



LEGAL COMMITTEE – 33RD SESSION

(Montréal, 21 April – 2 May 2008)

Agenda Item 3: Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks

CONTROLLING THE FINANCIAL EFFECTS OF TERRORISM

(Presented by the Chairman of the Special Group on the Modernization of the Rome Convention of 1952 (SG-MR))

1. At its 33rd Session to be held from 21 April to 2 May 2008, the ICAO Legal Committee will consider a draft Convention on Compensation of Damage Caused by Aircraft to Third Parties, in Case of Unlawful Interference. The immediate purpose of the Convention is to ensure reliable compensation to third party victims for their losses while affording, in a uniform way, long-term stable financial protection for the air transport industry, also the unwitting victims of terrorist activity.
2. The draft Convention should be expected to have even broader and far ranging effects. Not only did the attack of 9/11 cause damage to persons and property, but it also produced wider effects on the global economy causing a clear distortion. It is a truism that our economies are sensitive to uncertainty. A reliable and broadly framed system for compensation ready to spring into motion in cases of terrorism involving civil aviation is likely to contribute significantly to the predictability that markets look for in situations of crisis.
3. In addition, by controlling the financial effects of terrorism in the civil aviation sector, one of the objectives of those who target that sector would be removed. Terrorist attacks such as 9/11 are carefully planned not only to strike terror in a population but also with regard to their other effects. If the economic consequences of terrorism involving civil aviation are contained, that sector could become less interesting a target for terrorists. The draft Convention, like The Hague and Montreal security conventions and the technical standards on aviation security may be regarded as elements of an overall plan to curtail terrorist attack on civil aviation.

4. Returning to the Convention's immediate purpose, it is important to note that it is built on the notion of affording all victims full compensation for their actual losses while protecting the innocent actors in the air transport industry. Full compensation to the victims is achieved through a three-layered approach. The first layer of compensation is to be provided by the aircraft operators' insurances to the extent available and affordable. The second layer is provided by a Supplementary Compensation Mechanism and the third, by the States concerned by the incident in accordance with their laws and policies. Some have referred to this non binding layer as the manifestation of the concept of solidarity within a society and between States. The protection of the air transport industry is achieved by excluding the liability of innocent industry participants and by channelling claims up to a fixed and reasonably insurable amount to the aircraft operator involved in the incident.

5. The Supplementary Compensation Mechanism will operate a fund to cover claims not compensated by the first layer. The Mechanism is novel in that it is the first international body to cover terrorism risks, but several well-known systems have been used as models, both with regard to the Mechanism itself and its funding. The Mechanism's fund would be fed by a small departure fee collected in respect of passengers and cargo. Certain studies indicate that the Mechanism would be economically viable at a fee of 1 SDR if the States from two of the major aviation areas join in. Global adherence would make the Mechanism stronger, but that is not necessary. Together the first and second layers would in the present draft provide 3.7 billion SDR coverage per incident.

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