



WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

Agenda Item 1: Global overview of trends and developments

Agenda Item 1.1: Industry and regulatory developments

Agenda Item 2: Examination of key issues and related regulatory framework

Agenda Item 2.3: Consumer protection

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

(Presented by Asociación Latinoamericana de Derecho
Aeronáutico y Espacial (ALADA))

EXECUTIVE SUMMARY

This working paper is in support of ATConf/6-WP/70, presented by Canada, Germany, Singapore, United Arab Emirates, United States, the International Air Transport Association (IATA) and the International Air Cargo Association (TIACA).

The 1999 Montreal Convention (MC99) was adopted to replace, modernize and unify for the 21st century the much fractured Warsaw Convention system of 1929. Since MC99 came into force in 2004, only 103 of the 191 ICAO Member States have deposited their ratifications, and 16 of the original signatories have not ratified MC99. The intended and much needed unification of certain rules for international carriage by air among all Member States has not yet been achieved.

Action: The Conference is invited to consider the recommendations presented in paragraph 3 of ATConf/6-WP/70 and encourage States that have not yet ratified MC99 to do so, without any further delay.

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 The 1929 Warsaw Convention was adopted when long range civil aviation barely existed. It entered into force on 13 February 1933. The purpose of the 1929 Warsaw Convention was the “Unification of Certain Rules for the International Carriage by Air” for the time in the future when passengers and good would be transported worldwide.

1.2 After the conclusion of World War II – with the introduction of ever larger planes able to fly large distances non-stop over longer routes, transporting an increasing number of passengers and a substantial volume of freight world wide – the 1929 Warsaw Convention needed to be brought to the present day requirements and beyond.

1.3 Instead of concluding a new comprehensive and pro-active Convention, the post WWII negotiators limited themselves over a period of 44 years to create a series of incremental upgrades to the 1929 Warsaw Convention, satisfying some, but never all – nor even a large number of States – creating considerable confusion because some States had ratified the original convention but not the incremental upgrades and vice versa.¹

1.4 The result was that neither the original 1929 Warsaw Convention, nor its supplemental Protocols ever achieved complete acceptance:

1944 Chicago Convention	entry in force 1947	191 States
1929 Warsaw Convention	1933	152 States
1955 The Hague Protocols	1963	137 States
1961 Guadalajara Protocols	1964	86 States
1971 Guatemala Protocols	not in force	7 States
1975 Additional Protocol 1	1996	49 States
2	1996	50 States
3	not in force	21 States (of 32 signatories)
4	1998	58 States

1.5 In addition, when some States, regional entities or even trade associations did not find favour with the inadequate updates – they availed themselves of the right to enact either by law or special agreement their own adjustments to the 1929 Warsaw Convention.

1.6 Instead of unification, at present 88 Member States are still holding on to the old documentary rules and contentious Warsaw system, while 103 States have ratified the modern MC99 strict liability regime. Absent of all ICAO Member States ratifying MC99, the fractured, contentious, costly environment for all parties concerned is still maintained affecting 2.5 billion passengers and the very important freight transportation industry.

2. **BENEFITS**

2.1 The benefits for passengers, shippers (cargo) and for the airlines within a unified MC99 are more fully described in ATConf/6-WP/70 paragraphs 2.1.1 and 2.1.3.

2.2 Additionally, Governments, their Parliaments and the respective judiciaries also benefit from MC99, reducing, even eliminating, the need for remedial legislation in affected States, clarifying applicable jurisdictions, and creating a cooperative (instead of the past a contentious) environment for all affected parties in resolving the issues covered by MC99.²

¹ Chubb vs Asiana Airlines 214F3rd 301,308 2nd Cir 2000 (Docket 99-7617) – US

² KAL 007 – 1929 Warsaw/1955 The Hague/1963 Montreal Intercarrier Agreement – 17 years litigation and remedial legislation vs. AF 4590 (Concorde) – IATA Intercarrier Agreement/Montreal 1999– 11 months settlement of all civil issues among all responsible parties – without litigation.

2.3 ICAO and some States have already implemented MC99 in various ways, among them Council Resolution 32/7 regarding the “Assistance to Aircraft Accident Victims and their Families”³ with the 198th Session of the Council on 1 March 2013, approving unanimously a suitable “Policy”.

3. **RECOMMENDATION**

3.1 The Conference is invited to adopt recommendations a) through c) of ATConf/6-WP/70.

— END —

³ ICAO CIRCULAR 285-AN/166 of 2001