



International Civil Aviation Organization

WORKING PAPER

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ASSEMBLY — 37TH SESSION

LEGAL COMMISSION

Agenda Item 60: Work Programme of the Organization in the Legal Field

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

(Presented by the Air Crash Victims Families Group, the Air Safety Foundation and La
Asociación Latino Americana de Derecho Aeronáutico y Espacial (ALADA))

EXECUTIVE SUMMARY

The Montreal Convention of 1999 which establishes certain unified rules for international carriage by air for passengers and freight shippers has been ratified by, and is in force in 97 of the 190 Member States of the International Civil Aviation Organization. In order to fully replace the original Warsaw Convention of 1929, its subsequent supplemental Protocols, individual States' laws, as well as industry agreements and achieve worldwide unification of certain rules for carriage by air, all ICAO member States that have not done so should ratify the 1999 Montreal Convention, as soon as possible.

Action: The Assembly is invited to:

- a) adopt the Resolution submitted by the United States and other co-sponsoring States; and
- b) in bi-lateral and multilateral meetings or other diplomatic exchanges with non-ratifying States, including at the highest levels, States that have already ratified should encourage the ratification by other States at the earliest possible time.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective F (Rule of Law).
<i>Financial implications:</i>	None
<i>References:</i>	Resolution A36-26, Appendix C

1. INTRODUCTION

1.1 The Warsaw Convention of 1929 was signed by 31 League of Nations Member States, when international transportation by air was in its infancy. The Convention came into force in 1934.

1.2 Today, 190 States are members of the International Civil Aviation Organization (ICAO). Long range international passenger and freight transportation by air have become the preferred – and in some inaccessible areas the only mode of travel for passengers and high value freight deliveries.

1.3 The Montreal Convention of 1999 was adopted by acclamation on 28 May 1999 and initially signed by 53 ICAO Member States. The Convention came into force in 2003.

1.4 Extensive case law has been developed over the 81 years of the “Warsaw 1929” system.

2. DISCUSSION

2.1 None of the numerous supplemental remedial Protocols, regional, national or industry agreements to the 1929 Warsaw Convention have ever been unified – resulting in lengthy, wide ranging costly litigation to determine the parties’ rights, the proper jurisdiction, the extent of liability and adequate resolution of losses and damages.

2.2 The 1999 Montreal Convention unifies and simplifies the patchwork of the 1929 Warsaw system – and brings it into line with the requirements of 21st century civil aviation.

2.3 For carriage of freight modern means of documentation are adopted reducing substantially the antiquated error prone and often disputed, costly paper work.

2.4 The amounts of valuations have being unified and expressed in international “Special Drawing Rights”(SDR). Present Values are preserved by adjusting them to inflation every five years.

2.5 The need to prove “Wilful Misconduct” by the carrier under Warsaw 1929 has led to repetitious, lengthy costly litigation through the judicial process. This has been replaced in Montreal 1999 by a limited strict liability for damages (up to 113,000 SDR) and subsequent full compensation for all economic and non economic losses incurred, according to the laws of the domicile of the victim. This avoids “forum shopping” litigation but preserves for carriers the right to prove their innocence. Punitive damages remain excluded.

2.6 Montreal 1999 also addresses worldwide code share and alliances agreements between the carriers, practices that did not exist yet in 1929.

2.7 Since coming into force in 2003 the 1999 Montreal Convention has proven to be beneficial to all parties involved.

3. **ACTION**

3.1 It is recommended that the Assembly adopt the Resolution set forth in the Appendix of working paper A37-WP/77.

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