

Editorial to the Special Edition of *Air and Space Law* on the 25th Anniversary of the Montreal Convention 1999

MC99 or the Montreal Convention for the Unification of Certain Rules for International Carriage by Air 1999 represents a landmark international agreement and one of the cornerstones of global air transport. It also belongs to a fairly limited category of those international treaties whose renown extends well beyond the confines of a small circle of legal experts. That is surely a mark of success for a technical instrument dealing with the complex topic of liability.

MC99 emerged from a collective effort to harmonize and streamline the complex web of international rules governing air carrier liability. As readers are well aware, the international rules on liability were first established in the earliest days of commercial aviation, by the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air adopted in 1929. That instrument was drafted when aircraft were a nascent technology and decades before the jet aircraft we see everywhere today were even conceived. And yet, it introduced certain liability principles that remain relevant today. That is quite extraordinary and shows remarkable foresight on the part of the drafters. Nevertheless, it became increasingly clear over the years that the ‘Warsaw system’,¹ was no longer fit for purpose. A revised instrument was needed to simplify the liability regime and adapt it to the realities of modern civil aviation, including changing economic and social needs.

The origins of MC99 have been mapped elsewhere.² It should nevertheless be noted that it did not originate solely as an initiative of Member States but significantly from industry also – an acknowledgement that airlines, passengers and

¹ The Hague Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air (28 Sep. 1955); Guadalajara 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 (18 Sep. 1961), Guatemala City Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 Oct. 1929 as Amended by the Protocol done at The Hague on 28 Sep. 1955 (8 Mar. 1971), and the Montreal additional Protocols No 1 to 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 Oct. 1929, as Amended by the Protocol done at The Hague on 28 Sep. 1955 (25 Sep. 1975).

² See *The Montreal Convention, A Commentary* (G. Leloudas et al. eds, Edward Elgar 2023).

cargo operators alike needed a more coherent framework for liability. For example, IATA's 1995 Intercarrier Agreement was a catalyst for the complete revision of the Warsaw system.

These initiatives came to fruition in 1999, with the International Civil Aviation Organization (ICAO) convening a Diplomatic Conference. The joint effort of states, ICAO, and industry stakeholders resulted in a text that maintained a large amount of continuity with the key elements of the Warsaw system, while bringing numerous important innovations. The first achievement of MC99 was to regroup a number of rules that were previously scattered throughout nine different instruments in a single cohesive instrument. Its second achievement lies in the enhanced protection and greater certainty with respect to the liability framework applicable to airlines. The establishment of a two-tier liability system, combining a strict liability up to a threshold with presumptive liability up to an unlimited amount, plays a pivotal role in that respect. Furthermore, the mechanism for the periodic review of the limits through its 'escalator clause' ensures that the various thresholds set in the Convention are adaptable to changing economic and social factors and can therefore stand the test of time. The third achievement of the Convention was to modernize many procedural aspects and bring them into the twenty-first century. Notably, the ability to substitute paper-based documentation with other means (electronic air tickets for passengers and airway bills for cargo) has paved the way for the subsequent digitalization of air travel. This has greatly benefited carriers, shippers, and passengers.

It has been noted elsewhere that MC99 has fared better than its illustrious predecessor.³ Indeed, while the revision process of the Warsaw Convention was well underway by the time it had turned twenty-five, resulting in the 1955 Hague Protocol, there are no significant initiatives to revise the MC99, a quarter of a century after its adoption. The Convention has now been ratified by 139 contracting parties. While encouraging, this number remains short of the universal participation expected from such a central instrument to the air transport regime. ICAO continues to dedicate significant effort to encourage global ratification. Thus, in 2016, the 39th ICAO Assembly urged all states that had not ratified MC99 to promptly do so, and the ICAO Secretariat, through the Legal Affairs and External Relations Bureau, actively promotes this objective through regular advocacy activities with its Member States. ICAO has also greatly benefited from the support of states, the leadership of industry and the input of civil society stakeholders, a testament to the concrete benefits that MC99 brings to states, carriers and passengers alike.

I am confident that, through these joint efforts, MC99 will very soon surpass the level of ratification of the Warsaw Convention. Only then will the liability

³ See Preface to, *ibid.*

regime applicable to international carriage by air finally complete its transition away from a patchwork and realize the simplification and harmonization objectives that motivated the original adoption of the Convention.

*Michael Gill,
Michael Gill is the Director of the Legal Affairs and
External Relations Bureau of the International Civil
Aviation Organization.*

