

SOME OBSERVATIONS ON THE AIR TRANSPORT OF ANIMALS

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I. Introduction

With the increase in air transport, the transport of animals has grown, too. In general, the rules of the Warsaw and Montreal Conventions of 1929 and 1999, as well as IATA rules are applicable.¹ Besides the rules of the Warsaw and Montreal Conventions, two other conventions on animals are applicable. The first is the European Convention for the protection of Animals during International Transport of 1968.² A Protocol was added on 10 May 1979, which came into force on 7 November 1989.³ The second convention is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 1973. More than 160 countries have signed this last convention.⁴ Finally, there are rules of air companies and national rules. However, the problem is that the supervision of existing rules is not sufficient.

Another problem is the frequent occurrence of smuggling. Rod Margo has written:

The concern over the trade in wild animals, pets and animal parts has some precedent, here and abroad. The United States and China are the biggest markets for an estimated \$ 10 billion global trade in illegal wildlife. The black market in wildlife and wildlife parts is second only to trafficking in arms and drugs.⁵

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¹ Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air; ICAO Doc. 7838, 9201, 12 October 1929. Montreal Convention of 1999 for the Unification of Certain Rules for International Carriage by Air; *Air and Space Law*, vol. XXIV (1999), pp. 344–354; Giemulla/Schmid, *Warsaw Convention* (loose-leaf), Annex I-15.

² European Convention for the Protection of animals during International transport of 1968 (*European Treaty Series*, No. 65). For the text of this convention see the website (<http://conventions.coe.int>) and enter ETS number 065.

³ Protocol of 10 May 1979 (*European Treaty Series*, No. 103).

⁴ Convention on International Trade in Endangered Species of Wild Fauna and Flora. For the text of this Convention see: (<http://www.cites.org/eng/disc/text.shtml>). The full list of states parties is to be found under the heading 'Member Countries' (<http://www.cites.org/eng/parties/index.shtml>).

⁵ R. Margo, "Analysis of Animal Welfare Act and Regulations Applicable to Air Carriers", April 2004.

During an October, 1998 Ansett Airlines flight from Melbourne to Perth, Australia, 6-year-old Khyll Hardy reached under his seat for a lost lollipop and was bitten by a snake. Reports say his mother noticed something was wrong when the boy started trembling. Medical tests later confirmed that Khyll had in fact been bitten by a taipan snake. Bite victims have difficulty breathing and can suffer rapid paralysis; without an antidote, the likelihood of mortality is high. Thankfully, this young passenger survived. Ansett grounded the A-320 aircraft in Adelaide, where seven snake catchers boarded to search for the creature. When their efforts failed, sniffer dogs were summoned. But the snake proved elusive for the four-legged posse as well. In the end, the airplane had to be fumigated. 'We're absolutely satisfied that there is no snake on that aircraft,' said Ansett spokesman Peter Young. He believes a passenger must have brought it on board.⁶

II. *Animals: Cargo or Luggage?*

This is an interesting point. Animals are different from ordinary cargo and baggage. They must have air, food and water. The rules of Air France contain the following conditions. Condition 10 says:

If we agree to carry your animals, they will be accepted for carriage subject to the following conditions:

- a. You must ensure that animals such as dogs, cats, household birds and other pets, are properly crated and accompanied by valid health and vaccination certificates, entry permits and other documents required by States of entry or transit, failing which they will not be accepted for carriage. Such carriage may be subject to additional conditions specified by us and available on request.⁷

Thus animals are considered as cargo.

Further rules of Air France state:

- b. If accepted as baggage, the animal, together with its container and food, shall not be included in your free baggage allowance but shall constitute excess baggage, for which you will be obliged to pay the applicable rate.
- c. Service animals, together with its container, accompanying passengers with reduced mobility will be carried free of charge, in addition to the normal free baggage allowance, subject to conditions specified by us and available on request.
- d. Where carriage is not subject to the liability rules of the Convention, we shall not be responsible for injury to or loss, sickness or death of an animal which we have agreed to carry, unless we have been negligent.

⁶ E. Hester, *Plane Insanity, A Flight Attendant's Tales of Sex, Rage and Queasiness at 30,000 Feet*, 2002.

⁷ See the General Conditions of Carriage of Air France on their websites. E.g.: (www.airfrance.nl) and look at the foot of the homepage for the tab referring to legal notices.