



WORKING PAPER

ASSEMBLY — 40TH SESSION

LEGAL COMMISSION

Agenda Item 40: Other issues to be considered by the Legal Commission

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

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

EXECUTIVE SUMMARY

The Montreal Convention 1999 (MC99) heralded the introduction of a modern, fair and effective regime relating to airline liability during international carriage by air. It delivers significant benefits for passengers, shippers, airlines and States. IATA has been a strong advocate for MC99, supporting ICAO in promoting the practical benefits of MC99 directly to States and participating in various regional fora.

Currently, there are 136 Parties to MC99 capturing over 98% of global traffic operating between States. Since the 39th Assembly (A39) in 2016, 14 additional States have become Parties including several major aviation markets such as Indonesia, Sri Lanka, Russia, Thailand and Vietnam.

Now that almost all international traffic is covered by MC99, IATA is focusing its advocacy effort toward the ratification of other multilateral air law instruments. However, we encourage ICAO to continue to support the 58 States yet to ratify to become Parties, so they derive the benefits it brings and so that a single universal liability regime becomes a reality.

Finally, the paper provides data to demonstrate what can be achieved when governments and industry work together to develop effective and balanced regulation to meet clear objectives.

Action: Given the benefits outlined above and in accordance with ICAO Assembly Resolution A39-9, IATA respectfully invites the Assembly to:

- a) Note the significant progress in terms of number of Parties made since A39 in 2016; and
- b) Request ICAO to provide the necessary support to enable all remaining Member States to ratify MC99 at the earliest opportunity.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objectives: Economic Development.
<i>Financial implications:</i>	Not Applicable.
<i>References:</i>	Doc 10075, <i>Assembly Resolutions in Force</i> (as of 6 October 2016) (A39-9).

¹ English, Arabic, Chinese, French, Russian and Spanish versions were provided by IATA.

1. INTRODUCTION

1.1 Entering into force on 4 November 2003, the Montreal Protocol 1999 (MC99) established a modern liability regime relating to international carriage by air. It sets out the rules relating to airline liability in the case of death, injury or delay for passengers or delay, damage or loss of baggage and cargo.

1.2 Intended as a universal liability regime to replace the earlier Warsaw Convention 1929 and its amending Protocols (collectively known as the Warsaw system), MC99 now has 136 Parties (135 States plus the European Union as an economic bloc), covering over 98% of traffic.

1.3 Over the past 20 years, IATA has been supporting ICAO, advocating for States to become Parties to MC99 through 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 outline the benefits. Regionally, IATA has engaged with the various civil aviation commissions, while globally IATA has used speeches and meetings involving the Director General to promote ratification of this important air law instrument.

1.4 Since the 39th ICAO Assembly in 2016, these efforts have contributed to 14 additional States becoming Parties to MC99 shown in Table 1. This includes several significant aviation markets such as Indonesia, Russia, Sri Lanka, Thailand and Vietnam. IATA extends its appreciation to all the States listed.

1.5 With almost all international air traffic now being covered by MC99, IATA has ended its advocacy effort to promote the ratification of MC99, concentrating efforts on other air law instruments. However, there are still 58 States that have yet to benefit from ratification and to deliver the single, universal liability regime as envisaged when MC99 was created. Ratification by these remaining States will ensure that all passengers and shippers will be protected by MC99 irrespective of their itinerary.

2. BACKGROUND

2.1 The benefits of MC99 will only be maximized when all ICAO Contracting States become Parties to it. Key benefits are as follows:

2.2 For Passengers – MC99 replaces the low liability limited of as little as US\$12,000 for death or injury under the Warsaw System. MC99 allows claims for damages up to 113,100 Special Drawing Rights (approx. US\$157,000 as of May 2019) without proof of negligence or fault. Damages can be claimed beyond this amount and the burden falls on the airline to prove that it was not negligent. MC99 also ushered in consumer-friendly provisions, such as allowing passengers to claim in a wider choice of jurisdictions and advanced compensation payments by airlines to victims. Finally, the limits of liability are reviewed by ICAO every five (5) years, ensuring that MC99 takes inflation into account.

2.3 For shippers – air cargo connects the world accounting for 35% of global trade by value. High value time-sensitive shipments such as medical supplies, components and fresh produce use air cargo. Under the Warsaw System, a physical paper air waybill must travel with the shipment for the airline to rely on the limits of liability. MC99 allows the use of electronic documents of carriage which delivers faster, more accurate and more secure shipments. The eradication of huge volumes of printed documents also has environmental benefits.

2.4 For airlines – while most aviation markets are now Parties to MC99, 58 States still need to ratify. This means that a patchwork of liability regimes continues to exist. This creates unnecessary confusion in determining which regime applies in the case of an accident or incident and makes claims handling complex. Universal ratification will resolve this problem.

Table 1 – List of depository actions relating to MC99 since the 39th Assembly

STATE	DATE OF DEPOSIT	TYPE OF DEPOSIT
Sri Lanka	19 November 2018	Accession
Nepal	16 October 2018	Accession
Viet Nam	27 September 2018	Accession
Tunisia	21 September 2018	Accession
Ghana	4 June 2018	Ratification
Niger	31 January 2018	Ratification
Uganda	28 November 2017	Ratification
Sudan	18 August 2017	Ratification
Thailand	3 August 2017	Accession
Chad	12 July 2017	Accession
Russian Federation	22 June 2017	Accession
Indonesia	20 March 2017	Accession
Mauritius	2 February 2017	Ratification
Eswatini	23 November 2016	Ratification

2.5 MC99 is an excellent example of good regulatory practice. Industry was actively consulted and involved in the development of instrument which was created to achieve clear regulatory objectives. This demonstrates what can be achieved when States and industry work together.

2.6 IATA economics has calculated that since 2011, the global proportion of passenger traffic covered by MC99 has risen from 86% to 98%. 390 million additional passengers annually are now better protected. In addition, over US \$600 billion in bilateral trade has been opened to electronic documents of carriage such as electronic air waybills. The use of electronic documents of carriage speeds up shipments. Thus, MC99 represents a no-cost consumer protection and trade facilitation measure for States.

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