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UNITING AVIATION

NO COUNTRY LEFT BEHIND



The Montreal Convention of 1999: 20 years and counting

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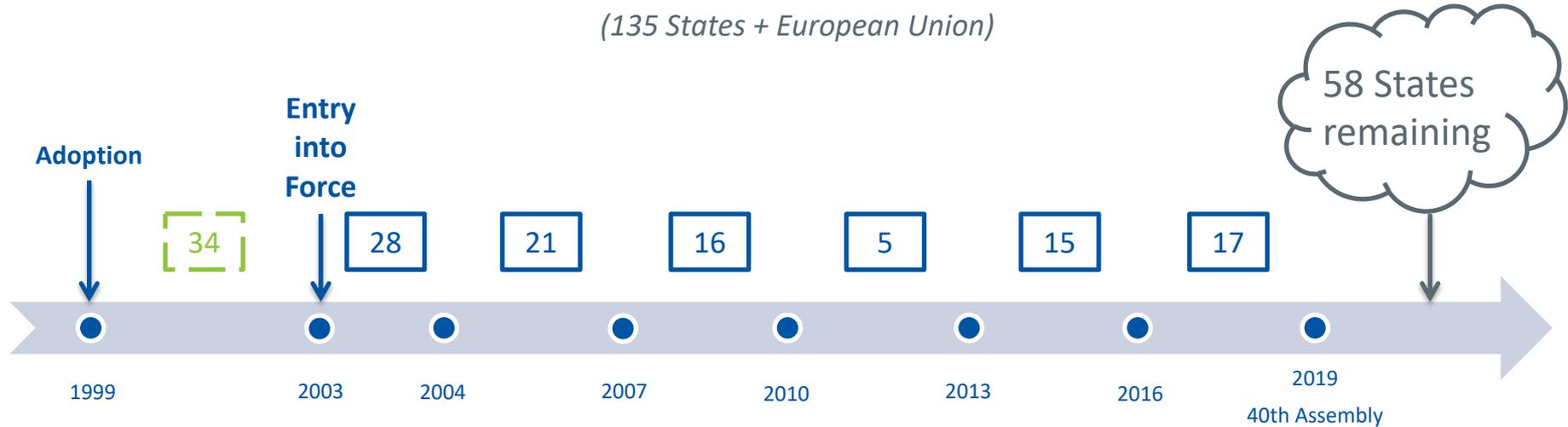
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= Number of new parties

Montreal Convention 1999

Entry into force: 4 November 2003
136 Parties

(135 States + European Union)





Status

- Over the last 3 years: **17 additional States Parties**
 - Including **major aviation markets** such as: Russian Federation, Indonesia, Thailand and Vietnam;
 - Leading to more than 390 million new passengers being protected under MC99¹;
 - Allowing an additional 600 billion USD in trade to use modern technology (e.g. electronic air waybills)¹.
- Currently covers approx. **98% of all passenger traffic**¹
- **Living document** (Article 24)

1. Based on IATA statistics, as presented in A40—WP/293



Review of Limits (Art. 24)

- **Quinquennial** review mechanism;
- Three reviews conducted thus far



- 2019 review resulted in a **13.9%** inflation rate:
 - State Letter on increased limits sent 28 June 2019
 - Notification of disapproval delay is closed
 - New limits will become effective 28 December 2019

MC99 Article	Original limit (SDRs)	Revised limit as of 30 December 2009	Rounded Revised limit as of <u>28 Dec. 2019</u>
Art 21	100 000	113 100	128 821
Art 22(1)	4 150	4 694	5 346
Art 22(2)	1 000	1 131	1 288
Art 22(3)	17	19	22

1 SDR = 1.37 USD
IMF rate as of 16 October 2019



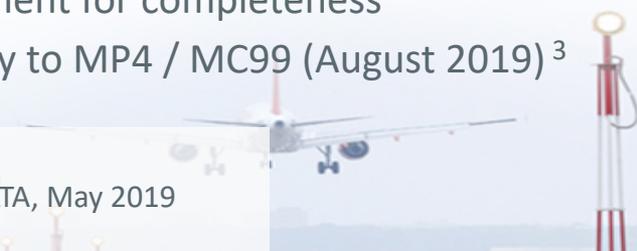
Enabling the Use of Modern Technology

- Article 3(2) enables the use of e-tickets
 - IATA target of **100%** members using e-ticketing was **reached in 2008**¹
 - Results in savings of **more than 3 billion USD/year** across the industry¹
- Article 4(2) enables the use of electronic air waybills
 - **Sustainability**²: will eliminate more than 7,800 tons of paper documents
 - **Increased cost effectiveness**²: less processing time and archiving costs
 - **Better data accuracy**²: system automatically checks the document for completeness
 - Currently used on **66%** of the trade lanes between States party to MP4 / MC99 (August 2019)³

1. Industry Bids Farewell to Paper Ticket, IATA, May 2008

2. In conjunction with e-Freight initiative; e-Freight and the e-Air Waybill Fact Sheet, IATA, May 2019

3. e-AWB international monthly report, IATA, August 2019





Origin of overlapping regime (EU and Canada example)

EU Regulation 261/2004

Canada APPR (SOR/2019-150)

Montreal Convention 1999

Denied Boarding



Denied Boarding



No equivalent

Cancellation



Cancellation



No equivalent

Delay (art. 6)



Delay (s. 19)



Delay (art. 19)





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Current Issues

- **Lack of uniformity** in judicial interpretation of MC99
- Particularly on the overlap between compensation for **delays** in national laws v. compensation and **exclusivity clause** of MC99
 - e.g. **EU Regulation 261/2004** and the ECJ interpretation in *IATA and ELFAA*, *Sturgeon* and *Nelson*
 - e.g. **Canadian APPR** (SOR/2019/150)





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Article 29 of the MC 99 – Basis of Claims (Exclusivity)

“In the carriage of passengers, baggage and cargo, **any action for damages, however founded**, whether under this 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 this 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”.





Interpretation of International Conventions

(Vienna Convention on the Law of Treaties)

- Article 27 – Internal Law and Observance of Treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. [...]

- MC99 does not have a mechanism allowing appeal of domestic courts' decisions to an international body

Some academics believe that the only remedy at this point would be under public international law: an aggrieved State would need to bring an action before the ICJ.



Improving the Situation

- What **can** ICAO do?

Harder



- Define delays
- Template regulation for unifying global aviation consumer protection frameworks¹
- Consumer protection SARPs
- New international convention² or protocol to amend MC99

1. Proposed in A40-WP/234

2. Proposed in A40-WP/349; reported in A40-WP/579





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Conclusion

