



ASSEMBLY — 39TH SESSION

LEGAL COMMISSION

Agenda Item 47: Other issues to be considered by the Legal Commission

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

(Presented by the International Air Transport Association (IATA))

EXECUTIVE SUMMARY

The Montreal Convention 1999 (MC99) established a modern, fair and effective regime to govern airline liability for passengers and shippers on international flights. Recognizing the significant benefits that MC99 delivers to passengers, shippers and airlines, the 38th ICAO Assembly (A38) passed Resolution A38-20. This urged remaining States to ratify MC99 and called on those that have already done so to promote the benefits of ratification.

IATA strongly supports MC99 and has been advocating directly with States to demonstrate the practical benefits it brings for all stakeholders and promoting its urgent ratification. Good progress has been made, with 17 more States becoming Parties to MC99 since A38 in 2013.

However, despite being envisaged as a single, universal liability regime for international carriage by air, only 120 (63%) of ICAO Contracting States have ratified it. The Warsaw Convention 1929, and its various amending instruments, remains in force, leaving a complex patchwork of applicable liability regimes. Several recent air accidents and incidents demonstrate the unfairness and complexity that results.

Given the benefits to be gained from the universal acceptance of MC99, Member States should again be urged to prioritize the urgent ratification of MC99.

**Action:** In light of Resolution A38-20 and the recognized benefits of achieving a universal regime to govern airline liability for passengers and shippers on international flights, IATA invites the Assembly to:

- a) Note IATA's efforts to support ICAO by promoting the ratification of MC99; and
- b) Urge all Member States that have not done so, to ratify MC99 at the earliest opportunity.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective <i>Economic Development of Air Transport</i>
<i>Financial implications:</i>	N/A
<i>References:</i>	ICAO 38th Assembly Resolution A38-20

<sup>1</sup> English, Arabic, Chinese, French, Russian and Spanish versions were provided by IATA.

## 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. It governs airline liability in the case of death, injury or delay for passengers or delay, damage or loss of baggage and cargo.

1.2 MC99 was envisaged as *the* universal liability regime. Today, almost 13 years after it came into force, only 120 of the 191 ICAO Contracting States have ratified it<sup>2</sup> (it should be noted that the vast majority of total scheduled air traffic is covered by those States). However, there are a number of fast growing aviation States, particularly in Asia, that have yet to ratify MC99 (see Appendix A).

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

1.4 The tragic loss of Metrojet 9268 over the Sinai Peninsula (October 2015) and Air Asia 8501 over the Java Sea (December 2014) with no survivors are two recent examples of incidents where the majority of the deceased passengers were subject to significantly lower limits of liability of the earlier Warsaw Convention regime (see Table 1). Universal ratification of MC99 will end this unfairness, providing greater protection and certainty for passengers, shippers and airlines.

1.5 IATA has been advocating for States to ratify MC99, with activities at the national, regional and global level. Working with member airlines and our partner associations, meetings and seminars have been held with governments and other stakeholders to explain the benefits. At the regional level, IATA has engaged the various regional Civil Aviation Commissions, submitting information papers at appropriate meetings. Likewise, IATA has engaged ICAO Council members and used various speeches and meetings involving the Director General to promote the ratification of this important instrument.

## 2. BACKGROUND

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 of as little as USD12,000 (see Table 1) for death or injury under the Warsaw Convention and Warsaw/Hague liability regimes. Under MC99, Passengers are entitled to claim damages up to 113,110 Special Drawing Rights (approximately US\$160,000 as of June 2016) 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 reviews the liability limits every five (5) years ensuring that MC99 keeps pace with developments and inflation.

2.1.2 *For shippers* – 35% of global trade by value is transported by air. This involves high value, time-sensitive shipments such as medical supplies, components and fresh produce. Under the Warsaw Convention, a physical paper air waybill must accompany the shipment in order for airlines to

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<sup>2</sup> See [http://www.icao.int/secretariat/legal/List%20of%20Parties/Mt199\\_EN.pdf](http://www.icao.int/secretariat/legal/List%20of%20Parties/Mt199_EN.pdf)

rely on the limits of liability. However, MC99 specifically facilitates the use of electronic records, including electronic air waybills (e-AWB). As a result, there are significant efficiencies gained, including environmental benefit from eradicating paper from the air cargo supply chain. Likewise, the use of electronic documents supports trade facilitation as 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* – Many international airlines operate 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 that are subject to the provisions of different liability regimes. As outlined in 1.4, this creates complexity and confusion in determining which regime covers a particular incident or accident. The process of handling claims resulting from international carriage by air is unnecessarily complex. Universal acceptance of MC99 will eliminate these issues.

**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	<b>USD 160,000</b> (first <i>threshold</i> , higher sums recoverable)
Cargo	USD 20 per kg	USD 20 per kg	USD 25 per kg	<b>USD 28 per kg</b>
Provisions for electronic documentation?	No	No	Yes (with MP4 only)	<b>Yes</b>

*Note: The table compares the USD conversion figure at midmarket rates on 22 June, 2016, for the various limits and thresholds. The Treaties do not specify a USD value – these have been calculated in USD for easy reference/comparison.*

### 3. ACTION

3.1 In light of Resolution A38-20 and the aforementioned benefits of achieving a universal regime to govern airline liability to passengers and shippers on international flights, IATA invites the Assembly to:

- a) Note IATA’s efforts to support ICAO by promoting the ratification of MC99; and
- b) Urge all Member States that have not done so, to prioritize the ratification of MC99.

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**APPENDIX**

**LIST OF ICAO CONTRACTING STATES YET TO RATIFY MC99**

1	Afghanistan	27	Kiribati	53	Somalia
2	Algeria	28	Kyrgyzstan	54	South Sudan
3	Andorra	29	Lao People's DR	55	Sri Lanka
4	Angola	30	Lesotho	56	Sudan
5	Antigua and Barbuda	31	Liberia	57	Suriname
6	Bahamas	32	Libya	58	Swaziland
7	Bangladesh	33	Malawi	59	Tajikistan
8	Belarus	34	Marshall Islands	60	Thailand
9	Bhutan	35	Mauritania	61	Timor-Leste
10	Brunei Darussalam	36	Mauritius	62	Togo
11	Burundi	37	Micronesia	63	Trinidad and Tobago
12	Cambodia	38	Myanmar	64	Tunisia
13	Central African Republic	39	Nauru	65	Turkmenistan
14	Chad	40	Nepal	66	Uganda
15	Comoros	41	Nicaragua	67	Uzbekistan
16	DPR of Korea	42	Niger	68	Venezuela
17	Djibouti	43	Palau	69	Vietnam
18	Eritrea	44	Papua New Guinea	70	Yemen
19	Ghana	45	Russian Federation	71	Zambia
20	Grenada	46	Saint Kitts and Nevis	72	Zimbabwe
21	Guinea	47	Saint Lucia		
22	Guinea-Bissau	48	Samoa		
23	Haiti	49	San Marino		
24	Indonesia	50	Sao Tome and Principe		
25	Iran	51	Senegal		
26	Iraq	52	Solomon Islands		