

**Aviation Liability Regimes in the New Millennium:
Beyond the Wild Blue Yonder**

**Air Carrier Liability For International Air Cargo
Shipments In The 21st Century**

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I. INTRODUCTION

The 1929 Warsaw Convention governs liability for the international carriage of cargo, as well as passengers.¹ This international treaty sets uniform rules as to the rights and obligations between air carriers and users of international air transportation and creates uniformity with respect to transportation documentation, e.g., air waybills. In 1999, the United States ratified amendments to that Convention, known as the Montreal Protocol No. 4 or MP-4, which entered into force March 4, 1999.

MP-4 modernizes the cargo liability regime by allowing carriers and shippers to omit irrelevant information from air waybills and to substitute

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1. Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000 (1929), *reprinted in* 49 U.S.C. § 40105 (1994) [hereinafter Original Warsaw].

an electronic record for the paper air waybill. This elimination of out-of-date requirements will reduce transportation costs significantly and should save our industry and the U.S. economy nearly \$1 billion annually.

MP-4 amends and updates the cargo provisions of the Warsaw Convention and incorporates the terms of The Hague Protocol,² to which the United States was not previously a party. As a result, four sets of rules governing international carriage emerged:³

- Warsaw Convention as amended by MP-4;
- Warsaw Convention as amended by The Hague Protocol;
- Warsaw Convention, unamended; or
- Applicable domestic rules, for those countries not party to any Warsaw instrument.

A new, uniform international system has been proposed to replace this complex system. On September 6, 2000, the President transmitted to the Senate for its advice and consent a new treaty known as the Montreal Convention. The Montreal Convention updates the rules and incorporates the benefits of MP-4. Observers expect it to enter into force in the next few years and enjoy the same widespread international adherence as the Warsaw Convention has since 1929.

Section II explains how to determine which set of rules applies to a specific transaction. The major changes that MP-4 and The Hague Protocol make to the cargo provisions of the Warsaw Convention are described in Section III.

II. WHICH RULES APPLY TO THE CARRIAGE?

Each of the three sets of Warsaw rules described above—original Warsaw, Warsaw as amended by The Hague Protocol and Warsaw as amended by MP-4—has different rules. The choice of law can be critical to enforcing the carrier's liability limit and must be carefully observed. To determine which set of rules will apply to a particular transaction, it is helpful to think of the Warsaw system as an edifice, where each set of rules builds on the other. In the case of cargo, there are three steps for determining which set of rules governs a particular international carriage:

- 1) Identify the countries in which the cargo's places of departure

2. Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929, Sept. 28, 1955, 478 U.N.T.S. 371 [hereinafter *The Hague Protocol*].

3. The following abbreviations will be used hereafter: "Consolidated Warsaw Convention, 1975" refers to the consolidated provisions of the Warsaw Convention as amended by MP-4 (which includes changes made by The Hague Protocol); "Consolidated Warsaw Convention, 1955" refers to the consolidated provisions of the Warsaw Convention as amended by The Hague Protocol; "Original Warsaw" refers to the original, unamended 1929 treaty.

and destination are located. The place where the contract is made is irrelevant, and it does not matter in which direction the cargo flows.

- 2) Identify which treaties each country is party to.
- 3) Determine the most recent agreement to which both countries are party by examining the lists of countries party to MP-4, The Hague Protocol, and original Warsaw, in this order.⁴

III. CHANGES TO THE CARGO PROVISIONS

This section outlines the major changes The Hague Protocol and MP-4 make to the cargo provisions of original Warsaw. Each topic includes a brief discussion of original Warsaw and how each of these treaties changes the original Convention's text.

CONTENTS OF THE AIR WAYBILL & CARGO RECEIPT⁵

Original Warsaw

Original Warsaw requires that 17 separate categories of information⁶ be included on the air waybill. Much of this information has no commercial significance, i.e., listing the agreed stopping place.⁷ However, the failure to include this information on an air waybill or to make out an air waybill may preclude the carrier from enforcing its liability limits for the cargo.⁸

4. Both The Hague Protocol and MP-4 contain provisions that state if a country accedes to either, the country is party to the earlier agreements. See The Hague Protocol, *supra* note 2, arts. XXI, XXIII, 478 U.N.T.S. at 387; Montreal Protocol No. 4, Sept. 25, 1975, arts. XVII, XIX, Unif. L.R. 144, 161-63; Hyosung (America), Inc. v. Japan Air Lines Co., 624 F. Supp. 727 (S.D.N.Y. 1985). *But see* Chubb & Son, Inc. v. Asiana Airlines, 214 F.3d 301, 310-13 (2d Cir. 2000) (holding that United States and South Korea were not in a treaty relationship when United States had ratified only the original Warsaw Convention and South Korea adhered only to the Convention as amended by The Hague Protocol).

5. Cargo receipts are not required under original Warsaw and The Hague Protocol. They are only required if electronic air waybills are used. Warsaw Convention (Convention for the Unification of Certain Rules Relating to International Carriage by Air), Sept. 25, 1975, art. 5(2), 22 I.L.M. 13, 23 [hereinafter Consolidated Warsaw Convention, 1975]; *see also*, Montreal Protocol No. 4, *supra* note 4, art. III, at 147-53.

6. Original Warsaw, *supra* note 1, art. 8, at 3016-17.

7. Original Warsaw, *supra* note 1, art. 8(c), at 3016; *see* Grey v. American Airlines, 227 F.2d 282 (2d Cir. 1955), *cert. denied*, 350 U.S. 989 (1956).

8. Original Warsaw, *supra* note 1, art. 9, at 3017 (stating "[i]f the carrier accepts goods without an air waybill having been made out, or if the air waybill does not contain all the particulars . . . the carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability). *But see* Exim Industries v. Pan American World Airways, 754 F.2d 106 (2d Cir. 1985); Distribuidora Dimsa v. Linea Aerea Del Cobre S.A., 976 F.2d 90 (2d Cir. 1992); Maritime Insurance Co. v. Emery Air Freight, 983 F.2d 437 (2d Cir. 1993).

The Hague Protocol

The Hague Protocol specifies only three requirements that must appear on the air waybill. These requirements are:

- An indication of the places of departure and destination;
- An indication of an intermediate stopping place in the territory of another state, but this is only necessary if the places of departure and destination are within the territory of the same Warsaw state; and
- A notice to the shipper that if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo.⁹

Failure to make out a waybill, or if the waybill does not include the notice described above, generally precludes the carrier from enforcing its liability limits.¹⁰

Montreal Protocol No. 4

MP-4, like The Hague Protocol, drastically reduces the extensive cargo documentation requirements of Original Warsaw. This regime only has three requirements that must be included on an air waybill and cargo receipt. These requirements are:

- An indication of the places of departure and destination;
- An indication of the cargo's weight; and
- An indication of an intermediate stopping place in the territory of another state, but this is only necessary if the places of departure and destination are within the territory of the same Warsaw country.¹¹

MP-4 deletes the language that precluded a carrier from availing itself of the Convention's liability limits if the air waybill was either not made out or made out incompletely.¹² Failing to do these things does not affect the existence or the validity of a contract of carriage under the

9. Consolidated Warsaw Convention, 1955, *supra* note 3, art. 8; see also The Hague Protocol, *supra* note 2, art. VI, at 379.

10. Consolidated Warsaw Convention, 1955, *supra* note 3, art. 9; see also The Hague Protocol, *supra* note 2, art. VII, at 379.

11. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 8, at 25; see also Montreal Protocol No. 4, *supra* note 4, art. III, at 147-53.

12. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 9, at 26; see also Montreal Protocol No. 4, *supra* note 4, art. III, at 147-53.

Convention.¹³

FORM OF THE AIR WAYBILL

Original Warsaw & The Hague Protocol

Under Original Warsaw and The Hague Protocol, the use of an electronic system is not specifically authorized; the shipper must still use a paper air waybill. The air waybill, of which there must be three originals, must be filled out by the shipper¹⁴ and labeled as Original Warsaw requires (i.e., “for the carrier,” “for the consignee”).¹⁵ While the signature of the shipper may be printed or stamped, the signature of the carrier may not be printed.¹⁶

Montreal Protocol No. 4

If the shipper consents, MP-4 allows carriers to substitute computer entries for paper air waybills. The Protocol states, “Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor [shipper], be substituted for the delivery of an air waybill.”¹⁷ This allows “carriers to expand the electronic processing system which they already use for domestic cargo shipments.”¹⁸

To facilitate the use of this electronic format, other changes to Original Warsaw were made. The shipper may request from a carrier using an electronic processing system a cargo receipt identifying the shipment and access to the information contained in the electronic record.¹⁹ A carrier may not refuse a cargo shipment based on the absence of an electronic processing system at a certain airport.²⁰

Of course, a paper air waybill may still be used under MP-4. There are no significant changes made to the form of the waybill under this treaty. The requirements continue to specify the waybill must be made out in three original parts and how each part shall be labeled (i.e., “for the carrier” and “for the consignee”).²¹ Although signatures are still re-

13. *Id.*

14. Original Warsaw, *supra* note 1, art. 6(1), at 3016.

15. Original Warsaw, *supra* note 1, art. 6(2), at 3016.

16. Original Warsaw, *supra* note 1, art. 6(4), at 3016.

17. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 5, at 25; *see also* Montreal Protocol No. 4, *supra* note 4, art. III, at 147-53.

18. S. EXEC. REP. NO. 105-20, at 3 (1998).

19. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 5(2), at 25; *see also* Montreal Protocol No. 4, *supra* note 4, art. III, at 147-53.

20. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 5(3), at 25; *see also* Montreal Protocol No. 4, *supra* note 4, art. III, at 147-53.

21. Original Warsaw, *supra* note 1, arts. 6(1)(2), at 3016; Consolidated Warsaw Convention, 1975, *supra* note 5, arts. 6(1)(2), at 25; *see also* Montreal Protocol No. 4, *supra* note 4, art. III, at 147-53.

quired on an air waybill, MP-4 allows both the carrier's and the shipper's signatures to be printed.²² "This permits electronic recordation."²³

DELIVERY OF THE AIR WAYBILL

Original Warsaw & The Hague Protocol

Original Warsaw and The Hague Protocol require the air waybill be handed over with the goods and a copy of the waybill accompany the goods.²⁴

Montreal Protocol No. 4

MP-4 permits cargo shipments to commence prior to the waybill's completion.²⁵ The requirements that the air waybill "be handed over with the goods" and it "shall accompany the goods" are deleted. Further, the requirement that documents "necessary to meet the formalities of customs, octroi or police" be attached to the air waybill is also deleted.²⁶ These changes facilitate the use of an electronic processing system.

LIABILITY LIMITS

Original Warsaw

Original Warsaw holds carriers liable for damage sustained in the "event of the destruction or loss of, or of damage to" cargo.²⁷ It, however, limits carrier liability for cargo to 250 French gold francs per kilogram.²⁸ The Convention is silent as to when the conversion to the local currency is to be made: as of the date of contract, the date of loss, the date of judgment, or the date of payment. In the United States, the Department of Transportation's regulations sanction the use of the last official price of gold (\$42.22 per ounce) in order to determine carrier's liability limits at \$9.07 per pound.²⁹ Thus, the U.S. liability limit is approximately \$20.00 per kilogram. The shipper may make a special declaration of value and insure the shipment for a higher value.³⁰

22. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 6(3), at 25; *see also* Montreal Protocol No. 4, *supra* note 4, art. III, at 147-53.

23. S. EXEC. REP. NO. 105-20, at 9 (1998).

24. Original Warsaw, *supra* note 1, arts. 6(1)(2), at 3016.

25. Consolidated Warsaw Convention, 1975, *supra* note 5, arts. 6(1)(2), at 25; *see also* Montreal Protocol No. 4, *supra* note 4, art. III, at 147-53.

26. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 16, at 27; *see also* Montreal Protocol No. 4, *supra* note 4, art. III, at 147-53.

27. Original Warsaw, *supra* note 1, art. 18, at 3019.

28. Original Warsaw, *supra* note 1, arts. 22(2)(4), at 3019.

29. S. EXEC. REP. NO. 105-20, at 13-14 (1998); *Franklin Mint v. TWA*, 525 F. Supp. 1288 (S.D.N.Y. 1981), *rev'd in part*, 690 F.2d 303 (2nd Cir. 1982), *rev'd in part*, 104 S. Ct. 1776 (1984).

30. Original Warsaw, *supra* note 1, art. 22(2), at 3019.

The Hague Protocol

The Hague Protocol retains Original Warsaw's liability limits for cargo and allows the shipper to contract with the carrier for insuring the cargo for a higher value.³¹ Unlike Original Warsaw, it specifies the conversion to the local currency is to be made on the date of judgement.³² The Hague Protocol also provides if, during shipment under one waybill, loss, damage, or delay to part of the shipment affects the value of the whole shipment, the weight of the whole shipment is used in calculating the carrier's liability.³³

In addition, The Hague Protocol allows for the possibility of an award of court and legal fees in accordance with local law.³⁴ This provision, however, is generally not applicable if the carrier makes a written offer to settle that exceeds the eventual damages awarded (excluding any award for litigation or court costs).³⁵

Montreal Protocol No. 4

In the carriage of cargo, MP-4 limits the carrier's liability to 17 Special Drawing Rights (SDRs) per kilogram, approximately \$23.12/kg.³⁶ The SDR is defined as the average value of a defined basket of IMF member currencies, including the U.S. Dollar, British Pound, Japanese Yen, and Euro (replacing the German Mark and French Franc as of January 1, 1999). Its value is published on a daily basis in major newspapers, including the Wall Street Journal. The SDR value used to calculate liability should be established as of the date of judgement.³⁷ Of course, as with Original Warsaw and The Hague Protocol, the shipper may make a special declaration of value and insure the shipment for a higher value.³⁸

MP-4 does maintain some changes regarding liability limits The Hague Protocol made to Original Warsaw text. Both agreements provide if, during shipment under one waybill, loss, damage, or delay to part of the shipment affects the value of the whole shipment, the weight of the

31. Consolidated Warsaw Convention, 1955, *supra* note 3, arts. 22(2), 22(5); *see also* The Hague Protocol, *supra* note 2, art. XI, at 381-83.

32. Consolidated Warsaw Convention, 1955, *supra* note 3, art. 22(5); *see also* The Hague Protocol, *supra* note 2, art. XI, at 381-83.

33. Consolidated Warsaw Convention, 1955, *supra* note 3, arts. 22(2)(b); *see also* The Hague Protocol, *supra* note 2, art. XI, at 381-83.

34. Consolidated Warsaw Convention, 1955, *supra* note 3, art. 22(4); *see also* The Hague Protocol, *supra* note 2, art. XI, at 381-83.

35. *Id.*

36. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 22(2)(b), at 31; *see also* Montreal Protocol No. 4, *supra* note 4, art. VII, at 155. On March 4, the SDR was valued at \$1.3599.

37. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 22(6), at 32; *see also* Montreal Protocol No. 4, *supra* note 4, art. VII, at 155-6.

38. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 22(2)(b), at 31.

whole shipment is used in calculating the carrier's liability.³⁹ Both also provide for the possibility of an award of court and legal fees in accordance with local law.⁴⁰

BREAKING THE LIABILITY LIMITS

Original Warsaw & The Hague Protocol

The liability limits for cargo set out in Article 22 of Original Warsaw and The Hague Protocol can be broken if the claimant can prove that:

- The carriage of cargo was not international transportation;⁴¹
- The carrier either accepts cargo without a waybill having been made out or the waybill fails to include certain information;⁴²
- The damage occurred during the surface transportation;⁴³ or
- The carrier acted with willful misconduct⁴⁴ or with "intent to cause damage or recklessly and with knowledge that damage would probably result."⁴⁵

Montreal Protocol No. 4

One of the most important changes made by MP-4 is the liability limit for the carriage of cargo is now essentially unbreakable.⁴⁶ The liability limits cannot be exceeded, even if a carrier fails to produce a waybill or the waybill is incomplete.⁴⁷ In fact, MP-4 narrows the scope of the willful misconduct provision to exclude cargo.⁴⁸ This means that even if a carrier acts with willful misconduct in the carriage of cargo, its liability is

39. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 22(2)(c), at 31; *see also* Montreal Protocol No. 4, *supra* note 4, art. VII, at 155.

40. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 22(4), at 31-2.

41. Original Warsaw, *supra* note 1, art. 1, at 3014; The Hague Protocol, *supra* note 2, art. I, at 373-75.

42. Original Warsaw, *supra* note 1, art. 9, at 3017 (failure to include the information set out in Article 8 (a) to (i), inclusive, and (q) breaks the liability limits); The Hague Protocol, *supra* note 2, art. VII, at 379 (failure to include notice on the air waybill that the carriage is governed by the Warsaw Convention breaks the liability limits).

43. Original Warsaw, *supra* note 1, art. 18, at 3019. *See, e.g.,* Victoria Sales Corp. v. Emery Air Freight, 917 F.2d 705, 707-08 (2nd Cir. 1990).

44. Original Warsaw, *supra* note 1, art. 25, at 3020.

45. Consolidated Warsaw Convention, 1955, *supra* note 3, art. 25, *see also* The Hague Protocol, *supra* note 2m art. XIII, at 383. The Hague Protocol clarified Original Warsaw's willful misconduct provision (Article 25).

46. "Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which gave rise to the liability." Consolidated Warsaw Convention, 1975, *supra* note 6, art. 24, at 32; *see also* Montreal Protocol No. 4, *supra* note 5, art. VIII, at 157.

47. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 9, at 26; *see also* Montreal Protocol No. 4, *supra* note 4, art. III, at 147-53.

48. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 25, at 33; *see also* Montreal Protocol No. 4, *supra* note 4, art. IX, at 157-59.

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limited to 17 SDRs per kilogram (unless the parties contract otherwise). It is expected this strict liability regime will lead to reductions in insurance and settlement costs.⁴⁹

MP-4 does retain very limited circumstances in which a claimant can break the liability limits for cargo:

- If the carriage of cargo was not international transportation;⁵⁰ or
- If the damage occurred during the surface transportation.⁵¹

CARRIER DEFENSES

Original Warsaw

Under Original Warsaw, the carrier operates under a rebuttable presumption of carrier fault for injury caused by destruction, loss, damage, or delay in the carriage of cargo.⁵² The carrier has the following defenses to cargo claims under Original Warsaw:

- It took all necessary measures to avoid the damage or it was impossible for it to take such measures.⁵³
- The damage “was occasioned by an error in piloting, in the handling of the aircraft, or in navigation,” and that the carrier and his agents otherwise took all necessary measures to avoid the damage.⁵⁴

Under these so-called “due care” defenses, the carrier has the burden of proving it was not negligent.

The carrier may also have a defense of comparative or contributory negligence in the carriage of cargo. If the carrier shows the claimant contributed to the damage, local law determines whether the carrier should be exonerated from liability.⁵⁵

The Hague Protocol

The Hague Protocol operates in the same manner as Original Warsaw, except it deletes the carrier defense that the damage “was occasioned by an error in piloting, in the handling of the aircraft, or in navigation.”⁵⁶ The Hague Protocol retains the language of Original War-

49. Gerald F. Fitzgerald, *The Four Montreal Protocols to Amend the Warsaw Convention Regime Governing International Carriage By Air*, 42 J. AIR L. & COM. 273, 302 (1976).

50. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 1, at 23-4.

51. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 18(5), at 28-9.

52. Original Warsaw, *supra* note 1, arts. 18(1)(19), (20), at 3019.

53. Original Warsaw, *supra* note 1, art. 20(1), at 3019.

54. Original Warsaw, *supra* note 1, art. 20(2), at 3019.

55. Original Warsaw, *supra* note 1, art. 21, at 3019.

56. Consolidated Warsaw Convention, 1955, *supra* note 3, arts. 18(1), 19, 20; *see also* The Hague Protocol, *supra* note 2, art. X, at 379.

saw that the applicability of a comparative or contributory negligence regime is left to the court's discretion, pursuant to local law.⁵⁷

Montreal Protocol No. 4

Under MP-4, the carrier is strictly liable for the loss of, or damage to, cargo.⁵⁸ The carrier, however, can avoid strict liability if it proves the damage "resulted solely" from:

- An inherent defect, quality, or vice of the cargo;
- Defective packaging performed by one other than the carrier or its agents or servants;
- An act of war;
- Acts of public authority in the entry, exit, or transit of the cargo.⁵⁹

The "resulted solely" language makes these defenses unavailable to the carrier if the carrier is responsible in part for the damage.

Under MP-4, the carrier is not strictly liable for damage caused by delay.⁶⁰ Instead, MP-4 retains the rebuttable presumption of carrier fault contained in Original Warsaw and The Hague Protocol.⁶¹ The carrier, however, has the "due care" defense for damage claims caused by cargo delay. If the carrier can prove "that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures," it avoids liability.⁶²

Finally, MP-4 adds a comparative negligence defense for the carriage of cargo. Thus, if the carrier proves that damage to the cargo was caused in part by the negligence or other wrongful act of a person claiming compensation, the carrier shall be exonerated from his liability to the extent of the claimant's fault.⁶³ Original Warsaw and The Hague Protocol left the applicability of a comparative or contributory negligence regime to the carriage of cargo to the court's discretion, pursuant to local law.⁶⁴

57. Original Warsaw, *supra* note 1, art. 21, at 3019.

58. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 18(2), at 28; *see also* Montreal Protocol No. 4, *supra* note 4, art. IV, at 153.

59. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 18(3), at 28; *see also* Montreal Protocol No. 4, *supra* note 4, art. IV, at 153.

60. Consolidated Warsaw Convention, 1975, *supra* note 5, arts. 19, 20, at 29; *see also* Montreal Protocol No. 4, *supra* note 4, art. V, at 155.

61. This provision was retained because imposing strict liability for delay is "inappropriate and indeed harmful" since "a main cause of delay is adherence to safety requirements." Fitzgerald, *supra* note 49, at 302, n.93.

62. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 20, at 29; *see also* Montreal Protocol No. 4, *supra* note 4, art. V, at 155.

63. Consolidated Warsaw Convention, 1975, *supra* note 5, art. 21(2), at 29; *see also* Montreal Protocol No. 4, *supra* note 4, art. VI, 155.

64. Original Warsaw, *supra* note 1, art. 21, at 3019.

STATUTE OF LIMITATIONS AND OTHER RELEVANT TIME PERIODS

Under all the treaties, the statute of limitations on the right to damages is two years, which runs from the date of arrival, the date the aircraft ought to have arrived, or the date on which the transportation stopped.⁶⁵ Each agreement provides that receipt of the goods by the person entitled to delivery constitutes prima facie evidence the goods were delivered in good condition and in accordance with the air waybill.⁶⁶

Original Warsaw

In the case of damage to cargo, the recipient must complain within seven days of the date of receipt of the damaged cargo.⁶⁷ For delay, the time period for complaining is within 14 days of the date the goods were finally placed at the recipient's disposal.⁶⁸ There is no limit (other than the two years to bring suit) for claims based on non-delivery of cargo.

The Hague Protocol & Montreal Protocol No. 4

Under The Hague Protocol and MP-4, the recipient has 14 days from receipt within which to complain about damage and 21 days from receipt within which to complain about delay.⁶⁹ There is no limit (other than the two years to bring suit) for claims based on non-delivery of cargo.

IV. CONCLUSION

The conditions under which liability for the international carriage of cargo is administered are subject to a complex system of legal rules. With the Senate's ratification of The Hague Protocol and MP-4, these legal rules have been modernized; however, any one of four sets of legal rules may be applied in a particular case. Moreover, new legal issues will arise when courts are faced with issues relating to the application of MP-4.

Nonetheless, the changes in the treaty will facilitate the carriage of goods by air. In this unprecedented era of international trade and the increasing role of e-commerce, these changes will undoubtedly play a significant role in the further development of the air cargo industry and the global economy. Therefore, the updated legal regime established by MP-4 must be understood to take advantage of its benefits.

65. Original Warsaw, *supra* note 1, art. 29(1), at 3021; Consolidated Warsaw Convention, 1975, *supra* note 5, art. 29(1), at 34.

66. Original Warsaw, *supra* note 2, art. 26, at 3020; The Hague Protocol, *supra* note 2, art. XV, at 383-84; Consolidated Warsaw Convention, 1975, *supra* note 5, art. 26, at 33.

67. Original Warsaw, *supra* note 1, art. 26(2), at 3020.

68. *Id.*

69. The Hague Protocol, *supra* note 3, art. XV, at 383-84; Consolidated Warsaw Convention, 1975, *supra* note 5, art. 26(2), at 33.

