

## **THE MONTREAL CONVENTION OF 1999**

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## ***I. Introduction***

The 1929 Warsaw Convention<sup>1</sup> which governs the international carriage by air of passengers, baggage and cargo, is one of the most widely adhered to and litigated<sup>2</sup> treaties in the world and has had a dynamic and turbulent history. It has been subject to three Protocols amending the original text<sup>3</sup>, one supplementary Convention<sup>4</sup>, denunciation by the United States

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<sup>1</sup> Convention for the Unification of Certain Rules Relating to International Transportation by Air, signed at Warsaw October 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11 (1934), *reprinted in* note following 49 U.S.C. § 40105.

<sup>2</sup> The United States Supreme Court has addressed issues relating to the Warsaw Convention on seven separate occasions. *See El Al Israel Airlines v. Tseng*, 119 S. Ct. 662 (1999); *Zicherman v. Korean Air Lines*, 516 U.S. 217 (1996); *Eastern Airlines v. Floyd*, 499 U.S. 530 (1991); *Chan v. Korean Air Lines*, 490 U.S. 122 (1989); *Air France v. Saks*, 470 U.S. 392 (1985); *Trans World Airlines, Inc. v. Franklin Mint Corp.*, 466 U.S. 243 (1984); *Lisi v. Alitalia-Linee Aeree Italiane*, 390 U.S. 455 (1968), *aff'g by an equally divided Court*, 370 F.2d 508 (2d Cir. 1966).

<sup>3</sup> *The Hague Protocol (1955)*: Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw 12 October 1929, Done at the Hague on 28 September 1955, 478 U.N.T.S. 371 (entered into force on August 1, 1963); *Guatemala City Protocol (1971)*: Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw 12 October 1929 as Amended by the Protocol Done at the Hague on September 28, 1955, ICAO Doc. No. 8932 (not yet in force); *Montreal Additional Protocol No. 3 (1975)*: Additional Protocol No. 3 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw October 12, 1929 as Amended by the Protocols Done at the Hague on September 28, 1955 and at Guatemala City on March 8, 1971, ICAO Doc. No. 9147 (not yet in force); *Montreal Protocol No. 4 (1975)*: Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw October 12, 1929 as Amended by the Protocol Done at the Hague on September 28, 1955, ICAO Doc. No. 9148 (entered into force on June 14, 1998).

<sup>4</sup> *Guadalajara Supplementary Convention (1961)*: Convention Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other Than the Contracting Carrier, ICAO Doc. No. 8181 (entered into force on May 1, 1964).

(subsequently withdrawn), supplemental “private” agreements among air carriers<sup>5</sup> and various challenges to its constitutionality<sup>6</sup>. This patchwork of amendments, supplementary conventions and protocols often is referred to as the “Warsaw System” of liability.

The primary catalyst for change to the original Warsaw Convention has been the dissatisfaction, particularly by the United States, with the low limits of liability. In 1995-1996, rising concern about the low liability limits resulted in moves by many member airlines of the International Air Transport Association (“IATA”) to voluntarily waive the Warsaw Convention limits of liability for passenger injury and death. In May 1999, the International Civil Aviation Organization (“ICAO”) adopted a “new” Convention to replace the existing Warsaw System in its entirety. The result of this 1999 ICAO initiative was the entry into force in 2003 of the “Convention for the Unification of Certain Rules for International Carriage by Air,” commonly known as the “Montreal Convention of 1999.” This paper traces the overall historical developments of the law governing international air transportation culminating in the Montreal Convention of 1999.

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<sup>5</sup> *Montreal Agreement (1966):* Agreement Relating to Liability Limitations of the Warsaw Convention and the Hague Protocol, CAB Agreement 18900, *reprinted in* note following 49 U.S.C.A. § 40105 (approved by CAB Order E-23680, May 13, 1966, 31 Fed. Reg. 7302); 1995 IATA Intercarrier Agreement/1996 IATA Measures of Implementation Agreement -MIA.

<sup>6</sup> Courts in the United States unanimously hold that the Warsaw Convention is constitutional. *See Swaminathan v. Swiss Air Transport Co.*, 962 F.2d 387, 390 (5th Cir. 1992); *In re Air Crash in Bali, Indonesia on April 22, 1974*, 684 F.2d 1301, 1309-10 (9th Cir. 1982); *Lee v. China Airlines, Ltd.*, 669 F. Supp. 979, 982 (C.D. Cal. 1987); *Duff v. Varig Airlines, Inc.*, 185 Ill. App. 3d 992, 993-95, 542 N.E.2d 69, 70-71 (1989). The Italian Constitutional Court, however, declared the Article 22(1) limits of liability in both the original Warsaw Convention and as amended by the Hague Protocol to be contrary to the basic principles of the Italian Constitution and thus were unconstitutional. *Coccia Ugo v. Turkish Airlines*, No. 132/1985 (Italian Const. Ct. May 2, 1985), *reprinted in* X Air Law, No. 6 at 297 (1985).

## II. Evolution of the Warsaw System

### A. The 1929 Warsaw Convention

The 1929 Warsaw Convention, the result of two international conferences in 1925 and 1929, entered into force in 1933 and presently has more than 151 parties.<sup>7</sup> The Warsaw Convention had two primary goals: (1) to establish uniform worldwide laws for claims arising out of international aviation accidents; and (2) to limit the liability of the air carrier in the event of an accident.<sup>8</sup>

The primary articles of the Warsaw Convention relating to damages for passenger injury or death, loss of baggage/cargo and delay are Articles 17-22, 24, 25 and 28.<sup>9</sup> Article 17 of the Warsaw Convention creates a cause of action and establishes a presumption of air carrier liability for passenger death or bodily injury resulting from an accident occurring while the passenger is either on board the aircraft or in the course of embarking or disembarking the

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<sup>7</sup> For a detailed discussion of the history of the Warsaw Convention, see *Floyd v. Eastern Airlines Inc.*, 872 F.2d 1462, 1467-1469 (11th Cir. 1989), *rev'd on other grounds*, 499 U.S. 530 (1991), and *In re Air Disaster at Lockerbie, Scotland on December 21, 1988*, 928 F.2d 1267, 1270-1271 (2d Cir. 1991). See also Lowenfeld & Mendelsohn, *The United States and the Warsaw Convention*, 80 Harv. L. Rev. 497, 498 (1967); Sullivan, *The Codification of Air Carrier Liability by International Convention*, 7 J.A.L.C. 1 (1936); Ide, *History and Accomplishments of C.I.T.E.J.A.*, 3 J.A.L.C. 27 (1932).

<sup>8</sup> See *Eastern Airlines v. Floyd*, 499 U.S. 530 (1991); *In re Air Disaster at Lockerbie, Scotland on Dec. 21, 1988*, 928 F.2d 1267, 1271 (2d Cir. 1991); *Benjamins v. British European Airways*, 572 F.2d 913 (2d Cir. 1978).

<sup>9</sup> For an analysis of the Warsaw Convention see, Mankiewicz, *The Liability Regime of the International Air Carrier* (Kluwer 1981); Miller, *Liability in International Air Transport* (Kluwer 1977); Drion, *Limitations of Liability in International Air Law* (Martinus Nijhoff 1954); Goedhuis, *National Airlegislations and the Warsaw Convention* (Martinus Nijhoff 1937). See also *Shawcross & Beaumont: Air Law* (P. Martin, D. McClean, E. Martin eds. Butterworths 1992); Kreindler, *Aviation Accident Law* (Matthew Bender 1992); Speiser & Krause, *Aviation Tort Law* (Lawyers Coop. 1977).

aircraft.<sup>10</sup> Article 18 creates an action for damage or loss of baggage and cargo and Article 19 creates liability for delay. Article 24 renders the Article 17 cause of action exclusive and makes clear that the proper measure of damages recoverable and the beneficiaries thereof under Article 17 are left to the domestic law of the contracting states. Article 20 provides that the air carrier shall not be liable if it proves that it has taken “all necessary measures” to avoid the damage and Article 21 contains a defense based on the contributory/comparative negligence of the passenger. Article 22(1) limits the liability of an air carrier for passenger injury or death to approximately US \$10,000, unless the injury or death was proximately caused by the “wilful misconduct” of the air carrier or its employees within the meaning of Article 25 of the Convention. Finally, Article 28 provides that an action for damages governed by the Convention must be brought, at the option of the passenger, in one of four jurisdictions: “either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination.”

***B. The 1955 Hague Protocol***

The 1955 Hague Protocol amended the Warsaw Convention to clarify certain provisions governing the liability of the air carrier’s agents and servants, simplified documents of carriage and increased the limit of liability to 250,000 French francs (U.S. conversion \$20,000) for passenger injury, death or delay. This Protocol entered into force in 1963 and has 136

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<sup>10</sup> It is generally accepted that Article 17 creates a cause of action for passenger injury and death. See *In re Air Disaster at Lockerbie, Scotland on Dec. 21, 1988*, 928 F.2d 1267, 1271 (2d Cir. 1991); *Benjamins v. British European Airways*, 572 F.2d 913 (2d Cir. 1978); *In re Mexico City Aircrash of Oct. 31, 1979*, 708 F.2d 400 (9th Cir. 1983).

parties. The United States is now a party to the Hague Protocol by virtue of its ratification of Montreal Protocol No. 4.

***C. Other Amendments to the Warsaw Convention***

Other amendments to the Warsaw Convention /Hague Protocol include The Guadalajara Supplementary Convention (1961), Guatemala City Protocol (1971) and Montreal Protocol Nos. 1, 2 and 3 (1975). The United States is not a party to the Guadalajara Supplementary Convention or Montreal Protocol Nos. 1 and 2. Neither the Guatemala City Protocol nor Montreal Protocol No. 3 has ever come into effect. In any event, none of these amendments adequately addressed the concerns relating to the limits of liability.

***D. The 1966 Montreal Agreement***

In the early 1960's, changing economic conditions resulted in mounting dissatisfaction by the United States with the Warsaw Convention's liability limits for air carriers. This dissatisfaction culminated in the formal denunciation of the Warsaw Convention by the United States. On November 15, 1965, the U.S. State Department delivered a Notice of Denunciation of the Warsaw Convention pursuant to Article 39 to the Polish Government, effective May 15, 1966.

One day before the denunciation was to become effective, the United States withdrew the Notice of Denunciation and announced that the Civil Aeronautics Board (predecessor to the U.S. Department of Transportation) had approved an agreement between the United States and the majority of international air carriers, wherein the air carriers agreed: (1) to be bound by an increased liability limit of \$75,000 (including legal fees and costs) and (2) to waive the "all necessary measures" defense of Article 20(1) with respect to passenger injury or death. This agreement, known as the 1966 Montreal Agreement, was viewed as an "interim"

solution until a more comprehensive modification of the Convention could be made at the intergovernmental level. In fact, no significant intergovernmental level solution to this issue was reached for over thirty years.

The Montreal Agreement was not a treaty binding on states, but rather was a private contract with the air carriers applicable to all international air transportation to, from or having an agreed stopping place in the United States.<sup>11</sup> Air carriers incorporated the terms of the Montreal Agreement into their Conditions of Carriage and tariffs and thereby, in effect, created a “special contract” with the passengers (as permitted under Article 22), agreeing to a higher limit of liability.

#### *E. The Japanese Initiative*

In November 1992, after receiving approval from the Japanese Ministry of Transport, all Japanese international airlines amended their respective Conditions of Carriage to waive the passenger liability limits in international transportation by air under the Warsaw Convention. The purpose of this amendment was to preserve certain aspects of the Warsaw Convention, while abolishing the Convention’s limits of liability. Pursuant to the amended conditions of carriage, there was absolute liability on the part of the Japanese airlines for claims

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<sup>11</sup> Each international air carrier is required to adhere to the Montreal Agreement as a condition of its foreign air carrier permit in order to operate in the United States. The carrier files a signed counterpart of CAB Agreement 18900 and a tariff that includes its terms. *See* 14 C.F.R. §§ 202.12, 221.175-221.177. For a discussion regarding the background of the Montreal Agreement, *see Block v. Compagnie Nationale Air France*, 386 F.2d 323 (5th Cir. 1967); *Lowenfeld & Mendelsohn* at 563-601.

with a value of less than 100,000 Special Drawing Rights (“SDR”)<sup>12</sup> because the Article 20(1) defense was expressly waived. The Japanese airlines were presumptively liable for claims with a value greater than 100,000 SDR.

The “Japanese Initiative” marked another milestone in the modifications to Warsaw System and offered a possible solution to the governmental deadlock regarding the liability limitations.

*F. The IATA Inter-Carrier Agreements*

Following the Japanese Initiative, and recognizing the need for additional changes to the Warsaw liability regime and the 1966 Montreal Agreement, airline members of IATA developed several Intercarrier Agreements to modify the limits of liability. While these agreements could not “amend” the Warsaw Convention, because that would require governmental action, the individual air carriers again used the mechanism of Article 22 to raise or waive the liability limitation by amending their Passenger Rules Tariffs and changing their Conditions of Carriage with passengers.

In October 1995, members of IATA agreed, in what is known as the “IATA Intercarrier Agreement” (“IIA”), to take steps to waive the Warsaw Convention/Hague Protocol Article 22(1) limitation for passenger injury or death arising out of an Article 17 accident. In April 1996, IATA drafted the “IATA Measures of Implementation Agreement” (“MIA”), an agreement to implement the IIA. The IIA/MIA embrace the following concepts:

- a universal approach to liability limits

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<sup>12</sup> A SDR is an accounting unit of the International Monetary Fund comprised of various currencies. *See Verdesca v. American Airlines, Inc.*, No. 3-99-CV-2022-BD, 2000 WL 1538704, \*2 n. 2 (N.D. Tex. Oct. 17, 2000); *see also* <http://www.imf.org>.

- no limits on compensatory damages for passenger injury or death
- waiver by air carriers of their defenses under the Warsaw Convention/Hague protocol up to 100,000 SDR.

The IIA and MIA were filed in July/August 1996 with the U.S. Department of Transportation and the European Commission. In January 1997, the IIA and MIA received approval by the Department of Transportation. As of 2004, approximately 129 air carriers have signed the IIA and 92 air carriers signed the MIA, effectively waiving liability limits for passenger injury or death. As with the 1966 Montreal Agreement, the IIA/MIA was considered an interim solution to improve the legal relationship between air carriers and their passengers until an agreement could be reached at the intergovernmental level for a new international legal instrument amending the Warsaw System.

***G. Ratification of Montreal Protocol No. 4 and the 1955 Hague Protocol***

While the air carriers were negotiating the Intercarrier Agreements, the United States and the world aviation community looked, once again, at Montreal Protocol No. 4, which was drafted in 1975. Finally, almost 23 years after being drafted, Montreal Protocol No. 4 came into force on June 14, 1998.

Montreal Protocol No. 4 had languished in the U.S. Senate for over two decades, due in large part to the fact that it was linked to the ratification of Montreal Protocol No. 3. With the air carriers' acceptance of the IATA Intercarrier Agreement, however, many of the perceived problems with the Warsaw Convention and Montreal Protocol No. 3 no longer presented an obstacle to the acceptance of Montreal Protocol No. 4.

On September 28, 1998, on the strong recommendation of the U.S. Department of State, the United States ratified Montreal Protocol No. 4/1955 Hague Protocol. President Clinton thereafter signed the instrument of ratification on November 5, 1998 and forwarded the

instrument of ratification for deposit with the government of Poland. Thus, Montreal Protocol No. 4 and the 1955 Hague Protocol entered into force in the United States on March 4, 1999.

Montreal Protocol No. 4 revises the Warsaw Convention/Hague Protocol with respect to documentation and the liability regime applicable to the carriage of cargo. Specifically, Montreal Protocol No. 4 expresses the limits of liability for cargo in Special Drawing Rights and renders the liability limits unbreakable. In addition, Montreal Protocol No. 4 facilitates electronic air waybills and establishes that cargo claims cannot exceed the limits of liability, even if defects exist in the cargo documentation.

Montreal Protocol No. 4 also made significant changes to Articles 18 and 20 of the Warsaw Convention. New Article 18 expressly provides a defense if the damage was caused by: (a) an inherent defect, quality or vice of that cargo; (b) defective packing of the cargo not performed by the carrier or its servants or agents; (c) an act of war or armed conflict; and (d) an act of a public authority carried out in connection with the entry, exit or transit of the cargo. The Article 20 all necessary measures defense applies only to claims for cargo delay and not to claims for damage. The ratification by the United States of Montreal Protocol No. 4 resulted in the automatic adherence of the United States to the 1955 Hague Protocol.

### ***III. The Montreal Convention of 1999***

Finally, in May 1999, following decades of discussion about achieving a new comprehensive intergovernmental regime, ICAO convened a Diplomatic Conference in Montreal attended by 118 states. The purpose of this conference was to consider a new convention intended to modernize and replace the existing Warsaw System of liability. On May 28, 1999, the Montreal Convention was adopted and signed by 52 states, including the United States. The United States government deposited its instrument of ratification of the Montreal Convention

with ICAO on September 5, 2003 bringing the number of ratifying countries to 30 – the number required to bring the Montreal Convention into force. Accordingly, the Montreal Convention took effect for all ratifying countries 60 days later on November 4, 2003.

There are currently 64 parties to the Montreal Convention, including one Regional Economic Integration Organization, the European Community.<sup>13</sup> The Montreal Convention applies to all carriage originating and having a final destination in States which are Parties to the Montreal Convention, as well as to all round-trip journeys originating and terminating in any single State Party with an intermediate stop in another country. In those countries where it is applicable, Article 55 dictates that the Montreal Convention should prevail over any other rules that have applied to “international carriage” by air, which traditionally have been governed by the Warsaw Convention of 1929, amendments thereto and the IATA Inter-carrier Agreements.

Few “new” principles are contained in the Montreal Convention. Rather, the Montreal Convention essentially consolidates the existing “Warsaw System” into a single treaty and revises various articles in accordance with modern realities and concerns. Some of the more significant provisions in the Montreal Convention include:

- ***Liability for passenger injury or death (Articles 17, 20 and 21):*** Under the Montreal Convention, the carrier is liable for passenger injury or death up to 100,000 SDR, subject only to the defense of contributory/comparative liability. For claims in excess of 100,000 SDR, the carrier is not liable if the carrier proves that the damage “was not due to the negligence or other wrongful act or omission of the carrier” or was “solely due to the negligence or other wrongful acts or omission of a third party.” The basis for air carrier liability (*i.e.*, “accident” on board the aircraft or during

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<sup>13</sup> For a complete list of the parties to the Montreal Convention, please see Appendix A hereto.

embarking/disembarking causing “death” or “bodily injury”), however, remains unchanged.

While these provisions represent a desirable departure from the confusing, and much litigated, “all necessary measures” standard, they impose an arduous burden on the air carrier to avoid liability by requiring the air carrier to prove that it or its agents/representatives were not negligent in any degree or that the damages resulted solely from the negligence of a third party. Moreover, absent contributory/comparative liability, air carriers appear to be strictly liable up to 100,000 SDR.

- ***Liability Limit for Delay, Baggage and Cargo (Article 22):*** The liability limit in case of passenger delay is 4,150 SDR. In the carriage of checked or unchecked baggage, the liability limit for loss or delay is 1000 SDR per passenger. For the destruction, loss, damage or delay to cargo, the air carrier’s liability is limited to 17 SDR/per kilogram.
- ***Documentation (Articles 3-16):*** The Montreal Convention streamlines documentation requirements for the carriage of passengers, checked baggage and cargo, embracing electronic ticketing and air waybills. Moreover, there are no sanctions for non-compliance with the new documentation requirements.
- ***Jurisdiction (Article 33):*** In addition to the four jurisdictions presently specified where an action for damages must be brought in Article 28 of the Warsaw Convention, a “fifth jurisdiction” is added which is defined to include the principal and permanent residence of the passenger *and* to or from which the carrier operates *and* in which that carrier conducts business.

In providing for the “fifth jurisdiction” it appears the drafters intended to permit a passenger or his heirs to obtain jurisdiction in the place of his permanent residence over both carriers who are a party to a code-share agreement, but where only one of the carriers operates flights into the jurisdiction.

- ***Types of Damages (Articles 17 and 29):*** There is no limitation on the types of recoverable compensatory damages. However, the Montreal Convention still does not allow the recovery of damages for pure mental injury and contains an express prohibition on the recovery of “punitive, exemplary or any non-compensatory damages”.
- ***Advance Payments (Article 28):*** While not required by the Montreal Convention, provision is made that a carrier is obligated

to make advance payments with respect to passenger injury or death if required by the national law of the air carrier.

- ***Recourse Against Third-Parties (Article 37):*** It is expressly stated that nothing in the Convention shall prejudice an air carrier's right of recourse against any other party. While this may be meaningful after a trial and imposition of liability, its actual usefulness when a case is settled is limited.
- ***Insurance (Article 50):*** The Convention imposes a duty upon the contracting states to require their air carriers to maintain "adequate insurance" covering their liability under the Convention. The determination of what constitutes "adequate insurance" appears to be left to each contracting state.

#### ***IV. Conclusion***

The Montreal Convention of 1999 moves the international aviation community past the patchwork system of liability stemming from the original Warsaw Convention and establishes a comprehensive liability regime for air carriers engaged in international carriage. The Convention provides a much needed limit on liability for delay and sets forth clear limits on liability for lost or damaged baggage and cargo. In addition, the Montreal Convention simplifies documentation requirements by embracing electronic ticketing and air waybills, which should eliminate litigation regarding the adequacy of travel documents. One of the most significant aspects of the Montreal Convention is the new liability limit for passenger injury or death. Under the new liability regime, air carriers will be held absolutely liable for the first 100,000 SDR of damages, even if the damage was caused by a third party, so long as the injury producing event meets the conditions for liability under Article 17 and was not contributed to by the passenger. The U.S. Department of State has hailed this new passenger liability regime as the culmination of years of work by the United States to increase, and later eliminate what it viewed as the "unconscionably low" liability limits applicable under the Warsaw System.

The Montreal Convention of 1999 only applies to international transportation occurring between two (or more) states which are parties to the Convention. Fortunately, because there have been no major international air disasters over the past few years, the international aviation law community has not yet seen the Montreal Convention principles applied to an actual international accident. In fact, 2004 marked a 20 year low in aircraft accident fatalities and commercial aviation continues to be an extremely safe mode of travel. Nonetheless, accidents are a practical inevitability and at some point in the reasonably near future, we will see the Montreal Convention liability regime applied to a real world set of facts.

## **APPENDIX A**

**CONVENTION FOR THE UNIFICATION OF CERTAIN RULES  
FOR INTERNATIONAL CARRIAGE BY AIR  
DONE AT MONTREAL ON 28 MAY 1999**

<b>Entry into force:</b>	The Convention entered into force on 4 November 2003.
<b>Status:</b>	64 Parties.

<b>State</b>	<b>Date of signature</b>	<b>Date of deposit of instrument of ratification, acceptance (A), approval (AA) or accession (a)</b>	<b>Date of entry into force</b>
Albania		20/10/04 (a)	19/12/04
Austria (10)		29/04/04 (a)	28/06/04
Bahamas	28/05/99		
Bahrain		02/02/01(a)	04/11/03
Bangladesh	28/05/99		
Barbados		02/01/02 (a)	04/11/03
Belgium (1)(15)	28/05/99	29/04/04	28/06/04
Belize	28/05/99	24/08/99	04/11/03
Benin	28/05/99	30/03/04	29/05/04
Bolivia	28/05/99		
Botswana		28/03/01 (a)	04/11/03
Brazil	03/08/99		
Bulgaria		10/11/03 (a)	09/01/04
Burkina Faso	28/05/99		
Cambodia	28/05/99		
Cameroon	27/09/01	05/09/03	04/11/03
Canada (6)	01/10/01	19/11/02	04/11/03
Central African Republic	25/09/01		
Cape Verde		23/08/04 (a)	22/10/04
Chile	28/05/99		
China	28/05/99		
Colombia	15/12/99	28/03/03	04/11/03
Costa Rica	20/12/99		
Côte d'Ivoire	28/05/99		
Cuba	28/05/99		
Cyprus		20/11/02 (a)	04/11/03
Czech Republic (3)	28/05/99	16/11/00	04/11/03
Denmark (1)(11)	28/05/99	29/04/04	28/06/04
Dominican Republic	28/05/99		
Egypt		24/02/05 (A)	25/04/05
Estonia	04/02/02	10/04/03	04/11/03
Finland (4)	09/12/99	29/04/04	28/06/04
France (1)	28/05/99	29/04/04	28/06/04
Gabon	28/05/99		
Gambia		10/03/04	09/05/04
Germany (1)(12)	28/05/99	29/04/04	28/06/04
Ghana	28/05/99		
Greece (1)	28/05/99	22/07/02	04/11/03
Hungary		08/11/04 (a)	07/01/05

Iceland	28/05/99	17/06/04	16/08/04
Ireland (1)	16/08/00	29/04/04	28/06/04
Italy (1)	28/05/99	29/04/04	28/06/04
Jamaica	28/05/99		
Japan (8)		20/06/00 (A)	04/11/03
Jordan	05/10/00	12/04/02	04/11/03
Kenya	28/05/99	07/01/02	04/11/03
Kuwait	28/05/99	11/06/02	04/11/03
Latvia		17/12/04 (A)	15/02/05
Lithuania (17)	28/05/99	30/11/04	29/01/05
Lebanon		15/03/05 (a)	14/05/05
Luxembourg (2)	29/02/00	29/04/04	28/06/04
Madagascar	28/05/99		
Malta	28/05/99	05/05/04	04/07/04
Mauritius	28/05/99		
Mexico	28/05/99	20/11/00	04/11/03
Monaco	28/05/99	18/08/04	17/10/04
Mongolia		05/10/04 (a)	04/12/04
Mozambique	28/05/99		
Namibia	28/05/99	27/09/01	04/11/03
Netherlands (14)	30/12/99	29/04/04	28/06/04
New Zealand (5)	13/07/01	18/11/02	04/11/03
Niger	28/05/99		
Nigeria	28/05/99	10/05/02	04/11/03
Norway		29/04/04 (a)	28/06/04
Pakistan	28/05/99		
Panama	28/05/99	13/09/02	04/11/03
Paraguay	17/03/00	29/03/01	04/11/03
Peru	07/09/99	11/04/02	04/11/03
Poland	28/05/99		
Portugal (1)	28/05/99	28/02/03	04/11/03
Romania	18/11/99	20/03/01	04/11/03
Qatar (16)		15/11/04 (a)	14/01/05
Saint Vincent and the Grenadines		29/03/04 (a)	28/05/04
Saudi Arabia	28/05/99	15/10/03	14/12/03
Senegal	28/05/99		
Slovakia	28/05/99	11/10/00	04/11/03
Slovenia	28/05/99	27/03/02	04/11/03
South Africa	28/05/99		
Spain (13)	14/01/00	29/04/04	28/06/04
Sudan	28/05/99		
Swaziland	28/05/99		
Sweden (1)	27/08/99	29/04/04	28/06/04
Switzerland	28/05/99		
Syrian Arab Republic		18/07/02 (a)	04/11/03
The former Yugoslav Republic of Macedonia		15/05/00 (a)	04/11/03
Togo	28/05/99		

Tonga		20/11/03 (a)	19/01/04
Turkey	28/05/99		
United Arab Emirates		07/07/00 (a)	04/11/03
United Republic of Tanzania		11/02/03 (a)	04/11/03
United States (7)	28/05/99	05/09/03	04/11/03
United Kingdom (1)	28/05/99	29/04/04	28/06/04
Uruguay	09/06/99		
Zambia	28/05/99		
<b>Regional Economic Integration Organisations</b>			
European Community (9)	09/12/99	29/04/04 (AA)	28/06/04

(1) Upon signature of the Convention, this State, Member State of the European Community, declared that, "in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention".

(2) On 3 October 2000, ICAO received from Luxembourg the following declaration: "The Grand Duchy of Luxembourg, Member State of the European Community, declares that in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention".

(3) Upon deposit of its instrument of ratification, the Czech Republic notified ICAO that "as a Member of the International Monetary Fund, [the Czech Republic] shall proceed in accordance with Article 23, paragraph 1 of the Convention".

(4) By a Note dated 13 July 2000, Finland transmitted a declaration dated 7 July 2000 signed by the Minister for Foreign Trade, setting forth the wording quoted in note (1) above.

(5) Upon deposit of its instrument of accession (deemed to be an instrument of ratification), New Zealand declared "that this accession shall extend to Tokelau".

(6) At the time of ratification, Canada made the following declaration: "Canada declares, in accordance with Article 57 of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999 and signed by Canada on 1 October 2001, that the Convention does not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by Canada, the whole capacity of which has been reserved by or on behalf of such authorities [Article 57(b)]."

(7) The instrument of ratification of the United States contains the following declaration:

"Pursuant to Article 57 of the Convention, the United States of America declares that the Convention shall not apply to international carriage by air performed and operated directly by the United States of America for non-commercial purposes in respect to the functions and duties of the United States of America as a sovereign State."

(8) By a Note dated 24 October 2003 signed by the Minister for Foreign Affairs, Japan informed ICAO "that, in accordance with Article 57(a) of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999, the Government of Japan declares that this Convention shall not apply to international carriage by air performed and operated directly by the Government of Japan for non-commercial purposes in respect to its functions and duties as a sovereign State."

(9) The instrument of approval by the European Community contains the following declaration:

"Declaration concerning the competence of the European Community with regard to matters governed by the Convention of 28 May 1999 for the unification of certain rules for international carriage by air (the Montreal Convention):

1. The Montreal Convention provides that Regional Economic Integration Organisations constituted by

sovereign States of a given region, which have competence in respect of certain matters governed by this Convention, may become parties to it.

2. The current Member States of the European Community are the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

3. This declaration is not applicable to the territories of the Member States in which the Treaty establishing the European Community does not apply and is without prejudice to such acts or positions as may be adopted under the Convention by the Member States concerned on behalf of and in the interests of those territories.

4. In respect of matters covered by the Convention, the Member States of the European Community have transferred competence to the Community for liability for damage sustained in case of death or injury of passenger. The Member States have also transferred competence for liability for damage caused by delay and in the case of destruction, loss, damage or delay in the carriage of baggage. This includes requirements on passenger information and a minimum insurance requirement. Hence, in this field, it is for the Community to adopt the relevant rules and regulations (which the Member States enforce) and within its competence to enter into external undertakings with third States or competent organisations\*.

5. The exercise of competence which the Member States have transferred to the Community pursuant to the EC Treaty is, by its nature, liable to continuous development. In the framework of the Treaty, the competent institutions may take decisions which determine the extent of the competence of the European Community. The European Community therefore reserves the right to amend the present declaration accordingly, without this constituting a prerequisite for the exercise of its competence with regard to matters governed by the Montreal Convention.

\*Sources:

- 1) Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents, Official Journal of the European Union, L 285, 17.10.1997, p. 1;
- 2) Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents, Official Journal of the European Union, L 140, 30.05.2002, p. 2."

(10) The instrument of accession by Austria contains the following declaration:

"The Republic of Austria declares according to Article 57 of the Convention for the Unification of Certain Rules for International Carriage by Air of 28 May 1999 that this Convention shall not apply to:

- a) international carriage by air performed and operated directly by the Republic of Austria for non-commercial purposes in respect to its functions and duties as a sovereign State;
- b) the carriage of persons, cargo and baggage for the military authorities on aircraft registered in or leased by the Republic of Austria, the whole capacity of which has been reserved on behalf of such authorities."

(11) The instrument of ratification by Denmark contains a declaration that until later decision, the Convention will not be applied to the Faroe Islands.

(12) The instrument of ratification by Germany was accompanied by the following declaration:

"In accordance with Article 57 of the Convention of for the Unification of Certain Rules for International Carriage by Air of 28 May 1999, the Federal Republic of Germany declares that the Convention shall not apply to international carriage by air performed and operated directly by the Federal Republic of Germany for non-commercial purposes in respect to its functions and duties as a sovereign State or to the carriage of persons, cargo and baggage for the military authorities of the Federal Republic of Germany on aircraft registered in or leased by the Federal Republic of Germany, the whole capacity of which has been reserved by or on behalf of such authorities."

(13) The instrument of ratification by Spain contains the following declarations:

“The Kingdom of Spain, Member State of the European Community, declares that in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention.”

“In accordance with the provisions of Article 57, the Convention shall not apply to:

- a) international carriage by air performed and operated directly by Spain for non-commercial purposes in respect to its functions and duties as a sovereign State;
- b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by Spain, the whole capacity of which has been reserved by or on behalf of such authorities.”

(14) By a Note dated 29 April 2004 from the Ministry of Foreign Affairs, the Netherlands transmitted to ICAO the following declaration: “The Kingdom of the Netherlands, Member State of the European Community, declares that in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention”.

(15) By a Note dated 15 July 2004 from the Minister of Foreign Affairs, Belgium transmitted to ICAO the following declaration in accordance with Article 57:

“the Convention does not apply to:

- a) international carriage by air performed and operated directly by Belgium for non-commercial purposes in respect to its functions and duties as a sovereign State;
- b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by Belgium, the whole capacity of which has been reserved by or on behalf of such authorities.”

(16) In its instrument of accession, Qatar confirmed the application of the following declaration in accordance with Article 57:

“the Convention does not apply to:

- a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State, and/or
- b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.”

(17) The instrument of ratification by Lithuania contains the following declarations:

“... in accordance with Article 57 ..., the Seimas of the Republic of Lithuania declares that this Convention shall not apply to international carriage by air performed and operated directly by the Republic of Lithuania for non-commercial purposes in respect to its functions and duties as a sovereign State; and also shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by the Republic of Lithuania, the whole capacity of which has been reserved by or on behalf of such authorities.”

“... in accordance with the Treaty establishing the European Community, the Seimas of the Republic of Lithuania declares that the Community has competence to take actions in certain matters governed by the Convention.”