



WORKING PAPER

ASSEMBLY — 38TH SESSION

LEGAL COMMISSION

Agenda Item 47: Work Programme of Organization in the legal field

PROMOTION OF THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR (MONTREAL CONVENTION OF 1999)

(Presented by the United Arab Emirates, the Air Crash Victims Families Group (ACVFG) and the International Air Transport Association (IATA))

EXECUTIVE SUMMARY

The Montreal Convention 1999 (MC99) established a modern, fair and effective regime to govern airline liability to passengers and shippers on international flights. Whilst MC99 was envisaged as the universal liability regime for international carriage by air, currently only 103 (54%) ICAO Member States are parties to it. The Warsaw Convention 1929, and its various amending instruments, remains in force.

This leaves a complex patchwork of potentially applicable liability regimes. Thus, even passengers and cargo shipments traveling from States that are already party to MC99 may remain subject to the provisions of earlier regimes depending on the itinerary involved.

In September 2010, the ICAO 37th Assembly Resolution A37-24 urged remaining States to ratify MC99. Unfortunately, since then just seven (7) more States have ratified or acceded to the Convention. One of the recommendations from the Sixth Air Transport Conference (ATConf/6) in March 2013 was to urge States to ratify MC99.

Because of the benefits to be gained from the universal acceptance of the Convention, Member States should again be urged to ratify or accede to MC99.

Action: In light of Resolution A37-24 and the benefits of achieving a universal regime to govern airline liability to passengers and shippers on international flights, the co-signatories invite the Assembly to urge all Member States that have not done so, to become Parties to MC99 as soon as possible.

<i>Strategic Objectives:</i>	This working paper relates to Supporting Implementation Strategy – Programme Support – Legal Services and External Relations.
<i>Financial implications:</i>	N/A
<i>References:</i>	Doc 9958, <i>Assembly Resolutions in Force</i> (as of 8 October 2010) Recommendation ATConf/6-WP/104 Report on Agenda Item 1.1 (1.1.4)

1. INTRODUCTION

1.1 The Montreal Convention 1999 (MC99) entered into force on 4 November 2003 and established a modern liability regime in respect of international air carriage.

1.2 Whilst MC99 was envisaged as the universal liability regime, almost a decade later, just 103 (54%) Member States are parties to it¹ (albeit that the vast majority of total scheduled air traffic is covered by those States). A number of major aviation States do remain outside the regime. None of the original Warsaw Convention 1929, nor its amending instruments, ever achieved universal acceptance:

Treaty	Entry into force	Number of Parties
Chicago Convention 1944	1947	191
Warsaw Convention 1929	1933	152
Hague Protocol 1955	1963	137
Guadalajara Protocol 1961	1964	86
Montreal Additional Protocol 1 1975	1996	50
Montreal Additional Protocol 2 1975	1996	51
Montreal Additional Protocol 3 1975	Not in force	21
Montreal Additional Protocol 4 1975	1998	58

1.3 Indeed, the predecessor Warsaw Convention 1929, Hague Protocol 1955, Guadalajara Convention 1961 and some of the Montreal Additional Protocols 1975 remain in force, creating a complex patchwork of potentially applicable liability regimes.²

1.4 This means that in many cases, passengers, shippers and airlines still do not enjoy the significant benefits that MC99 affords.

2. BACKGROUND

2.1 Universal adoption of MC99 will deliver important benefits to all parties:

i) *For Passengers* - MC99 replaces the arbitrarily low airline liability caps of as little as USD12,000 (see Table 1) for death or injury under the previous Warsaw Convention and Warsaw/Hague liability regimes. Under MC99, Passengers are entitled to claim damages up to 113,110 Special Drawing Rights (approximately US\$170,000 as of April 2013) without proof of negligence or fault. If damages are claimed in excess of that, the burden of proof lies with the airline to show that it was not negligent. MC99 also offers other consumer friendly provisions such as the ability for passenger claims to be brought in a wider choice of jurisdictions and advanced compensation payments by airlines to victims. Finally, ICAO

¹ See Appendix B

² Particular confusion results from the fact that some States only ratified the original Warsaw Convention 1929 without its amending instruments, whilst other States became Party to one or more of the amending instruments without ratifying the original Convention. Courts have held that adherence to an amending Protocol by a State which is not Party to the Convention does not make that State a Party to the unamended Convention: see *Chubb v Asiana Airlines* 214 F 3rd 301, 308 2nd Cir 2000 (Docket 99-7617) – US.

reviews the liability limits every five (5) years ensuring that MC99 keeps pace with developments and inflation.

(ii) *For cargo shippers* – MC99 specifically facilitates the use by airlines of electronic records, including electronic air waybills (e-AWB) and other documents of carriage. As a result, there are significant efficiencies gained, including environmental benefit, from eradicating paper from the air cargo supply chain. MC99 is a prerequisite for the industry’s e-freight initiative that aims to eradicate paper documentation from the air cargo supply. It is estimated that e-freight will deliver benefits totalling US\$4.9billion per annum. Shippers, forwarders and regulators benefit from faster and more accurate document processing, improved productivity, security, accelerated shipment times and better customs compliance.

(iii) *For airlines* – Most of today’s international airlines operate large and increasingly global route networks. However, without universal ratification of MC99, a patchwork of liability regimes continues to exist. For example, an individual flight between any origin and destination can have passengers and cargo shipments which are subject to different liability regimes.

This creates complexity and confusion in determining which regime covers a particular incident or accident. The process of obtaining adequate insurance cover and handling claims resulting from international carriage by air are unnecessarily complex. Universal acceptance of MC99 will go a long way to eliminating such issues.

2.2 Universal acceptance of MC99 will mean that governments can truly ensure that a modern and fair liability regime would apply to passenger and cargo claims, whatever the route or destination involved. Likewise, since MC99 facilitates the use of e-AWB, universal acceptance means that governments can be sure that their industry stakeholders that rely on air cargo connectivity can avail themselves of faster shipment times, the ability to track cargo and lower costs on a global scale.

Table 1 – Limits associated with different Airline Liability Regimes

Type	Warsaw Convention (1929)	Hague Protocol (1955)	Additional Protocol 2 & Montreal Protocol 4	Montreal Convention (1999)
Death or injury	USD 12,000	USD 24,000	USD 25,000	USD 170,000 (first <i>threshold</i> , higher sums recoverable)
Cargo	USD 20 per kg	USD 20 per kg	USD 25 per kg	USD 28 per kg
Provisions for electronic documentation?	No	No	Yes (with MP4 only)	Yes

Note: The table compares the USD conversion figure at midmarket rates on 4th April 2013, for the various limits and thresholds. The Treaties do not specify a USD value – these have been calculated in USD for easy reference/comparison.

APPENDIX

LIST OF ICAO MEMBER STATES THAT ARE PARTIES TO MC99

Albania	France	Norway
Argentina	Gambia	Oman
Armenia	Georgia	Pakistan
Australia	Germany	Panama
Austria	Greece	Paraguay
Bahrain	Hungary	Peru
Barbados	Iceland	Poland
Belgium	India	Portugal
Belize	Ireland	Qatar
Benin	Israel	Republic of Korea
Bosnia and Herzegovina	Italy	Republic of Moldova
Botswana	Jamaica	Romania
Brazil	Japan	Saudi Arabia
Bulgaria	Jordan	Serbia
Burkina Faso	Kenya	Seychelles
Cameroon	Kuwait	Singapore
Canada	Latvia	Slovakia
Cape Verde	Lebanon	Slovenia
Chile	Lithuania	South Africa
China	Luxembourg	Spain
Colombia	Macedonia, FYRO	Saint Vincent and the Grenadines
Congo	Madagascar	Sweden
Cook Islands	Malaysia	Switzerland
Costa Rica	Maldives	Syrian Arab Republic
Croatia	Mali	Tanzania, United Republic of
Cuba	Malta	Tonga
Cyprus	Mexico	Turkey
Czech Republic	Monaco	Ukraine
Denmark	Mongolia	United Arab Emirates
Dominican Republic	Montenegro	United Kingdom
Ecuador	Morocco	United States
Egypt	Namibia	Uruguay
El Salvador	Netherlands	Vanuatu
Estonia	New Zealand	
Finland	Nigeria	TOTAL: 103 Member States

The European Union also became a party to MC99 as a regional economic integration organization.