Forum Non Conveniens and the Montreal Convention

On July 9, 2006, Siberia Airlines Flight 787, a regularly scheduled flight from Moscow to Irkutsk, Russia, departed with 195 passengers and eight crew members on board. 124 of those passengers were killed and numerous others were injured when the aircraft was unable to stop upon landing, departed the runway and struck a concrete barrier and several buildings.

Of the 203 passengers and crew, 187 were residents of Russia; 16 passengers were residents of other countries, but none was a resident of the United States. Siberia Airlines operated this purely domestic Russian flight using an aircraft registered in France, operated and maintained by a Russian airline, piloted by a Russian crew and regulated by Russian law. The only contact with the United States was that the aircraft was leased from a Virginia corporation.

Despite the complete lack of relevant contacts with the United States, 183 plaintiffs commenced litigation in the United States District Court for the Southern District of New York to recover for the death or injury of passengers and crew members on board the aircraft.

The United States litigation arising out of the Siberia Airlines incident is reflective of an overall trend. More and more aviation claims are being brought in the United States, especially for extraterritorial air crashes, regardless of whether the accident has any meaningful contact with the United States forum. See John D. Goetz and Dana Baiocco, The Americanization of Aviation Claims: Litigating Extraterritorial Air Crashes in the U.S. Courts and the Impact on Aviation and Airlines, at 20, http://www.jonesday.com/files/Publication/d11c0e61-214c-42f0-a81a-cf13885e1ed7/Presentation/PublicationAttachment/4a5f4357-b076-4434-a0d3-d37a5f5270d3/aviation_20claims.pdf. The reasons for this increase in United States litigation of foreign air crash cases are clear: (1) there are many highly experienced aviation lawyers in the United States willing to handle such cases on a contingency fee basis, and (2) recoveries in the United States are perceived to be significantly more generous than in other coun-

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tries. Id.; see also Esheva v. Siberia Airlines, 499 F. Supp. 2d 493, 501 (S.D.N.Y. 2007) (“It would appear that American counsel have filed lawsuits on behalf of foreign plaintiffs who were injured abroad to gain advantage in settlement discussions from the substantial damage awards that may be obtained from American juries and to inconvenience the principal defendant, a Russian corporation.”); Allan I. Mendelsohn, *International Litigation: The U.S. Jurisdiction to Prescribe and the Doctrine of Forum Non Conveniens*, 73 J. Air L. & Com. 17, 26 (2008).

The lawsuits arising out of the Siberia Airlines accident were dismissed pursuant to the doctrine of forum non conveniens so they could be litigated in a more convenient forum. *Esheva*, 499 F. Supp. 2d at 501. However, the *Esheva* court was not faced with the issue of whether forum non conveniens is available in an action governed by the Warsaw Convention or Montreal Convention, which apply to claims arising out of many aviation incidents. The Conventions provide the exclusive cause of action for injury sustained during international carriage by air, and set forth the exclusive fora in which an action governed by their terms may be brought. See Warsaw Convention, Art. 28; Montreal Convention Art. 33.

Until 2002, no United States court held that the doctrine of forum non conveniens is not available in a Convention case where jurisdiction exists in the United States because Article 28(2) of the Warsaw Convention and Article 33(4) of the Montreal Convention expressly state that questions of procedure are to be governed by the law of the forum, and application of forum non conveniens is a matter of procedure. Then, the Court of Appeals for the Ninth Circuit, in *Hosaka v. United Airlines, Inc.*, 305 F.3d 989 (9th Cir. 2002), *cert. denied*, 537 U.S. 1227 (2003), disregarded the plain text of the Warsaw Convention, looked to the drafting history to find ambiguity in the Convention’s text, and held that forum non conveniens is not available where Article 28 jurisdiction is proper in the United States.

Although the *Hosaka* decision created a conflict among the Circuits with regard to the Warsaw Convention, the Supreme Court denied review. The potential impact of this conflict, however, was rendered largely moot when the Montreal Convention took effect in 2003. The plain text of the Montreal Convention, as confirmed by the drafting history, makes clear that the doctrine of forum non conveniens continues to be available to United States courts even where Article 33 jurisdiction is proper in the United States.

**The Doctrine of Forum Non Conveniens**

Forum non conveniens is a common-law doctrine of Scottish descent that was first introduced into American law in the early 1900’s. See Anne McGinnes Kearse, *Forfeiting the Home-Court Advantage: The Federal Doctrine of Forum Non Conveniens*, 40 S.C.L. Rev. 1303, 1305 (1998). The doctrine allows a court to decline to hear a case even where jurisdiction and venue are proper, if the convenience of the parties and interests of justice so dictate. The doctrine rests upon a court’s inherent power to control its docket and to prevent its process from becoming an instrument of abuse or injustice. See *In re Air Crash Disaster Near New Orleans, Louisiana on July 9, 1982*, 821 F.2d 1147, 1153–54 (5th Cir. 1987) (en banc).

Adoption of the doctrine by United States federal courts began to take hold with the Supreme Court’s decision in *Canada Malting v. Paterson Steamships, Ltd.*, 285 U.S. 413 (1932), where the Court upheld the lower court’s application of the doctrine to decline jurisdiction in litigation between Canadian citizens arising from a collision occurring on Lake Superior.

Fifteen years later, the Supreme Court set forth a balancing test for application of the doctrine in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), where it transferred to Virginia a case brought by a Virginia citizen against a Pennsylvania corporation in the United States District Court for the Southern District of New York. In *Gilbert*, the Court set forth a number of “private interest factors” and “public interest factors” that must be weighed in determining whether dismissal is proper. The relevant private interest factors are:

1. the relative ease of access to sources of proof;
2. availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses;
3. possibility of view of premises, if view would be appropriate to the action; and
4. all other practical problems that make trial of a case easy, expeditious and inexpensive.

The relevant public interest factors include:

1. the administrative difficulties caused by foreign litigation congesting local court dockets;
2. the imposition of jury duty on residents of a jurisdiction having little relation to the controversy; and
3. the local interest in the controversy; and
4. the appropriateness of having trial in a forum that is at home with the law that must govern the case.

In 1981, the Supreme Court further refined the forum non conveniens analysis in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). As refined, the analysis begins with a determination of whether an adequate alternative forum exists. An adequate alternative forum exists where the defendant is amenable to process in the jurisdiction and the forum provides an adequate remedy to the prevailing party. *Id.* at 254. Only if an alternative forum is available are the private and public interest factors set forth in *Gilbert* weighed. *Id.* at 258.

**Forum Non Conveniens under the Warsaw/Montreal Convention**

The common law doctrine of forum non conveniens provides an effective tool in the defense of aviation accident litigation that may have only a limited nexus with plaintiffs’ chosen forum. While the relevance of applying the doctrine of forum non conveniens to actions arising out of international carriage by air seems natural and obvious, plaintiffs have questioned whether a court may decline to exercise jurisdiction based on the doctrine where jurisdiction is prop-

The first appellate court decision to address this issue was In re Air Crash Disaster Near New Orleans, 821 F.2d at 1153–54, which specifically ruled that the doctrine of forum non conveniens is available in Warsaw Convention cases. The litigation arose out of Pan Am Flight 759, which crashed shortly after takeoff in Kenner, Louisiana, killing all 154 passengers. Id. at 1150–51. Personal representatives of many deceased passengers quickly filed wrongful death suits and survival actions in district courts across the United States.

Plaintiffs in the relevant action, heirs and families of Uruguayan citizens who were vacationing in the United States, commenced litigation in the United States District Court for the Eastern District of Louisiana. Id. at 1151. Pan Am filed a motion to dismiss plaintiffs’ claims on forum non conveniens grounds. Pan Am’s motion, as well as its appeal, was denied. Id. at 1153. Upon rehearing before the Fifth Circuit, plaintiffs insisted that their actions could not be dismissed based upon the doctrine of forum non conveniens because Article 28(1) granted them absolute power to decide in which of the four available fora their lawsuits would be litigated. Id. at 1161. The Fifth Circuit disagreed.

We are of the opinion that article 28(1) offers an injured passenger or his representative four forums in which a suit for damages may be brought. The party initiating the action enjoys the prerogative of choosing between these possible national fora but that selection is not inviolate. That choice is then subject to the procedural requirements and devices that are part of that forum’s internal laws. [citations and footnote omitted]. As one commentator on the Convention has stated: "No evidence can be found anywhere that the drafters of the Convention intended to alter the judicial system of any country," Robbins, Jurisdiction Under Article 28 of the Warsaw Convention, 9 McGill. L.J. 352, 355 (1963). We simply do not believe that the United States through adherence to the Convention has meant to forfeit such a valuable procedural tool as the doctrine of forum non conveniens.

...The plaintiffs’ interpretation of article 28(1) cuts against the Convention’s underlying purpose of ensuring that a dispute arising out of an air travel accident is litigated in a forum that has an actual interest in the matter. See McHenry, Judicial Jurisdiction Under the Warsaw Convention, 29 J. Air L. & Com. 205 (1963).

Id. at 1161–62. The Fifth Circuit then upheld the denial of Pan Am’s motion to dismiss on the ground of forum non conveniens.

Similarly, in In re Air Crash off Long Island New York, on July 17, 1996, 65 F. Supp. 2d 207 (S.D.N.Y. 1999), the district court found that Article 28(1) of the Warsaw Convention does not preclude application of the doctrine of forum non conveniens. This case arose out of TWA Flight 800 from New York to Paris and Rome, which crashed shortly after take-off. Defendants moved to dismiss all claims on behalf of French domiciliaries pursuant to the doctrine of forum non conveniens.

The court rejected plaintiffs’ argument that the British delegate’s submission and later withdrawal during the drafting of the Warsaw Convention of a proposal to specifically permit judicial discretion to decline jurisdiction in favor of another forum was evidence the drafters did not intend to allow cases brought properly pursuant to Article 28(1) to be dismissed on forum non conveniens grounds. Id. at 214. Instead, the court held that Article 28(2) of the Convention, when read in conjunction with the withdrawal of the British proposal, should be understood to allow application of the doctrine of forum non conveniens in common law countries in which it was familiar without forcing it upon civil law countries where it was not. Id. at 214–15. The court, however, denied the motion to dismiss.
Hosaka’s Retreat from Application of Forum Non Conveniens in Warsaw Convention Cases

Application of the doctrine of forum non conveniens in Warsaw Convention cases was not brought into serious question until the decision of the Court of Appeals for the Ninth Circuit in Hosaka v. United Airlines, Inc., 305 F.3d 989 (9th Cir. 2002). Hosaka [2002] was the first appellate court case to find that the doctrine of forum non conveniens is not available where suit is brought in a jurisdiction permitted by Article 28 of the Warsaw Convention.

In Hosaka, the plaintiffs were Japanese citizens who sustained injuries during a United Airlines flight from Tokyo to Hawaii when the aircraft encountered severe turbulence over the Pacific Ocean. Plaintiffs commenced litigation in the United States District Court for the Northern District of California. See Hosaka, 305 F.3d at 993. The district court dismissed the action on forum non conveniens grounds to a more convenient forum in Japan. Plaintiffs appealed to the Ninth Circuit.

The Court of Appeals gave little weight to the plain text of Article 28(2), and instead looked to the drafting history to find ambiguity. To justify its resort to the drafting history, the Court opined that Article 28 “is susceptible to two equally plausible interpretations”:

1) The view taken by the British Court of Appeal in Milor v. British Airways, Plc, [1996] Q.B. 702, 706 (Eng. C.A.), in which it was held that the doctrine of forum non conveniens is inconsistent with the right conferred on plaintiffs by Article 28(1) to choose in which of the competent jurisdictions their cases will be tried. Under this view, “the forum state’s procedural law incorporated by Article 28(2) is subject to Article 28(1), which grants to the plaintiff an absolute right of choice as between four presumptively convenient jurisdictions”; or

2) The view taken by the district court in In re Air Crash Off Long Island New York, 65 F. Supp. 2d 207, finding that Article 28(2) incorporates the state’s procedural law which, in the United States, includes the doctrine of forum non conveniens. Id. at 994–95.

Viewing the text of the Warsaw Convention as ambiguous, the court found that the use of forum non conveniens would undermine the cardinal purpose of the Warsaw Convention to achieve uniformity of rules governing claims arising from injuries sustained during international air transportation, and the secondary purpose of balancing the interests of air carriers against those of passengers. Id. at 996–97. The court noted that the delegates’ rejection of a proposal which would have granted expressly to courts the discretion to decline jurisdiction provided that the rules of the forum permitted the court to do so suggested that the parties were cognizant of the doctrine and did not believe Article 28(2) to silently incor-
porate or acquiesce to its application. Id. at 997–98. Because the Convention “was drafted by civil law jurists, to whom forum non conveniens was an alien concept,”” the court inferred that if the delegates intended to permit the application of this doctrine, they would have done so explicitly. Id. at 999. Thus, the court found that, if anything, the drafting history indicated a lack of shared understanding on the issue of whether the doctrine of forum non conveniens is available and concluded that the Warsaw Convention’s silence does not permit application of the doctrine. Id. at 1001. The court, however, expressly declined to opine as to the viability of the doctrine under the Montreal Convention.

Despite the conflict with the Fifth Circuit’s en banc decision in In re Air Crash Disaster Near New Orleans, the Supreme Court denied certiorari. See United Airlines, Inc. v. Hosaka, 537 U.S. 1227 (2003).

**Forum Non Conveniens and the Montreal Convention: The Future**

The Ninth Circuit’s decision in Hosaka was largely rendered moot when the Montreal Convention took effect in 2003. Article 33(4) of the Montreal Convention is identical to Article 28(2) of the Warsaw Convention and, accordingly, a proper interpretation of the plain meaning of this provision mandates that the doctrine of forum non conveniens be available in Montreal Convention cases. To the extent the Ninth Circuit’s incorrect holding in Hosaka raises any doubt as to the propriety of this conclusion, that doubt is quickly erased by a review of the Montreal Convention Minutes, which indicate a clear understanding among the delegates that Article 33(4) of the Convention would permit application of forum non conveniens in those States where it is a part of the procedure law.

**The Montreal Convention’s Drafting History**

Unlike the Minutes of the Warsaw Convention, the Minutes of the Montreal Convention contain significant discussions regarding forum non conveniens, and make plain the drafters’ belief that nations who employ this doctrine should be permitted to do so under the Convention. See, e.g., 1 International Civil Aviation Organization, International Conference on Air Law, Montreal 10–28 May 1999, at 144 (2001) (“With reference to draft Article 27, the Delegate of Sweden recalled that reference had been made to the possibility of provisions on forum non conveniens and his delegation welcomed any such working that would enable States presently applying that principle to continue doing so”); 1 International Civil Aviation Organization, International Conference on Air Law, Montreal 10–28 May 1999, at 159 (2001) (“The Delegate of the United States noted that the doctrine of forum non conveniens would be applied to all five jurisdictions in his country whether the Group prescribed that or not”); 2 International Civil Aviation Organization, International Conference on Air Law, Montreal 10–28 May 1999, at 108 (2001) (stating, in the United States’ submission regarding the addition of a fifth jurisdiction, that “the presence of a fifth jurisdiction could well result in fewer ‘forum shoppers’…. Furthermore, U.S. courts are far more likely to dismiss lawsuits brought by non-U.S. residents on the grounds of forum non conveniens if a convenient homeland court is available to the plaintiff because of the fifth jurisdiction”); see also Allan I. Mendelsohn, Recent Developments in the Forum Non Conveniens Doctrine, 52-Feb. Fed. Law 45, 46 (2005) (“Unlike the Warsaw Convention’s Article 28, however, the legislative history leading to the adoption of Article 33 of Montreal-99 clearly and categorically demonstrates the intention and expectation of the U.S. government that U.S. courts would apply the forum non conveniens doctrine under Article 33(4)…. In short, the dearth of legislative history under the Warsaw Convention, which led the Hosaka Court to conclude that FNC was not available under Warsaw’s Article 28(2), is corrected by copious legislative history under Montreal-99, showing that forum non conveniens is available and will be employed by U.S. courts under Article 33(4)”)

The Minutes reveal an attempt to incorporate certain aspects of the doctrine into the text of Article 33 (Draft Article 27), at least with regard to the fifth jurisdiction:

4. Questions of procedure shall be governed by the law of the Court seized of the case. The Court may decline to exercise jurisdiction on the basis of the additional jurisdiction set out in paragraph 2 of this Article, if the carrier proves

a) that having regard to the circumstances of the accident and the issues to be determined it would place too onerous a burden on the carrier for the case to be heard and determined in that jurisdiction; and

b) there exists another jurisdiction in which the case may be properly, and with a view to the interests of all the parties, more fairly and conveniently be determined.

See 2 International Civil Aviation Organization, International Conference on Air Law, Montreal 10–28 May 1999, at 493–94 (2001); see also 1 International Civil Aviation Organization, International Conference on Air Law, Montreal 10–28 May 1999, at 159 (2001) (“To a comment by the Delegate of Switzerland that the principle of forum non conveniens was relatively unknown in his country, as well as in other European countries, the Chairman indicated that that was a convincing reason for ensuring uniformity in the principle’s application by enshrining it in the new Convention”); 1 International Civil Aviation Organization, International Conference on Air Law, Montreal 10–28 May 1999, at 160 (2001) (“Recognizing, as he did, that in some jurisdictions the concept of forum non conveniens might not exist in a particular form, as well as that many of the elements of the Convention relating to the burden of proof, what was required to be proved and the limits of liability also did not exist in the domestic legislation of...
many countries, the Chairman indicated that it would be necessary to make adjustments to such legislation in order to achieve uniformity.

The United States delegate suggested that the best solution might be to keep the language of Article 28(2) of the Warsaw Convention and simply clarify that nothing here was intended to limit the ability of courts, in their discretion, applying the law of the court seized of the case to dismiss cases that more properly belonged in one of the other jurisdictions.” See 1 International Civil Aviation Organization, International Conference on Air Law, Montreal 10–28 May 1999, at 180 (2001).

While the final text did not include any express reference to the availability of forum non conveniens, a complete reading of the Montreal Convention minutes makes clear that the concern was not with the concept of forum non conveniens, but that certain nations would not be able to ratify the Convention if it explicitly incorporated the doctrine because it was not part of their procedural law. The consensus among the drafter was that the doctrine would be applied in certain States while not in others, and that courts in the United States could continue to apply the doctrine regardless of the text finally adopted. The final statements on the matter, made by the Chairman, indicate an intent of the drafters to allow application of the doctrine in those countries where it is a part of its procedural law:

…the Chairman indicated that the suggestion made by the Representative of the United States, to indicate that it would be enough to indicate that nothing in this article is intended to limit the ability of the court seized of the case to dismiss cases which could more properly belong to another of the jurisdictions stated in the [Montreal] Convention, would in fact preserve the right of those States which had the forum non conveniens principle and in no way derogated from those who did not have it. It would leave the door open to the latter to think in the future as to whether it may well be appropriate to change their own law if they so wished.

See 1 International Civil Aviation Organization, International Conference on Air Law, Montreal 10–28 May 1999, at 183–84 (2001). Accordingly, the decision to leave Article 33(4) identical to Article 28(2) evidences an understanding that the language of the Article already allowed for application of the doctrine as a procedural matter, as well as a fear that language specifically incorporating the doctrine, even in permissive terms, might cause ratification problems with States unfamiliar with it.

A Glance at the Future

The United States District Court for the Southern District of Florida became the first court to address the availability of forum non conveniens under the Montreal Convention. See In re West Caribbean Airways, S.A., Case No. 06-22748, 32 Avi. Cas. (CCH) 15,595 (S.D. Fla. Sept. 26, 2007), appeal filed, No. 07-15902 (11th Cir. Dec. 12, 2007). In In re West Caribbean, the district court ruled as a matter of first impression that the doctrine of forum non conveniens is available under the Montreal Convention. The action arose out of the crash of West Caribbean Airways (“WCA”) Flight 708 from Panama to Martinique, which crashed on August 16, 2005, killing all 160 passengers, each of whom was a resident of Martinique. The defendants filed a motion to dismiss the action based on forum non conveniens, and plaintiffs opposed, relying in large part on Hosaka. Because the Ninth Circuit “made clear in Hosaka that it was not opining on the availability of forum non conveniens dismissals under the then unratified Montreal Convention”, the court in In re West Caribbean concluded that Hosaka has limited precedential value on the issue of whether the doctrine of forum non conveniens was available. In re West Caribbean, 32 Avi. Cas. at 15,602.

The court found that while Article 33 of the Montreal Convention is silent with respect to the doctrine of forum non conveniens, the language providing that questions of procedure be governed by the law of the forum clearly decided the question because the doctrine was firmly entrenched in the procedural law of the United States at the time the Montreal Convention was drafted. Id. at 15,603. According to the court, this construction comports with the rules commonly used to construe treaty provisions, and specifically, the international law principle endorsed by the United States Supreme Court that “absent a clear and express statement to the contrary, the procedural rules of the forum State govern the implementation of the treaty in that State”. Id. (citations omitted).

Notwithstanding the above conclusion, the court noted its responsibility to interpret Article 33 of the Convention consistently with the shared expectations of the contracting parties, and therefore con-

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Forum non conveniens remains a viable tool for courts and airline defendants in Montreal Convention litigation.

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Forum, from page 51 of forum non conveniens because application of the doctrine (1) is supported by the Montreal Convention’s goal to modernize the Warsaw Convention and related instruments, and (2) would not undermine the Convention’s goal of uniformity or the balance it seeks to strike between the interests of the passengers and those of the airlines. Id. at 15,606.

The court also found that the minutes of the Convention showed no inclination on the part of the delegates to restrict existing practices among the signatory States: “Importantly, the Minutes of the Conference and related documents contain not a single proposal that would prohibit the courts of Convention States from employing forum non conveniens.” Id. at 15,608. Thus, the court concluded that the drafting history:

...shows that the doctrine was extensively discussed, mainly with respect to the creation of the fifth jurisdiction, that proposals addressing the doctrine were advanced, including proposals which would have made forum non conveniens applicable only to the fifth jurisdiction or clarified its applicability to all jurisdictions, and that the United States actively and persistently opposed the inclusion of any forum non conveniens language except to clarify its general applicability, all the while making it abundantly clear that United States courts would continue to employ the doctrine in Montreal Convention and other international cases. In the end, the consensus among the delegates was to omit any language respecting the applicability of forum non conveniens to avoid imposing the doctrine on States that do not employ it and distorting its application in States where it is commonly employed. In other words, the delegates determined to maintain the status quo: signatory countries employing the doctrine would continue to do so pursuant to subsection (2)... and signatory countries that do not employ the doctrine would not be required to adjust their legal systems to accommodate the doctrine in cases in cases arising under the Convention. Id. at 15,615 (emphasis added).

The court acknowledged the lack of post-ratification history reflecting the signatories’ understanding of whether forum non conveniens would apply in Montreal Convention cases brought in States adhering to the doctrine, but noted the importance of the Statement of Interest filed by the United States in the action, which reaffirmed the United States’ position in support of the “continuing application of the forum non conveniens doctrine in Montreal Convention cases.” United States Statement of Interest, In re West Caribbean, Case No. 06-22748-CIV-UNGARO, Docket Item No. 116; see also In re West Caribbean, 32 Avi. at 15,615–16. Because the Statement of Interest was filed by the U.S. Department of Justice, and included the participation of the very two Departments that were charged with both negotiating and implementing the treaty—the Department of State and the Department of Transportation—it is entitled to great weight. See El Al Israel Airlines, Ltd. v. Tseng, 525 U.S. 155, 168 (1999) (citing Sumitomo Shogi America v. Ava-giano, 457 U.S. 176, 184–85 (1982)).

Based on the foregoing, the court concluded that based on the historical context, purpose of the treaty, drafting history, post-ratification history and United States’ understanding of the Convention, the doctrine of forum non conveniens is available under the Montreal Convention. In a subsequent decision, the court dismissed the actions on the grounds of forum non conveniens. See In re West Caribbean Airways, S.A., Case No. 06-22748, 32 Avi. Cas. (CCH) 15,764 (S.D. Fla. Nov. 9, 2007), appeal filed, No. 07-15902 (11th Cir. Dec. 12, 2007). Plaintiffs’ appeal of the district court’s decision is currently pending before the United States Court of Appeals for the Eleventh Circuit. Id.

Conclusion

The Ninth Circuit’s decision in Hosaka ignored the plain text of the [Montreal] treaty to find ambiguity where none exists. Forum non conveniens is a procedural matter and both the Warsaw and Montreal Convention expressly state that “questions of procedure shall be governed by the law of the court” seised of the case. While Hosaka created a conflict as to whether the doctrine of forum non conveniens is available in Warsaw Convention cases, its practical effect was minimized dramatically when the Montreal Convention came into effect in the United States. The plain text of the Montreal Convention, as confirmed by its drafting history, and even the Statement of Interest filed by the United States Government in In re West Caribbean, reinforces that forum non conveniens remains a viable tool for courts and airline defendants in Montreal Convention litigation. In light of the plaintiffs’ bar’s ever-increasing desire to bring all air crash cases in the United States, without regard to the underlying facts, this doctrine will continue to be an indispensable tool to protect not only airlines from inconvenient litigation in the United States, but the courts from being forced to adjudicate cases that simply do not belong here.

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