



## **LEGAL COMMITTEE – 33RD SESSION**

(Montréal, 21 April – 2 May 2008)

**Agenda Item 8: Report on work done at the Session**

### **DRAFT REPORT ON THE WORK OF THE LEGAL COMMITTEE DURING ITS 33RD SESSION**

The attached paragraphs 3:1 to 3:5 of the draft Report of the Legal Committee on Agenda Item 3.

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

3:1 The Secretary introduced LC/33-WP/3-1 which contains the summary and texts of the two draft conventions. One of the Rapporteurs, Mr. A. Mutti, presented LC/33-WP/3-4 analyzing the draft Convention on Compensation for Damage Caused by Aircraft to Third Parties. The other Rapporteur, Mr. M. Jennison, then presented LC/33-WP/3-3 containing his Report on the draft Convention on Compensation for Damage Caused by Aircraft to Third Parties in Case of Unlawful Interference (“the Unlawful Interference Compensation Convention”).

3:2 The Chairman sought introduction of other working papers before starting discussions on Agenda Item 3. After ALADA presented LC/33-WP/3-2, Germany presented LC/33-WP/3-5 (Exceptions to the Limitations on the Operator’s Liability (“breakability”)), LC/33-WP/3-6 (Exoneration of Other Service Providers) and LC/33-WP/3-7 (The Supplementary Compensation Mechanism (SCM)). IATA then presented opening remarks, submitting first that a general risks convention was not needed for the reasons explained in LC/33-WP/3-10 which was presented later. However, this observer declared its cautious optimism that a compromise between the due compensation of victims and the safeguarding of the aviation industry could be achieved in an aviation terrorism convention. This would be based on key elements: third-party victims should be treated with compassion and compensated for their monetary losses; such compensation should go promptly to the victims themselves; the funds available for compensation should exceed the assets of the airlines; airlines liability must be subject to a hard cap. This observer therefore agreed with the balanced proposal reflected in the Joint Industry Paper, i.e. LC/33-WP/3-9 as introduced by the Aviation Working Group (AWG).

3:3 One delegate introduced for information of the Committee LC/33-WPs/3-8 and 3-11 which presented the work accomplished so far by the Supplementary Compensation Mechanism (SCM) Task Force: Draft rules of procedure of the Conference of Parties (COP) of the SCM; Draft Regulations of the SCM; and Draft Guidelines on Investment. Such work-in-progress was noted with satisfaction by the Committee and the Chairman invited those who wished so to join and provide input to the Task Force. The introduction by the Air Crash Victims Families Group (ACVFG) of LC/33-WPs/3-12 through 3-15 was deferred.

3:4 After the Delegate of Japan presented LC/33-WP/3-16 (Issues to be addressed with respect to the Procedures for Limitation of the Operator’s Liability), the Chairman proposed that specific proposals therein, as well as in other papers previously introduced, be taken into consideration while the Committee would review the draft instruments clause-by-clause. Meanwhile, the Chairman opened the floor for further general comments. One delegate, as Chairman of the Special Group of the Council, summarized the process that the Group went through so as to produce drafts for the Committee’s consideration. Another delegate, as Vice-Chair of the Special Group, wished to further emphasize the shift of mind that took place in the context of unlawful interference since the previous session of the Committee, from the principle of liability towards the concept of risk allocation.

3:5 One delegation expressed its gratitude for the excellent work of the Special Group, noting that the modernization of the 1952 Rome Convention was an attempt of same importance as the efforts which led to the adoption of the 1999 Montreal Convention, and indicated that any views it would take during the Committee would not prejudge its position at any Diplomatic Conference. Another delegation equally praised the work of the Special Group, while indicating that differing proposals such as those presented in LC/33-WPs/3-5 through 3-7 were certainly worth considering. In view of the points made in LC/33-WP/3-10, it reminded that both draft conventions were for review by the Committee, i.e. including

the General Risks Convention which would be of great importance for its region – Africa – where domestic law was not always effective in this domain; this was agreed by the Council whose decision had to be respected. This delegation was also of the opinion that ICAO should be given an oversight responsibility regarding the SCM.