

## Need for Better Compensation on Bhutanese Air Carriers\*

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### บทคัดย่อ

ดริ๊กแอร์ และ ทาซีแอร์ สายการบินของภูฏาน มีกฎเกณฑ์ความรับผิดชอบสำหรับการขนส่งระหว่างประเทศแตกต่างกัน ความแตกต่างในการจัดการความเสี่ยง เช่น สัมภาระ หรือของล้ำค่า เสียหาย ถูกทำลาย สูญหาย หรือผู้โดยสารถึงปลายทางล่าช้า บาดเจ็บแก่กาย หรือเสียชีวิต เกิดจากการที่ภูฏานไม่ได้ลงนามในอนุสัญญาระหว่างประเทศ กำกับกับการขนส่งทางอากาศระหว่างประเทศ และไม่มีกฎหมายภายในที่กำกับความรับผิดชอบในการขนส่งระหว่างประเทศต่อผู้โดยสารหรือผู้โดยสารส่ง ในขณะที่ยุโรปเลือกจะใช้อนุสัญญารุงวอร์ซอ ค.ศ. 1929 ที่แก้ไขโดยพิธีสารกรุงเฮก ค.ศ. 1955 แต่ผู้เรียกร้องอาจได้รับความไม่แน่นอนได้ ภูฏานจึงต้องทำเช่นเดียวกับประเทศอีก 137 ประเทศ ด้วยการลงนามเข้าเป็นภาคีอนุสัญญามอนทรีออล ค.ศ. 1999 การทำให้เป็นอันหนึ่งอันเดียวกันซึ่งกฎเกณฑ์การขนส่งระหว่างประเทศตามอนุสัญญานี้ ดีกว่าอนุสัญญาเดิม ได้แก่ ข้อกำหนดเรื่องเอกสารมีความเรียบง่ายขึ้น เกณฑ์จำกัดความรับผิดชอบที่ทันสมัยขึ้น การแก้ไขจำนวนจำกัดความรับผิดชอบอย่างสม่ำเสมอ ข้อกำหนดเรื่องการประกันภัย โอกาสในการได้รับชำระเงินล่วงหน้าในกรณีผู้เรียกร้องมีความเร่งด่วน การเพิ่มเขตอำนาจศาลที่หา ความรับผิดชอบสูงขึ้นในกรณีผู้โดยสารบาดเจ็บแก่กายหรือเสียชีวิต ตัวอย่างทั้งหมดนี้แสดงให้เห็นประโยชน์ที่มากกว่าในการเข้าเป็นภาคีอนุสัญญามอนทรีออล อีกทั้งภูฏานจะได้ปฏิบัติตามแนวคิดเรื่องความสุขมวลรวมประชาชาติ นอกเหนือจากการคิดทางเศรษฐกิจแต่เพียงอย่างเดียว เพราะจะได้แสดงให้เห็นที่ท่องเที่ยวเห็นว่าภูฏานใส่ใจนักท่องเที่ยว ผู้ขนส่งของภูฏานเองสามารถใช้มาตรฐานความรับผิดชอบตามอนุสัญญามอนทรีออลเพื่อสร้างความแน่นอนและจำกัดความรับผิดชอบต่อลูกค้าของผู้ขนส่ง ระบบการชดเชยความเสียหายแก่ผู้โดยสารสำหรับสัมภาระและของจะมีผลในเชิงบวกต่อจิตใจและสร้างความพอใจให้แก่ลูกค้า

### คำสำคัญ

ความรับผิดชอบของผู้ขนส่งทางอากาศ ดริ๊กแอร์ ความสุขมวลรวมประชาชาติ อนุสัญญามอนทรีออล ค.ศ. 1999 ทาซีแอร์

\* ความจำเป็นในการมีระบบชดเชยความเสียหายที่ดีกว่าสำหรับผู้ขนส่งทางอากาศภูฏาน

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## Abstract

*Drukair and Tashi Air—the two air carriers in Bhutan—have different international carriage liability rules. The difference in approach to handling risks such as delay of, damage to, destruction of, loss of baggage or cargo; delay, bodily injury or death of passengers stems from Bhutan not having signed any international convention governing international carriage by air. Nor is there specific national legislation governing liability for international carriage towards passengers or consigners. While Drukair has chosen to apply better part of Warsaw Convention 1929 as amended by the Hague Protocol 1955, those claiming against might have to live with more uncertainties. Bhutan must join the 137 countries around the globe and sign the Montreal Convention 1999. The better unification of rules of international carriage offered by this convention, simplification of documentation requirements, modernization of the liability limits, periodic revision of the limits, requirement for insurance, opportunity to provide advance payment to meet emergency requirements of claimants, addition of fifth jurisdiction, two tier liability for bodily injury and death of passengers are benefits that will outweigh any perceived burden of ratifying Montreal Convention. Bhutan will stand up to its own commitment as a nation emphasizing Gross National Happiness instead of mere economic calculations. It will demonstrate to the potential traveller that it cares. Bhutanese carriers could as well embrace a less formal adoption of the Montreal Convention liability standards to offer certain and enhanced liability limits to their customers. A better compensation to passengers and for baggage and cargo will positively impact the psychological wellbeing ensure customer satisfaction.*

## Key words

air carrier liability, Drukair, Gross National Happiness, Montreal Convention 1999, Tashi Air

It has been seventeen years after the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999 (MC) came into force, but Bhutan is not a member. Bhutan is not a member of any prior international conventions on carriage by air.

This essay is an attempt by a keen observer of the legal developments in the aviation industry of Bhutan to compare the confusing practices even between the two air carriers in Bhutan thereby complicating the carriers' legal liability.

An attempt shall also be made to explain how subscribing to an international liability regime shall help or hinder the pursuit of Gross National Happiness (GNH)—Bhutan's developmental goal. Owing to lack of access to a good library of up to date reference material, it is necessarily less academic and more of an anecdotal relation to the subject.

There is no dearth of scholarly examination of the Warsaw liability regime in various jurisdictions up till the entry into force of the MC or even the latest convention itself. This is a personal survey of scholarly views to relate them to a tiny land locked country for which air travel is essential.

Offering better care and choices to the passenger at no additional cost may be an assured way for the Bhutanese carriers to survive the economic plight brought about by the Covid-19 pandemic.

### **A Glimpse of Aviation in Bhutan**

Commercial aviation in Bhutan began on 11 February 1983 with an 18-seat Dornier 228-200 operated by Drukair, state-owned carrier. The first international destination was Kolkata and gradually eight destinations in South Asia were linked. The fleet was upgraded to BAe 146 in November 1988, then to A319 in 2004 and A320 in the first half of 2020.

Tashi Air Private Limited,<sup>1</sup> owned by Tashi Group, commenced domestic flights with an eight-seater Pilatus PC12 in December 2011. Tashi Air's first international flight was from Paro to Bangkok on 10 October 2013 and continues with two A319 aircraft.

While Drukair operates to nine international destinations in five countries (Bangladesh, India, Nepal, Thailand and Singapore) and Tashi Air serves fewer city pairs (in India, Nepal and Thailand).

### **Liability of Bhutanese Air Carriers**

There is no national law specifically governing air carriage and air carriers are not required to follow any international liability regime. Drukair—the State-owned carrier chose to apply<sup>2</sup> Warsaw Convention

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<sup>1</sup> "Our Story," Bhutan Airlines, accessed 1 October 2020, from <http://www.bhutanairlines.bt/about-us/corporate-profile/our-story>.

1929 as amended by the Hague Protocol 1955 (WC-HP). These set of rules governing the international carriage by air is described as ‘conditions’ by the Bhutanese carriers. And the two air carriers have contrasting set of conditions governing their respective carriages.

Drukair had chosen to apply the WC-HP system<sup>3</sup> to determine its liability for the international carriage of passengers and baggage. So, for a journey not to, from or having an agreed stopping place in the United States, liability of the carrier for death or personal injury to passengers is limited in most cases to approximately US\$ 10,000 or US\$ 20,000. By implication there is no limitation if the journey is to, from or having an agreed stopping place in the US.

Drukair’s liability for loss, damage or delay of checked baggage is limited to approximately US\$20 per kilogram.

In contrast the conditions of Tashi Air<sup>4</sup> appear to be incomplete with a total of eight articles in eight pages. There is no mention of which international liability regime is to govern its liability for international carriage by air. An electronic ticket issued by Tashi Air on 3 January 2020 had a notice that read “Carriage and other services provided by the carrier are subject to conditions of carriage, which are hereby incorporated by reference. These conditions may be obtained from the issuing carrier.” The only liability towards passengers declared on its website is those arising from Cancellation, Changes of Schedule.

The rules are unclear, not uniform and archaic at best and almost non-existent in worst case scenario.

### **Domestic Laws Governing Carriage**

The conditions of Drukair makes clear that any provision contrary to anything contained in the Convention, applicable laws, government regulations, orders or requirements that cannot be waived by agreement of the parties are invalid. The conditions are to prevail over carrier’s regulations.

Tashi Air yet again does not mention anything about how its conditions will relate to domestic laws.

This means that claimants or courts could invoke domestic laws of Bhutan in case of delay, damage or loss of baggage or cargo, and personal injury or death of passengers. From among the domestic

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<sup>2</sup> “Terms and Conditions of the Carrier,” Drukair, accessed 1 October 2020, from <https://www.drukair.com.bt/Conditions-of-Carriage>.

<sup>3</sup> Convention for the Unification of Certain Relating to International Carriage by Air, opened for signature 12 October 1929, entered into force 13 February 1933; and Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw 12 October 1929, opened for signature 28 September 1955.

<sup>4</sup> “Terms and Conditions of the Carrier,” Bhutan Airlines, accessed 1 October 2020 from [http://www.bhutanairlines.bt/assets/bhutan-airlines-images/assets/uploads/Conditions\\_of\\_Carriage.pdf](http://www.bhutanairlines.bt/assets/bhutan-airlines-images/assets/uploads/Conditions_of_Carriage.pdf).

laws, the two acts applicable to air carrier are Consumer Protection Act 2012 and Contract Act of Bhutan 2013. These laws offer broad legal remedies which are not exclusive to carriage by air.

Any loss or damage suffered by passenger on Tashi Air can claim damages from the service provider.<sup>5</sup> Remedies for breach of contract,<sup>6</sup> such as compensatory damages, which includes compensation for the loss or damage caused to him or her which naturally arose in the usual course of things from such breach, or which the parties knew, at the time of making the contract, to be likely to arise from a breach of the contract.

Decisions of the Royal Courts of Justice in Bhutan are not reported or published. Hence it is near impossible to know whether cases related to international carriage by air were brought before the courts of law in Bhutan. Nor is it possible to predict how the Bhutanese courts will decide if such a case were to come before them.

Courts of law would be guided by the Constitution in relation to international conventions. Article 10 (25) of which states that an international convention “... duly acceded to by the Government hereafter, shall be deemed to be the law of the Kingdom only upon ratification by Parliament unless...” It is clear that besides accession, the convention has to be ratified by the Parliament. A private international legal instrument voluntarily opted by a corporate entity, albeit a State-owned airline, to govern its activities may well fall short of a law passed by legislative. It is not impossible to imagine claimants arguing that a legal instrument more beneficial to its position is applicable.

There were certainly no case brought against the carriers<sup>7</sup> before the courts in Bhutan in the last decade starting 2010. Decisions of the courts in other jurisdictions are not considered because there is no published instance of Bhutanese courts having been guided by the decisions from other jurisdictions.

In every sense air carrier liability in Bhutan is an uncharted territory—legally.

### **Anecdotes of Accident, Damages and Delays**

Events short of legal action against the carriers have been reported in newspapers covering delay of or damage to baggage or cargo, denied boarding and death onboard.

The most frequent claims raised against the carrier being claims of damaged baggage or cargo.

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<sup>5</sup> Consumer Protection Act of Bhutan, 2012, § 64.

<sup>6</sup> Contract Act of Bhutan, 2013, § 211 (1).

<sup>7</sup> Personal experience of having worked in the aviation industry from October 2007 to May 2020.

An uncommon but pitiable incident in September 2015 was that of denied boarding of an ailing passenger<sup>8</sup> who emanated a strong odour as a result of his medical condition. While there was robust debate on social media, it did not test the ‘conditions’ in courts of law. The very next month in 2015, a man died onboard<sup>9</sup> Drukair flight from Kolkata to Singapore. Press release from the carrier shared its presumption that the deceased was diabetic.

As of now the safety record of Bhutanese aviation industry is impeccable, there had been very few incidents and only one accident—caused by hail at Guwahati, India on 16 April 2016.<sup>10</sup> No one was injured.

### Current Woes

Aviation industry in Bhutan had been exceptionally lucky on one hand and reveals a robust safety management system on the other. There was no incident which tested the legal strength of the conditions of carriage.

There is little appreciation of the fact that having opted to apply WC-HP liability regime exposes the national carriers to jurisdictions outside Bhutan. With the exception of Bangladesh, MC has come into force in all destination countries of Bhutanese air carriers.

Liability limits imposed by WC-HP vis-à-vis the ‘conditions’ are summarized below:

The liability limit of the WC-HP is 250,000 francs for death and bodily injury of passenger. For international air carriage, Drukair has limited its liability for bodily injury or death of passenger, as mentioned earlier. Liability for destruction to, loss of or damage to cargo or baggage is capped at US\$ 20 per kilogram. Bhutanese claimants would receive varying compensation arising from international carriage depending on the value of US\$ compared to claim arising from domestic air carriage.

Different level of liability limits applies to domestic air carriage on Drukair. In the event of death or bodily injury or wound suffered by a passenger which results in a permanent disablement incapacitating the passenger from engaging in or being occupied with usual duties or business occupation, the liability of the carrier for each passenger shall be<sup>11</sup> BTN 750,000 if the passenger is 12

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<sup>8</sup> Gyalsten K Dorji, “The captain makes the final call,” *Kuensel* (30 September 2015) accessed 2 October 2020, from <https://kuenselonline.com/the-captain-makes-the-final-call/>.

<sup>9</sup> Gyalsten K Dorji, “Passenger dies mid-air on Drukair flight,” *Kuensel* (22 October 2015) accessed 2 October 2020, from <https://kuenselonline.com/passenger-dies-mid-air-on-drukair-flight/>.

<sup>10</sup> Staff reporter, “Drukairs aircraft damaged by hail,” *Kuensel* (17 April 2016) accessed 2 October 2020, from <https://kuenselonline.com/drukairs-aircraft-damaged-by-hail/>.

<sup>11</sup> Royal Monetary Authority, “Exchange Rates, USD 1 = BTN 75.45” accessed 8 November 2020, from <https://www.rma.org.bt>.

years or more of age. If the passenger is below 12 years of age at the date of accident it is BTN 375,000.

Tashi Air assumes no such liability or limits. Claimants against this carrier might be able to claim better compensation than those claiming against Drukair depending on the choice of legal forum.

Claimants could file suit outside Bhutan based on (a) carrier's principal place of business or (b) the place of destination. Air carrier liability, especially for Tashi Air, for death, bodily injury of passenger and destruction to, loss of or damage to baggage and cargo may differ with jurisdictions.

Under WC-HP, documentation had been simplified. But failure to issue ticket, failure to notify on ticket about the limit of liability will expose carrier to unlimited liability. Therefore, Bhutanese carriers must embrace for unlimited liability since their tickets do not give such notice pertaining to liability limits of carrier. It has also revised the liability limits to 250,000 francs for death, wounding, physical injury from the 1929 level. Agents and servants acting within scope of employment could avail limits of liability available to the carrier.

If the level of compensation offered by WC-HP were deemed inadequate as early as the 1960s, it needs no emphasis that it is peanuts now.

Professor Bin Cheng diagnosed that the Warsaw liability regime along with its various instruments was in 'crisis' on the sixtieth anniversary of the Warsaw Convention. Justifying that the balance of benefits it has established has over the years... shifted disproportionately and overwhelmingly in favour of the carrier at the expense of the customer.<sup>12</sup>

Conditions of Drukair excepts traffic from, to and via Canada and the US, thereby assuming unlimited liability towards that class of air travellers. WC-HP certainly does not require that differentiation.

## MC

Salient features of MC are summarized here to highlight the modernization of the liability regime extant before MC. The old regulatory framework had to be adjusted to the realities of the modern transportation by air and the needs of the travelling public and that of the carriers.<sup>13</sup>

1. Documentations have been simplified, allowing electronic ticketing, baggage identification tag and air waybills.

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<sup>12</sup> Bin Cheng, "Sixty Years of the Warsaw Convention: Airline Liability at the Crossroads (Part I)," German Journal of Air and Space Law, Vol. 38, p.319 (1989).

<sup>13</sup> Michael Milde, "The Warsaw System of Liability in International Carriage by Air," Annals of Air & Space Law, Vol. XXIV, p.155 (1999).

2. To limit liability notice had to be given but noncompliance does not jeopardize the right avail limits of liability of the carrier.
3. Definitions of accidents and bodily injury remains the same as in WC-HP.
4. Liability remains unchanged though the limits have even enhanced. Carrier is liable for death or bodily injury of passenger up to 128,821 special drawing rights. Beyond which carrier has to prove the damage was not due to the negligence or wrongful act or omission of the carrier, servant or agent or that it was due to negligence, wrongful act or omission of third party.
5. Carrier is liable for destruction of, damage to, loss of checked baggage if the event causing damage occurred onboard or while the baggage in charge of the carrier. The maximum liability is limited to 288 special drawing rights. For unchecked baggage, the liability was based on fault--meaning the carrier will be liable if its servant or agent caused the damage or if passenger declares special interest at delivery accompanied by supplementary payment.
6. Carrier is liability for the destruction of, loss of, damage to cargo caused during the carriage or while the cargo is in the charge of the carrier. Carrier can exclude liability for damage resulting from inherent defect, quality or vice of the cargo, defective packaging done by person other than the carrier, servant or agent, act of war, armed conflict, or an act of public authority in connection with entry, exit or transit of cargo. Carrier's liability is limited to 22 special drawing rights per kilogram unless special interest had been declared.
7. In case of damages resulting from delay of passenger, baggage and goods, the maximum liability is limited to 5,346 special drawing rights if the carrier cannot prove that its servant or agents took all means reasonably required to avoid damage or that it was impossible to do so.
8. Carrier can defend by proving contributory negligence of wrongful act or omission of the claimant or a third party.
9. If national law requires carrier can make advance payment without admitting liability and the advance may be offset against final settlement.
10. MC provides a mechanism for revision of the liability limits every five years. The last revision was effective 28 December 2019.
11. Air carriers are required to insure their convention liability.

### **Why should Bhutan Ratify MC?**

The following are some reasons that Bhutan will find for acceding to the MC:

1. MC modernized and consolidated the fragmented system extant till then, and simplified documentation.
2. Liability for death and bodily injury is now unlimited with strict liability up to some extent.
3. If the WC limits were intended to shield the fledgling aviation industry during the initial years of the convention. Bhutanese aviation industry had more than three decades to prepare itself for



enhancement of liability limits. No other industry has such a privilege. Even if the State, as the owner of Drukair, believes that unlimited liability could pose threat to the survival of the airline industry in Bhutan, a reasonable enhancement of the liability limits is long overdue.

4. Mechanism for periodic revision of liability is advantageous for the passenger and the signatories reflecting economic reality. This feature of MC will prevent the liability limits becoming redundant in the market, the fact which WC-HP liability suffered internationally.
5. With 137 member countries, air carrier liability will be fairly predictable and reasonably uniform wherever claimants choose to litigate their claims.
6. Since Bhutanese air carriers already have insurance, the additional financial burden will not be huge.
7. WC-HP documentation requirements are outdated compared to the recent airline practices.
8. Full compensation will also act as an incentive to aim at ever higher safety standards.<sup>14</sup>

Professor Bin Cheng recommends that although by no means perfect, MC is certainly a worthy heir to Warsaw and should carry the family flag proudly into the new millennium. *States should accept it without delay.*<sup>15</sup>

If the economy is significant like Thailand or Indonesia, entities like IATA, in 2015 urged them to join MC. However, Bhutan has to take its own steps without such encouragement as its carriers are not member of IATA.

### Accession to MC and GNH

It is proposed that accession to the MC will help Bhutan move closer to achieving GNH.

His Majesty King Jigme Singye Wangchuck, first enunciated the principles of the philosophy of Gross National Happiness in the late 1980s, saying that “Gross National Happiness is more important than Gross National Product.” Bhutanese government leaders discussed GNH in the years following His Majesty’s announcement.<sup>16</sup> Mark Mancall stated that “Development for its own sake is not GNH... GNH, therefore, is an integrated and systematic approach to change with certain particular objectives, into which economic development must be consciously integrated as one, but only one, component. Economic development... is part of but neither the whole of GNH nor its primary objective”.<sup>17</sup>

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<sup>14</sup> Bin Cheng, “The 1999 Montreal Convention on International Carriage by Air Concluded on the Seventieth Anniversary of the 1929 Warsaw Convention (Part II),” *German Journal of Air and Space Law*, Vol. 49, p.484 (2000).

<sup>15</sup> *Ibid*, p.499 (Emphasis is mine.)

<sup>16</sup> Karma Ura, and Karma Galay (eds), *Gross National Happiness and Development*, (Thimphu: The Centre for Bhutan Studies, 2004), p.vii.

<sup>17</sup> Mark Mancall, “Gross National Happiness and Development: An Essay” in Karma Ura, and Karma Galay (eds), *supra note 16*, pp.39-40.

In 2017, Centre for Bhutan Studies and GNH, at the behest of the Prime Minister, developed Proposed GNH of Business to (a) assess the overall functioning of the business entity as per the GNH framework; (b) certify business entity based on its performance, and (c) identify areas that require improvement.

Of the nine domains<sup>18</sup> of GNH, accession to MC will have a positive impact on Psychological Wellbeing and Good Governance. While there is no passenger survey related to airline liability, it is assumed that passenger would welcome better compensation for bodily injury and death or delay of passengers; delay of, destruction of, damage to or loss of baggage or cargo. Thereby prompting their psychological wellbeing.

The draft Proposed GNH of Business did not have “Customer/Client satisfaction” under the domain of Good Governance. The authors had to include<sup>19</sup> it in the final document of GNH Certification. It urges businesses to develop strategic programmes to promote customer satisfaction like monitoring and tracking satisfaction, understanding customer expectations, and providing effective measures to increase satisfaction to be able to qualify themselves as a GNH imbued business.

It was found that the business sector in Bhutan continues to operate on a conventional business principle of maximizing profit, and it is yet to experiment with integrating GNH values into its business goal and operations. Another study<sup>20</sup> on corporate social responsibilities revealed Drukair—albeit a state-owned carrier—treading behind other corporations.

Not only should the two airlines embrace GNH principles, they should also conduct periodic surveys to measure the happiness of passengers using survey questionnaire<sup>21</sup> including psychological wellbeing and customer satisfaction.

### **An Alternative Means to the End**

Accession to an international legal instrument is an arduous process. Every communication between the international registry and the prospective acceding country has to be done through diplomatic channels with its inherent formalities. Bhutan would have to allocate resources and take time to study the full implication of the accession. For instance, in 2009 Bhutan commenced preparatory work for

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<sup>18</sup> Karma Wangdi, Tshoki Zangmo, and Jigme Phuntsho, GNH Certification, (Thimphu: Centre for Bhutan Studies & GNH, 2017), p.10.

<sup>19</sup> *Ibid.* p. 41.

<sup>20</sup> Jigme Phuntsho, and Sonam Zangmo, “Corporate Social Responsibility Practice in Bhutan,” Journal of Bhutan Studies, Vol. 38, p.79 (2018), from <https://www.bhutanstudies.org.bt/publicationFiles/JBS/JBS%2039/83-124.pdf>

<sup>21</sup> Karma Wangdi, Tshoki Zangmo, and Jigme Phuntsho, *supra note 18*, p.114

accession to the Cape Town Convention 2001 and the Aircraft Protocol 2001<sup>22</sup> and the accession occurred only in 2014.

The two carriers in Bhutan can learn lessons from past practices by international carriers like the Japanese Initiative, whereby JAL waived all applicable limitations of liability effective 20 November 1992 by a simple amendment to the conditions of carriage for JAL. Similar actions were taken by carriers in Thailand way before enactment of International Carriage by Air Act 2015 ratifying MC into municipal laws.

At the time of writing this, one carrier in Bhutan has already taken the steps to adopt WC-HP system to govern its liability for international carriage. There is ample room to improve the provisions to incorporate the WC-HP provisions in its entirety.

The other carrier has yet to adopt any standard liability provisions.

The Board and the Management of respective carriers would do well to initiate serious informal or formal discussions to amend their conditions of carriage to incorporate the MC liability standards. Assuming MC liability standards as their contractual obligations towards passengers and consigners will be faster, easier and less expensive means of achieving the same end. After all major carriers offered improved liability coverage even before the MC was enacted.

At present the aviation market in Bhutan is a duopoly—the two carriers sharing roughly equal market on busy routes such as Paro-Bangkok-Paro. That might explain why Tashi Air did not adopt any standard liability for international carriage by air. Or perhaps the better rationale could be that the law does not require the carrier to do so.

The national think tank on GNH urges that business embrace social benefit in addition to conventional bottom line.<sup>23</sup> If they do not volunteer, it is time to require improvements in liability standards by law.

### **Liability Limits on International Carriage and Domestic Carriage**

Drukair is the only carrier offering domestic connectivity. It uses the same aircraft equipment to operate both domestic and some international sectors. From the conditions cited earlier, the domestic liability limits for 12 years and above is converted from US\$ to BTN, and the liability limit for those below 12 years of age is half of that applicable to the former group.

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<sup>22</sup> Convention on International Interests in Mobile Equipment, opened for signature on 16 November 2001, entered into force 1 March 2006, and Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, opened for signature on 16 November 2001, entered into force 3 March 2006.

<sup>23</sup> *Supra* note 21, p.5.

There is no logic or basis to distinguish domestic and international carriage in terms of liability its liability implications for the carrier faced with events that will expose itself to liability.

### Conclusion

To consider a very Bhutanese purpose for modernization or improvement of liability limits, we are a country in pursuit of Gross National Happiness. The concept of GNH puts the people and their wellbeing in the centre,<sup>24</sup> hence our business practices must exhibit the traditional culture of care towards passengers and their property.

While formal accession to MC would be the ideal approach, there is nothing to prevent the Bhutanese carriers from taking the faster, easier and less expensive route of voluntarily incorporating the MC liability standards into its conditions of carriage. Such approach had been tried and tested worldwide before MC came into force.

Though there are obvious differences of economic standards between countries and their citizens, it is universally proclaimed that “All human beings are born free and equal in dignity and rights...”<sup>25</sup> There could not be a better reason than this to offer same levels of compensation for passengers on Bhutanese carriers and Bhutanese citizens. Otherwise, Bhutanese who has to resort to making claims against air carriers before the Bhutanese courts of law would receive an unfair compensation compared to those who can pick and choose alternative forum to exercise their rights.

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<sup>24</sup> Anne-Marie Schreven, “Good Organisational Practice and Gross National Happiness”, in Proceedings of the Fourth International Conference on Gross National Happiness, organized by The Centre for Bhutan Studies, Thimphu, 2008: pp.340-341, accessed 2 October 2020, from

[http://www.bhutanstudies.org.bt/publicationFiles/ConferenceProceedings/4thGNH/18.4thGNH\\_AnneSchreven.pdf](http://www.bhutanstudies.org.bt/publicationFiles/ConferenceProceedings/4thGNH/18.4thGNH_AnneSchreven.pdf).

<sup>25</sup> The Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly 10 December 1948, art. 1, accessed 1 October 2020, from <https://www.un.org/en/universal-declaration-human-rights/>.