



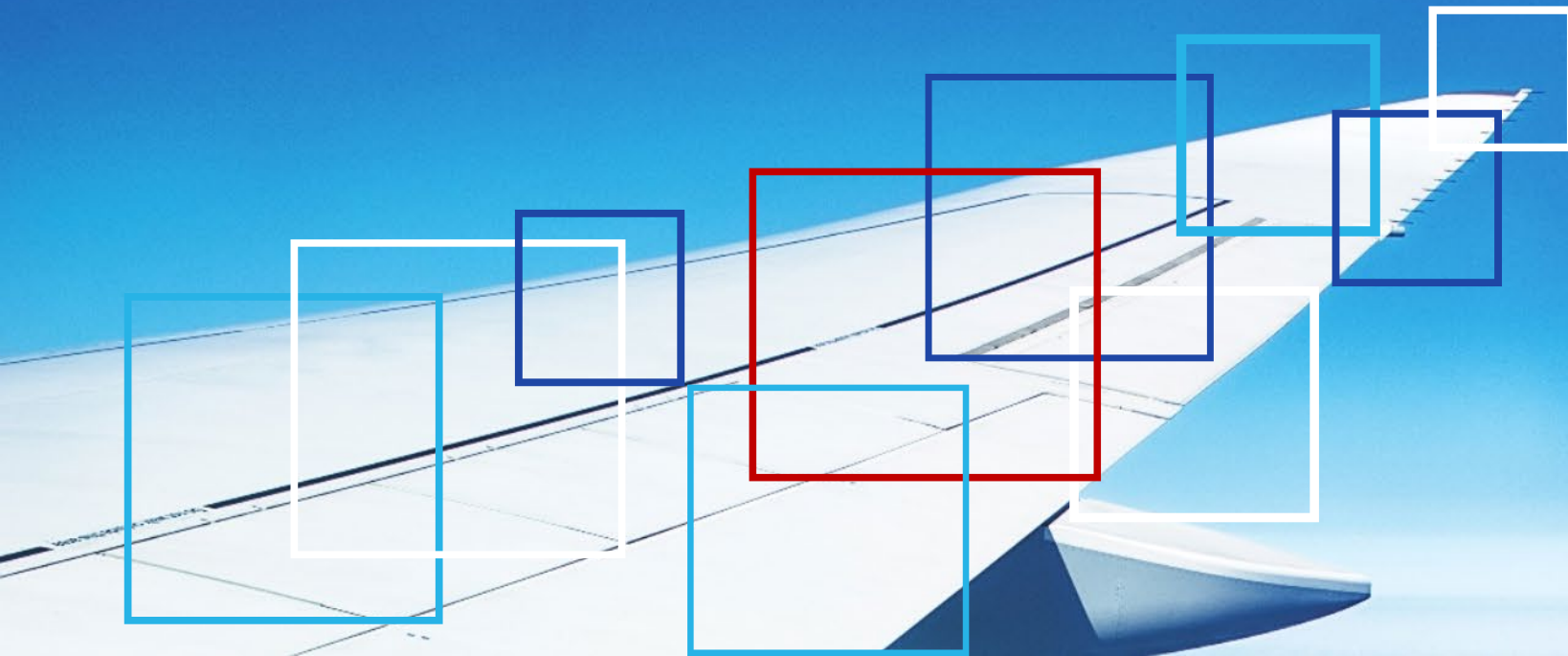
THE MONTREAL CONVENTION 1999

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BENEFITS

Benefits of international Conventions for both the industry and its users

- Global mobility is advanced by having a global legal framework;
- Uniform rules of engagement;
- Uniform layer of protection from unfair contract terms;
- Common format of (electronic) documents.

ACHIEVEMENTS

- The Montreal Convention 1999 is 24 years old
 - Consolidates and modernises (?) the Warsaw Convention System (WCS)
 - The WCS supported aviation in its formative and adolescent years, but by the 4th quarter of the 20th century was showing its age;
 - The move to the Montreal Convention 1999 is largely attributed to the airline/insurance industry.
 - The Montreal Convention 1999 re-balances the interests between passengers and the industry
 - Does not impose artificial limits on compensation for death or bodily injury;
 - The WCS's artificial limits of liability, the difficulty of "breaking" them, and their fragmented/inadequate increase led to its demise.
 - Permits bodily injury/death claims to be filled at the State of residence of the passenger (subject to conditions)
- The Montreal Convention 1999 is successful in terms of ratifications: 139 State Parties
 - It surpassed the number of ratifications of the Hague Protocol 1955 (137) in 2022;
 - Next target: the 152 ratifications of the Warsaw Convention 1929.

SCOPE OF APPLICATION

- The Convention applies to claims from passengers/cargo interests against airlines
 - Claims for death/bodily injury *and delay of passengers (Article 17.1)*/ Claims for loss, damage, destruction and delay of *(checked and carry-on) baggage (Article 17.2)* and *cargo (Article 18)*
 - It does not apply to claims from airlines/passengers against manufacturers (although it influences them);
 - It does not apply to claims based on domestic passenger-rights regimes - parallel actions are increasingly permitted;
 - The only Convention to deal with passenger and cargo claims in the same document.
- The Convention applies to international carriage by air (wide definition)
 - LHR - MCT – LHR: the UK is required to ratify it/ LHR-MCT: both the UK and Oman are required to ratify it;
 - Covers domestic carriage that is part of an international itinerary: EDI-LHR-MCT;
 - It does not cover purely domestic carriage (EDI-LHR) unless the Country in question applies it to non-international carriage: e.g. Regulation (EC) No 889/2002 on air carrier liability in the event of accidents
 - *“This Regulation implements the relevant provisions of the Montreal Convention in respect of the carriage of passengers and their baggage by air and lays down certain supplementary provisions. It also extends the application of these provisions to carriage by air within a single Member State”*
 - cargo?

PASSENGER CLAIMS FOR DEATH OR BODILY INJURY

- **Passengers are required to prove the following (Art 17) (rarely an issue in claims resulting from the total loss of a/c):**
 - Death or bodily injury;
 - That was caused by an accident;
 - The accident was caused on board the aircraft or in the process of embarking/disembarking from the aircraft.
- Bring the claim within 2 years from date of the accident (Art 35.1) (formally before a court; negotiations alone do not stop the limitation clock).
- **Passengers are also required to prove the extent of their financial loss**
 - This aspect is not regulated by the Convention, but by the law of the court seised of the case – forum shopping is triggered by this aspect;
 - The amount of compensation paid is determined by national laws, not by the Convention;
 - Notoriously difficult to adopt uniform laws on the level of damages.
- However, the Convention regulates two related issues:
 - **It identifies the type of damages that shall not be awarded by courts**
 - “...punitive, exemplary or any other non-compensatory damages shall not be recoverable”(last sentence of Article 29).
 - **It identifies the defences available to the airline by reference to the claimed amount (Article 21)**
 - Claims below 128,821 SDRs (approx. 173,000USD): carriers have the defence of contributory negligence (negligence of the passenger);
 - Claims above 128,821 SDRs: carriers have the defences of (i) contributory negligence, (ii) no negligence of the carrier (including its servants and agents); and (iii) negligence of a third party.
 - The figure of 128,821 SDRs is not a limit and is not a lump sum payment: it requires proof of financial loss

PASSENGER CLAIMS FOR DEATH OR BODILY INJURY

- Passenger claims for death or bodily injury before certain courts (Art 33)
 - Country of domicile/principal place of business of the airline (WCS);
 - Country where the ticket was made provided it was made via a place of business of the airline (unsuitable for electronic tickets) (WCS);
 - Country of destination (in return tickets the country of departure is also the country of destination) (WCS);
 - Country of the principal and permanent residence of the passenger provided the airline carries passengers to/from this country and conducts the business of carriage of passengers by air therein (not necessarily by using its own a/c or having its own offices) (new in Montreal Convention 1999 – the wording is complicated because of the drafting compromise).
- Forum shopping is a side-effect of international litigation (not unique to aviation) and would have been more of a problem without the Montreal Convention 1999 or the WCS.

CONCLUSIONS

- The Montreal Convention 1999 has almost entirely replaced the WCS;
- The Convention has successfully re-balanced the interests of passengers and airlines
 - The reduction of litigation rates is a reflection of the effectiveness of its liability system;
 - Identifying compensation levels on an international basis (via the Convention or other international legal instruments) is difficult, if not impossible, to achieve.
- There is a strong pro-consumer interpretative trend of its provisions
 - see several recent judgments of the CJEU – ignoring pre-existing case law.
- A rapprochement with national passenger rights regimes is advisable.
- Cargo provisions might require some polishing (but this is a discussion for a different forum)

Thank you very much for your attention

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