The regime for international air carrier liability: to what extent has the envisaged uniformity of the 1999 Montreal Convention been achieved?

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5 Suggestions for Enhancing Uniformity

5.1 Introduction

In the previous chapters, the analysis has shown that the 1999 Montreal Convention had ambitions to offer a uniform legal regime that contributed to predictable interpretations. Several factors, from the drafting stage to the everyday application of the rules, have demonstrated that this aim has not been fully achieved.

This chapter is designed to provide proposals that could be implemented to enhance its uniform application. The analysis of these proposals is divided into three categories: substantive elements (section 5.2), procedural elements (section 5.3), and prospective elements using Artificial Intelligence (section 5.4).

The implementation of such proposals may require a revision of the 1999 Montreal Convention. Such a revision should not be a taboo. George Tompkins, who, at the conclusions of his analysis of the uniform effectiveness of the 1999 Montreal Convention, indicated that:

> As perhaps a last resort, ICAO should re-convene the Montreal Conference of 1999 to make even clearer the intent of the Parties to MC99 as to the meaning of those Articles of MC99 which have been misconstrued, misinterpreted and misread by courts when applying the liability rules of MC99 to actual cases.[1]

Nevertheless, a revision may also create risks. To be useful, an eventual revision would need therefore several components:

– *first*, clear provisions based on a broad political consensus, which, as seen in this study, is a difficult task;[2]
– *second*, in order not to further increase fragmentation,[3] a universal ratification status.

Taking into account these risks, the elements described below will not all need to wait for a new diplomatic conference to be convened before being useful.

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1 George Tompkins, "The Malaise Affecting the Global Uniform Effectiveness of the Montreal Convention, 1999 (MC99)", in Pablo Mendes de Leon (eds), *From Lowlands to High Skies: A Multilevel Jurisdictional Approach Towards Air Law – Essays in Honour of John Balfour* 282 (Martinus Nijhoff Publishers, 2013).

2 *See*, section 3.2.4.3.

3 *See*, section 4.2.1.

5.2 Substantive Elements

5.2.1 Enhancing Autonomy

5.2.1.1 A Double-Edged Mechanism

Symptomatically and ironically, the autonomy that was contemplated as a mechanism to ensure the uniform application of the Conventions is also a source of their fragmentation. Despite efforts to draft legal instruments, the vagueness of several terms and concepts have been identified as sources of fragmentation.[4]

In addition, the 1999 Montreal Convention's negotiators' wish to stick as closely as possible to the wording of the Warsaw Instruments prevented the coherent application of the guidance generally used to draft clear treaties.[5] Whereas the text adopted in 1929 was voluntarily imperfect, its negotiators wished to test it before possibly improving it,[6] and it was not made to last for a very long time, these arguments are no longer valid.

The need for certainty in a globalized industry, and the interest of achieving a homogenized passenger protection regime, require that formulations be clearer. To this end, autonomy deserves further enhancement with, as a starting point, the elements developed below.

5.2.1.2 Elements Requiring Amendments of the 1999 Montreal Convention

(1) Amendments of the Preamble

The previous sections highlighted how the conceptual and hermeneutical ties between the Warsaw Instruments and the 1999 Montreal Convention were not properly addressed during the 1999 Montreal Conference,[7] despite the fact that the 1999 text took the form of a new convention supposed to prevail over prior instruments pursuant to its Article 55.[8] A clearer position could therefore be adopted, in the preamble, on the exact weight to be given to the jurisprudence of the Warsaw System when interpreting the 1999 Montreal Convention. One possibility could be to indicate that, while prior judicial decisions should be regarded as interpretation tools pursuant to Article 32 of the 1969 Vienna Convention, legal certainty recommends that an explanation be given as to why one would depart from them or not.

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4 *See*, section 3.2.

5 *See*, section 3.2.1.

6 ICAO Doc 7838, II Conférence Internationale de Droit Privé Aérien, 4-12 Octobre 1929, *Procès-Verbaux*, Varsovie, 1930, p. 104: 'Je pense qu'il vaut mieux mettre des indications et laisser un peu la pratique se développer. Nous sommes en présence d'un mode de transport qui vient de naître, il faut laisser la pratique s'établir'.

7 *See*, sections 1.3.2.4 and 4.3.3.4(2).

8 *See*, section 1.3.1.1(2).

Furthermore, as divergences should be avoided with respect to the purposes of the 1999 Montreal Convention, particularly as to whether consumer protection is an additional purpose,[9] the preamble ought to be redrafted to clearly highlight its envisaged purposes and put an end to existing controversies.

(2) The Incorporation of Definitions

The inextricable links between the various texts also prevented the 1999 Montreal Convention from adopting new – ideally clearly autonomous – definitions, as reported in its *Travaux Préparatoires*:

> The Delegate of Cameroon proposed that the definitions in Article 1 be expanded to include 'combined carriage', 'intermodal carriage' and 'multi-modal carriage'. […] However, the Delegate of Poland took the view that firstly, the introduction of further definitions should be avoided as the authors of the draft Convention had preserved much of the text from the Warsaw instruments in order to ease the transfer from one system to another and secondly, to avoid lengthy discussions by lawyers in the application of these definitions. The Delegate of Pakistan supported this view and added that as a general principle of law, when no definition is given of any term, the general meaning attached to the term was commonly used.[10]

The fact that it was suggested that undefined terms be understood under their 'general meaning' has been seen as insufficiently self-explanatory. Moreover, these reported statements must be read in conjunction with another one suggesting that reference may be sought in the ICAO documentation:

> The Delegate of Lebanon suggested that a unified concept be developed on the basis of ICAO documents which could be applied in all countries. In this connection, he was aware of the existence of an ICAO document which explained the definitions of certain terms that could be useful for the courts when considering these cases. The Delegate of Lebanon suggested that this be mentioned in the 'travaux préparatoires' of the Convention for easier application of Article 27.[11]

Practice shows that the drafters should not be reluctant to adopt specific autonomous definitions when unification is at stake. This was notably done

9 *See*, section 2.3.3(2).

10 ICAO Doc 9775, International Conference on Air Law (Convention for the Unification of Certain Rules for International Carriage by Air), Montreal, 10 – 28 May 1999, volume I, *Minutes*, Montreal 1999, p. 55.

11 *Ibid*., p. 179. There is no clear indication of which ICAO Document the delegate referred to.

in the 2001 Cape Town Convention[12] and in its 2001 Aircraft Protocol,[13] which respectively count 40 and 16 specific definitions. Equally, the 2008 Rotterdam Rules count more than 30 definitions despite them only concerning carriage of goods by sea.[14]

In light of these elements, efforts should be made to adopt more definitions. These definitions should use neutral language, free from expressions used in specific legal systems or well-known to practitioners;[15] and should be distinct from those used in other international instruments whenever possible.[16]

Back in 1929, legislators decided against producing a simple set of private international rules with a list of competent laws and jurisdictions with regards to an international air liability regime. Instead, they chose to adopt uniform rules. Therefore, negotiators should not be uncomfortable with what they are creating. The 1999 Montreal Convention is a *sui generis* private air law regime relying on autonomous terms and concepts, which can be compared to a certain extent to a domestic law in itself, or more accurately to an a-national law that would rank above pure domestic law. This autonomous dimension should be better reflected in the text. While it could be argued that, in the past, private initiatives, such as the IATA Recommended Practices,[17] may have partly filled the gaps, experience demonstrates that with respect to carrier liability towards passengers, Courts often deny legal value to industry standards such as the IATA's General Conditions of Carriage,[18] given that certain Courts reproach these

12 Convention on International Interests in Mobile Equipment, 16 November 2001, Cape Town, ICAO Doc 9793, entry in force 1 March 2006.

13 Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, 16 November 2001, Cape Town, ICAO Doc 9794, entry in force 1 March 2006.

14 United Nations Convention on the Contracts for the International Carriage of Goods Wholly or Partly by Sea, 11 December 2008, New York, not yet in force. Again, with respect to the law of the sea, on the public law side, the 1982 Montego Bay Conventions has several specific definitions. *See*, United Nations Convention on the Law of the Sea, 10 December 1982, Montego Bay, UNTS, 1834, I-31363, entry in force 16 November 1994.

15 *See*, Silvia Ferreri, "The Devil is in the Details – Undetected Differences in Projects to Harmonize the Law", in Unidroit (eds), *Eppur si Muove: The Age of Uniform Law – Essays in Honour of Mickael Joachim Bonell to Celebrate his 70th Birthday* 318 (Unidroit, 2016). She however underlines that, as a downside, neutral language may be uncertain and ill-defined at the beginning, given the absence of case law. For example, she refers to the choice of using the concept of 'extraordinary circumstances' instead of 'force majeure' in EU Regulation 261/2004.

16 *See*, Camilla Andersen, *Defining Uniformity in Law*, 12 Unif. L. Rev. 53 (2007).

17 *See*, Lasantha Hettiarachchi, *The Quasi-Regulatory Regime of the International Air Transport Association (IATA) and its Impact upon the Airline Industry and the Consumer* (Thesis McGill University, 2018).

18 Peter Sand, *The International Unification of Air Law*, 30 Law and Contemporary Problems 402 (1965).

private initiatives for lacking balance between the interests of passengers and air carriers. Therefore, such drafting missions can only be entrusted to international legislators.

Despite difficulties, the inclusion of new well-articulated definitions, clearly marked as autonomous, would limit the fragmentation of the 1999 Montreal Convention, particularly if the other suggestions made in this chapter were also adopted.

(3) The Identification of Uniform Rules

The complexity of the 1999 Montreal Convention is also due to the fact that it contains both uniform rules and provisions referring to domestic law.[19]

In order to avoid the risk of divergent decisions, a clear distinction should always be made between what is governed by uniform rules[20] and what is subject to domestic law. The analysis showed that this distinction has not always been clearly acknowledged by Courts.[21] A clear demarcation between uniform rules and *renvois* will also be very important when Artificial Intelligence is at stake, as discussed below.[22]

5.2.1.3 Elements Not Requiring an Amendment to the 1999 Montreal Convention

(1) The Dissemination of Knowledge

As the ICAO vowed greater dissemination of air law in its 39th session,[23] further teaching of uniform law and particularly of international private air law instruments such as the 1999 Montreal Convention will hopefully lead Courts across its ratifying States to better appreciate its purposes and the function of autonomous terms.

Such endeavours may rely on new technologies, as pointed out by the Hague Conference on Private International Law and the European Commission in their joint conclusions on access to foreign law in commercial and civil matters.[24] For example, these new technologies now permit efficient distance learning and instantaneous document translation.

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19 *See*, section 1.1.3.2.

20 Despite this, an autonomous nature might have been (and might still be) unnatural for many.

21 *See*, sections 3.2.4.3(5) and 3.2.5.

22 *See*, section 5.4.

23 ICAO, Resolution A39-11: Consolidated Statement of Continuing ICAO Policies in the Legal Field, Appendix D, Assembly, 39th session (October 2016).

24 Hague Conference on Private and International Law and the European Commission, Joint Conclusions of the Hague Conference on Private and International Law and the European Commission, Access to Foreign Law in Commercial and Civil Matters, Conclusions and Recommendations, points 2 and 7, Source: Hague Conference on Private International Law, <https://assets.hcch.net/upload/foreignlaw_concl_e.pdf> (accessed 29 October 2019).

(2) A Database of Judicial Decisions

The 1999 Montreal Conference rightly pointed out that judges are not all aviation regulatory experts[25] with an aviation law background.[26] Even experts wishing to ensure a uniform application of the 1999 Montreal Convention through an analysis of foreign case law meet certain hindrances. Amongst various obstacles, one of the most regrettable is that, depending on the jurisdiction, not all decisions are published. The proliferation of different journals, reports and search engines also increases the difficulty for local Courts to have quick access to relevant foreign air law decisions.

Most of these hurdles were recognized from early on. For example, in 1977, Dr. Georgette Miller noted that:

> A better diffusion of the judicial decisions interpreting the uniform law has been advocated as a means of lessening divergences by letting courts know of existing precedents adopted in other countries.[27]

In order to tackle this issue, one solution could be to gather relevant case law in a specific database.[28]

Certain Uniform Instruments already benefit from such centralization. The jurisprudence of the UNCITRAL conventions are, for instance, gathered on an online public platform.[29] The jurisprudence of certain Uniform Instruments related to transportation by sea also benefits from an online platform organized on the initiative of the *Comité Maritime International* and managed in cooperation with the National University of Singapore.[30] A database of decisions regarding the application of the CMR was also organized, in the past by UNIDROIT,[31] and now by the *Institut du Droit International des Transports*.[32]

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25 ICAO Doc 9775, International Conference on Air Law (Convention for the Unification of Certain Rules for International Carriage by Air), Montreal, 10 – 28 May 1999, volume I, Minutes, Montreal 1999, p. 154.

26 *Ibid*., p. 144.

27 Georgette Miller, *Liability in International Air Transport* 366 (Kluwer, 1977). *See also*, Emmanuel du Pontavice, *L'interprétation des conventions internationals portant loi uniforme dans les rapports internationaux*, Annales de Droit Aérien et Spatial 30 (1982); Peter Sand, *The International Unification of Air Law*, 30 Law and Contemporary Problems 400-424 (Springer, 1965); Huib Drion, *Towards A Uniform Interpretation of the Private Air Law Conventions*, 19 J. Air L. & Com. 423-424 (1952).

28 *See*, João Ribeiro-Bidaoui, *The International Obligation of the Uniform and Autonomous Interpretation of Private Law Conventions: Consequences for Domestic Courts and International Organisations*, 67 Netherlands International Law Review 148, 155-159 (2020).

29 *See*, UNCITRAL, <https://www.uncitral.org/clout/> (accessed 8 April 2020).

30 National University of Singapore, <https://law.nus.edu.sg/cmlcmidatabase/> (accessed 8 April 2020). *See also*, Patrick Griggs, *Obstacles to Uniformity of Maritime Law*, CMI Yearbook 158-173 (2002).

31 However, the project was discontinued as it was too resource intensive. *See*, Lena Peters, *Unidroit*, Max Planck Encyclopedias of International Law (2017).

32 *See*, Institut du Droit International des Transports, <https://www.idit.fr/_private/moteur_cmr/jurisprudence/index.php> (accessed 1 November 2019).

With respect to air law instruments, and more particularly the 1999 Montreal Convention, this central database could be entrusted to the ICAO. Although it seems difficult to consider the ICAO the guardian of the application of the 1999 Montreal Convention,[33] being essentially its depositary,[34] there would not be too many hurdles to the ICAO serving as a central documentation point, to which the major case law of each ratifying Party could be sent, translated and made publicly available for free.[35] However, this role could be taken on by any trustworthy entity.

Beyond the costs associated with the creation and maintenance of such a database, its effectiveness would depend on the will of the ratifying Parties to communicate decisions delivered by their Courts, ideally with a translation into at least one of the authentic languages of the 1999 Montreal Convention.

The implementation of such a database would not only enhance the uniform application of the 1999 Montreal Convention, but would also increase the visibility of judicial decisions delivered in less commented-on jurisdictions.

The importance of such a database managed by a trustworthy entity will be further examined below, in the section dedicated to Artificial Intelligence tools.[36]

5.2.2 Refining Exclusivity

The principle of exclusivity has been seen as a mechanism that, while envisaged as safeguarding the uniformity of the Conventions, unintentionally led to various divergent interpretations. Even if Professor Bin Cheng stated that Article 29 of the 1999 Montreal Convention was 'designed to protect both the objective of the Convention and the integrity of the rules drawn up to implement it',[37] the exact scope of this provision is still controversial as evidenced by this analysis[38] and reported in the literature.[39]

In the absence of a clear position on the exact extent of Article 29 of the 1999 Montreal Convention, the aim of uniformity suggests that the interpretation of this mechanism should be done along with the most cited decisions of Courts, which – depending on how they are looked at – essentially point in

33 *See*, Michael Milde, *International Air Law and ICAO* 179 (Eleven International Publishing, 2008).

34 *See*, 1999 Montreal Convention, Article 53.

35 As the *Travaux Préparatoires* should be.

36 *See*, section 5.4.

37 Bin Cheng, *A New Era in the Law of International Carriage by Air: from Warsaw (1929) to Montreal (1999)*, 53 International & Comparative Law Quarterly 846 (2004).

38 *See*, sections 2.5.3.2 and 4.3.2.

39 *See*, for example, Elmar Giemulla, e. a., *The Montreal Convention* 29-5 (Kluwer, Supplement 5, 2009); Marc McDonald, *The Montreal Convention and the Preemption of Air Passenger Harm Claims*, 44 The Irish Jurist 203-238 (2009).

the direction of a strict application of the principle of exclusivity as understood in common law jurisdictions.

A clarification of the exact shape of said provision is not only important with respect to personal injury, but also in light of the development of passenger rights at regional and domestic levels. The situation where Courts have strictly applied the principle of exclusivity, while governments enacted new passenger rights, is not sustainable in light of the uniformity of the 1999 Montreal Convention.[40]

The attempt made by the ICAO with the publication of Core Principles on Consumer Protection in 2015 could have been useful, as it insists on a respect for consistency with international law:

> Government authorities should have the flexibility to develop consumer protection regimes which strike an appropriate balance between protection of consumers and industry competitiveness and which take into account States' different social, political and economic characteristics, without prejudice to the safety and security of aviation. National and regional consumer protection regime should […] iii) be consistent with the international treaty regimes on air carrier liability […].[41]

However, this timid step, together with the non-binding nature of these Core Principles, falls short of efficiently refining the principle of exclusivity.

A fine-tuning of Article 29 of the 1999 Montreal Convention would also be beneficial to resolving other controversies. In States who are parties to this convention, and who host important aircraft manufacturers, victims of air disasters may consider initiating legal proceedings, pursuant to domestic law, against the manufacturer only, in order to avoid conditions and limits set out in Conventions that would have been applicable if they had sued the carrier. In this scenario, the manufacturer would likely request the carrier to indemnify it against any potential condemnation. As the Conventions do not explicitly address this situation, the question arises if the carrier could still benefit in this configuration from the limits provided by the Conventions.

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40 *See*, section 4.2.2.

41 ICAO, Core Principles on Consumer Protection, Source: ICAO, <www.icao.int/sustainability/SiteAssets/pages/eap_ep_consumerinterests/ICAO_CorePrinciples.pfd> (accessed 27 October 2019). For a commentary, *see*, Steven Truxal, *Air Carrier and Air Passenger Rights: A Game of Tug of War*, 4 Journal of International and Comparative Law 103-122 (2017). In 2013, the IATA published its own Core Principles on Consumer Protection, which even went further, advocating that: 'Passenger rights legislation, in accordance with the Chicago Convention 1944, should only apply to events occurring within the territory of the legislating State, or outside that territory with respect to aircraft registered there. […] Legislation should be clear and unambiguous', Source: IATA, <www.iata.org/policy/Documents/consumer_protection_principles.pdf> (accessed 29 October 2019).

In a decision made in 2015, the French *Cour de cassation* concluded that carriers were not allowed such a defence.[42] This decision was particularly unexpected, insofar as the Court had previously held that a manufacturer could not call in guarantee an airline before a jurisdiction not listed in the Conventions.[43]

On a more theoretical note, one wonders whether, in a situation of major loss where criminal investigations are carried out, Article 29 of the 1999 Montreal Convention would not preclude the possibility of enforcing criminal penalties, being understood as economic compensation in favour of collectivity, against air carriers.[44]

In order to clarify the exact scope of the principle of exclusivity, the best option would be to redraft Article 29 of the 1999 Montreal Convention. In the meantime, given the various interpretations of this principle in the Conventions, the aim of uniformity could be ensured if Courts followed the interpretation most regularly given by highly regarded Courts. As mentioned earlier,[45] it appears that the interpretation most regularly adopted by such Courts is a strict application of the principle of exclusivity.[46]

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42 Cass., 4 March 2015, ECLI:FR:CCASS:2015:C100327. In this case, passengers had already agreed on a settlement with the carrier but sought further compensation from the manufacturer. *See*, Pablo Mendes de Leon, "Jurisdiction under and Exclusivity of Private International Air Law Agreements on Air Carrier Liability: The Case of Airbus versus Armavia Airlines (2013)", in Pablo Mendes de Leon (eds), *From Lowlands to High Skies – A Multilevel Jurisdictional Approach towards Air Law – Essays in Honour of John Balfour* 261-273 (Martinus Nijhoff Publishers, 2013); Laurent Chassot, *Le domaine de la responsabilité du transporteur aérien international à la lumière de deux décisions récentes*, RFDAS 5-25 (2016).

43 Cass., 11 July 2006, 04-18.644. *See*, Gilbert Guillaume, *Du caractère impératif des dispositions de l'article 28 de la Convention de Varsovie*, RFDAS 227-239 (2006).

44 A different approach is adopted in France, for instance, where there is a longstanding jurisprudence preventing passengers from seeking compensation against carriers in the course of criminal proceedings. One of the reasons for this prohibition stands in the clear distinction between civil and criminal actions. *See*, Jean-Pierre Tosi, *Responsabilité aérienne* 158 (Litec, 1978).

45 *See*, section 4.3.3.5.

46 Another option is suggested by John Balfour, at least with respect to the position adopted by the Court of Justice of the European Union regarding delays, and consists in requesting that the International Court of Justice settle opposing views. *See*, John Balfour, "Luxembourg v Montreal: Time for The Hague to Intervene", in Michal Bobek, Jeremias Prassl (eds), *Air Passenger Rights – Ten Years On* 73 (Hart Publishing, 2016). However, such an action would have to be initiated by a State which is Party to the 1999 Montreal Convention but is not an EU Member State. Such a State must also be affected by case law developed by the Court of Justice of the European Union, despite it being in contradiction with its domestic interpretation of said convention. Without going into the procedural aspects and limits of such a claim, this endeavour would essentially depend on political will rather than constituting an option directly offered to Courts. However, this divergence of views could be more effectively settled through the adoption of international rules on passenger rights, which could take the form of a convention or a protocol to the 1999 Montreal Convention (depending on the compromise to be reached, the 1999 Montreal Convention being modified or not). *Contra*, Nicolas Bernard, *Taking Air Passenger Rights Seriously: The Case Against the Exclusivity of the Montreal Convention*, 23 International Community Law Review 1-31 (2021).

5.3 Procedural Elements

5.3.1 The Establishment of a Common Court

On the side of possible improvements at a procedural level, the question of a common specialized Court has already been discussed, along with the reasons why it has not yet been created.[47]

International dispute mechanisms already exist, however, with respect to international public law instruments. Next to the well-known International Court of Justice, many other international remedies have been created and implemented. For instance, the uniform application of the 1982 Montego Bay Convention on the Law of the Sea[48] is safeguarded by the International Tribunal of the Law of the Seas sitting in Hamburg. Even in aviation, the 1947 Chicago Convention sets forth specific provisions under its Article 84 *et seq.* in order to settle potential disputes between Contracting States on its interpretation or application.[49] Many other international public air conventions have also established specific dispute resolution mechanisms.[50]

With respect to international private law, and more particularly international transportation law, the CMR provides under its Article 47 that:

> Any dispute between two or more Contracting Parties relating to the interpretation or application of this Convention, which the parties are unable to settle by negotiation or other means may, at the request of any one of the Contracting Parties concerned, be referred for settlement to the International Court of Justice.[51]

Nevertheless, this provision has never been used in practice[52] and the right to be heard is limited to Contracting Parties. But specific international Courts, open to private bodies, do exist in international law. For example,

47 *See*, section 3.3.3.2.

48 United Nations Convention on the Law of the Sea, 10 December 1982, Montego Bay, UNTS, 1834, I-31363, entry in force 16 November 1994.

49 *See*, for instance, International Court of Justice, *Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar)*, 14 July 2020. *See also*, section 5.3.3.

50 *See*, for example, 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, Article 24; 1971 Montreal Convention for the Suppression of Unlawful Acts against Safety of Civil Aviation, Article 14; 2010 Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, Article 20.

51 Regarding the interpretation of the CMR Convention, *see*, Waldemar Czapski, *Application et interprétation de la Convention CMR à la lumière du droit international,* 9 Unif. L. Rev. 545 (2006); Cécile Legros, *Modalités de l'interprétation uniforme de la CMR: Quelles difficultés? Quels remèdes?,* 20 Unif. L. Rev. 426 (2016); Wouter Verheyen, *National judges as gatekeepers to the CMR Convention,* 21 Unif. L. Rev. 441 (2016).

52 *See*, Francisco Sánchez-Gamborino, *La llamada Culpa Grave en el transporte de mercancías por carretera* 434 and fn (Marge Books, 2016).

disputes arising out of the application of the World Trade Organization rules are heard by its Dispute Settlement Body.[53]

Many States have agreed to establish common, in some cases supranational, Courts at a regional level in order to ensure not only dispute resolution, but also uniformity in matters relating to both public and private law. This is notably the case of the CJEU.

There also exist many specifically orientated Courts, such as the Common Court of Justice and Arbitration of the OHADA acting as an ultimate jurisdiction on points of law only,[54] or the Unified Patent Court which will function with different First Instance Courts across the European Union and with a single Court of Appeal.[55]

Furthermore, many arbitration mechanisms have also been implemented with respect to disputes arising between States, between States and private bodies, and between private bodies. The 1999 Montreal Convention even authorizes such recourse regarding cargo disputes.[56] However, notwithstanding the advantages of arbitration, the absence of a publication of awards does not assist in enhancing a uniform application of the 1999 Montreal Convention. This could be the case if there was a single arbitration Court for cargo claims, as a certain uniformity in the awards could be expected. Nevertheless, there could still be divergences in the interpretation of provisions of the 1999 Montreal Convention, as certain of its provisions deal with both cargo and passenger matters. The exclusion of arbitration to passenger related claims[57] in the 1999 Montreal Convention finds an explanation in the wish to protect passengers from expensive technical procedures, as noted in the *Travaux Préparatoires* of the 1929 Warsaw Conference:

> L'arbitrage commercial s'adresse à des personnes expérimentées qui savent ce qu'elles font, qui ont les moyens de choisir un arbitre; tandis que quand une compagnie de navigation aérienne met au bas du billet: toutes les difficultés seront réglées par arbitrage, le voyageur ne sait même pas ce que cela veut dire. Il est obligé d'aller chercher un arbitre. Les tribunaux sont institués pour la sau-

53 *See*, WTO Secretariat, *A Handbook on the WTO Dispute Settlement System* (2nd edition, Cambridge University Press, 2017).

54 *See*, Eugène Assepo Assi, *La Cour commune de justice et d'arbitrage de l'OHADA: un troisième degré de juridiction?*, 57 Revue Internationale de Droit Comparé 943-955 (2005).

55 *See*, Clement Petersen, Jens Schovsbo, "Decision-making in the Unified Patent Court: ensuring a balanced approach", in Geiger Christophe, e. a. (eds), *Intellectual Property and the Judiciary* 231-254 (Edward Elgar Publishing, 2019).

56 1999 Montreal Convention, Article 34.

57 However, nothing seems to prevent a passenger claim from being subject to arbitration, provided the arbitration clause be agreed *a posteriori*. *See*, ICAO Doc 9775, International Conference on Air Law (Convention for the Unification of Certain Rules for International Carriage by Air), Montreal, 10 – 28 May 1999, volume I, *Minutes*, Montreal 1999, p. 188.

> vegarde des gens; s'il est permis à des commerçants de régler entre eux leurs affaires, il faut, pour protéger les individus, qu'il ne soit pas possible de déroger à la protection judiciaire par un simple arbitrage.[58]

The more likely reason to justify the absence of a common Court for litigation relating to the 1999 Montreal Convention is that it is politically difficult to imagine depriving a consumer of his or her right of action before domestic Courts, which are his or her natural jurisdiction. Moreover, it cannot be expected that judges sitting in such a common Court be familiar with every possible domestic legislation.

Nonetheless, these arguments do not prevent the creation of a common Court that could be seized on a preliminary ruling basis, as the analysis will examine below.[59] But, to fully achieve the purposes of the Conventions, specific interpretation rules must still be agreed upon.

5.3.2 The Formulation of Interpretation Rules

While a common Court would undoubtedly promote the uniform interpretation of the provisions of the 1999 Montreal Convention, this scenario appears unlikely to happen. In terms of common interpretation rules, the examination and conclusions made in the previous chapter show that the formulation of the principles of interpretation of the 1969 Vienna Convention is not sufficiently self-explanatory to fully ensure a uniform application of the 1999 Montreal Convention.[60]

In order to achieve the envisaged uniformity, clear interpretation rules should be added to the 1999 Montreal Convention.

This idea is not revolutionary: many international instruments have already set out hermeneutical provisions.[61] For example, Protocol No 2 to the 1988 Lugano Convention on Jurisdictions and the Enforcement of Judgments in Civil and Commercial Matters[62] sets out under its Article 1 that:

> The courts of each Contracting State shall, when applying and interpreting the provisions of the Convention, pay due account to the principles laid down in any relevant decision delivered by courts of the other Contracting State concerning provisions of this Convention.

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58 ICAO Doc 7838, II Conférence Internationale de Droit Privé Aérien, 4-12 Octobre 1929, *Procès-Verbaux*, Varsovie, 1930, p. 86.

59 *See*, section 5.3.3.

60 *See*, section 4.3.3.7.

61 *See*, João Ribeiro-Bidaoui, *The International Obligation of the Uniform and Autonomous Interpretation of Private Law Conventions: Consequences for Domestic Courts and International Organisations*, 67 Netherlands International Law Review 142 (2020).

62 Convention on Jurisdictions and the Enforcement of Judgements in Civil and Commercial Matters, 16 September 1988, Lugano, UNTS, 1659, I-28551, entry in force 1 January 1992. This convention was recast in 2007 and kept this provision.

The 2016 UNIDROIT Principles of International Commercial Contracts[63] provides under their Article 1(6)(1) that:

> In the interpretation of these Principles, regard is to be had to their international character and to their purposes including the need to promote uniformity in their application.

The 1980 United Nations Convention on Contracts for International Sale of Goods (hereinafter 'CISG') also provides under its Article 7 (1) that:

> In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.[64]

In terms of interpretation guidance, this convention is also supplemented by an Explanatory Note prepared by the UNCITRAL Secretariat.[65] Its uniform application is also reinforced by a dedicated case law database, publicly available on the UNCITRAL website.[66]

Professor Olivier Cachard underlined that the absence of similar provisions for the 1999 Montreal Convention notably stems from the fact that the CISG Convention is applied by international arbitrators without a specific *forum*, whereas, in the case of the 1999 Montreal Convention, such a uniform interpretation would be implicit and would not require special inclusion.[67] However, contrary to his view, in other Uniform Instruments in the transport sector, such an inclusion was made. For example, Article 2 of the Rotterdam Rules provides that:

> In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

Article 8(1) of the COTIF, as amended by the 1999 Vilnius Protocol, provides that:

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63 UNIDROIT, <https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016> (accessed 1 October 2020). On this topic, *see*, Jürgen Basedow, *Uniform law and Conventions and the UNIDROIT Principles of International Commercial Contracts*, 5 Unif. L. Rev. 129 (2000); Christina Ramberg, *The UNIDROIT Principles as a means of interpreting domestic law*, 9 Unif. L. Rev. 669 (2014); Olaf Meyer, *The UNIDROIT Principles as a Means to Interpret or Supplement Domestic Law*, 21 Unif. L. Rev. 559 (2016).

64 United Nations Convention on Contracts for International Sale of Goods, 11 April 1980, Vienna, UNTS, I-25567, 1489, entry in force 1 January 1988.

65 On this topic, *see*, Paul Schiff Berman, *The inevitable legal pluralism within harmonization regimes: the case of the CISG*, 21 Unif. L. Rev. 23 (2016); Martin Gebauer, *Uniform Law, General Principles and Autonomous Interpretation*, 5 Unif. L. Rev. 683 (2000).

66 UNCITRAL, <https://www.uncitral.org/clout/> (accessed 29 October 2019).

67 Olivier Cachard, *Le transport international aérien de passager* 169 (Les livres de Poche de l'Académie de droit international de La Haye, 2015).

> When interpreting and applying the Convention, its character of international law and the necessity to promote uniformity shall be taken into account.

This is also the case in other private air law conventions, such as under Article 5(1) of the 2001 Cape Town Convention:

> In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.[68]

This crafty idea, with respect to the interpretation of this convention, is that it also receives assistance from Official Commentaries[69] published regularly and from a dedicated on-line journal.[70] Such additional help may also come useful for interpreting the 1999 Montreal Convention.

Formal inclusion of specific interpretative guidance will obviously not solve every difficulty that a uniform application of the 1999 Montreal Convention raises, but it would be a useful tool for Courts. As a reminder, the pioneers of air law had a clear intention to adopt a specific international convention on the interpretation of private international air law conventions.[71]

In the absence of the adoption of common specific interpretation rules, Courts should be encouraged, when interpreting Uniform Instruments such as the 1999 Montreal Convention, to further detail their reasoning and the interpretation mechanisms they used, in order to assist other Courts seeking guidance. They are also strongly invited to refer to foreign case law when interpreting the Conventions. Recourse to foreign case law when interpreting international instruments has indeed been endorsed by the International Court of Justice in *Ahmadou Sadio Diallo*.[72]

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68 On this subject, *see*, Thomas Traschler, *A Uniform application of Article 13 of the Cape Town Convention via an autonomous interpretation*, 21 Unif. L. Rev. 640 (2016).

69 *See*, for example, Roy Goode, *Cape Town Convention and Aircraft Protocol Official Commentary* (UNIDROIT, 4th edition, 2019).

70 *See*, Cape Town Convention Journal, <https://ctcjournal.net/index.php/ctcj> (accessed 29 October 2019).

71 *See*, section 3.3.3.3.

72 International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgements*, I.C.J. Reports 2010, p. 639, at 66: '[…] Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty. The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled'.

5.3.3 Intermediary Solutions

Another approach could be for any specialist in the area to intervene in foreign Court proceedings – whenever the jurisdiction seized allows it – as an *amicus curiae* to defend the aim of uniformity of the Conventions.[73] Without a designated effective guardian of the 1999 Montreal Convention, each ratifying States should be the watchdog of its ambition. But, aside from being utopian, this would raise other issues, such as the awareness of the existence of litigation and linguistic issues resulting from the lack of a common mutual language.

Nevertheless, in the absence of a common Court, common specific interpretation rules, or even the possibility to act as an *amicus curiae*, an official body of experts[74] could be created to act as a *collegium jurisconsultorum* and deliver advisory opinions.[75] Should the ICAO[76] or any other entity, be prepared to assume this new function, the question would remain how to determine the value of these opinions.

Additionally, mechanisms should be found to encourage Courts to seize, on a preliminary basis, such *collegium jurisconsultorum*. Linguistic issues, as well as a vision of national centrism, could constitute strong barriers to its materialization and it would therefore require communication campaigns to be implemented across ratifying States. The creation of such an advisory body could, however, be implemented without needing to amend the 1999 Montreal Convention, as it could exist in parallel to it and be open to other private air law instruments. The non-binding nature of these opinions would permit a strong and smooth adherence of Courts

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73 Such a mechanism is already implemented in certain jurisdictions, such as in the United States before the Supreme Court.

74 *See*, Euthymène Georgiades, *De la méthodologie juridique pour l'unification du Droit aérien international privé*, RFDAS 379 (1972).

75 A similar approach was adopted by the Hague Conference on Private International Law. Article 8(1) of the Statute of the Hague Conference on Private International Law provides that: 'The Sessions and, in the interval between Sessions, the Council, may set up Special Commissions to prepare draft Conventions or to study all questions of private international law which come within the purpose of the Conference', Source: Hague Conference on Private International Law, <https://www.hcch.net> (accessed 30 October 2019). On this basis, interpretative 'Conclusions and Recommendations' have occasionally been published.

76 Technically, the Council of the ICAO may provide advisory opinions on any matter related to civil aviation on the grounds of its Resolution A1-23. *See*, ICAO, Resolution A1-23: Authorization to the Council to Act as an Arbitral Body, ICAO Doc 10140. But to our knowledge, such a mechanism was never used and only States can seize this arbitral body. *See*, Michael Milde, *International Air Law and ICAO* 184 (Eleven International Publishing, 2008). Moreover, the composition of this arbitral body does not appear to include independent experts in air law, but rather essentially delegates of States who are expected to respect the instructions given from their capital. *See*, Paul Dempsey, *Public International Air Law* 734 (Institute and Center for Research in Air & Space Law, McGill University, 2008).

in this endeavour of uniformity. The composition of such an advisory body might however raise difficulties, particularly if decided at a political level.

In the case where no official public body could establish such an advisory body, initiatives could also potentially come from the private sector. Taking again the example of the CISG, upon the initiative of various academics, the CISG Advisory Council[77] was established in 2001. This informal Advisory Council aims to promote a uniform interpretation of the CISG by delivering opinions upon request. Its members are scholars fluent in different languages that do not represent a specific legal culture or governments. Since its establishment in 2001, it has already delivered twenty opinions. Depending on possibilities offered by each domestic law, certain Courts have expressly relied on their opinion in their decisions.[78]

As academics have already expressed an interest for this type of *collegium jurisconsultorum* with respect to the CMR,[79] the uniform application of the 1999 Montreal Convention could also be widely improved through such an advisory body, be it of a public or private nature, as long as it were independent and composed of highly esteemed legal professionals.

5.4. Prospective Elements Using Artificial Intelligence

5.4.1 A Proposal for a Robotic Court

In her remarkable work on the way the Warsaw instruments were interpreted in various jurisdictions, Dr. Georgette Miller concluded in 1977 that:

> Pushing this to the absurd, the only tribunal qualified to apply a uniform law would be a kind of robot programmed solely with the uniform law.[80]

More than forty years later, her conclusion may no longer be so absurd or unrealistic. It is impossible to ignore the current evolution of technology and particularly that of Artificial Intelligence, which some believe heralds the fourth industrial revolution.[81]

While communication speed has tremendously increased in the last decades, research and development programmes have made a step further

77 CISG Advisory Council, <www.cisgac.com> (accessed 29 October 2019).

78 *See*, Olivier Deshayes, *L'amélioration de l'application et de l'interprétation uniforme des conventions internationales relative au contrat de transport: le cas de la faute qualifiée* 293 (Thesis, Université de Rouen Normandie, 2018).

79 *See*, Cécile Legros, *The CISG Advisory Council: A Model to Improve Uniform Application of CMR?*, 9 European Journal of Commercial Contract Law 27 (2017).

80 Georgette Miller, *Liability in International Air Transport* 351 (Kluwer, 1977).

81 *See*, Nicolás Lozanda-Pimiento, *AI Systems and technology in dispute resolution*, 24 Unif. L. Rev. 350 (2019).

in calculation capacity, offering new technologies that are capable of learning and reasoning in a way close to humans, as further explained in the Appendix to this study.[82] As the whole process of litigation may already be partly de-materialized through online Courts,[83] the development of Artificial Intelligence mechanisms suggests that particular software could, in the future, act as a substitute for judges, or at least, could pre-draft a Court decision based on a rapid analysis of the different sources of law and interpretation tools available.

The following analysis will examine the potential benefits and risks of these new softwares with respect to the quest for further uniformity in the application of the 1999 Montreal Convention.

5.4.2 Benefits

The benefits of recourse to such mechanisms are obvious and numerous. As no judge can pretend to have an exhaustive knowledge of the law, particularly when it comes to air law and foreign case law, such software would provide an immediate solution inspired by all available case law and interpretation tools. For the law consumers, such as passengers, air carriers and insurers, this would also give an insight into the forecast decision without having to await the outcome of litigation proceedings.

It would also achieve the aim of predictability to the highest extent possible, insofar as a common solution could be obtained at pre-litigation level. The remaining degree of unpredictability would be due to the possibility of the human judge deviating from the precomposed decisions of the machine. Finally, in terms of uniformity, the aim would be reached, as the machine would take into consideration all possible sources of law available and each interpretation tool that may exist.

5.4.3 Risks

5.4.3.1 A Multiplicity of Risks

Next to the feasibility of such software and the benefits that could be gained from it, such recourse to machines might pose several risks with respect to the improvement of the uniformity of the 1999 Montreal Convention.

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82 The reader unfamiliar with Artificial Intelligence mechanisms is invited to read this Appendix before continuing any further in this chapter.

83 For example, the British Columbia Civil Resolution Tribunal is an online dispute resolution forum incorporated in the public judicial system. *See*, British Columbia Civil Resolution Tribunal, <www.civilresolutionbc.ca> (accessed 19 February 2021). Said online Court has notably confirmed its competence to hear certain air passengers' claims. *See*, *Serbinenko v. Air Canada*, (2020) BCCRT 1330.

5.4.3.2 *Software Design*

The first category of risk lies with the software design. In order to be acceptable, the software using Artificial Intelligence mechanisms should be unique and designed by a public body, such as the ICAO, or during a diplomatic conference. This would avoid disputes over the nature of the algorithm used, given that, as explained by Adrien van den Branden, algorithms are opinions integrated into code.[84] It would also guarantee that the algorithm was publicly known, with the consequence that its application could be verified at any time in order to detect any possible corruption.[85] Therefore, to avoid these risks, each State would have to play three active roles in this process.

First, all States should participate in this project. Otherwise, there would be a risk of not having a full picture of existing case law and of having a multispeed decision-making process, where certain States would use one system and others would rely on another. This situation would eventually lead to a disproportionated inputs into the software if decisions delivered in non-participating States artificially nourished the system. The challenge, however, would be to allow less developed countries to be able to feed into the system, which would probably require a modernization of their judiciary system in order to use the software and deliver decisions that were readable by the machine.

Second, participants should play an active role in ensuring that every decision and official comment is made publicly available for free in a machine-readable format, in order to ensure every decision can be analysed.

Third, the major risk with respect to uniformity and global predictability would consist in the failure to mutually agree on a common algorithm. As a reminder, the drafting of an international convention faces many hurdles and sometimes the outcome of mutual concessions leads to a lack of clarity. When it comes to the creation of an algorithm, a lack of clarity cannot be tolerated. While the general architecture of the common algorithm may reasonably be accepted by all participants pursuant the interpretation tools described in the 1969 Vienna Convention, the discussions might still be endless with regards to the actual value to be allocated to each parameter.

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84 Adrien van den Branden, *Les robots à l'assaut de la justice – L'intelligence artificielle au service des justiciables* 107 (Bruylant, 2019).

85 This risk was emphasized by the Council of the European Union as follows: '[…] in certain cases, outcomes of artificial intelligence systems based on machine learning cannot be retraced, leading to a black-box-effect that prevents adequate and necessary responsibility and makes it impossible to check how the result was reached and whether it complies with relevant regulations. This lack of transparency could undermine the possibility of effectively challenging decisions based on such outcomes and may thereby infringe the right to a fair trial and an effective remedy, and limits the areas in which these systems can be legally used', Council of the European Union, Council Conclusions, "Access to justice – seizing the opportunity of digitalization", *Official Journal*, 14 October 2020, C-342 I/1, at 41.

The elements of fragmentation analysed earlier show indeed that there remain many divergent views that would need to be reconciled. Here is a sample of various questions that would have to be answered:

- What value, for example out of ten, should be allocated to Supreme Court decisions in comparison to inferior Courts? Should the value allocated to Supreme Court decisions be equal to those delivered by the French *Cour de cassation*, knowing that French domestic law allows a higher percentage of decisions to pass its filter?

- Should some jurisdictions be given a higher credit than others based on the degree of independence of their judiciary system or on the degree of corruption? What factors should be taken into consideration in this deliberation?

- Should recent case law receive a higher score than older one? Should Warsaw case law be integrated; and if so, should it receive the same consideration as Montreal case law?

- Should decisions delivered in one of the authentic languages of the 1999 Montreal Convention be granted a higher score? Should decisions delivered in French, or having been cross-checked against the French version, regarding provisions that have not changed since 1929, receive a higher score?

- Should the decisions that have insisted on a specific purpose of the Convention be considered as equal to those that have taken into consideration all the purposes of the Convention?

This list of examples demonstrates that many delicate questions would have to be raised and solved if a single software using a common algorithm were to be adopted.

5.4.3.3 Software Use by Courts

The next category of risks appears in the use that could be made of such software.

First, there is an initial risk of dominance of common law jurisprudence, given that dissident opinions are equally published, and that the interpretative reasoning behind the highest Court's decision in civil law jurisdictions are for the time being less detailed.

Second, there is a high risk of crystallization of *proforma* solutions if Courts tend to always stick to suggested decisions without deviating from them, and consequently do not feed the system with new decisions.

5.4.3.4 *Software Use by Law Consumers*

The last category of risks consists in law consumers' attitude.

The highest variation in the predictability of a case outcome might result, at least at the beginning of its implementation, from an increase in forum shopping. However, this risk might be mitigated by the existence of more uniformly applied terms and concepts.

In addition, the use of such software by passengers, air carriers and their insurers, may lead to a substantial rise in amicable out-of-Court settlements or recourses to alternative dispute resolution mechanisms. The risk is again that, by avoiding Court proceedings, the machine will not be fed with new and divergent decisions.

5.4.4 Concluding Remarks

The question of whether the implementation and the use of machines using Artificial Intelligence is desirable or not should not be assessed given that technologies do not await general acceptance, and no one has ever succeeded in prohibiting new technologies in the long run.

Machines using Artificial Intelligence are already in use in many industries such as: finance, leisure, sports, medicine, arts, air transport, and the legal sector.[86]

Smart Contracts are increasingly employed.[87] Software aiming at facilitating legal research using Artificial Intelligence is already in use in different jurisdictions.[88]

Air law is also already impacted by these new technologies. Some programmes developed by claims agencies have already automated the production of their Court documents and the extraction of data from third party websites in order to evidence, for example, the reality of weather conditions at a specific airport.[89] In a 2019 interview with a French financial newspaper,

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86 For several examples in the air transport sector, *see*, Ruwantissa Abeyratne, *Legal Priorities in Air Transport* (Springer, 2019); European Aviation Artificial Intelligence High Level Group, *The Fly AI Report – Demystifying and Acceleration AI in Aviation/ ATM*, 5 March 2020, Source: Eurocontrol, <https://www.eurocontrol.int/sites/default/files/2020-03/eurocontrol-fly-ai-report-032020.pdf> (accessed 9 March 2020). *See also*, Appendix.

87 *See*, Riccardo De Caria, *The Legal Meaning of Smart Contracts*, 27 European Review of Private Law 731 (2018). The author acknowledged the existence of myriad possible definitions of smart contracts. He suggests the following definition of 'decentralized smart contract', at 737: '[…] any digital agreement which is (a) written in computer code (thus, a piece of software), (b) run on blockchain or similar distributed ledger technologies (thus, decentralized) and (c) automatically executed without any need for human intervention (thus, smart)'.

88 *See*, for example, in the United States, Ross, <www.rossintelligence.com> (accessed 31 October 2019).

89 On this topic, *see*, Paul Fitzgerald, *Automating the Process of Passenger Claims under the EU Passenger Rights Regime*, The Aviation & Space Journal 2 (October 2018).

a company specializing in European air passenger right claims reported the use of several machines using Artificial Intelligence to, amongst other things, identify the most appropriate Court on the grounds of tens of thousands legal proceedings and to analyse the legal aspects of each claim.[90]

More is then to come. And it is therefore not a surprise that UNCITRAL and UNIDROIT, both known to be active in international law, have jointly initiated an examination of legal issues arising from the use of these technologies.[91]

5.5 Conclusions

The variety of tools that could be implemented to enhance the uniformity of the 1999 Montreal Convention demonstrates that the fragmentation factors examined in Chapters 3 and 4 could be mitigated. Amongst the possible proposals for enhancing uniformity, some do require heavy machinery that would entail a revision of the 1999 Montreal Convention. Such proposals pertain to redrafting points discussed regarding the autonomy and exclusivity mechanisms. Other suggestions could, however, be implemented without amending the current text, although their efficiency would be improved if they were integrated therein. This is particularly the case of the procedural elements examined and the implementation of a centralized database.

A robotic Court would also improve the uniformity of the 1999 Montreal Convention without any changes being made to its provisions, but would only be efficient if a single algorithm was used worldwide.

In the meantime, in order to adhere as much as possible to the aim of the Conventions, Courts should bear in mind that the terms and concepts therein are distinct from those that could possibly exist under domestic law or in other international instruments.

In addition, while recourse should be made to the hermeneutical canons of the 1969 Vienna Convention, significant value should be granted to foreign case law and, as a corollary, eventual deviation from widespread jurisprudence should be well-reasoned.[92]

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90 Les Echos, <https://business.lesechos.fr/directions-juridiques/droit-des-affaires/contentieux/0601825123420-l-intelligence-artificielle-se-met-au-service-des-juristes-d-airhelp-331496.php> (accessed 31 October 2019).

91 UNIDROIT, <https://www.unidroit.org/english/news/2019/190506-unidroit-uncitral-workshop/conclusions-e.pdf> (accessed 31 October 2019).

92 *See*, João Ribeiro-Bidaoui, *The International Obligation of the Uniform and Autonomous Interpretation of Private Law Conventions: Consequences for Domestic Courts and International Organisations*, 67 Netherlands International Law Review 149 (2020).