

# Aviation Claims in Indonesia Part II - Indonesia and the Montreal Convention 1999 - the journey has just begun

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*In this Part II of our focus on aviation claims handling in Indonesia, Hermanto Moeljo reflects on Indonesia's adherence to international civil aviation liability conventions to include the Montreal Convention 1999.*

## Reflections on the past

There is a rich heritage in international civil aviation in terms of state agreement to multilateral conventions. Their aim is to regulate carrier liability for claims occurring in the course of international carriage by air. The provisions operate to govern carrier liability to passengers for bodily injury and/or death, baggage claims and liability to cargo interests for damage, loss and delay to shipments.

Indonesia is a long-time state party to the founding civil aviation liability convention, the Warsaw Convention of 1929 (WC1929)<sup>[1]</sup>. However, when other states party to the WC1929 moved on to ratify the Hague Protocol of 1955<sup>[2]</sup>, Indonesia did not. Nor over the years did it adopt other attempts by the International Civil Aviation Organisation (ICAO) and international carriers to update the WC1929, to include the Guadalajara Convention of 1961 and the Montreal Protocols of 1975. Whilst flag carrier Garuda Indonesia signed the Intercarrier Agreement on Passenger Liability of 1996, it was not in fact implemented. By reason of Indonesia's continued adherence solely to the WC1929 in its original un-amended form, aviation insurers and their insureds dealing with claims in Indonesia remained bound by liability provisions from which other states had moved on, to include inter alia the WC1929 Article 22 provision for the determination of liability limits linked to the Poincaré franc.

## The leap forward

The application to international aviation liability claims of the Montreal Convention 1999 MC99<sup>[3]</sup> gives comfort to aviation insurers, their insureds, brokers, surveyors and other third parties in knowing what to expect. Currently, 137 states including Indonesia are states party to the MC99. In 2017 when Indonesia ratified the MC99 it represented a significant leap forward for the handling of Indonesian international air carrier liability claims. The state's accession to the MC99 was in large part a response to a concerted push by the International Air Transport Association (IATA) for global ratification. This push has seen other states in the region sign up to the MC99 in recent years: notably the Philippines (2015), Thailand (2017), Vietnam (2018), Nepal (2018) and most recently, Brunei Darussalam (2020).

## The beginning of the journey

However, accession by a state to the MC99 is in many respects not the end but merely the beginning of the journey. In Indonesia there are as yet few court judgments on questions of interpretation of the MC99. There is some read-across from judgements argued on the earlier WC1929 (where there is commonality with later MC99 provisions) but other MC99 terms remain untested both for claimant passenger or shipper and defendant carrier alike. This is in contrast to other states that are long-term signatories to the MC99. They have the benefit of a mature body of case law on points of interpretation of the convention. We see this in the member states of the European Union (the MC99 having entered into force in June 2004 for the EU and then including also the United Kingdom). So too, in the USA which ratified the MC99 back in November 2003.

In June 2019, the MC99 carrier limits of liability, expressed in Special Drawing Rights (SDRs) and established under Articles 21 and 22, were revised by ICAO. This revision was made on operation of the escalator clause that is built into the convention and which enables ICAO to adjust the applicable limits every five years to ensure they remain current. States parties were invited to enact necessary domestic law provisions to give full effect to the revised limits, effective as at 28 December 2019. As at May 2021 Indonesia has yet to pass required domestic legislation to give effect to these revisions. So, the question as to which limits of liability (i.e. existing or revised) apply to MC99 claims brought in Indonesia is unclear and the

point has yet to be tested before the Indonesian courts.

#### Looking ahead

*In Part III of our focus on Indonesia, and with the benefit of practical experience in aviation claims handling of in Indonesia, Hermanto provides an outline of the assessment of damages under Indonesian law, with a particular focus on passenger injury and fatal accident claims.*

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[1] Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929.

[2] Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by signed at Warsaw on 12 October 1929, done at the Hague on 28 September 1955.

[3] Presidential Regulation No. 95 of 2016 and came into force on 19 May 2017

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