



**WORKING PAPER**

**WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)**

**SIXTH MEETING**

**Montréal, 18 to 22 March 2013**

**Agenda Item 1: Global Overview of trends and development**

**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 Canada, Germany, United Arab Emirates,  
United States and the International Air Transport Association (IATA))

**EXECUTIVE SUMMARY**

The Montreal Convention 1999 established a modern, fair and effective regime to govern airline liability to passengers and shippers on international flights. Almost a decade after coming in to force, only 54 per cent of Parties to the Chicago Convention have ratified it, leaving in place a complex patchwork of potentially applicable liability regimes.

Universal adoption of the Montreal Convention 1999 as the single universal liability regime for international carriage by air will deliver wide-ranging benefits to passengers and shippers and provide greater certainty to the airline industry on the rules governing their liability.

**Action:** The Conference is invited to agree to the recommendations presented in paragraph 3.

*References:* ATConf/6 reference material is available at [www.icao.int/meetings/atconf6](http://www.icao.int/meetings/atconf6).

**1. INTRODUCTION**

1.1 Every year more than 2.8 billion passengers and goods worth in excess of USD 5 trillion travel safely by air. Despite civil aviation being the safest form of transport, accidents and incidents do occur that can lead to injury or even death of passengers or delay or loss to baggage and cargo.

1.2 The Montreal Convention 1999 (MC99) entered into force on 4 November 2003 and established a modern compensatory regime in respect of passengers who suffer death or injury caused by an accident during international air carriage. It provides a simplified liability regime for the destruction or

loss of or damage to cargo. It also facilitates the use of electronic messaging to replace paper documents in the carriage of passengers and cargo.

1.3 Whilst MC99 was envisaged as the universal liability regime, almost a decade later, just 54 percent of ICAO States Parties have ratified it (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. The predecessor Warsaw Convention 1929, Hague Protocol 1955, Guadalajara Convention 1961 and Montreal Additional Protocols 1975 continue to exist, creating a complex patchwork of potentially applicable liability regimes as presented in the Appendix to this paper. This means that in many cases, passengers, shippers and airlines still do not enjoy the significant benefits that MC99 affords.

## 2. **BENEFITS**

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

2.1.1 *For Passengers* – MC99 replaces the arbitrarily low airline liability caps 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\$174,000 as of January 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.

2.1.2 *For shippers (Cargo)* – MC99 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 the equivalent of over 80 Boeing 747 Freighters filled with paper every year 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 USD 4.9 billion per annum. Shippers, forwarders and regulators benefit from faster and more accurate document processing, improved productivity, security, accelerated shipment times and better customs compliance.

2.1.3 *For airlines* – Most of today's international airlines operate large and increasingly global route networks. However, because there has not been 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 claims handling process, obtaining adequate insurance cover and litigation resulting from an accident are unnecessarily complex. Universal acceptance of MC99 will go a long way to eliminating such issues.

2.2 Universal ratification 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 ratification 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 enjoy other economic benefits such as improved productivity and lower costs on a global scale.

3. **RECOMMENDATIONS**

3.1 In light of the aforementioned benefits outlined in paragraph 2, the Conference is invited to:

- a) urge all States to support and encourage the universal adoption of MC99;
- b) urge all States that have not done so, to become Parties to MC99 as soon as possible; and
- c) request ICAO to provide assistance as appropriate, with the ratification if so requested by a State.

-----

APPENDIX

CURRENT TREATY RATIFICATION STATUS OF THE WARSAY/MONTRÉAL REGIME

Country	Warsaw 29	HP 55	GC 61	AP1 75	AP2 75	AP3 75	MP4 75	MC99
Afghanistan	1	1						
Albania								1
Algeria	1	1						
Andorra								
Angola	1	1						
Antigua & Barbuda								
Argentina	1	1		1	1	1	1	1
Armenia	1							1
Australia	1	1	1				1	1
Austria	1	1	1					1
Azerbaijan	1	1	1	1	1		1	
Bahamas	1	1	1					
Bahrain	1	1	1	1	1		1	1
Bangladesh	1	1						
Barbados	1							1
Belarus	1	1	1					
Belgium	1	1	1				1	1
Belize								1
Benin	1	1						1
Bhutan								
Bolivia	1							
Bosnia and Herzegovina	1	1	1	1	1		1	1
Botswana	1							1
Brazil	1	1	1	1	1	1	1	1
Brunei Darussalam	1							
Bulgaria	1	1						1
Burkina Faso	1		1					
Burundi								
Cambodia	1	1						
Cameroon	1	1						1
Canada	1	1	1	1	1		1	1
Cape Verde	1	1	1					1
Central African Republic								
Chad			1					
Chile	1	1		1	1		1	1
China, People's Republic of	1	1						1
Colombia	1	1	1	1	1	1	1	1
Comoros	1							
Congo	1	1						
Congo, Democratic Republic of	1							
Cook Islands	1	1						1
Costa Rica	1	1						1

Country	Warsaw 29	HP 55	GC 61	AP1 75	AP2 75	AP3 75	MP4 75	MC99
Côte d'Ivoire	1	1						
Croatia	1	1	1	1	1		1	1
Cuba	1	1		1	1			1
Cyprus	1	1	1	1	1	1	1	1
Czech Republic	1	1	1					1
Denmark	1	1	1	1	1	1	1	1
Djibouti								
Dominica								
Dominican Republic	1	1						1
Ecuador	1	1					1	1
Egypt	1	1	1	1	1		1	1
El Salvador		1	1					1
Equatorial Guinea	1							
Eritrea								
Estonia	1	1	1	1	1	1	1	1
Ethiopia	1			1	1	1	1	
Fiji	1	1	1					
Finland	1	1	1	1	1		1	1
France	1	1	1	1	1			1
Gabon	1	1	1					
Gambia								1
Georgia								1
Germany	1	1	1					1
Ghana	1	1	1	1	1	1	1	
Greece	1	1	1	1	1	1	1	1
Grenada		1	1					
Guatemala	1	1	1	1	1		1	
Guinea	1	1	1	1	1		1	
Guinea-Bissau								
Guyana								
Haiti								
Honduras	1			1	1		1	
Hungary	1	1	1			1	1	1
Iceland	1	1	1				1	1
India	1	1						1
Indonesia	1							
Iran	1	1	1					
Iraq	1	1	1	1	1			
Ireland	1	1	1	1	1	1	1	1
Israel	1	1	1	1	1	1	1	1
Italy	1	1	1	1	1	1	1	1
Jamaica			1					1
Japan	1	1					1	1
Jordan	1	1		1	1		1	1
Kazakhstan								
Kenya	1	1		1	1		1	1
Kiribati								
Korea (Dem. People's Rep of)	1	1						
Korea (Rep. of)		1						1
Kuwait	1	1	1	1	1	1	1	1
Kyrgyzstan	1	1						
Lao People's	1	1						



Country	Warsaw 29	HP 55	GC 61	AP1 75	AP2 75	AP3 75	MP4 75	MC99
Nevis								
St. Lucia								
St. Vincent and the Grenadines	1	1						1
Samoa	1	1						
San Marino								
Sao Tome and Principe								
Saudi Arabia	1	1	1					1
Senegal	1	1						
Serbia	1	1	1	1	1		1	1
Seychelles	1	1	1					1
Sierra Leone	1							
Singapore	1	1					1	1
Slovakia	1	1	1					1
Slovenia	1	1	1	1	1		1	1
Solomon Islands	1	1	1					
Somalia								
South Africa	1	1	1					1
South Sudan								
Spain	1	1		1	1	1	1	1
Sri Lanka	1	1						
Sudan	1	1						
Suriname		1						
Swaziland		1	1					
Sweden	1	1	1	1	1		1	1
Switzerland	1	1	1	1	1	1	1	1
Syrian Arab Republic	1	1						1
Tajikistan								
Tanzania	1							1
Thailand								
Timor-Leste								
Togo	1	1	1	1	1	1	1	
Tonga	1	1						1
Trinidad and Tobago	1	1						
Tunisia	1	1	1	1	1			
Turkey	1	1					1	1
Turkmenistan	1							
Uganda	1							
Ukraine	1	1	1					1
United Arab Emirates	1	1					1	1
United Kingdom	1	1	1	1	1	1	1	1
United States	1	1					1	1
Uruguay	1							1
Uzbekistan	1	1	1	1	1		1	
Vanuatu	1	1						1
Venezuela	1	1		1	1			
Viet Nam	1	1						
Yemen	1	1						
Zambia	1	1	1					
Zimbabwe	1	1	1					
<b>IO</b>								
European Union								1
<b>TOTAL</b>	<b>152</b>	<b>137</b>	<b>86</b>	<b>49</b>	<b>50</b>	<b>21</b>	<b>57</b>	<b>102</b>

**LEGEND**

Warsaw 29	Warsaw Convention 1929
HP 55	Hague Protocol 1955
GC 61	Guadalajara Convention 1961
AP1 75	Additional Protocol 1 1975
AP2 75	Additional Protocol 2 1975
AP3 75	Additional Protocol 3 1975
MP4 75	Montreal Protocol 4 1975
MC99	Montreal Convention 1999

"1" denotes ratification.

— END —