

**CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR  
INTERNATIONAL CARRIAGE BY AIR,  
DONE AT MONTREAL ON 28 MAY 1999  
[1999] ATSD 4713**

**Documents tabled on 4 August 2004:**

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**Convention for the Unification of Certain Rules for International Carriage by Air,  
done at Montreal on 28 May 1999  
[1999] ATSD 4713**

**Date of Tabling of Proposed Treaty Action**

1. The NIA and text of the treaty will be tabled in Parliament on 4 August 2004.

**Nature and Timing of Proposed Treaty Action**

2. It is proposed that Australia accede to the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999 (Montreal Convention). In accordance with Article 53, the Montreal Convention will enter into force for Australia on the sixtieth day following the date of deposit of an instrument of accession with the International Civil Aviation Organisation (ICAO).

**Overview and National Interest Summary**

3. The Montreal Convention updates and will eventually replace the Convention for the Unification of Certain Rules Relating to International Carriage by Air, done at Warsaw on 12 October 1929 (the Warsaw Convention) and a number of subsequent Conventions and Protocols, which together form the 'Warsaw System'. This system provides an international treaty framework for liability rules governing commercial international aviation travel, and for documentation such as tickets and air waybills. At present it consists of a confusing array of different versions of the Warsaw Convention, and its liability limits, and provisions relating to documentation are out of date.
4. The Montreal Convention provides a new uniform code that modernises the international air carriers' liability framework and provides measures such as electronic documentation to assist the smooth movement of air passengers, baggage and cargo. Most of Australia's major aviation partners are Parties to the Montreal Convention.
5. By acceding to the Montreal Convention, Australia will maintain its international standing as a lead nation in international aviation reform. Accession will also allow Australian carriers, passengers and cargo-forwarders to benefit from the updated and improved provisions in relation to most international air travel to and from Australia.

## **Reasons for Australia to Take the Proposed Treaty Action**

### ***The Warsaw System before the Montreal Convention***

6. The Warsaw Convention was negotiated during the early years of the aviation industry. It provided a uniform international treaty framework for liability rules governing commercial international aviation travel, and for documentation such as tickets and air waybills. The Warsaw Convention capped air carriers' liability at limits that were appropriate for that era and that would protect a fledgling industry from potentially ruinous claims for compensation, while providing a basic level of protection for passengers. Those limits are now unreasonably low.

7. Many amendments to the Warsaw Convention were negotiated over the years in an attempt to update it and raise liability limits - The Hague Protocol (1955), the Guadalajara Convention (1961), the Guatemala City Protocol (1971), the 1975 Additional (Montreal) Protocols Nos 1, 2, and 3, and Montreal Protocol No. 4 (1975). Australia is currently a Party to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention and Montreal Protocol No. 4. However, some of the amendments failed to attract broad adherence. Further, different Warsaw Parties adopted different amending instruments, resulting in a complex array of international arrangements. The Warsaw System rules that apply to any particular flight are those set by the instruments to which both the country of departure and the country of destination are Parties.

8. In addition, a number of international agreements and private voluntary arrangements among air carriers were developed, particularly by the International Air Transport Association (IATA) and the European Union, largely in response to the failure to reform the Warsaw System effectively. Relying on a provision of the Warsaw Convention that permits a carrier and passenger to agree 'by special contract' to a higher limit of liability, many carriers agreed among themselves to apply an increased liability limit, or to waive liability limits. Japanese airlines have abandoned liability limits. These voluntary arrangements increased the amount of compensation available to passengers of certain carriers in certain circumstances, but further complicated the international system.

9. A complicated, unwieldy and out-of-date system for international carriers' liability resulted. Compensation limits remained very low for many victims of air accidents. In addition, other provisions of the Warsaw system relating to baggage and cargo are outdated.

### ***The Montreal Convention***

10. Concluded in 1999, the Montreal Convention is widely regarded as a major achievement in reaching a compromise between representatives of countries with disparate views on the nature of the aviation industry and appropriate methods and amounts of compensation for injury or death as a result of aviation accidents. It is considered to be a fair and reasonable compromise that offers the best chance yet to achieve a global solution to the problem of updating the Warsaw System.

11. The Montreal Convention incorporates most of the provisions of existing instruments but combines them as a single package that States must either accept or reject. For the Montreal Convention to be effective, it is essential that a large number of States adhere to it. As more States become Parties to the Montreal Convention, the older Warsaw System instruments will become increasingly redundant, pressuring non-Parties to join the new Convention. The Montreal Convention will eventually replace the Warsaw System.

12. The Montreal Convention entered into force on 4 November 2003. As at 4 June 2004, there were 53 Parties to the Convention, including the United States, New Zealand, Canada, Japan, and the European Community and its member countries. Other major aviation partners of Australia, such as Singapore, are known to be considering accession.

13. The Montreal Convention goes further than consolidating existing Warsaw System instruments. It includes a number of innovative mechanisms, refinements and reforms. It substantially improves consumer protection in international carriage by air and modernises the smooth flow of passengers, baggage and cargo. Most importantly it improves the international regime for air carriers' liability, particularly in relation to injury or death.

### **Obligations**

14. The Montreal Convention imposes obligations on Parties to implement the rules set out in the Convention in relation to international air travel between the Parties to the Convention. It does not impose any obligations in relation to domestic air travel or affect travel to or from countries which are not parties to the Montreal Convention. The main features of the Montreal Convention are discussed below.

### ***SDRs***

15. The Montreal Convention uses the International Monetary Fund's Special Drawing Right (SDR) as the monetary unit rather than the obsolete Poincaré gold francs of the Warsaw Convention. On 21 June 2004 the SDR rate, as published by the Reserve Bank of Australia, was A\$ 0.4707.

### ***Two tier liability for death or injury***

16. Article 21 provides for two tiers of liability for the death of, or bodily injury to, an aircraft passenger:

- The first tier - up to 100,000 SDRs (approx. A\$212,000) - is on the basis of strict (no-fault) liability, and can be reduced or excluded only in the case of contributory negligence of the passenger or person claiming compensation;
- The second tier (ie, for claims in excess of 100,000 SDRs) is unlimited in amount, but this liability is fault-based. However, the plaintiff is not required to prove fault. The carrier is liable unless it proves either that the damage was not due to negligence or any other wrongful act or omission, or that the damage was solely due to the negligence or the wrongful act or omission of a third party.

### ***Proven damages rather than punitive damages compensation***

17. Article 29 provides that punitive, exemplary or other non-compensatory damages may not be recovered in any claim arising from international carriage by air.

### ***Updated liability limits for baggage, cargo and delay***

18. Article 22 of the Montreal Convention provides for liability of the air carrier for damaged or delayed baggage (either accompanied or unaccompanied) up to a limit of 1,000 SDRs (\$A2,123) for each passenger, unless a special declaration is made to the carrier by the passenger. If the carrier admits loss of checked baggage or if checked baggage has not arrived after 21 days, the passenger may make a claim. The liability limit for damaged or delayed cargo is 17 SDRs (\$A36) per kilogram. Where damage is caused by delay to passengers, the carrier is liable up to a limit for each person of 4,150 SDRs (\$A8809), unless it proves it took all reasonable measures to avoid the damage. Court costs may also be awarded to the claimant. These provisions represent substantial improvements on the current Warsaw System arrangements.

### ***Regular revision of liability limits***

19. Article 24 provides for review of carriers' liability limits every five years to take account of inflation. ICAO must measure the accumulated inflation over the review period, and if it exceeds 10% must notify the Parties of a revision of the limits of liability. The revision takes effect six months later, unless a majority of the Parties register their disapproval, in which case the matter is referred to a meeting of the Parties.

### ***Advance payments***

20. Article 28 allows States to require their own carriers to make advance payments following aircraft accidents, to assist victims or their relatives meet their immediate economic needs. These payments are not to constitute recognition of liability, and may be offset against any amounts of compensation subsequently paid as damages by the carrier.

### ***Insurance***

21. Article 50 the Convention obliges States to ensure their air carriers maintain adequate insurance to cover their liability under the Convention. A carrier may be required by a State into which it operates to furnish evidence that it maintains adequate liability insurance.

### ***Fifth jurisdiction***

22. Under the Warsaw System, damages claims can be heard in one of four jurisdictions:

- a court in the State where the carrier is ordinarily resident;
- a court in the State where the carrier has its principal place of business;
- a court in the State where the carrier has an establishment by which the ticket was purchased or contract was made; and
- a court in the State of the passenger's destination.

23. Article 33 of the Montreal Convention provides for a 'fifth jurisdiction'. An action for damages for the death or injury of a passenger may be brought in the country where the passenger resided at the time of the accident, if it is a country to or from which the carrier operates and where it has premises.

#### ***Simplified documentation/electronic ticketing***

24. The Montreal Convention provides for simplified documentation. It eliminates the need for cargo consignors to complete detailed paper-based air waybills, and so allows simplified electronic records to be used.

#### **Implementation**

25. The Warsaw System instruments to which Australia is a Party are adopted into Australian law through the *Civil Aviation (Carriers' Liability) Act 1959* (Carriers' Liability Act). That Act will be amended to give the force of law to the Montreal Convention in Australia, in relation to air carriage to which it applies as international law.

26. The Carriers' Liability Act currently imposes on Australian international carriers a higher liability limit (260,000 SDRs or around A\$552,000), for death or injury, than applies under the Warsaw System. As a matter of international law, Australia cannot impose a higher liability limit on foreign carriers operating to and from Australia.

27. If Australia accedes to the Montreal Convention and amends the Carriers' Liability Act to give effect to it, the 260,000 SDR limit will continue to apply to Australian carriers in relation to non-Montreal Convention carriage. However, for carriage to which the Montreal Convention applies, in case of death or injury, both Australian and foreign carriers will be subject to a first tier strict liability limit of 100,000 SDRs, and a second tier of unlimited fault-based liability, with the airline bearing the burden of proving absence of fault. The Montreal Convention liability limits in relation to delay, baggage and cargo will also apply. The amendments to the Act will also provide for any inflation-linked updating of the Convention limits to apply under Australian law.

28. It is proposed that, for Montreal Convention carriage, the amount of compulsory insurance against liability for death or injury remain at 260,000 SDRs per passenger.

29. Part IV of the Carrier's Liability Act applies to domestic inter-State carriage, and to international carriage that is not covered by the international treaty system. Part IV is applied by State laws to intra-State carriage. No amendment to these provisions is required.

30. Minor consequential amendment of the *Air Accidents (Commonwealth Government Liability) Act 1963* will be required. The Air Accidents Act applies to persons travelling on Commonwealth-operated aircraft, or travelling on Commonwealth business on commercial airlines. It provides for the Commonwealth to 'top-up' damages to the level that applies to domestic travel, in cases where lower Warsaw limits apply. Minor amendment is necessary

to deal with the relationship between Commonwealth liability under the Air Accidents Act and its liability under the Carriers' Liability Act, where the Montreal Convention applies.

### **Costs**

31. Accession to the Convention has no financial implications for the Commonwealth or State and Territory Governments.

32. The implications for business and the aviation industry will be positive. Most international carriers operating into Australia already subject themselves voluntarily to higher liability limits than apply under the Warsaw System. They do not expect to have higher insurance costs. This is reflected in the positive submissions made by both airlines and the aviation insurance industry to the Discussion Paper referred to below.

33. Carriers, and in particular the cargo freight industry will also benefit from the simplified documentation procedures provided for in the Montreal Convention.

34. The domestic liability regime will be unchanged, with no additional burden on domestic airlines.

### **Consultation**

35. The proposed action is of interest to the aviation industry and various community organisations. In 2001 the Department of Transport and Regional Services issued a Discussion Paper inviting comment on the proposal to accede to the Montreal Convention, as well as on proposals to amend the Carriers' Liability Act in relation to domestic carriage. A summary of the consultations is attached to this paper. All those who commented were in favour of Australian accession to the Convention, apart from two individuals who wanted Australia to seek an even better international regime.

### **Regulation Impact Statement**

36. A Regulatory Impact Statement has been prepared in consultation with the Office of Regulatory Review and accompanies this paper.

### **Future Treaty Action**

37. Under Article 24, ICAO, as Depositary, must review the liability limits at five-year intervals, by reference to an inflation factor which corresponds to the accumulated rate of inflation since entry into force or since the previous revision. The measure of inflation will be the weighted average of changes in the Consumer Price Indices of the States whose currencies comprise the SDR. If the review concludes that the inflation factor has exceeded 10 percent, the Depositary must notify State Parties of a revision of the limits of liability. Any such revision becomes effective automatically six months after its notification to the State Parties, unless within three months after its notification a majority of the State Parties register their disapproval, in which case the Depositary must refer the matter to a meeting of

the State Parties. The liability limits must also be reviewed at any time that one-third of the State Parties express a desire to that effect, if the inflation factor has exceeded 30 percent since the previous revision. Liability limits can therefore be amended in line with inflation.

38. The Montreal Convention makes no other provision for amendments. The general rules of treaty law would apply to allow amendment if the Parties agree. For Australia to become a Party to any such amendment, treaty action would be required which would be subject to the Australian treaty processes.

39. Under Article 57 of the Montreal Convention, a State Party may at any time declare that the Convention shall not apply to international carriage by air operated by the State for non-commercial purposes in respect to its functions and duties as a sovereign State, and/or to carriage for its military authorities. It is not currently proposed to make a reservation under this Article. Any decision to make such a reservation in the future would be subject to the Australian treaty processes. No other reservations may be made to the Convention.

### **Withdrawal or Denunciation**

40. Under Article 54, Parties may withdraw from the Convention by giving written notification to the Depository. Withdrawal takes effect 180 days after the Depository receives the notification. Denunciation would be subject to the Australian treaty processes.

### **Contact details**

Transport Industry and International Policy  
Transport Markets  
Department of Transport and Regional Services.



**Convention for the Unification of Certain Rules for International Carriage by Air,  
done at Montreal on 28 May 1999  
[1999] SD 4713**

**Annexure A: Consultations**

1. A Discussion Paper was issued in January 2001, which invited comment on the questions whether Australia should become a party to the Montreal Convention, and whether features of the Montreal Convention should be applied to Australia's domestic carriers. As well as publishing the Discussion Paper on its website, the Department wrote to the States and Territories and industry stakeholders with a copy of the Discussion Paper, and faxed a media release to other relevant organisations, in February 2001. Submissions were requested by 20 April 2001, but the deadline was extended to allow for additional comment.
2. In addition to submissions or comments from six members of the public, submissions or comments were received from the following:

Airfreight Consultant, Infofreight International  
Southdown Engineering Pty Ltd  
Sport Aircraft Association of Australia  
Phillips Fox  
AOPA Australia  
President Additional Comment  
Falcon Hawk Microlight School  
Australian Aviation Underwriting Pool Pty Ltd (AAUP)  
Australian & International Pilots' Association (AIPA)  
Qantas Airways Ltd  
All Nippon Airways Co Ltd  
Australian Aviation Insurance Group (Agency) Pty Ltd (AAIG)  
Lloyd's Aviation Underwriters' Association, London  
Emirates Airlines  
Australian Ultralight Federation Inc  
Sapphire Aircraft Australia Pty Ltd  
Department of Defence  
Airline Passenger Safety Association Inc  
Board of Airline Representatives of Australia (BARA)  
McGauran, Peter MP  
International Air Transport Association (IATA)  
Queensland Government  
Papua New Guinea Department of Works & Transport  
Ansett Australia  
TC Beirne School of Law, University of Queensland  
Norfolk Island Government

3. Of the comments on accession to the Montreal Convention, all from major stakeholders were positive. The only negative response, from two members of the public, was that Australia should push for an even better Convention.
4. Comments on revision of the law applying to domestic flights, in line with the Montreal Convention, were mixed. Responses revealed substantial concern in relation to the application of some Montreal Convention principles to domestic flights, particularly with regard to unlimited liability and the cost of insurance.
5. Both Qantas and Ansett responded to the Discussion Paper. The Virgin Blue group, which has a New Zealand subsidiary engaged in Trans-Tasman carriage, was not in existence when the Discussion Paper was issued. The Department contacted both Virgin Blue and Qantas in June 2004 for (additional) comment on proposed accession to the Montreal Convention. Qantas reaffirmed its support for the accession to the Montreal Convention, and Virgin Blue did not object to the Department's proposal to accede to the Montreal Convention.
6. Consultation with the States and Territories has been undertaken through the Treaties Schedule, as well as through the Discussion Paper. The Queensland and Norfolk Island Governments commented on the Discussion Paper.
7. Relevant Commonwealth agencies were also sent the Discussion Paper, and the Department of Defence provided comments.
8. The Department also gave a presentation - 'Reforming Aviation Insurance and Carriers' Liability' - to the Aviation Law Association of Australia and New Zealand in Sydney on 19 June 2001, outlining the proposed changes to be brought about by the Montreal Convention.

## Annexure B: Current Status List

### CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR DONE AT MONTREAL ON 28 MAY 1999

**Entry into force:** The Convention entered into force on 4 November 2003.  
**Status:** 53 Parties.

State	Signature	Deposit of instrument of ratification, acceptance (A), approval (AA) or accession (a)	Entry into force
Austria (10)		29/04/04 (a)	28/06/04
Bahamas	28/05/99		
Bahrain		02/02/01(a)	04/11/03
Bangladesh	28/05/99		
Barbados		02/01/02 (a)	04/11/03
Belgium (1)	28/05/99	29/04/04	28/06/04
Belize	28/05/99	24/08/99	04/11/03
Benin	28/05/99	30/03/04	29/05/04
Bolivia	28/05/99		
Botswana		28/03/01 (a)	04/11/03
Brazil	03/08/99		
Bulgaria		10/11/03 (a)	09/01/04
Burkina Faso	28/05/99		
Cambodia	28/05/99		
Cameroon	27/09/01	05/09/03	04/11/03
Canada (6)	01/10/01	19/11/02	04/11/03
Central African Republic	25/09/01		
Chile	28/05/99		
China	28/05/99		
Colombia	15/12/99	28/03/03	04/11/03
Costa Rica	20/12/99		
Côte d'Ivoire	28/05/99		
Cuba	28/05/99		
Cyprus		20/11/02 (a)	04/11/03
Czech Republic (3)	28/05/99	16/11/00	04/11/03
Denmark (1)(11)	28/05/99	29/04/04	28/06/04
Dominican Republic	28/05/99		
Estonia	04/02/02	10/04/03	04/11/03
Finland (4)	09/12/99	29/04/04	28/06/04
France (1)	28/05/99	29/04/04	28/06/04

Gabon	28/05/99		
Gambia		10/03/04	09/05/04
Germany (1)(12)	28/05/99	29/04/04	28/06/04
Ghana	28/05/99		
Greece (1)	28/05/99	22/07/02	04/11/03
Iceland	28/05/99	17/06/04	16/08/04
Ireland (1)	16/08/00	29/04/04	28/06/04
Italy (1)	28/05/99	29/04/04	28/06/04
Jamaica	28/05/99		
Japan (8)		20/06/00 (A)	04/11/03
Jordan	05/10/00	12/04/02	04/11/03
Kenya	28/05/99	07/01/02	04/11/03
Kuwait	28/05/99	11/06/02	04/11/03
Lithuania	28/05/99		
Luxembourg (2)	29/02/00	29/04/04	28/06/04
Madagascar	28/05/99		
Malta	28/05/99	05/05/04	04/07/04
Mauritius	28/05/99		
Mexico	28/05/99	20/11/00	04/11/03
Monaco	28/05/99		
Mozambique	28/05/99		
Namibia	28/05/99	27/09/01	04/11/03
Netherlands (14)	30/12/99	29/04/04	28/06/04
New Zealand (5)	13/07/01	18/11/02	04/11/03
Niger	28/05/99		
Nigeria	28/05/99	10/05/02	04/11/03
Norway		29/04/04 (a)	28/06/04
Pakistan	28/05/99		
Panama	28/05/99	13/09/02	04/11/03
Paraguay	17/03/00	29/03/01	04/11/03
Peru	07/09/99	11/04/02	04/11/03
Poland	28/05/99		
Portugal (1)	28/05/99	28/02/03	04/11/03
Romania	18/11/99	20/03/01	04/11/03
Saint Vincent and the Grenadines		29/03/04 (a)	28/05/04
Saudi Arabia	28/05/99	15/10/03	14/12/03
Senegal	28/05/99		
Slovakia	28/05/99	11/10/00	04/11/03
Slovenia	28/05/99	27/03/02	04/11/03
South Africa	28/05/99		
Spain (13)	14/01/00	29/04/04	28/06/04
Sudan	28/05/99		
Swaziland	28/05/99		
Sweden (1)	27/08/99	29/04/04	28/06/04
Switzerland	28/05/99		

Syrian Arab Republic		18/07/02 (a)	04/11/03
The former Yugoslav Republic of Macedonia		15/05/00 (a)	04/11/03
Togo	28/05/99		
Tonga		20/11/03 (a)	19/01/04
Turkey	28/05/99		
United Arab Emirates		07/07/00 (a)	04/11/03
United Republic of Tanzania		11/02/03 (a)	04/11/03
United States (7)	28/05/99	05/09/03	04/11/03
United Kingdom (1)	28/05/99	29/04/04	28/06/04
Uruguay	09/06/99		
Zambia	28/05/99		

### **Regional Economic Integration Organisations**

European Community (9)	09/12/99	29/04/04 (AA)	28/06/04
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### **Reservations/notes**

- (1) Upon signature of the Convention, this State, Member State of the European Community, declared that, "in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention".
- (2) On 3 October 2000, ICAO received from Luxembourg the following declaration (original in French): "The Grand Duchy of Luxembourg, Member State of the European Community, declares that in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention".
- (3) Upon deposit of its instrument of ratification, the Czech Republic notified ICAO that "as a Member of the International Monetary Fund, [the Czech Republic] shall proceed in accordance with Article 23, paragraph 1 of the Convention".
- (4) By a Note dated 13 July 2000, Finland transmitted a declaration dated 7 July 2000 signed by the Minister for Foreign Trade, setting forth the wording quoted in note (1) above.
- (5) Upon deposit of its instrument of accession (deemed to be an instrument of ratification), New Zealand declared "that this accession shall extend to Tokelau".
- (6) At the time of ratification, Canada made the following declaration: "Canada declares, in accordance with Article 57 of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999 and signed by Canada on 1 October 2001, that the Convention does not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by Canada, the whole capacity of which has been reserved by or on behalf of such authorities [Article 57(b)]."
- (7) The instrument of ratification of the United States contains the following declaration: "Pursuant to Article 57 of the Convention, the United States of America declares that the Convention shall not apply to international carriage by air performed and operated directly by the United States of America for non-commercial purposes in respect to the functions and duties of the United States of America as a sovereign State."
- (8) By a Note dated 24 October 2003 signed by the Minister for Foreign Affairs, Japan informed ICAO "that, in accordance with Article 57(a) of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999, the Government of Japan declares that this Convention shall not apply to international carriage by air performed and operated directly by the Government of Japan for non-commercial purposes in respect to its functions and duties as a sovereign State."
- (9) The instrument of approval by the European Community contains the following declaration: "Declaration concerning the competence of the European Community with regard to matters governed by the Convention of 28 May 1999 for the unification of certain rules for international carriage by air (the Montreal Convention):

1. The Montreal Convention provides that Regional Economic Integration Organisations constituted by sovereign States of a given region, which have competence in respect of certain matters governed by this Convention, may become parties to it.
2. The current Member States of the European Community are the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.
3. This declaration is not applicable to the territories of the Member States in which the Treaty establishing the European Community does not apply and is without prejudice to such acts or positions as may be adopted under the Convention by the Member States concerned on behalf of and in the interests of those territories.
4. In respect of matters covered by the Convention, the Member States of the European Community have transferred competence to the Community for liability for damage sustained in case of death or injury of passenger. The Member States have also transferred competence for liability for damage caused by delay and in the case of destruction, loss, damage or delay in the carriage of baggage. This includes requirements on passenger information and a minimum insurance requirement. Hence, in this field, it is for the Community to adopt the relevant rules and regulations (which the Member States enforce) and within its competence to enter into external undertakings with third States or competent organisations\*.
5. The exercise of competence which the Member States have transferred to the Community pursuant to the EC Treaty is, by its nature, liable to continuous development. In the framework of the Treaty, the competent institutions may take decisions which determine the extent of the competence of the European Community. The European Community therefore reserves the right to amend the present declaration accordingly, without this constituting a prerequisite for the exercise of its competence with regard to matters governed by the Montreal Convention.

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\*Sources:

- 1) Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents, Official Journal of the European Union, L 285, 17.10.1997, p. 1;
- 2) Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents, Official Journal of the European Union, L 140, 30.05.2002, p. 2."
- (10) The instrument of accession by Austria contains the following declaration:  
"The Republic of Austria declares according to Article 57 of the Convention for the Unification of Certain Rules for International Carriage by Air of 28 May 1999 that this Convention shall not apply to:  
a) international carriage by air performed and operated directly by the Republic of Austria for non-commercial purposes in respect to its functions and duties as a sovereign State;  
b) the carriage of persons, cargo and baggage for the military authorities on aircraft registered in or leased by the Republic of Austria, the whole capacity of which has been reserved on behalf of such authorities."
- (11) The instrument of ratification by Denmark contains a declaration that until later decision, the Convention will not be applied to the Faroe Islands.
- (12) The instrument of ratification by Germany was accompanied by the following declaration:  
"In accordance with Article 57 of the Convention of for the Unification of Certain Rules for International Carriage by Air of 28 May 1999, the Federal Republic of Germany declares that the Convention shall not apply to international carriage by air performed and operated directly by the Federal Republic of Germany for non-commercial purposes in respect to its functions and duties as a sovereign State or to the carriage of persons, cargo and baggage for the military authorities of the Federal Republic of Germany on aircraft registered in or leased by the Federal Republic of Germany, the whole capacity of which has been reserved by or on behalf of such authorities."
- (13) The instrument of ratification by Spain contains the following declarations (original in Spanish):  
"The Kingdom of Spain, Member State of the European Community, declares that in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention."  
"In accordance with the provisions of Article 57, the Convention shall not apply to:

- a) international carriage by air performed and operated directly by Spain for non-commercial purposes in respect to its functions and duties as a sovereign State;
  - b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by Spain, the whole capacity of which has been reserved by or on behalf of such authorities."
- (14) By a Note dated 29 April 2004 from the Ministry of Foreign Affairs, the Netherlands transmitted to ICAO the following declaration: "The Kingdom of the Netherlands, Member State of the European Community, declares that in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention".