



**Keynote address by the Secretary General  
of the International Civil Aviation Organization (ICAO),  
Dr. Fang Liu,  
to the 10th McGill Conference  
on International Aviation Liability & Insurance**

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*Thank you for that kind introduction Ludwig.*

1. I also wish to thank, at the outset of these remarks, Professor Paul Dempsey, the former director of this institute, as well as IFAD, the International Foundation for Aviation and Development, for their joint efforts in organizing and co-hosting this event and bringing us all together here today.
2. This Conference represents an important opportunity to survey a topic of immense complexity, and one for which the operating environment has been developing at a very rapid pace.
3. The field of liability and insurance in aviation implicates multiple stakeholders, including airlines, shippers, insurers, governments, and most importantly, people. It also represents an intersection of numerous disciplines, including law, finance, economics, risk management, engineering, as well as numerous political considerations.
4. It would truly be a monumental challenge to address these multiple and complex aspects were it not for Conferences such as this one.
5. To establish a useful perspective from which to discuss the issues before us, I would like to begin today by highlighting for you the foundations and intent of the global air transport network, as well as the significant contributions it makes today to socio-economic development globally.
6. Under the Chicago Convention, ICAO's mandate is to encourage the safe and orderly development of international civil aviation, and with the expressed goal of fostering greater friendship and understanding among the nations and the peoples of the world.

7. We must recall in this regard that the Convention's drafters were undertaking their work at the close of one of mankind's most violent and destructive global conflicts. As they began their work of converting military airfields around the world to civilian use, and agreeing on the rules of the air which would govern future civilian flights, they also shared within themselves the common vision of a new and worldwide network which could be an invaluable tool for facilitating international cooperation, cultural interchange, and truly global peace and prosperity.
8. The development of common standards, practices and policies supporting the harmonized expansion of the global air transport network was seen as essential to these Chicago Convention objectives. And it was specifically to manage that development that the Convention further established ICAO.
9. It has been said that language itself was the very first human standard, and this analogy helps us to understand that, at its most basic level, the process of standardization is nothing short of essential to any human aspiration requiring concerted cooperation and consensus.
10. Given the immense logistical, technological, legal and political complexities inherent in 191 nation States sharing a single and global sky, and to an extent today covering some 100,000 flights and 10 million passengers daily, I would even go so far as to suggest that the global air transport network has come to represent humanity's most significant and successful example of concerted international cooperation.
11. From this standpoint then, we can recognize why effective compliance with ICAO standards and policies is the most critical prerequisite for States hoping to establish international air connectivity, and to optimize the socio-economic benefits that connectivity generates.
12. This process has been an incredibly successful one through ICAO, and has led to our network growing considerably in the past seven decades. For instance while the distance flown by the first commercial aircraft was a mere 34 kilometres, today's commercial fleets fly a total of 46 billion kilometres annually, or 10 times the distance from Earth to Neptune.
13. Similarly, if aviation were a country, it would rank as the 5th largest economy in the world, with a gross domestic product (GDP) similar to that of the United Kingdom at 2.8 trillion dollars. It also supports 63.5 million jobs globally, and modern commercial aircraft carry no less than a third of world trade by value.

14. Aviation delivers these benefits mainly by:
  - a. Opening up markets and trade flows for local producers;
  - b. Expanding tourism and its associated and varied revenue streams;
  - c. And ultimately by fostering a greatly expanded and resilient local tax base, thus providing an important local foundation in cities, States and Regions for future planning and investment for sustainable development.
  
15. It is on the basis of these benefits that international air transport provides a vital socio-economic lifeline to many countries and regions today, most especially Landlocked Developing Countries and Small Island Developing States. This helps to explain why air transport is integral to virtually all of the 17 Sustainable Development Goals presently being pursued by world governments under the United Nations' visionary *Agenda 2030*.
  
16. One of ICAO's major contributions on the topic of this Conference is the series of instruments referred to as the 'Warsaw System'. This leads ultimately to the '*Convention for the Unification of Certain Rules for International Carriage by Air*', or the '*1999 Montreal Convention*'.
  
17. The Warsaw System is named for its foundational treaty, the 1929 Warsaw Convention, which pre-dates ICAO. It includes a series of iterations which have been adopted over the years.
  
18. The 1999 Montreal Convention entered into force in November 2003, and at last count has some 125 parties. Each successive iteration incorporates improvements and amendments based on our experiences with the existing instruments and ongoing developments in the industry.
  
19. Another complementary series of instruments has also been concluded under ICAO's auspices, dealing with risks to persons not in a direct contractual relationship with the air carrier.
  
20. This began with the 1933 Rome Convention, which again pre-dates ICAO. ICAO oversaw some developments to that instrument, first in the form of the 1952 Rome Convention, which was ratified by 49 parties, and later its subsequent update in the form of the 1978 Protocol.
  
21. More recently, we saw the adoption in 2009 of two new instruments: the '*Unlawful Interference Convention*' and the '*General Risks Convention*'. These two instruments were the product of long and difficult reflection following the unprecedented attacks of 9/11.

22. It's important to recognize that concluding an international agreement is not simply a matter of studying the issues and formulating the best policy response. It also involves a process of collecting and understanding the views of the broad base of stakeholders from the States and industry parties who together compose the global air transport community.
23. Identifying the various interests, and finding areas of common ground, therefore takes considerable time and commitment.
24. The '*Unlawful Interference*' and '*General Risks*' conventions have not been widely accepted. Neither has entered into force, and there is no sign that they will in the near future. While the issues were pressing and there was a mood to discuss them, it is important for us to reflect on why States are so far lukewarm to these instruments, so that we can learn the appropriate lessons.
25. On the other hand, with its 125 parties, the '*1999 Montreal Convention*' enjoys a high degree of acceptance. Its success has been partially dependent on the 70-year evolution of its various aspects, which provided the time and space needed to understand the issues and refine the Convention's solutions.
26. This area also did not suffer from any shortage of political will, which was reinforced through repeated 'trials by fire' in domestic courts subsequent to related events.
27. One commendable aspect of this instrument is the fact that some of its most important features represent innovations emanating from States and from industry.
28. In mentioning this, I am by no means suggesting that we should not embark on ambitious projects of this sort unless we have a 70-year time frame to realize them in. I simply wish to draw attention to the difficulties with respect to unifying laws in complex international domains.
29. We should also be under no illusion, as we tackle tomorrow's challenges, that they will require extensive mutual consultation and the humility to learn from both the experiences of others and our own mistakes.
30. A second observation I would make relates to how we deal with the uncertainties which are an inherent in an industry which is as dynamic as aviation.

31. For example an aviation treaty or convention sets up a framework to apportion rights and obligations. It reflects a balance of the various interests and considerations relevant to a particular time and level of understanding of the air transport sector, and yet at the same time a defining characteristic of aviation is change, and change always brings with it new uncertainties.
32. On a number of issues, the liability conventions have been very instructive in regulating for uncertainty. I will briefly refer here to two examples.
33. The first of these deals with the erosion of the liability limits, a repeatedly contentious issue in the history of the Warsaw System.
34. Choosing Special Drawing Rights (SDRs) instead of a domestic currency was one decision taken to build resilience into the instrument. After the de-linking of the U.S. dollar and other currencies from the gold standard, the IMF's concept of a basket of five major currencies was selected.
35. In a non-linear innovation, the '*1999 Montreal Convention*' takes this one step further. It addresses not just the erosion of the value of the specified limits, but also their insufficiency over the lifespan of the instrument.
36. It accomplished this by incorporating an inflation-based review of liability limits, to be conducted periodically at five-year intervals. An initial review of limits was undertaken by ICAO, in its capacity as the Depository, following which the limits were revised as at 30 December 2009.  
A second review was concluded in 2014, and the next review is expected to be concluded in the first part of 2019.
37. The second example I would illustrate involves the introduction, as early as 1971, of the electronic ticketing for passengers and processing for air cargo.
38. These were early but very forward looking enabling provisions, and they eventually drove enormous and sector-wide cost savings and productivity gains.  
Both represent commendable attempts to build durability into air law instruments to ensure their continued relevance.

39. While the process of understanding the competing and intersecting interests of the day takes time and energy, so does understanding how the landscape of today might shift. It is important to apply ourselves consciously to the challenges of regulating for uncertainty.
40. I would also like to discuss with you here the topic of *consumer protection*, which will be addressed during a specific session of this conference.
41. As most of you will know, the protection and improvement of airline passenger rights, along with the continuing liberalization of air transport regulation, have gained greater regulatory importance globally. The recent events widely reported in the media have illustrated this point.
42. A significant number of States have adopted related regulatory measures which address issues such as denied boarding compensation, assistance to passengers in the event of delays and cancellations, price transparency, and access for disabled passengers.
43. Only last month, Canada introduced legislation requiring their Transportation Agency to make regulations protecting certain passenger rights. When introduced, these will enhance passengers' access to information, establish minimum standards of treatment in cases of flight delays, cancellations or denied boarding, and impose minimum compensation.
44. The carrier's obligations will vary depending on certain criteria, such as whether the events were within their control.

It gives me great pleasure to see that the key provisions of this Canadian legislation are very much in line with the *ICAO Core Principles on Consumer Protection*, which I will briefly touch on in a moment.

45. Not all elements of these domestic or regional initiatives have been unanimously embraced by academics and the industry. One objection is that such initiatives are sometimes thought to contravene an understanding that the '*1999 Montreal Convention*' prescribes an exclusive scheme for airline liability.
46. Failing to respect this exclusivity unfairly exposes airlines to multiple fronts of liability outside of the bargain struck under the Convention.

47. With a view to introducing convergence between varying consumer protection regimes, the ICAO Council adopted a set of high-level *Core Principles on Consumer Protection* in June 2015. These provide guidance to Member States in the development or revision of their regulations for a number of key areas prior to, during and after the travel experience.
48. ***Prior to travelling***, the *ICAO Core Principles* recommend that passengers should benefit from sufficient levels of advance information.
49. More specifically, prior to purchasing their tickets, the *Core Principles* propose that passengers should have transparent access to all details regarding:
  - a. Their total ticket price, including all applicable air fares, taxes, charges, surcharges and fees;
  - b. The general conditions applying to the fare;
  - c. And lastly, the identity of the airline actually operating the flight, as well as prompt advice on any changes in this regard after the ticket is purchased.
50. ***During travel***, the *ICAO Core Principles* call for passengers to be provided regular updates on special circumstances or service disruptions which may arise, as well as due attention to their needs if and when these disruptions do arise. This can entail reroutings, refunds, care, and/or compensation.
51. The *Core Principles* also call on airlines and other stakeholders to have planning in place for situations of massive disruptions characterized by multiple flight cancellations, and reiterate the fundamental right to fair access for persons with disabilities.
52. ***After travelling***, the *ICAO Core Principles* provide that efficient complaint handling procedures should be established, and that these must be clearly communicated to customers.
53. Taken together, these *Core Principles* represent an important milestone in ICAO's continuing efforts to foster harmonization in worldwide air transport regulation.
54. In closing now ladies and gentlemen, it's my hope that these various examples and explanations have illustrated well for you why ICAO's mission and role is so appropriately focused on improving the level of regulatory convergence in global civil aviation.

55. Our safe, secure and efficient worldwide network has grown into an incredibly significant component of modern society, and has greatly aided humanity in its efforts to avoid the hugely destructive global conflicts which afflicted so many previous generations while at the same time expanding the economic reach and prosperity of nations and regions, wherever aircraft fly.
  
56. Let us embark on our coming discussions keeping these many challenges and contributions clearly in mind, and on that note I would wish you all a very engaging and productive conference.

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