

12<sup>th</sup> Annual Air Law Conference

***Air Carrier Liability: National Regulations and Practices  
Under Unified Rules***

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# *Air Carrier Liability: National Regulations and Practices Under Unified Rules*

## **Air Carrier Liability**

### *Convention for the Unification of Certain Rules for the International Carriage by Air*

Montreal, 28 May 1999 (ICAO Doc 9740)

No international and uniform regulation of the liability for damages of

- international airports;
- air navigation service providers (ANSPs);
- maintenance, repair and overhaul organisations (MROs); or
- aircraft manufacturers.

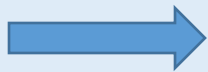
The actions for damages vis-a-vis these stakeholders of the industry are governed by *national law* despite the significant number of elements with international aspects.

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*Infer rubro ad nigrum: “from the red to the black”*

(1) Unification of (2) Certain Rules for  
the (3) International Carriage by (4) Air

The principal objective of the Convention is the unification of the certain rules, but not of all of them,



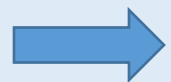
merely of the really important regulations!

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Montreal Convention (1999) does not define important concepts:  
thus, their precise definition and the clarification of their conceptual  
elements have devolved on the application of national law.

### No definition for

- Persons;
- Cargo;
- Delay;
- Accident;
- Embarkation;
- Disembarkation, etc.



The Convention does not provide for the cases of denied boarding.

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The reference to “national law” shall be construed as referring to the law of the relevant territorial unit of that State.

Montreal Convention [Article 56 (3) b)].

The following provisions of the Convention expressly refer to the application of *national law*:

- The national law of the court having jurisdiction and proceeding in the case shall govern the procedural issues [Article 33 (4) and Article 45].
- The action for damages may be lodged within a period of two years. The method of calculating that period shall be determined by the law of the court seized of the case [Article 35 (2)].

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There are several “passenger-friendly” provisions of consumer protection in the Montreal Convention such as

- in the case of the occurrence of an accident, the obligation of the air carrier to make an *advance payment* if required by national law (Article 28);
- the review of the upper limits of liability corresponding to the rate of inflation at five-year intervals (Article 24);
- the absolute liability of the air carrier up to an amount of 128,821 SDR [Article 21 (1)]; or
- upon the exoneration of the air carrier, the placement of the burden of proof on the air carrier [Articles 20, 21 (2)].

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### **Exclusive remedy**

“In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under the Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in the Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable” (Article 29).

If the Montreal Convention (1999) is applicable, but pursuant to its provisions, the award of the compensation is not substantiated, and as a consequence, the air carrier is not liable, therefore, this claim cannot be enforced, that is, the air carrier cannot be sued on any other legal grounds proceeding from *national law*.

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- *Sidhu v. British Airways*, Lloyd's Law Reports. 76. 1997.
- *EL AL Israel Airlines Ltd. v. Tsui Yuan Tseng*, US Court of Appeals for the Second Circuit, No. 97-475, 122 F. 3d, 1999.

According to the House of Lords, the Convention regulates the most important issues of private law so that the liability of the air carrier for damages should be uniform and exclusive, superimposed over national legal systems.

The institution of exclusive remedy also serves the objective that if the enforcement of the claims vis-à-vis the air carrier is impracticable, *national law* should not entitle the claimant either to sue the airline under national law or any other system of rules.

That is, if the action is not enforceable pursuant to the Convention, it should not be substantiated under national or other legal systems either.



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Private law does not have an international judicial  
forum



despite the broadly applied international system of  
rules of the Montreal Convention (1999),  
the *national* element will remain decisive.

## UNIFICATION

- **Unity requires the uniform application of the provisions**
- **But national law needs more space and applicability**
- **Ratification of Montreal Convention (1999) require harmonization  
(see, common and civil law systems, different national legislations)**
  - Taken consideration in different cultures, interest
  - ➔ Protect and support more the passengers in national law
  - ➔ More cooperation and finding the hard fine line between the *national and international* law.

Thank you very much for your kind attention!