



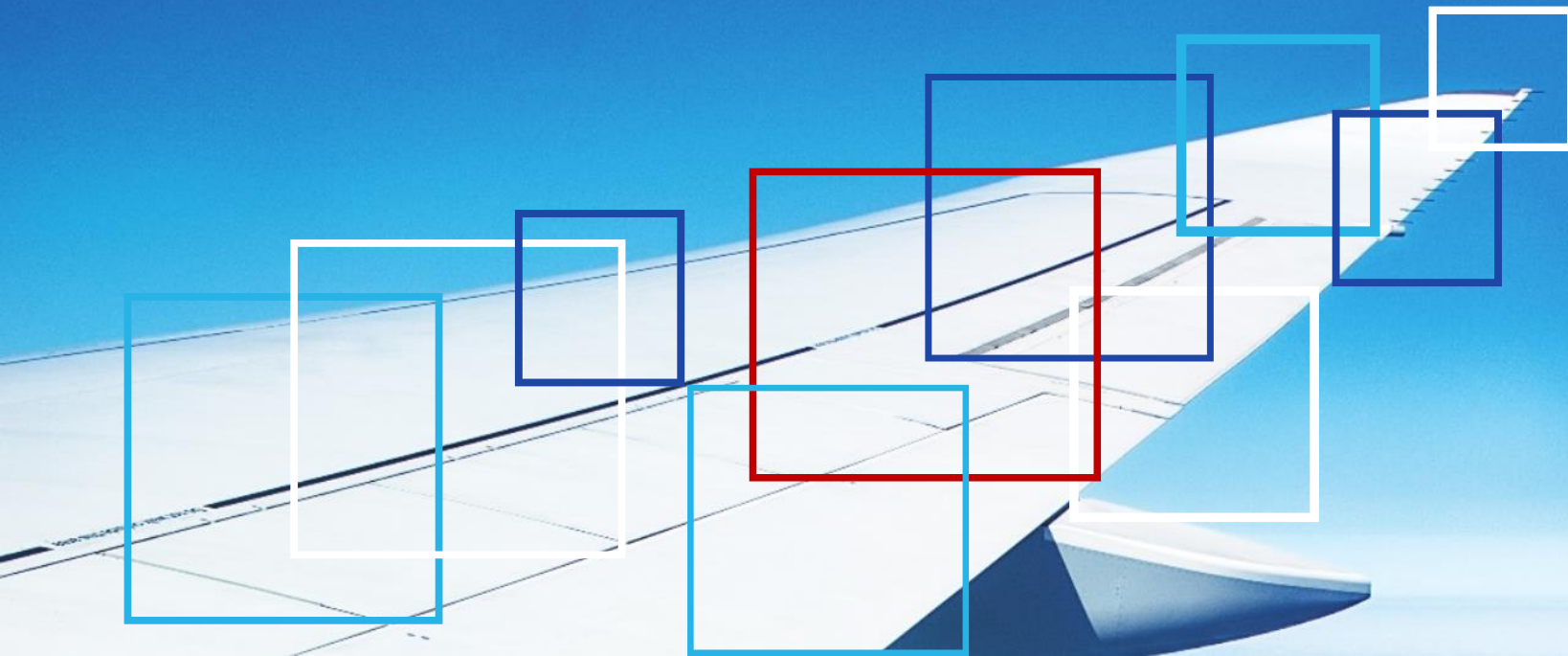
THE MONTREAL CONVENTION 1999

Professor George Leloudas

Institute of International Shipping and Trade Law

Swansea University, Wales, UK

g.leloudas@swansea.ac.uk



BENEFITS

Benefits of international Conventions for both the industry and its users

- Global mobility is advanced by having a global legal framework;
- Uniform rules of engagement;
- Uniform layer of protection from unfair contract terms;
- Common format of (electronic) documents.

ACHIEVEMENTS

- The Montreal Convention 1999 is 25 years old
 - Consolidates and modernises (?) the Warsaw Convention System (WCS)
 - The WCS supported aviation in its formative and adolescent years, but by the 4th quarter of the 20th century, it was showing its age;
 - WC29, HP55, GC61, MP1, MP2, MP4 and several domestic initiatives: a puzzle of legal instruments.
 - The WCS has a pro-carrier philosophy.
 - The move to the Montreal Convention 1999 is primarily attributed to the airline/insurance industry.

ACHIEVEMENTS

- The Montreal Convention 1999 is 25 years old
 - The Montreal Convention 1999 re-balances the interests between passengers and the industry
 - Does not impose artificial limits on compensation for death or bodily injury;
 - The WCS's artificial limits of liability, the difficulty of "breaking" them, and their fragmented/inadequate increase led to its demise.
 - Permits bodily injury/death claims to be filled at the State of residence of the passenger (subject to conditions).
 - Enables electronic ticketing (electronic AWBs were already permitted under MP4).

ACHIEVEMENTS

- The Montreal Convention 1999 is successful in terms of ratifications: 139 State Parties
 - It surpassed the number of ratifications of the Hague Protocol 1955 (137) in 2022;
 - Next target: the 152 ratifications of the Warsaw Convention 1929.
 - This is an essential target as we will then have ONE system governing airlines' international liability, which will reduce complications in deciding which law applies to passenger and cargo claims.
 - Latest ratifications: Bangladesh and Nicaragua in 2022.

SCOPE OF APPLICATION

- The Convention applies **EXCLUSIVELY** to claims from passengers/cargo interests against airlines
 - Claims for death/bodily injury and delay of *passengers* (Article 17.1)
 - Claims for loss, damage, destruction and delay of (*checked and carry-on*) *baggage* (Article 17.2)
 - Claims for loss, damage, destruction and delay of *cargo* (Article 18)
 - It does not apply to claims from airlines/passengers against manufacturers (although it influences them);
 - It does not apply to claims based on domestic consumer-protection regimes: parallel actions are increasingly permitted;
 - The only Convention to deal with passenger and cargo claims in the same document.

SCOPE OF APPLICATION

- The Convention applies to international carriage by air (broad definition)
 - LHR - CDG – LHR: the UK ratification of the Montreal Convention 1999 is significant – France is an agreed stopping place;
 - LHR- CDG: both the UK and France are required to ratify the Montreal Convention 1999 for it to apply (common denominator);
 - Covers domestic carriage that is part of an international itinerary: EDI-LHR-DBX;
 - It does not cover purely domestic carriage (EDI-LHR) unless the Country in question applies it to non-international carriage,
 - e.g. Regulation (EC) No 889/2002 on air carrier liability in the event of accidents
 - *“This Regulation implements the relevant provisions of the Montreal Convention regarding the carriage of passengers and their baggage by air and lays down certain supplementary provisions. It also extends the application of these provisions to carriage by air within a single Member State.”*
 - Regulation 889/2002 does not apply to cargo carriage

PASSENGER CLAIMS FOR DEATH OR BODILY INJURY

- Passengers are required to prove the following (Art 17) (rarely an issue in claims resulting from the total loss of a/c):
 - Death or bodily injury;
 - That was caused by an accident;
 - The accident was caused on board the aircraft or in embarking/disembarking from the aircraft.
- Bring the claim within two years from the accident date (Art 35.1) (strict application in most jurisdictions)
 - Claims formally before a court; negotiations alone do not stop the limitation clock.
 - Does the Convention make provision for Alternative Dispute Resolution methods?

PASSENGER CLAIMS FOR DEATH OR BODILY INJURY

- Passengers are also required to prove the extent of their financial loss
 - How much a passenger can recover is not regulated by the Convention, but by the law of the court seised of the case
 - this aspect triggers forum shopping.
 - The amount of compensation paid is determined by national laws, not by the Convention.
 - It is notoriously difficult to adopt uniform laws on the level of damages.

PASSENGER CLAIMS FOR DEATH OR BODILY INJURY

- However, the Convention regulates two related issues:
 - It identifies the type of damages that courts shall not award
 - “...punitive, exemplary or any other non-compensatory damages shall not be recoverable”(last sentence of Article 29).
 - It identifies the defences available to the airline by reference to the claimed amount (Article 21)
 - Claims below 128,821 SDRs (approx. 171,000USD):
 - carriers have the defence of contributory negligence (negligence of the passenger);
 - Claims above 128,821 SDRs:
 - carriers have the defences of
 - (i) contributory negligence;
 - (ii) no negligence of the carrier (including its servants and agents), and
 - (iii) negligence of a third party.
 - The figure of 128,821 SDRs is not a limit and is not a lump sum payment; it requires proof of financial loss from the claimant

PASSENGER CLAIMS FOR DEATH OR BODILY INJURY

- Passenger claims for death or bodily injury before certain courts (Art 33)
 - Country of domicile/principal place of business of the airline (WCS);
 - Country where the ticket was made, provided it was made via a place of business of the airline (unsuitable for electronic tickets) (WCS);
 - Country of destination (in return tickets, the country of departure is also the country of destination) (WCS);
 - Country of the principal and permanent residence of the passenger provided the airline carries passengers to/from this country and conducts the business of carriage of passengers by air therein (not necessarily by using its a/c or having its own offices) (new in Montreal Convention 1999 – the wording is complicated because of the drafting compromise – fifth jurisdiction).
- Forum shopping is a side-effect of international litigation (not unique to aviation) and would have been more of a problem without the Montreal Convention 1999 or the WCS.
- What are your views on ADR methods?

BAGGAGE CLAIMS

- Carrier can be liable for the destruction or loss of, or of damage to, checked baggage (Article 17.2)
 - If the event that caused the damage took place while the checked baggage was in the carrier's charge
 - Strict liability of the carrier
 - Defences that the carrier can use in baggage claims:
 - inherent defect, quality or vice of the baggage
 - contributory negligence of the claimant (Art 20).
- Carrier can be liable for the damage to unchecked baggage (carry-ons) (Article 17.2)
 - Fault liability of the carrier
 - The passenger must prove the fault of the carrier (including its servants or agents) that caused the carry-on damage.

BAGGAGE CLAIMS

- The limit of a carrier's liability for baggage claims is
 - 1,288 SDRs per PASSENGER (NOT PER KILOGRAM anymore) (approximately 1,700 USD per passenger).
 - The limit includes both checked baggage and carry-ons of a passenger.
 - Major change from the WCS as baggage claims were getting out of control (Art 22.2)
- Two ways that a claimant can recover more than 1,288 SDRs under the Convention:
 - The passenger makes a special declaration of interest to the carrier (Art 22.2) – not popular with airlines
 - The passenger proves that the damage to their baggage “resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result” (Art 22.5)
 - And also that the “servant or agent was acting within the scope of its employment”.
 - How do you understand “recklessness and with knowledge”?
- In baggage claims, passengers CAN NOT use the fifth jurisdiction of Article 33 (country of their principal and permanent residence) to bring claims

SOME IMPORTANT PROVISIONS TO THE SUCCESS OF THE MONTREAL CONVENTION 1999

- **Article 29:**
 - EXCLUSIVITY - fundamental provision to the success of the Convention – without it, the uniform system will crumble
 - Courts are not always respectful of it
- **Articles 25 and 26:**
 - safeguard that the Convention is the MINIMUM protection offered to the passenger; carriers can offer better (but not worse) terms
- **Article 28:**
 - provision for carriers making ADVANCE PAYMENTS in cases of a passenger's death or injury: domestic legislation is required
- **Articles 3 and 4:**
 - enable electronic ticketing and electronic AWBs

SOME IMPORTANT PROVISIONS TO THE SUCCESS OF THE MONTREAL CONVENTION 1999

- Article 24: the unsung hero of the Convention:

- provides for the review of the Convention's limits of liability and their increase if the inflation factor exceeds 10%.
- "Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision."
- 2024 is a review year.

2009 & 2019 Revised Limits of Liability under MC99			
MC99	Original Limit (SDRs)	Revised Limit (SDRs) as of 30 Dec 2009	Revised Limit (SDRs) as of 28 Dec 2019
Art 21	100 000	113 100	128 821
Art 22 para 1	4 150	4 694	5 346
Art 22 para 1	1 000	1 131	1 288
Art 22 para 1	17	19	22

CONCLUSIONS

- The Montreal Convention 1999 has not entirely replaced the WCS, but we are close.
 - More certainty if there is one legal system governing passenger/cargo claims
- The Convention has successfully re-balanced the interests of passengers and airlines
 - The reduction of litigation rates reflects the effectiveness of its liability system;
 - Article 24 guarantees that the Convention will follow the cost of living increases;
 - Identifying compensation levels internationally (via the Convention or other international legal instruments) is difficult, if not impossible, to achieve.

CONCLUSIONS

- There is a pro-consumer interpretative trend of the Convention's provisions in some countries
 - We will examine this trend in the case study.
- The relationship between the Convention and national consumer-protection regimes is fraught with issues
 - A relationship to consider in any future amendment of the Convention?
- A question for the future (and a different occasion): Is the Convention flexible enough to accommodate new technologies, such as UAS and VTOLs?

Thank you very much for your attention

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