

The Montreal Convention vs. EU Regulation 261/2004: A Clash Over Exclusivity and Passenger Rights

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Abstract

This paper investigates the legal conflict between the Montreal Convention's exclusivity principle (Article 29) and pro-passenger regional laws, exemplified by EU Regulation 261/2004. Through an analysis of legislative history and key Court of Justice of the European Union judgments, the study reveals a substantive conflict concerning flight delay compensation, where Regulation 261 imposes a standardized liability scheme that challenges the Convention's damages-based, exclusive regime. This conflict is contextualized within a broader doctrinal tension between the traditional value of treaty uniformity and the global trend toward enhanced consumer protection. The paper concludes that a balanced approach is necessary. It proposes a model for developing aviation markets like China that respects the Convention's exclusivity for covered issues while legislatively supplementing its gaps and developing a robust, multi-tiered Alternative Dispute Resolution system to efficiently resolve disputes and protect passenger rights.

Keywords

EU Law; Montreal Convention; International Air Transport; Conflict of Laws

1 Introduction

The landscape of international air law is defined by a growing tension between the unifying goal of the 1999 Montreal Convention and the rise of regional pro-passenger legislation. This paper investigates this dynamic, focusing on the pivotal conflict between the Convention's exclusivity and the robust passenger rights framework of EU Regulation 261/2004. This analysis examines the textual basis of the Convention's exclusivity, deconstructs the judicial reasoning used to reconcile the two regimes, and explores comparative approaches. The paper argues that the two legal instruments are fundamentally incompatible regarding delays and proposes a practical legislative and dispute resolution framework that harmonizes international obligations with national passenger protection priorities, offering a balanced model for consideration.



2 The Exclusivity of the Montreal Convention and EU Regulation 261

2.1 The Exclusivity Rule of Article 29 of the Montreal Convention

The 1999 Montreal Convention, officially the Convention for the Unification of Certain Rules for International Carriage by Air, states in its preamble that its objective is to unify and codify certain rules for international carriage by air, which is the most appropriate method for achieving an equitable balance of interests. The exclusive application of the Convention is primarily governed by Article 29, a crucial provision for realizing the treaty's goal of unification. This article extends and clarifies the preemptive effect of Article 24 of its predecessor, the Warsaw Convention.¹ Article 29 stipulates that the Montreal Convention is exclusive: for any claim for damages against a carrier that falls within the Convention's scope of application, recovery can only be sought subject to the conditions and limits of liability set out in the Convention, regardless of whether the cause of action is based on the Convention, contract, tort, or other legal grounds.

The design of Article 29 was not intended to comprehensively cover all possible passenger disputes arising during air transport. According to the drafting history, the delegate from Sri Lanka noted during the drafting process that under the previous Warsaw Convention, issues such as non-performance of the contract of carriage, denied boarding, and ticket refunds were not explicitly regulated. The delegate anticipated that cases involving such issues would become more frequent with the rise of new airline cooperation models like code-sharing. Therefore, it was suggested that Article 29 should not be interpreted to bring these situations, which are not expressly covered by the Convention itself, within the scope of its exclusive application. In response, the conference chairman clarified that the original intent of Article 29 was to ensure that where the Convention applies, parties cannot circumvent its provisions by invoking national laws of contract, tort, or otherwise when seeking damages. It only preempts matters of liability that are expressly governed by the Convention and its scope is not intended to be limitless.² This drafting history indicates that the exclusivity of Article 29 is effective only in the areas explicitly covered by the Convention. For matters not addressed, national and regional legislatures retain the authority to enact supplementary laws. This demonstrates that at its inception, the Montreal Convention consciously avoided regulating certain consumer protection issues, reflecting a restrained approach in its mission to build a uniform international framework.

Therefore, the systemic logic of the Convention does not preclude the supplementation of its unaddressed areas; rather, it expressly leaves room for national or regional legislation. It is feasible to expand the scope of air carriers' obligations through domestic laws or regional regulations to better protect the legitimate rights and interests of air passengers. Such action does not contradict the legislative intent of the Montreal Convention. Instead, it represents a systemic improvement based on the strengthening of consumer protection principles in areas outside the Convention's direct application. Consequently, as long as supplementary rules for passenger rights protection do not create substantive conflicts with matters expressly governed by the Montreal Convention, they cannot be considered a violation of its exclusivity.

2.2 The Conflict Between EU Regulation 261 and the Convention's Exclusivity

In the European Union's framework for air passenger rights, the relationship between the Montreal Convention and EU Regulation No 261/2004 has been a persistent source of conflict, particularly concerning the Convention's exclusivity.³ Article 19 of the Convention explicitly defines the carrier's liability and conditions for exemption from liability for damages caused by "delay" in the carriage of passengers. However, it does not provide clear rules for situations such as flight cancellations or denied boarding. In contrast, Articles 5, 6, and 7 of EU Regulation 261/2004 establish a series of passenger rights against carriers—including the right to compensation, care, and re-routing—which have direct effect in the Member States. The crucial question is which set of rules should apply when a passenger on an international flight experiences a delay or cancellation, and whether a conflict exists between the two instruments. The Court of Justice of the European Union (CJEU) has attempted to harmonize the relationship between these two laws through interpretation in several cases, most notably in the *Sturgeon* case. The CJEU reasoned that the "standardized compensation" established by Regulation 261 is not equivalent to "damages" as understood in the Montreal Convention, thereby negating the exclusive application of the latter.

However, this interpretive approach has sparked significant controversy in both academic and practical circles. On one hand, Article 19 of the Montreal Convention already sets out clear conditions for claims arising from delay, and Article 29 establishes the Convention's exclusivity. On the other hand, EU Regulation 261/2004 imposes more detailed and extensive obligations on carriers for events including flight delays and cancellations, granting passengers the right to a fixed amount of compensation even without proof of specific damage. This can be seen as creating a substantive conflict with the Montreal Convention. Therefore, how to manage the overlapping application of Regulation 261/2004 and the Montreal Convention, and whether the regulation violates or undermines the uniformity and exclusivity of the Convention, remains a pressing legal challenge that awaits resolution.

3 Rule Conflict: How EU Regulation 261 Challenges and Supplements the Montreal Convention

3.1 Key Judgments on the Exclusivity of the Montreal Convention and Regulation 261

3.1.1 The IATA Case (Case C-344/04)

In the context of the conflict between EU Regulation 261/2004 and the Montreal Convention, the International Air Transport Association (IATA) and the European Low Fares Airline Association (ELFAA) challenged the legality of Article 6 of the regulation, leading to the landmark judgment in Case C-344/04, commonly known as the IATA case. IATA and ELFAA argued that the measures for assistance and compensation to passengers in the event of flight delays, as stipulated in Article 6, were in substantive conflict with the relevant provisions of the Montreal Convention. According to Articles 19, 22, and 29 of the Montreal Convention, air carriers have limited liability for damages caused by delay in the carriage of passengers, and the Convention establishes this liability regime on an exclusive basis. Specifically, Article 19 holds car-



riers liable for damages caused by delay, but only on the condition that the passenger proves they suffered actual loss. Article 22 sets the upper limit for this liability, and Article 29 explicitly states that any action for damages, however founded, can only be brought subject to the conditions and limits set out in the Convention. On this basis, IATA and ELFAA contended that Article 6 of Regulation 261 effectively created a parallel system of liability for delays, thereby violating the unified and exclusive provisions of the Montreal Convention.

However, the Court of Justice of the European Union (CJEU) rejected this argument, adopting a different interpretive path that emphasized a balance between the EU's legislative autonomy and the protection of passenger rights. The Court held that while the Montreal Convention did establish a regime for damages caused by delay, its provisions did not indicate an intention by its drafters to prevent signatory states from adopting other forms of passenger protection in their domestic or regional legal systems. The Court reasoned that although Articles 19, 22, and 29 regulate liability and legal actions, nothing in their text, purpose, or interpretation precludes contracting parties from taking additional measures to enhance passenger protection. Therefore, the EU was entitled, within its legislative competence in transport and consumer protection, to enact regulations like Regulation 261 that operate independently of the Convention's system.

The Court further clarified that the assistance and care measures prescribed in Article 6 of the regulation—such as providing meals, communication, and accommodation—do not constitute "damages" in the sense of the Montreal Convention, which are claimed on the basis of individual loss. Instead, they are standardized, immediate support measures offered to all passengers affected by a delay. These measures are intended to alleviate the inconvenience caused by the disruption, not to compensate for individual harm, and therefore fall outside the exclusive scope of Articles 19 and 29 of the Montreal Convention. The Court accordingly ruled that Article 6 of the regulation did not violate the Convention but rather reinforced and specified passenger rights on top of the existing international legal framework. This judgment provided an important paradigm for the interaction between EU and international aviation law and established the core judicial logic for subsequent disputes over the scope of Regulation 261.

3.1.2 Joined Cases C-581/10 and C-629/10

In the joined cases of Nielsen (C-581/10) and TUI Travel (C-629/10), the CJEU provided a definitive analysis of whether the right to compensation under Article 7 of Regulation 261/2004 conflicts with Articles 19 and 29 of the Montreal Convention.

The Court distinguished between two different types of damage that passengers may suffer in the event of a long delay. The first is inconvenience and loss of time, which are similar for almost all affected passengers and can be characterized as universal, foreseeable, and non-individual. The second type is particular damage suffered by certain passengers due to their individual circumstances, such as missed work, lost business opportunities, or additional accommodation costs. This type of damage is subjective, varies between individuals, and typically requires a case-by-case assessment. The CJEU further explained that the purpose and structure of the Montreal Convention are primarily designed to establish a liability and claims process for the second type of damage (particular damage). Under the Convention, a claim for damages is conditional

upon the passenger proving a causal link between the delay and their actual, specific loss, while the carrier may raise defenses under the Convention's liability exemption clauses. This means the Montreal Convention provides a mechanism for remedying damage ex post facto, applicable to claims based on individual harm.

In contrast, the compensation system established by Article 7 of Regulation 261/2004 is a standardized, fixed-sum protection mechanism. Its application is not conditional on whether a passenger has suffered specific material loss but is triggered automatically by the objective occurrence of a flight cancellation, denied boarding, or long delay. The core of this system is its immediacy and universality. The compensation amount is not based on an assessment of individual harm but is set at tiered levels according to flight distance, applying equally to all eligible passengers. For instance, passengers who arrive at their final destination three hours or more after the originally scheduled time are entitled to standard compensation without having to prove any individual loss.

Based on this reasoning, the Court determined that the nature of this compensation system is fundamentally different from the individual damages regime governed by the Montreal Convention. Its purpose is to provide passengers with prompt and straightforward economic consolation for the loss of time and travel inconvenience resulting from a failure in flight service. This system neither replaces nor interferes with the application of the Montreal Convention but instead provides a higher level of consumer protection for passengers outside the Convention's framework. The Court therefore concluded that Article 7 of Regulation 261 does not conflict with Articles 19 and 29 of the Montreal Convention. Instead, the two legal instruments apply in parallel, each functioning at a different level, and the regulation constitutes a reasonable institutional arrangement made by the EU within its legislative powers to safeguard passenger rights.

3.2 Substantive Conflict between EU Regulation 261 and the Convention's Exclusivity on Delays

The standardized compensation system established by EU Regulation 261/2004 for flight delays creates a substantive conflict with the liability and compensation mechanisms of the Montreal Convention. According to Articles 19 and 29 of the Convention, a carrier is liable for damages caused by delay, but this liability is predicated on the passenger having suffered actual, individual harm and may be excluded under certain conditions. Furthermore, Article 29 explicitly states that all claims for damages arising from transport delays must be brought within the framework and limits set by the Convention, giving it significant preemptive force. This regime is oriented around the principle of restorative compensation, emphasizing the causal link between a specific harm and the carrier's liability.

In contrast, the EU regulation creates a fixed-sum compensation mechanism that requires no proof of individual damage. Once a passenger's delay exceeds the three-hour threshold, they are automatically entitled to a standardized payment from the carrier. This system fundamentally departs from the core principles of damage, compensation, liability, and standing to sue as defined by the Montreal Convention. Although the CJEU has attempted to circumvent the Convention's exclusivity by interpreting Regulation 261 as a supplement to the Convention's "gaps," this interpretation is heavily policy-driven and legally tenuous.⁴



The argument fails because Article 19 of the Convention already provides clear rules for "delay," leaving the EU with no authority to establish a separate, mandatory compensation system in this area. By directly regulating liability for delays on international flights, the EU has used regional legislation to challenge the uniform effect of an international convention. This not only undermines the institutional integrity of the Montreal Convention but also creates confusion and conflict in its application by the courts of Member States. In summary, the mandatory compensation mechanism for delays in Regulation 261 is fundamentally at odds with the liability system of the Montreal Convention in both its logic and application, and it challenges the Convention's authority as the exclusive body of substantive law for international air transport. The two systems are, in essence, incompatible.

3.3 How Article 5 of EU Regulation 261 Supplements the Montreal Convention

3.3.1 The Distinction between Flight Delays and Cancellations

Articles 5 and 6 of EU Regulation 261/2004 set out carrier liabilities for flight cancellations and delays, respectively. Distinguishing between a delay and a cancellation has significant legal and practical value. This is not a mere conceptual division, but a choice informed by the nature of air carriage contracts, the practical needs of passenger protection, and the realities of airline operations. From a contract law perspective, a delay constitutes delayed performance, whereas a cancellation constitutes non-performance—a fundamental legal difference. In a delay, the airline is still attempting to fulfill its contractual obligation, albeit with a time lag. A cancellation, however, signifies the airline's complete abandonment of the original contract. This distinction directly impacts the standards for determining legal liability and the scope of compensation.

The judgment in the *Sturgeon* case was a landmark in the interpretation of Regulation 261/2004. The core issue was whether passengers on a long-delayed flight were entitled to the same right to compensation as those whose flights were cancelled. Using purposive and systematic interpretation, the CJEU held that Articles 5, 6, and 7 should be interpreted broadly: if a delay results in a passenger reaching their destination three or more hours late, their legal situation should be treated as equivalent to that of a passenger whose flight was cancelled, entitling them to fixed-sum compensation under Article 7. The breakthrough in this ruling was its equation of a "delay" in the physical sense with a "cancellation" in its legal effect. The Court's reasoning was that the substantive harm caused to the passenger is homologous in both scenarios: whether forced to re-route due to a cancellation or stranded for hours by a delay, passengers face similar disadvantages, including trip interruption, loss of time, and disruption to subsequent plans.⁵

This principle was confirmed in the joined cases C-581/10 (*Nielsen*) and C-629/10 (*TUI Travel*), where the CJEU ruled that although the regulation does not explicitly grant a right to compensation for delays, passengers on long-delayed flights (over three hours) should have the same right as passengers whose flights are cancelled, based on the regulation's purpose and the equivalence of the inconvenience caused. At the same time, the Court affirmed that carriers could still be exempt from this obligation if the delay was caused by extraordinary circumstances.⁶

In practice, treating delays and cancellations differently can better reflect the complexities of air transport. Airline operations are affected by numerous factors, including weather, air traffic control, and mechanical issues, each impacting flights differently. A short delay is often a necessary adjustment made by an airline to ensure flight safety, whereas a cancellation typically involves a more serious operational failure or commercial decision. To conflate the two could impose unreasonable burdens on airlines, with the costs ultimately passed on to consumers. From the passenger's perspective, differentiated treatment allows for more targeted protection. The impact of a schedule change varies significantly: a connecting passenger might miss their next flight due to a short delay, while a point-to-point passenger might be far less affected. A single standard for delays fails to account for these differences. A clear distinction also helps manage passenger expectations and reduce disputes, as passengers who understand their rights in different situations can respond more rationally to flight disruptions.

3.3.2 The Supplementary Nature of Regulation 261's Provisions on Flight Cancellations

Article 5 of Regulation 261, which governs flight cancellations, should be seen as a specific supplement to the liability framework of the Montreal Convention, not a violation of its exclusivity.

Article 19 of the Montreal Convention primarily addresses carrier liability for delays, setting limits and conditions for damages, but it lacks detailed provisions for cancellations. This area was largely left to be regulated by national laws. Article 5 of Regulation 261 fills this gap by defining the carrier's duties of care, re-routing obligations, and rights to compensation in the event of a cancellation, creating a more complete passenger protection regime. Crucially, the regulation remains consistent with the principles of the Convention. Article 5(3) of the regulation exempts airlines from paying compensation if they can prove the cancellation was caused by "extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken." This aligns with the spirit of force majeure in the Convention and prevents a direct conflict. The EU's rules do not impose stricter or contradictory conditions for liability exemptions; rather, they operationalize the Convention's general principles for practical application.

Furthermore, the regulation's detailed rules on the obligation to inform passengers and the conditions for compensation exemptions based on the timing of this notice strike a balance between passenger rights and operational realities. Such detailed supplementary rules clarify liability and enhance legal predictability. As a regional legal body, the EU is entitled to enact more specific and stringent internal rules, provided they fit within the general framework of international conventions. The regulation's rules on flight cancellations are a reasonable extension of the passenger protection framework of the Montreal Convention, not a breach of or conflict with its exclusive terms.

4 Doctrinal Orientations: Treaty Uniformity vs. Pro-Passenger Protection

4.1 The Uniformity of Private Law Treaties

Uniformity is the foundation and fundamental goal of the 1929 Warsaw Convention, its amending proto-



cols, and the 1999 Montreal Convention. Since the birth of private international aviation law in the 1920s, its primary objective has been to achieve legal uniformity across jurisdictions worldwide. To ensure the unimpeded development of commercial aviation, the international community drafted multilateral conventions to guarantee that air carriers would receive equal legal treatment, regardless of their place of incorporation or where a death, injury, loss, or delay occurred. In response to the lack of uniform laws governing international commercial aviation and the resulting proliferation of conflicting domestic statutes, several organizations in the 1920s passed resolutions calling on governments to develop a unified system of private international aviation law.

Delegates at the Warsaw diplomatic conference affirmed that the convention's goal was to ensure legal uniformity. As one court noted: "In 1929, representatives of various nations met in Warsaw, Poland, and concluded a treaty known as the Convention for the Unification of Certain Rules Relating to International Transportation by Air. The purpose of the treaty was to unify the rules relating to international transportation by air, especially the liability of the carrier." The 1999 Montreal Convention integrated and modernized the Warsaw Convention and its amending protocols. Both conventions emphasize the exclusivity of remedies to enhance legal uniformity.

Article 29 of the 1999 Montreal Convention consolidated the two paragraphs of Article 24 of Montreal Protocol No. 4 into a single provision, making the following additions: 1) it added the title "Basis of Claims," in line with the standard practice of the 1999 Convention; and 2) while retaining the carve-outs for questions of standing and recoverable damages, Article 29 explicitly provided that domestic law should not be used to award punitive, exemplary, or other non-compensatory damages.⁷ Considering this purpose, any interpretation of the Convention must necessarily safeguard the consistency of liability rules among the contracting states.⁸ For scholars of private international law, achieving identical judgments in different national courts for the same international civil and commercial disputes remains a constant pursuit.⁹

4.2 The Trend Towards Pro-Passenger Protection

4.2.1 The Autonomy of EU Law

In resolving conflicts between EU law and international law, the Court of Justice of the European Union (CJEU) has developed a unique approach that diverges from traditional conflict-of-law norms. At the core of this approach is the safeguarding of the autonomy of the EU legal order. Based on this principle, the CJEU has, through a series of judicial interpretations and precedents, tended to limit or exclude the effect of international conventions and customary international law to ensure the primacy of EU regulations.

This pro-protection stance for the rights of EU citizens is evident in cases like the Kadi case, which concerned the application of the UN Charter and Security Council resolutions within the EU legal order. The CJEU overturned the lower court's decision, emphasizing that the protection of fundamental rights is a general principle of EU law, even a "constitutional principle." The Court stated that respect for human rights is a condition of the lawfulness of EU acts and that any measure infringing upon them is unacceptable within the EU. The CJEU held that even though the UN Charter and its Security Council resolutions are binding on the EU, their effect within the EU legal system is subordinate to primary EU law, which includes the

principles of human rights protection. On this basis, the Court annulled the EU sanctions regulation implementing the Security Council resolution because it violated fundamental rights.

This demonstrates a pattern where the CJEU supplements or, in special circumstances, displaces international conventions through regional legislation, partly to uphold the autonomy of EU law and partly to provide enhanced protection for specific rights. In international air transport, EU Regulation 261/2004 not only challenges the exclusivity of the Montreal Convention but also supplements it where it is silent. This, combined with the CJEU's jurisprudence, has pioneered the field of flight delay compensation and offers important guidance on clarifying air carrier liability and more comprehensively protecting the rights of passengers as the weaker party.¹⁰

4.2.2 Passenger Protection Regulations for Air Delays in Other Countries

(i) Canada's Air Passenger Protection Regulations

The Canadian Transportation Agency published the Air Passenger Protection Regulations on May 24, 2019, which came into effect in two parts. The first part, implemented on July 15, 2019, primarily addresses issues like denied boarding, lost baggage, and tarmac delays. The second part, effective December 15, 2019, covers compensation for general flight delays and seating arrangements for children. The regulations establish a clear liability regime for flights, with the core principle being the classification of carrier obligations based on the cause of the disruption. A passenger's rights depend on the degree of control the carrier had over the reason for the delay or cancellation, categorized as: within the carrier's control; within the carrier's control but required for safety; or outside the carrier's control.

Specifically, if a delay is within the carrier's control and the passenger has been waiting for two hours after the original departure time, the carrier must provide a reasonable quantity of food and drink, as well as access to communication, free of charge. If an overnight stay is required, accommodation and transport to and from the airport must also be provided. Furthermore, Sections 12(2) and 12(3) of the regulations stipulate that if the delay is within the carrier's control, the passenger was notified of it less than 14 days before departure, and their arrival at the final destination is delayed by three hours or more, the carrier must pay compensation. The amount depends on the length of the delay and the size of the carrier: for large airlines, the compensation is \$400 for delays of 3–6 hours, \$700 for 6–9 hours, and \$1,000 for 9 hours or more. For small carriers, the corresponding amounts are \$125, \$250, and \$500. This approach references the three-hour threshold established by the EU. When applied to international flights, Canada's regulations may also conflict with the Montreal Convention.¹¹

(ii) The Protection Mechanism for Passengers in the U.S. during Air Delays

Passenger protection during air delays in the United States has been continuously strengthening. As early as 1978, the Airline Deregulation Act established an obligation to compensate passengers who were denied boarding due to overbooking, though the protection was limited. In 2008, the rules on overbooking and denied boarding were amended to require airlines to arrange alternative transportation and provide compensation proportional to the ticket price.



Regarding delays, the U.S. Department of Transportation issued its first major passenger protection rule in late 2009, which took effect in April 2010. It explicitly prohibits airlines from keeping domestic flights on the tarmac for more than three hours after the cabin doors have closed, requiring them to provide food and water during the delay and allow passengers to deplane, with penalties for non-compliance. In 2011, a second rule was introduced, extending these protections to international flights.

In judicial practice, U.S. courts have sometimes adopted a more expansive interpretation of "delay" under the Montreal Convention. For example, in *Loukakis v. United Airlines, Inc.*, the court found that even though the airline offered a substitute flight for the next day, the passenger's cancellation of the trip due to a missed important event still constituted a "delay" under the Convention. The court held that the airline had not fulfilled its obligation to take all reasonable measures to avoid the damage and thus supported the passenger's claim for compensation. These legislative and judicial measures demonstrate the U.S. position of emphasizing consumer rights protection in its delay compensation system.

4.3 The Convergence and Tension between Treaty Uniformity and Pro-Passenger Protectionism

A foundational legislative goal of the Montreal Convention is to unify certain rules for international carriage by air. Its exclusivity clause, Article 29, ensures that for matters of liability and compensation already governed by the Convention, the application of other laws is precluded. However, an examination of the domestic laws and judicial precedents in the European Union, Canada, and the United States concerning flight delays and cancellations reveals a clear trend. These jurisdictions have supplemented the Convention's provisions, further specifying and strengthening carrier liability with an emphasis on passenger rights, thereby creating the potential for conflict with the Convention and a challenge to its exclusivity.

From the perspective of treaty uniformity, the provisions of EU Regulation 261 on flight delays are undoubtedly in conflict with the Convention's exclusivity rule. Yet, in its relevant judgments, the Court of Justice of the European Union has used methods of treaty interpretation to legitimize the regulation's provisions, driven by the dual aims of asserting the autonomy of EU law and better protecting passenger rights.

This trend towards pro-consumer protection is also evident within the Montreal Convention itself, particularly in the new and amended articles that updated the Warsaw Convention. Following the adoption of the 1929 Warsaw Convention, several major aviation nations began to establish new liability standards through domestic law, breaking through the Warsaw liability limits and deviating from its constraints. This signaled that the Warsaw regime needed to be reformed to meet the demands of the modern era. The process of integrating and modernizing the Warsaw system revealed a fundamental shift in the legislative center of gravity for international air transport liability: it moved from protecting the interests of air carriers to strengthening the protection of air transport consumers. Influenced by this change in values, the Warsaw system was inevitably reformed.¹²

The Montreal Convention, responding to this historical trend, further increased carrier liability. For example, Article 17 holds carriers liable for a passenger's death or injury resulting from an accident without requiring proof of fault. Article 19 reverses the burden of proof for delays, requiring the carrier to pay

compensation for damages unless it can prove that it took all reasonable measures to avoid them, thereby alleviating the passenger's evidentiary burden. The Convention also added a system of advance payments, requiring carriers to make prompt partial payments to victims of an aircraft accident in accordance with national law. These new rules and systems introduced by the Convention demonstrate a heightened focus on and protection of the consumer.

Half a century later, this trend has become even more pronounced, and enhancing the protection of air passenger rights has become a critical task for aviation law and the industry. The exclusivity rule of the Montreal Convention is being impacted by this movement, as some states enact more detailed air transport rules from the perspective of passenger protection. The Convention's legislative goal of unifying rules is now in direct competition with the powerful trend of pro-passenger protectionism, creating a tension that urgently needs to be balanced through careful treaty interpretation and judicial practice.

5 A Chinese Approach to Balancing Treaty Uniformity and Passenger Protection

5.1 Prudent Reference and Value Balancing

The conflict between the Montreal Convention's exclusivity rule and EU Regulation 261 is not merely a simple contradiction of legal texts. It is fundamentally a manifestation of the tension between the traditional value of treaty uniformity and the emerging, ascendent value of pro-consumer protection. The practices of the European Union, Canada, and the United States show that strengthening passenger rights is a global trend, which requires us to re-examine the applicable boundaries of the Montreal Convention's exclusivity rule.

EU Regulation 261 is undoubtedly the highest benchmark in passenger rights protection. It provides clear, quantifiable standards, giving passengers definite expectations about their rights in cases of flight delays or cancellations and greatly reducing the information asymmetry and evidentiary burden in the process of defending their rights. At the same time, the standardized, fixed-sum compensation mechanism has a quasi-punitive nature, which can effectively compel carriers to optimize their operational management and improve on-time performance, thus reducing the occurrence of flight irregularities at the source. This liability system strongly responds to the public's demand for a higher level of consumer protection and aligns with the global trend of strengthening passenger rights.

However, its disadvantages cannot be ignored. The core issue is its potential conflict with the Montreal Convention's exclusivity rule. As previously discussed, the CJEU has legitimized the regulation's liability rules through judicial interpretation to circumvent the Convention's application. This approach objectively undermines the uniformity of private international law treaties and may lead to confusion in the application of law. Secondly, high levels of compensation impose significant operational cost pressures on airlines, potentially holding them excessively liable for factors beyond their control. These costs may ultimately be passed on to all consumers through higher ticket prices. Such a demanding liability standard is clearly not a good fit for China as a developing country.



As a key signatory to the Montreal Convention, China has a duty to uphold the uniformity and authority of international treaties as part of its international obligations and its image as a responsible major power. At the same time, China's civil aviation industry is still in a period of rapid development and market restructuring. The issue of balancing passenger rights with industrial development requires more cautious consideration. China should appropriately draw on the legislative spirit and beneficial elements of the EU model, but it must do so in the context of its own national conditions, forging a path that is more resilient and balanced.

5.2 Rule Differentiation and Dispute Resolution

5.2.1 Clearly Differentiating between Conflicting and Supplementary Rules

When amending the Civil Aviation Law of the People's Republic of China or formulating related administrative regulations and judicial interpretations, legislators must be careful not to create rules that conflict with the liability regime already established by the Convention. At the same time, for areas not covered by the Convention, it is appropriate to introduce detailed supplementary rules that align with the development of the domestic aviation market.

For the issue of flight delays, which is explicitly regulated by the Convention, China's domestic legislation should avoid establishing a directly conflicting liability system. When applying the Convention, Chinese courts must first strictly scrutinize the case to ensure that in situations already governed by the Convention, its provisions are strictly applied, and its exclusivity is respected. When a passenger's claim is based on actual economic loss caused by a flight delay, courts should recognize that the dispute falls within the Convention's scope and adjudicate it strictly according to its terms.

However, for areas not regulated by the Convention, such as flight cancellations and denied boarding, domestic law can provide supplementary and detailed rules. China can partially draw on the positive experiences of the EU regulation to systematically establish carrier obligations in these situations. These could include the duty to provide timely and accurate information about flight status changes and passenger rights; the provision of complimentary meals and communication services based on the waiting time; the provision of accommodation and ground transportation when necessary; and offering passengers a full refund or arrangement of an alternative flight. Since the Convention is silent on these matters, establishing such a compensation and care mechanism falls within the sovereign legislative choice of each contracting state and does not constitute a direct challenge to the Convention's exclusivity.

5.2.2 Constructing a Multi-tiered Dispute Resolution Mechanism

Aviation transport disputes are characterized as being frequent, often involving groups, highly technical, and involving relatively small sums of money. Relying solely on legislation and judicial rulings is not only inefficient for providing relief to passengers but also risks wasting judicial resources. Given the complexity of aviation disputes and the high cost in time and money of traditional litigation, passengers—who face significant information and power imbalances with airlines—may ultimately abandon their claims.

Litigation is costly and inefficient. Non-litigious methods such as mediation and arbitration are more flexible and can better meet the demand for efficiency in aviation disputes. Establishing a civil aviation mediation system is necessary for resolving disputes fairly and efficiently and for fostering a culture of rule of law in the aviation sector.¹³ Compared to litigation, ADR procedures are more flexible, less expensive, and help maintain long-term relationships between airlines and passengers. Therefore, building a multi-tiered dispute resolution mechanism (ADR) with professional mediation at its core—effectively linking airlines' internal processes, administrative mediation, industry mediation, arbitration, and litigation—is an essential choice for the development of a law-based civil aviation sector.

The EU's ADR system serves as an important model. Through a unified directive, the EU has established a high-standard dispute resolution framework for its member states based on the principles of independence, fairness, transparency, and low cost. This system has become increasingly professionalized, leading to the creation of specialized ADR bodies for aviation disputes. Its most advanced feature is its protective stance towards passengers, the weaker party, by establishing a participation model that is voluntary for passengers but mandatory for airlines and by making decisions judicially enforceable.

In building China's aviation ADR system, a layered and organically linked approach should be adopted. As the first party responsible for disputes, airlines should establish transparent and efficient internal complaint-handling mechanisms to resolve most disputes at the initial stage. At the same time, professional and industry-specific mediation organizations should be developed. China has made positive strides in this area in recent years. In October 2020, under the guidance of the Civil Aviation Administration of China (CAAC) and the Shanghai High People's Court, the China Air Transport Association (CATA) and the People's Court of Changning District in Shanghai jointly established the first "Aviation Dispute Mediation Center." This collaboration integrates industry expertise with judicial experience and has already accumulated valuable insights. The center's establishment is a major innovation in creating a professionalized, trusted mechanism in China's civil aviation field, aligning with the international trend of ADR while also promoting China's own traditions of good governance. In the future, such experiences should be summarized and promoted to establish more regional or national aviation dispute mediation centers, with improved selection, training, and management mechanisms for mediators.

For an ADR system to be truly effective, its outcomes must be guaranteed. The enforceability of non-litigious dispute resolutions is paramount, which requires establishing and perfecting a system for the judicial confirmation of mediation agreements. For agreements reached through professional bodies like the Aviation Dispute Mediation Center, parties should be able to apply to a court for judicial confirmation, which would grant the agreement the force of a legal judgment. This would not only significantly enhance the credibility of mediation but also effectively reduce the caseload of the courts, ensuring that disputes are truly resolved.

6 conclusion

This research has demonstrated the inherent conflict between the Montreal Convention's foundational goal of uniformity and the potent pro-passenger protectionism exemplified by EU Regulation 261. The analysis of key CJEU jurisprudence shows that while judicial interpretation has attempted to harmonize the two regimes, a substantive tension persists that challenges the Convention's exclusive authority, particularly on the issue of flight delays. The international aviation liability regime is thus at a crossroads, forced to balance the industry's need for legal predictability with modern society's demand for stronger consumer rights. The most viable path forward, especially for major aviation nations like China, is a dual strategy: strictly applying the Convention where it governs, cautiously supplementing its gaps with clear domestic rules, and concurrently investing in specialized Alternative Dispute Resolution (ADR) mechanisms. This approach respects international law while pragmatically adapting to the evolving expectations of air passengers worldwide.

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