



International Civil Aviation Organization

SPECIAL GROUP ON AVIATION WAR RISK INSURANCE

SECOND MEETING

Montreal, 28–30 January 2002

REPORT

The material in this report has not been considered by the Council. The views expressed herein do not necessarily represent the views of the Organization.

TABLE OF CONTENTS

TERMS OF REFERENCE

INTRODUCTION

Page

Place and Duration	i-1
Opening Address	i-1
Attendance	i-2
Agenda of the Meeting	i-2
Officers	i-2
Languages and Documentation	i-2

EXECUTIVE SUMMARY	i-3
--------------------------------	------------

REPORT ON THE AGENDA

Item 1: Review of action taken in response to cancellation/reduction of war-risk insurance coverage	1-1
--	-----

Item 2: Possible mechanisms for government and industry action	2-1
--	-----

Item 3: Development of recommendations for consideration by the ICAO Council	3-1
---	-----

Item 4: Any other business	4-1
----------------------------------	-----

Appendix 1: SGWI proposal for an international insurance mechanism	A1-1
--	------

Attachment 1: Synopsis of insurance cover under the mechanism	A1-4
Attachment 2: Specimen policy – Aircraft operators	A1-8
Attachment 3: Specimen policy – Service providers coverage	A1-13
Attachment 4: Premium models	A1-17
Attachment 5: AVN52 loss summary	A1-21
Attachment 6: AVN Clauses 48B, 52D, 52E, 52F and 52G	A1-26

Appendix 2: List of participants	A2-1
--	------

Appendix 3: Agenda of the meeting	A3-1
---	------

Appendix 4: List of documentation	A4-1
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TERMS OF REFERENCE

1. On 22 October 2001, the Council decided to establish the Special Group on Aviation War Risk Insurance (164/1). The terms of reference of the Special Group, as agreed by the Council in view of paragraph 3.2 of C-WP/11705, shall be:

- 1) to review the problem of aviation war risk insurance in light of the present situation; and
- 2) to develop recommendations for coordinated and appropriate assistance mechanisms for airline operators and other affected parties with respect to aviation war risk insurance, to be operated if and when necessary to the extent the insurance markets are unable to provide sufficient coverage.

2. For its work, the Special Group should take into account:

- a) Assembly Resolution A33-20;
- b) State letters EC 2/6-01/94 dated 21 September 2001, EC 2/6-01/101 dated 25 October 2001 and LE 4/64-01/128 dated 14 December 2001;
- c) any other relevant documents; and
- d) the action taken by States and by the industry in relation to this matter.

**REPORT OF THE SECOND MEETING OF THE SPECIAL GROUP
ON AVIATION WAR RISK INSURANCE (SGWI/2)**

1. Place and Duration

1.1 The second meeting of the Special Group was held at the Headquarters of the International Civil Aviation Organization in Montreal from 28 to 30 January 2002.

2. Opening Address

2.1 The **President of the Council, Dr. Assad Kotaite**, opened the meeting by extending a warm welcome to all delegations and observers attending this meeting.

2.2 He referred to the first meeting of the Special Group, where a large degree of consensus was reached on very important matters, principally the need to establish an appropriate international mechanism, whereby aviation war risk coverage would be provided by the aviation insurance industries with multilateral governmental backing for the initial years.

2.3 Alluding to the tragic events of 11 September, he recalled that, following the seven-day notice of cancellation of the war risk coverage given by insurance writers to airlines and other parties, effective 24 September 2001, two State letters dated 21 September and 25 October 2001, respectively, appealed to all Contracting States to cover the risks left open until the insurance markets stabilize. As recommended by the Group and in consideration of the progress made, he signed a further State letter dated 14 December 2001, appealing to all Contracting States to extend or provide such a coverage, as the case may be, until an international mechanism is in place, thereby contributing to the stabilization of the insurance markets. He highlighted that ICAO and IATA were coordinating their action regarding this matter, and he was grateful to the States for their positive response to his appeal.

2.4 He noted that the industry and other parties had prepared a concrete proposal constituting an excellent basis for a favourable outcome if duly substantiated. He recalled in this respect that the Council of ICAO would consider the report and recommendations of the Group at the beginning of March 2002, during its forthcoming 165th Session, and that, meanwhile, the ICAO High-Level Ministerial Conference on Aviation Security to be held on 19 to 20 February 2002, would be duly informed on the outcome of the Group's work.

2.5 Finally, he encouraged the members of the Group to make good use of the valuable time available during the meeting by developing a clear proposal and recommendation for the setting up of a sound scheme which would fill the existing and future gaps in third party war risk insurance coverage, while maintaining a fair balance among the different interests involved, and which could be put in place in a relatively rapid fashion.

3. Attendance

3.1 The meeting was attended by 57 participants, i.e. 39 delegates from 14 Contracting States, 18 observers from 6 Contracting States and 6 organizations. The names of the participants appear in **Appendix 2**.

4. Agenda of the Meeting

4.1 The Director of the Legal Bureau, Dr. Ludwig Weber, also welcomed the participants to the meeting and presented the provisional agenda as set out in **Appendix 3** which was approved by the meeting.

5. Officers

5.1 As elected at the first meeting (SGWI/1), Mr. Simon Clegg (Australia) was Chairman of the Special Group and Ms. Siew Huay Tan (Singapore) was Vice-Chairman. The Secretary of the meeting was Mr. Benoît Verhaegen, Legal Officer, the Deputy Secretary was Mr. Arie Jakob, Legal Officer, and the Assistant Secretary was Mr. Toshiyuki Onuma, Junior Professional Officer, Legal Bureau.

6. Languages and Documentation

6.1 Translation and interpretation services in English, French, Spanish and Arabic were provided by the Language and Publications Branch under the direction of Mr. Y. Beliaev. A list of documentation prepared or made available for the meeting appears in **Appendix 4**.

EXECUTIVE SUMMARY OF OUTCOMES AND ACTIONS ARISING

The following points summarize the key findings and recommendations of the meeting:

1. Based on advice from the insurance industry observers, the SGWI noted that the available commercial market war risk cover was at U.S.\$1 billion in excess of the U.S.\$50 million primary. Nonetheless, this limit was available from only two sources and at premiums which the aviation industry considered far too expensive and unaffordable. This cover was in the main, cancellable on a 7-day notice:
 - a) reflecting the method by which private insurers reassess their risk after a major event and thus protect their investors' capital; and
 - b) highlighting the possibility that future terrorist events may result in a similar withdrawal of war risk insurance cover.
2. Cover for service providers (airports, ground handlers, refuellers, air traffic service providers, etc.) was up to U.S.\$150 million only and on similar terms. Service providers solely performing security screening functions remained unable to obtain any war risk cover. The renewal of many reinsurance treaties in January 2002 did not increase the basic U.S.\$50 million limit. It was instead solidified by re-insurers imposing this same limit on insurers. This situation is unlikely to change significantly in the next twelve to eighteen months.
3. For the medium term, the SGWI recommended that ICAO facilitate an international mechanism whereby aviation war risk coverage would be provided by a non-profit company with multilateral government backing.
4. The company's sole purpose would be to offer third-party war risk liability cover up to U.S.\$15 billion in excess of U.S.\$50 million per insured. The excess limit would progressively increase to enable a return to the market.
5. The company's insurance cover would be available to the entire aviation sector¹ (including domestic and international operations) as well as equipment lessors, financiers and manufacturers of any ICAO Contracting State that voluntarily joins the scheme.
6. The amount of the initial capitalization would depend on the company's location and the insurance regulatory requirements for that jurisdiction. This capital would be provided through financing arranged by the aviation industry (through their representative organizations) and not by participating States.
7. The scheme would commence once a sufficient number of States agree to participate, whose ICAO contribution rates add up to at least 51%.
8. Participating States would have a controlling interest via the statutes and board of the Company, e.g. in decisions relating to primary/excess limits, borrowings, reinsurance and other methods of reducing risk to participating States, repayment arrangements to States, etc. The Board of Directors would

¹ i.e. scheduled carriers, non-scheduled operators, cargo operators, general and business aviation, airports, ground handlers, refuellers, ATC providers, RFFS providers, security screeners and other aviation service providers.

include representatives of participating States and ICAO as well those from the participating aviation and insurance industries. To ensure strong corporate governance, there would also be a number of independent directors.

9. Premiums are to be collected from each insured party to build a pool to meet claims under the policies. The targetted premia to be collected in the first year is U.S.\$850 million. The company would normally meet any claims on it through funds accumulated from premiums, reinsurance and possibly other private financing arrangements. Participating governments would be called upon as a last resort only. Should a call have to be actually made, the company would repay the participating States from future increased premiums collected. The normal long time lag between a claim and its settlement would enable premiums to build up and reduce the possibility of a call being made on participating governments.

10. The contributions of participating States, should they be required, would be pro-rated based on ICAO funding percentages². The collective cap for participating States' contributions would be U.S.\$15 billion or such proportion thereof based on percentage of participation. Each State's maximum liability under the scheme would also be capped. The maximum exposure of each State would be their ICAO contribution percentage of U.S.\$15 billion on the basis of 100% participation, this percentage to decrease in proportion to the ratio of participation³.

11. The participation of States as guarantors or "reinsurers of last resort" would be through a legal agreement with the company. ICAO would offer its good offices to facilitate the development and processing of the necessary documentation to establish the mechanism and confirm the participation of States.

12. The initial commitment of each participating State would be three years – States could give a 12-month notice of withdrawal at the end of the second year. When the total claims on the company amount reach the collective cap, any participating State may withdraw from the scheme by giving a 90-day notice.

13. There would be a mandatory review of the scheme five years from its inception to determine whether the scheme should continue or cease. If insurance conditions change, the company may cease operations. This could occur if an international convention or other mechanism limiting third-party war risk liability were adopted by States or if the market returned to provide full cover at reasonable cost and reasonable notice of cancellation. In the event the company ceases to operate, participating States and contributing airlines would share in the distribution of the accumulated capital/premiums.

14. As an additional medium term response, the SGWI recommended that aviation insurers rewrite and separate the various risks covered by the standard aviation insurance clauses AVN48 and AVN52. The paragraphs of these clauses cover a number of lesser political risks such as riots, strikes, civil unrest and government expropriation which the SGWI considered should not be covered by the proposed scheme. These risks are not difficult or impossible for the market to price, in comparison to the difficulties in assessing and pricing the risk associated with war and other risks covered by remaining paragraphs. This will assist firms to meet many mandatory insurance requirements under commercial agreements.

² Thus if a claim requires governments to jointly contribute U.S.\$500 million, and the scheme has 75% participation, a hypothetical state with a 3% ICAO contribution, would make a contribution of U.S.\$20 million (which the insurance company would ultimately repay).

³ Thus a hypothetical state with a 3% ICAO contribution would have a cap of U.S.\$450 million.

15. For the long term, the SGWI recommended priority, expedited preparation of a new draft convention on third party liability and possibly other related mechanisms which takes into account and balances post-11 September 2001 economics, limitations of aviation industry liability for damages arising from war and allied perils or similar unlawful interference and victim protection.

16. The full report of the SGWI, its recommendations and a full explanation of the proposed scheme will be presented to the 165th Session of the ICAO Council in early March 2002.

Agenda Item 1: Review of action taken in response to cancellation/reduction of war-risk insurance coverage

1.1 The Group examined IP/2, presented by International Union of Aviation Insurers (IUAI), describing the state of the aviation insurance market pre- and post-11 September 2001. Further to a question raised by one delegation concerning current availability of war risk coverage, it was clarified that coverage for airlines was offered by two insurers, one of which was a consortium, up to U.S.\$1 billion in aggregate for claims in excess of U.S.\$50 million, under restrictive conditions including a 7-day notice of cancellation.

1.2 It was also confirmed that any event of the same nature as that of 11 September 2001, but not necessarily of the same magnitude or affecting the same sector, could result in an invocation of the 7-day notice of cancellation, most likely in a much quicker fashion to protect the private capital providers. In this context, one delegation considered the current criteria for an invocation of the coverage's cancellation as being too subjective, and suggested to establish more objective criteria therefor. It was agreed that this matter was a very important issue to be discussed under Agenda Item 2.

1.3 It was confirmed that cargo-only operations were insured under different policies, and that the typical premium was U.S.\$100 per cycle. It was also confirmed that no additional premium was required to cover the cargo carried on passenger flights.

1.4 Concerning paragraph 3.2 of IP/2, it was confirmed that, although some coverage might be accessible to security screeners under the umbrella of airports policies, the so called "stand-alone" airport security screeners were generally still unable to purchase the cover due to the extent of their potential liability exposure. On the other hand, one observer believed that there should be no difficulty for air traffic control service providers to have access to the cover. It was also confirmed that the rating of the premium regarding general aviation was not based on passenger volumes but on a percentage of the basic premium for primary coverage which generally amounted to less than U.S.\$50 million.

1.5 Further to consideration of IP/2, actions taken by States after the first meeting of the Group were reported by a number of delegations and one observer to facilitate the discussion. In particular, it was reported that the European Union (EU) member States would in general cease to provide their temporary support mechanism by 31 March 2002 to encourage a return of the market, although it appears some exceptions may be given to those operators for whom there is no commercial cover available. One delegation queried whether these States had considered the potential impact of another cancellation of war risk cover. IP/4 (Revised) presented by the International Air Transport Association (IATA) also contained related information on States' actions.

1.6 One observer emphasized the seriousness of the afore-mentioned close deadlines and that some sustained government actions would be required after March 2002, considering the fact that the insurance market would not come back in the near future to the levels which existed prior to 11 September 2001. This was confirmed by another observer who drew attention to the fact that the reinsurance treaty renewals in January 2002 did not result in any increase of available cover beyond the U.S.\$50 million limit. In fact, this limit has been solidified in the reinsurance treaties. One delegation, supported by other delegations, underlined in this respect that the airline industry in developing States was left with fragmented or no governmental support. In this connection, the Chairman stressed that the international community should develop a practical proposal for the medium term, which would ensure continuity of services and which would likely attract necessary support and participation, should the commercial market not return.

Agenda Item 2: Possible mechanisms for government and industry action

2.1 The Group was invited to provide comments on WP/2, and the proposed scheme set out therein, presented by the London Market Brokers Committee (LMBC) in conjunction with Airports Council International (ACI), International Air Transport Association (IATA) and International Coordinating Council of Aerospace Industries Associations (ICCAIA). This paper was prepared in response to an agreed action item at the first meeting of the Group (SGWI/1).

2.2 Three observers fully supported the scheme outlined in WP/2 and expressed the view that it represented a simple yet comprehensive solution beneficial to both the airline industry and governments. Support in principle was also expressed by two delegations. Another delegation insisted on the need to create circumstances under which the private market would ultimately re-emerge and take over this type of coverage.

2.3 Two delegations queried whether the proposal took sufficient account of the premise to rely, to the extent possible, on traditional insurance mechanisms. In this context, the presenter of WP/2 explained that the scheme had been based on the guiding principle of a quick accumulation of funds through premiums collection so that a pool could be established that could meet a claim as soon as possible. This would minimize the need for any payment from participating governments.

2.4 One delegation expressed its concern that there was currently no uniform method with respect to the levying of a surcharge for war risk insurance cost and the like, since some carriers collected the monies as a separate tax whereas others incorporated the surcharge as part of the airfare. On this point, it was explained that the surcharge provided for under the scheme represented the amount which the air carrier would be actually required to pay as a premium, and that it remained an operational decision for the air carrier as to how this charge could be implemented.

2.5 In the ensuing discussion related to the scheme set out in WP/2, several delegations queried the appropriateness of basing the premium charges on a per-passenger segment basis only. A view was expressed that charging could be on cargo carried as well. Several delegations stated that their preference was for all parties insured (i.e. including airports and service providers) to pay premiums rather than nominal administration fees. The presenter of WP/2 explained that the per-passenger segment charge appeared to be the most practicable and simple basis therefor. The Chairman added that alternative proposals could be considered, provided they equally permit the necessary accumulation of funds of approximately U.S.\$850 million, which was the targeted amount in the first year based on 1.7 billion passenger segments per year at U.S.\$0.50 per passenger segment.

2.6 Pursuing on the per passenger charge, several delegations expressed the view that it would place low-cost and charter carriers in a disadvantaged position, and one delegation suggested instead to consider a charge based on the various categories of aircraft. Another delegation was of the opinion to also take into account the varying risk levels among the member States of ICAO and believed that some guidance in this respect could be obtained from the information contained in Appendix G of the working paper. In this context, one observer expressed the view that a differentiated charging system may be more difficult to establish due to insufficient data regarding claims history for non-airlines. In relation to the suggestion for regional risk-based pricing, two delegations observed that the 25-year claim history listed events in all parts of the world. While acknowledging that certain refinements to the method of charging may be needed, two observers stressed the need for a simple solution allowing a swift implementation of the scheme, and

expressed the view that some of the above concerns could be addressed by the Board of the reinsurance vehicle for more detailed consideration, possibly further to some preparatory work which could be undertaken by a steering committee of the Group, where more detailed consideration could be given to the development of appropriate bases for charging premium for all insured parties.

2.7 In the ensuing discussion, many delegations raised the point of an overall liability cap under the scheme, considering that any governmental and budgetary approval process would require a clear understanding regarding the actual level of exposure of States. In this regard, the presenter of WP/2 stated that the envisaged premium adjustment feature under the scheme, coupled with the long time gap between a claim and payment of settlements and the diluted risk of States, would in practice already work as a cap. In this context, two delegations wondered whether the scheme would be more acceptable if it provided for the possibility for States to withdraw from participation, either based upon the expiry of a certain time period or once a certain level of financial commitment had been reached. This idea was also supported in principle by another delegation which felt that the proposed scheme represented a rather substantial change from the current practice. In this context, one observer recalled that the proposed scheme was only conceived as an interim solution pending the adoption of a new international legal framework regarding third-party liability for war risks, and that any governmental exposure under the scheme would only exist for a limited period of time.

2.8 In response to a number of queries concerning some modalities of the scheme, two observers expressed the view that issues such as re-payment of contributions to participating governments following a loss be best left for consideration by the Board referred to in paragraph 5 of Appendix B to WP/2, as these elements could only be addressed if and when an actual loss had occurred. Nonetheless, it was intended that contributions by participating governments would be on a “last resort” basis as the company would seek private financing should the accumulated and adjusted premiums together with investment income be insufficient.

2.9 In relation to the composition of the Board, several delegates and observers mentioned the need for a broad representational spread and the requirement to act in the interest of all stakeholders, particularly governments. Another delegation mentioned that the Board required sound economic expertise and adequate supervision. Referring to the organizational aspects of the scheme, one delegation considered it necessary for the credibility of the system that ICAO be closely involved in its establishment. The Secretary also stated that ICAO could play an active role in this context, including at the level of the above-mentioned Board. The Chairman further explained that ICAO would not enter into a direct agreement with the insurance vehicle, but rather act so as to ensure that the participating States’ interests would be protected at the level of the Board.

2.10 The Group thereafter continued its discussions with respect to certain modalities of the proposed scheme in WP/2.

2.11 One delegation questioned the rationale behind the envisaged repatriation of capital and retained income of the fund, on the winding up of the company to both airlines and governments on an equal basis, given that only States would be required to provide reinsurance under the scheme. An observer explained that airlines would not be able to pass on the full premium payable under the scheme to the ultimate consumers in view of advance ticket sales and commissions payable for sale of tickets. Since airlines would have to pay for some portion of the premium out of their own finances, the return of an equal portion of the retained capital and income to the airlines was reasonable. After further discussion, the Chairman noted that this issue, as well as some other modalities of the proposal, required further

consideration. Two delegations raised queries regarding the U.S.\$0.50 premium envisaged under the scheme; one of these delegations assessed the amount as being fairly low and, in a similar vein, the other delegation wondered whether this amount would not prove to be a disincentive for the commercial insurance market. One observer reminded the Group that the premium was not set on an actuarial basis, and that it therefore required an ex-post assessment, as set out under the scheme.

2.12 In order to facilitate further work by the Group and in light of the views which had been expressed, the Group reviewed key elements of the proposed scheme, and in the ensuing discussion several main areas of concern were identified. The first aspect related to the required level of States' participation for the purpose of the commencement of underwriting. In order to enhance the acceptability of the scheme, the Group considered it further necessary to introduce an overall liability cap. As a third point, as far as the "exit strategy" was concerned, the Group identified the need to progressively facilitate the re-emergence of the commercial insurance market, possibly through an gradual increase of the primary cover during the lifetime of the scheme. Several delegations supported early involvement of commercial re-insurers as a way to promote commercial insurance involvement and to reduce the risk for States. The Group considered it also necessary to revisit the basis for the charging of the premiums, as well as the required level of capitalization under the various scenarios outlined in paragraph 3 of Appendix B to WP/2.

2.13 One delegation then emphasized the fact that, while it would support in principle the general idea of the scheme as proposed in WP/2, several important issues still had to be revisited and any final decision as to participation in any scheme will have to be taken at governmental level, evaluating the respective prospects for users on the one hand and taxpayers on the other.

2.14 On the premium issue, one delegation stated that it would agree in principle, for the sake of simplicity, that collection would be carried out by airlines from passengers, provided that the costs of such collection would be added to such fees amounting to U.S.\$0.50 as contemplated so far. It was further clarified by the Chairman and confirmed by an observer, that such fees would be paid to the insurance scheme by airlines and that the latter would have flexibility as to the method and the amount of collection. One delegation also suggested that the U.S.\$0.50 per passenger premium should be a minimal figure, likely to increase but not decrease, so as to permit the re-building of the fund should any major loss arise, without having to call the governmental backing. Another delegation supported this position, which would ensure that the scheme would not distort the market competition. One observer supported by another also noted that, while the excess point for primary coverage from the market would most likely stand at U.S.\$50 million for the foreseeable future, such limit for the purpose of the scheme might be increased to U.S.\$100 million in January 2004 and U.S.\$150 million in January 2006, or even move to higher figures.

2.15 One delegation then requested more clarification as to the exact financial commitment which is expected from participating States, notably in terms of capitalization of the scheme. It was specified by one observer that, although governmental guarantees would certainly help in attracting capital from banks, the governments would not be requested to provide any cash-flow for the capitalization of the scheme, and, that different avenues involving only the industry (through their representative organizations) would be exploring and arranging the financing.

2.16 A concern regarding the terminology used in the description of the insurance vehicle was raised by one delegation, specifically with regard to the word "terrorism", noting that the expression usually used in ICAO and in treaties adopted under its auspices, referred to "acts of unlawful interference". One observer appreciated the comment from the treaty viewpoint but explained that the main objective of the

scheme was to write-back exclusions from AVN48 with reference to AVN52, and such reinstatement would require that coverage reflect policies as excluded, so as to avoid any gap of cover.

2.17 On this question of the wording of the policies, several delegations mentioned that, while AVN52 was also containing write-back coverage for strikes and other risks, the scheme would not be acceptable if the scope of the coverage offered would go beyond war and related risks. One observer found the remark very sensible and advised that some drafting work was in process in the aviation insurance industry in order to review the existing wording on this point, but was unable to predict how soon this major undertaking would be completed. Another observer agreed that any rewording of policies would be part of any long-term solution, but insisted that for any medium-term solution, the whole exclusion under AVN52C should be reinstated through the scheme, in order to avoid any gap in the coverage which could interrupt services, in view of national regulatory requirements. The Group agreed that as a separate medium-term action, the insurance industry should move to separate the risks covered by AVN52 into separate clauses as quickly as possible. These risks did not appear difficult or impossible for the market to price, in comparison to the difficulties in assessing and pricing the risk associated with war and other risks covered by remaining paragraphs. This rewrite would assist firms to meet many mandatory insurance requirements under commercial agreements.

2.18 The Group confirmed that, airlines, including non-scheduled, general and regional operators, as well as manufacturers, financiers, lessors and airports and other service providers of a State, would have access to war risk insurance cover under the scheme in excess of U.S.\$50 million primary coverage, if that State joined the scheme. Concerning the possibility of available coverage from the market for certain categories of such potential insured parties, it was further recalled that the 7-day cancellation notice would definitely remain in those cases, and likely to be activated much sooner than on the previous occasion, while much better conditions would be offered by the scheme in this respect, through the proposed 90-day notice. It was added that, should certain potential insured not hold primary coverage for U.S.\$50 million, technical solutions might easily be found to accommodate them, and that this would be an implementation issue. However, one delegation wondered whether the inclusion of certain parties such as service providers would not lead to accumulation of claims pertaining to the same occurrence.

2.19 The delegation of Brazil then presented WP/5, which was supported by another delegation. One observer agreed that the cap issue as addressed in the paper would be a critical point for any agreement on the scheme. The presenter of WP/2 also confirmed that the cargo component or the situation of general aviation could be taken into account in one way or another for the basis of premiums, although no simple system could be absolutely fair.

2.20 Commenting on a previous proposal to take a geographical risk-rating into account for the establishment of the premiums, one delegation insisted on the fact that any such rating would be extremely difficult to carry out, and it was generally agreed by the Group that this option should not be retained since the intent was to ensure continuity of civil aviation transport which was a global industry, and that the principle of solidarity should accordingly underlie the scheme.

2.21 One observer summarized the main points at issue in view of preceding discussions, i.e. the entry point or minimum level of States' participation, which could be set between 50 and 55% of ICAO apportionment figures, and the level of the cap for States' backing for claims, which could be established at U.S.\$15 billion on the basis of 100% participation. There was a clear consensus that the scheme should provide for such an overall cap.

2.22 For its consideration of long-term solutions, the Group then turned to WP/3 presented by Germany, WP/4 presented by IATA and ICCAIA, WP/6 presented by Finland, Germany, IATA and ICCAIA, and IP/3 presented by Finland. A number of delegations and observers supported the idea that a new Convention addressing third-party liability for war risk would be necessary. Several delegations expressed their view that a new convention should establish an overall regime rather than covering only third-party liability for war risks. Several delegations highlighted that other mechanisms such as model domestic law should not be excluded. On the other hand, one observer emphasised the view that third-party liability for war risks was conceptually different from other types of liabilities, since airlines themselves could not avoid the risk by their own efforts. However, this observer suggested that WP/6 offered a good basis for a solution in this regard.

Agenda Item 3 : Development of recommendations for consideration by the ICAO Council

3.1 As regards the medium term, the Group examined WP/7 presented by the Chairman, the Vice-Chairman and the Secretariat. The Chairman clarified that WP/7 was not the report itself, and that any final recommendations would be duly shaped into the appropriate format for report to the ICAO Council. In the course of the deliberations, the Chairman also noted that the Group was developing its recommendations in the spirit of international solidarity but that the Group's proposals would not bind the individual delegations.

3.2 At the beginning of the discussion, one delegation stated that its government was not favouring interventions on the insurance market, and further discussion would be necessary to decide whether to join the scheme or not. In particular, this delegation felt that it should be further examined whether this mechanism would foster the recovery of the insurance market, leading to the withdrawal of governmental intervention. The position of this delegation was supported by another delegation.

3.3 One delegation requested to express the specific principle that the envisaged company would normally meet any claims through the funds raised by the premiums, while participating governments would be called upon to contribute only if this was not sufficient. This was agreed, noting the comment of one observer that such accumulation of funds from premiums, without having to resort to States' back-up, is a realistic perspective considering the period of time which usually lapses between occurrences and payment of claims.

3.4 Concerning paragraph 1.1 of WP/7, one observer pointed out that a limit for the drop-down cover, namely U.S.\$2 billion, should be mentioned. It was also agreed that, for the sake of transparency, the term “non-cancellable” should be supplemented by a footnote to detail the conditions under which cancellation would nevertheless be activated (a 90-day notice refers). As regards the character of the company, two observers further requested to specify that it would be a non-profit entity, and the Group endorsed that view.

3.5 In pursuance of this character of the scheme, one delegation and one observer expressed the view that the insurance vehicle should exclusively cover the field which was not commercially available. In their views, even in case of excess of U.S.\$50 million, the cover should be provided only by commercial markets if airlines concerned could obtain adequate policies therefrom. In this regard, one delegation made an observation that it should also be necessary to encourage airlines to resort to the commercial markets as much as possible, such as through discount premium rates for the airlines who would have purchased overlapping policies from commercial markets. In this context, one observer pointed out that the view of this delegation was duly reflected in paragraph 5.6 of Appendix A to WP/2.

3.6 Concerning paragraph 1.2 of WP/7, one observer requested to specifically include “business aviation” under “general aviation” in order to reflect this frequent mode of operation in the aviation industry, and this was agreed by the Group.

3.7 As regards paragraph 1.3 of WP/7, the Group discussed the meaning of “the aviation industry participants”. It was clarified that this would realistically refer to the representative organizations of the aviation industry and that it was intended that governments would not be involved in providing the start up capital. Two delegations expressed the view that governments should specifically be excluded from the parties involved in the capitalization of the scheme, and this was agreed by the Group.

3.8 With respect to the three cities cited as possible location for the seat of the company, one observer explained that all were well established insurance centres. New York was envisaged for symbolic reasons without need to mention, London was the historic centre of insurance markets, whereas Bermuda was regarded as one of the best place for insurance capital formation. This observer continued, however, that any place would be agreeable if found practical from the view point of the tax environment and suggested that this comment should be reflected in the recommendation.

3.9 Concerning paragraph 2.1 of WP/7, one delegation suggested to attach a table illustrating the conditions for minimum participation by States. The question of the entry level was also discussed, and the simple majority principle (51%) was eventually supported.

3.10 Concerning paragraph 3.1 of WP/7, three delegations expressed their views that a direct contract between governments and the insurance company would be difficult to envisage, and it would be desirable that ICAO would offer its good offices to facilitate the development of agreements regarding the States' participation in the scheme.

3.11 As regards paragraph 3.2 of WP/7, it was confirmed that the maximum total liability of each participating State would amount to U.S.\$15 billion on the basis of 100% of participation by States, and that this figure would be decreasing in proportion to the level of participation (e.g. 66% of participation would lead to a total cap amounting to U.S.\$10 billion). It was agreed that some examples should be provided in the report, to facilitate correct understanding of this matter.

3.12 Concerning paragraph 3.3 of WP/7, one delegation confirmed the view that the governments would likely not have to spend their budgetary funds for this backing purposes, partly because of the time discrepancy between the date of the events and actual assessment of the call. The Chairman supplemented this view by stating that, should governments nevertheless have to effect any payments, issuing bonds might be an option for some governments that have budgetary legal constraints. It was agreed that any amounts to be paid in excess should be first borrowed at low rate from commercial markets, backed by participating governments guarantees if necessary, rather than be called upon to the governments.

3.13 In relation to paragraph 4.1, the Group clarified that premiums would be collected from each insured party.

3.14 With respect to paragraph 4.3 of WP/7 which lists the options for allocation of premiums, one delegation suggested that, for technical correctness, the flat rate per aircraft be proportional to the maximum take-off weight. This delegation further suggested that the flat rate per ton/km performed should include passengers and freight, to ensure fair treatment of freighters. It was also agreed to merely refer to passenger segment, without mentioning collection of fees by airlines, since other options might be envisaged. Two observers also requested that the flat rate premium would exclude financiers and manufacturers. It was also pointed out by one of the observers that paragraphs 4.2 and 4.3 of WP/7 would need further consideration since the data necessary for detailed analysis to put figures in these paragraphs were not available at this stage. In particular, the basis for setting premiums for airports and service providers required some analysis. It was agreed that further consideration would be needed to finalize these paragraphs, and that issues such as equity, risk assessment and cross subsidy should be duly considered in this process.

3.15 Concerning paragraph 5 of WP/7, one observer pointed out that the relationship between the company and States was not fully addressed. In his view, which was supported by one delegation, very firm control by the governments of the company's management should be necessary from the budgetary and

treasury viewpoints. In this respect, the Chairman also stated that the issue of State involvement in the Board should be resolved through company constitution or other forms.

3.16 As regards paragraph 5.5 of WP/7, one delegation supported by another expressed the view that the words “equally” in the context of re-distribution of funds between governments and industry was not adequate, and it was agreed that the word “equally” be removed, as equity was not necessarily applicable in this respect.

3.17 Concerning paragraph 5.6 of WP/7, one delegation requested that the principle should be emphasized that the market coverage should be increased and the dependency on governments should be decreased.

3.18 For the long term, the Group agreed on the following amended recommendation on the basis of WP/6:

“The SGWI has considered the matter of potential reform to third-party liability rules, taking into account damages caused by acts of war and allied perils or similar unlawful interference and the question of possible limitations of liability. On the basis of that consideration, it is recommended that the ICAO Council send the topic, as rapidly as possible to an appropriate body for high-priority, expedited consideration with these terms of reference:

‘A new draft international convention on third-party liability and possibly other related mechanisms should be prepared as rapidly as possible, taking into account and balancing in an equitable manner: a) the economic situation of the aviation industry in the light of the events of 11 September 2001; b) limitation of aviation industry liability for damages arising from war and allied perils or similar unlawful interference; and c) victim protection.’”

To expedite work, interested parties are invited to submit relevant background materials to that body as promptly as possible.”

Agenda Item 4: Any other business

4.1 The Chairman was delegated the authority for approving the report of the second meeting of the Group, including any necessary update or clarification on the medium term recommendation.

4.2 Concerning the process of the report of SGWI/2, it was confirmed that it would include both recommendations of the Group, i.e. on the long term on the one hand, and on the medium term on the other. As regards the medium-term proposal, it was also agreed that, in conjunction with the Vice-Chairman, the Secretariat and the London Market Brokers Committee, the Chairman would coordinate the review and update of WP/7 and pertinent appendices of WP/2, so as to duly reflect the discussions in respect of Agenda Item 3 within a comprehensive Appendix to the report (see Appendix 1).

4.3 It was also agreed that time was of the essence for implementing a medium-term solution. As regards the next steps, it was clarified by the Chairman that the outcome of SGWI/2 would be presented to the High-level Ministerial Conference on Aviation Security (Montreal, 19 to 20 February 2002) by way of an information paper embodying an executive summary. Thereafter, the Council, during the first half of March 2002 on the occasion of its 165th Session, would consider the report of the Group, including its recommendations, through a working paper to be prepared by the Secretariat. The Director of the Legal Bureau confirmed that subsequent action, such as the possible coordination by the Secretariat of the implementation of any scheme, would obviously depend on the Council decision in this respect. This could extend to further meetings of the Group.

4.4 The Group expressed its thanks to the London Market Brokers Committee for the considerable effort it had made to prepare the proposal set out in WP/2 in such a short period.

APPENDIX 1**SGWI PROPOSAL FOR AN INTERNATIONAL INSURANCE MECHANISM****1. PROPOSED INSURANCE ENTITY**

1.1 A non-profit company would be formed for the sole purpose of offering third-party war risk liability insurance cover in excess of U.S.\$50 million per Insured up to U.S.\$1.5 billion. It would automatically adjust to additionally provide passenger war risk liability cover and would also drop-down to cover the primary U.S.\$50 million should the commercial market withdraw such cover. In this latter case, the limit of cover would be U.S.\$2 billion.

1.2 The company would normally meet any claims through funds accumulated from premiums and possibly other financial mechanisms, while participating governments would be guarantors of last resort only.

1.3 The insurance cover to be provided by the company would be available to the entire aviation sector (including scheduled and non-scheduled operators, cargo operators, general aviation including business aviation, airports and service providers) and include domestic and international operations as well as equipment lessors, financiers and manufacturers of a State that joins the scheme.

1.4 The amount of the initial capitalization would depend on the location of the company¹. This capital would be provided through financing arranged by the aviation industry participants and not by participating States (unless the latter would wish to do so). If required, loans for the initial capitalization may be backed by participating States' guarantees but other possible sources of finance should first be explored.

2. COMMENCEMENT

2.1 The scheme would commence once a sufficient number of participating States agree to participate, the sum of whose ICAO contribution rates amount to at least 51%. For respective figures of ICAO Contracting States, see Assembly Resolution A33-26: *Assessment to the General Fund for 2002, 2003 and 2004*.

3. PREMIUM

3.1 Premiums are to be collected from each Insured party to build-up a pool to meet claims under the policies. The pool will distance participating States from having to make cash contributions to the company in the event of a claim.

¹ New York, London and Bermuda as examples of well known insurance industry locations were mentioned, or any other place offering favourable tax environment.

3.2 The total amount of premiums to be collected in the first year is targeted at U.S.\$850 million (equivalent to a premium of 50 cents per passenger segment based on total passenger segments of 1.7 billion). The premium for subsequent years would be kept at approximately the same level, provided there were no losses. For further details, reference is made to paragraph 6.3 of Attachment 1 hereto.

3.3 Options for allocation being considered:

- a) per passenger segment;
- b) flat rate per departure flight;
- c) flat rate per aircraft proportional to the maximum take-off weight;
- d) flat rate per ton/km performed, including passenger and freight; and
- e) flat rate premium (airports, service providers and others).

3.4 In addition to premiums, a policy fee of U.S.\$2 500 will be collected from each policy holder as referred to in paragraph 1.3.

3.5 In the event of a major loss and payout, the company may adjust upwards the premiums upon a 30-day notice.

4. GOVERNMENT BACKING

4.1 Participating States would act as guarantors or “reinsurers” through a legal agreement with the insurance company. ICAO would provide assistance to facilitate the development and process of necessary documents to establish the scheme and confirm the participation of States. The contributions of participating States, should they be required, would be pro-rated based on ICAO funding percentages. Participating States, directly and/or through ICAO, would be represented on the Board of the Company.

4.2 Each State’s maximum liability under the scheme would be capped. At this stage the total cap, if all ICAO States participate in the scheme, is proposed to be U.S.\$15 billion (sufficient to meet 10 maximum claims) this figure to decrease in proportion to the ratio of participating States (e.g. 66% participation would lead to a cap of U.S.\$10 billion). The maximum exposure of each State would be their ICAO contribution percentage of U.S.\$15 billion on the basis of a 100% participation.

4.3 If following a loss the company requires funds to be advanced from the States’ guarantees to meet claim obligations, the company would repay these monies through increased premiums (see below), or by any other avenue such as low-rate loans from commercial markets. Repayment of funds owing to States would have priority.

5. DURATION OF GOVERNMENT BACKING

5.1 The initial commitment of each participating State would be three years. States could give a 12-month notice of withdrawal at the end of the second year.

5.2 When the total losses and payout of the company reach the cap (see paragraph 4.2), any participating State may withdraw from the scheme by giving a 90-day notice.

5.3 There would be a mandatory review of the scheme five years from its inception to determine whether the scheme should continue.

5.4 If insurance conditions change, the company may cease operations. This could occur if an international convention or a mechanism limiting third-party war risk liability were adopted by States or if the market returned to provide full cover at reasonable cost and reasonable notice of cancellation.

5.5 In the event the company ceases to operate, participating States and contributing airlines would share in the distribution of the accumulated capital/premiums. (As noted in paragraph 4.3, the insurance company has to first repay any outstanding funds advanced by governments.)

5.6 The excess of the policy would progressively increase every two years from U.S.\$50 million to U.S.\$150 million to encourage increased participation by the primary commercial market so as to ensure corresponding decrease of governmental involvement. Additionally after two years, if the company has accumulated sufficient premium reserves, it would be required to take advantage of any reinsurance cover available at reasonable cost as determined by the Board and the States' representatives thereon.

6. DETAILS AND REMAINING ISSUES

6.1 A revised Appendix A of SGWI/2-WP/2 and other pertinent information are at Attachments 1 to 6.

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ATTACHMENT 1**SYNOPSIS OF INSURANCE COVER UNDER THE MECHANISM****1. SCOPE OF COVER**

1.1 Aviation War and Other Perils Liability Insurance based on Extended Coverage Endorsement Aviation Liabilities AVN52D and AVN52F writing back paragraphs a) and c) to g) of War, Hijacking and Other Perils Exclusion Clause AVN48B only except as provided in paragraph 5.3 herein. For the wording of these Clauses, see Attachment 6 of Appendix 1.

1.2 Specimen policies are in Attachments 2 and 3 of Appendix 1.

2. COMMENCEMENT

2.1 The scheme will commence once sufficient numbers of Contracting States agree to participate, the sum of whose ICAO contribution rates amounts to at least 51%.

3. PERIOD

3.1 Continuous contract commencing date to be agreed subject to a 12-month notice of cancellation by any participating Contracting State to Insurer, not to be given before second anniversary date of scheme inception.

3.2 Full scheme review by participating Contracting States to be held at fifth anniversary date with option to cancel/suspend scheme 90 days thereafter.

3.3 Notwithstanding paragraph 3.1, full scheme review by participating Contracting States to be held at any time when the total of incurred losses reaches the loss threshold amount shown in paragraph 5.4 below, with option to cancel/suspend scheme 90 days thereafter.

***Note relating to 3.3** – “Total incurred losses” means all paid losses plus estimated value of all outstanding losses as established by professional loss adjusters/lawyers appointed by the Insurer.*

3.4 In the event of any such cancellation or suspension notice by one or more participating Contracting States whose participation under the scheme totals 25% or more of the total guarantee, then balance of participating Contracting States to be notified and entitled to review their position.

3.5 Individual policies to be issued for the full period of the scheme and to be non-cancellable by either side except as provided in paragraphs 3.1, 3.2 and 3.3 above or for non-payment of premium or the policy fee as provided herein.

4. WHO'S COVERED

4.1 Coverage is intended for the following parties:

-
- any air carrier or other aircraft operator, including business operators and cargo carriers, and any service providers of any participating ICAO Contracting State, and any owned or controlled subsidiary, affiliate or subsidiary thereof as covered under their primary insurance;
 - including any other person or entity that a carrier or operator or service provider may be contractually required to name as an additional Insured under its primary insurance, including but not limited to lessors, financiers and manufacturers, shall be automatically included hereunder as additional Insured and this policy shall automatically incorporate all related contractual requirements; and
 - any lessors, financiers and manufacturers of any participating ICAO Contracting State who purchase their own primary insurance shall, in addition to any contractual protection described above, be entitled to purchase their own policy under this scheme as well,

subject to the respective participating ICAO Contracting State, being not a State under UN sanctions, complying with all necessary instruments of participation.

5. LIMIT OF LIABILITY

5.1 For operators who have cover under AVN52D and AVN52F, the scheme limit will be U.S.\$1.5 billion for any one Insured, any one occurrence, any one aircraft. This limit will apply in addition to the primary passenger and third-party limits currently provided by the commercial markets. A lower limit of U.S.\$500 million will apply for those operators who have cover under AVN52E and AVN52G.

5.2 This limit will apply to each policyholder no matter what their current policy limit may be as everyone will obtain equal benefit under the scheme.

5.3 In the event that primary passenger cover is reduced or withdrawn then the scheme limit will automatically increase to U.S.\$2 billion to allow for such passenger coverage to be included.

5.4 For the purposes of paragraph 3.3 above, if 100% of the Contracting States participate in the scheme then the loss threshold amount shall be U.S.\$15 billion. If the amount of participation is less than 100% then the amount of U.S.\$15 billion shall be proportionally reduced so that each actual participating Contracting States' loss threshold amount remains constant. For example, if the amount of participation is 51%, the loss threshold amount for the purposes of paragraph 3.3 is U.S.\$7.65 billion.

Note relating to 5.4 – It was suggested that the U.S.\$15 billion loss threshold should be in excess of accumulated premiums. In order to minimize States' exposure even further it is recommended that the U.S.\$15 billion loss threshold should apply independently of premiums so that any losses during the 90-day notice period, if invoked, can be offset by the accumulated premiums, which could be very substantial.

5.5 At commencement, the excess point for the scheme should be the U.S.\$50 million aggregate limit currently available under the primary aviation liability insurances for those Insured under AVN52D and AVN52F and U.S.\$10 million for those Insured under AVN52E and AVN52G.

5.6 In the absence of affordable and adequate cover above this primary limit, it would be considerably more beneficial to direct all available monies into building up the scheme funds rather than pay inflated prices for limited cover that can be cancelled on a seven-day notice.

5.7 However, in the event that an increase in the above limit becomes generally available under the primary aviation liability insurances at no identifiable additional cost to policyholders, then the primary limit can be increased upon confirmation from the policyholder that they have the higher limit in effect under their primary aviation liability insurance. Each policyholder shall use their best endeavours to secure such higher limit if available.

5.8 Nevertheless, it is the intention of the scheme to increase the excess point to at least U.S.\$100 million aggregate by 1 January 2004 and to U.S.\$150 million aggregate by 1 January 2006 for those Insured under AVN52D and AVN52F. Similar increases would apply to those for those Insured under AVN52E and AVN52G.

5.9 In the event that the primary limit is reduced or withdrawn then the scheme will automatically operate from the ground up if necessary and include passenger coverage if necessary.

5.10 The scheme should automatically extend to cover from the ground up other air carriers, aircraft operators, cargo carriers and service providers of any participating Contracting State who obtain primary coverage on the basis of AVN52E and AVN52G if such coverage is also cancelled and not replaced. In this instance, the lower limit of liability, premium charge and policy wording that will apply will be determined and announced during the notice period of any such cancellation.

5.11 For those policyholders who have purchased higher limits in the commercial markets and are unable to cancel these policies, then the scheme can apply in excess of such higher limits until the policies expire. Consideration should be given to reducing the premium rate levels for these policyholders until then.

6. SUGGESTED PREMIUM RATE LEVELS

6.1 Ideally the scheme should aim at having accumulated funds to cover one maximum loss (U.S.\$1.5 billion) within a maximum of three years of its inception.

6.2 The higher the level of participation by Contracting States, the lower the premium rate required to generate these funds and the scheme will further benefit if supported from the outset by those Contracting States who generate a high volume of passenger traffic.

6.3 The total amount of premiums to be collected in the first year is targeted at U.S.\$850 million (equivalent to U.S.\$0.50 per air carrier passenger based on 100% of estimated total global air carrier passenger segments of 1.7 billion). If participation of Contracting States is significantly less than 100%, then the above target may be subject to reevaluation.

6.4 Premium models reflecting these rates and variations are contained in Attachment 4 of Appendix 1.

6.5 It is intended that all policyholders under the scheme will pay a premium charge and a policy fee (see paragraph 8 below). A full evaluation of the most appropriate basis to charge cargo operators, general aviation, business aviation, airports, service providers and others is being undertaken and once this is finalized a full list of premium charges can be issued.

6.6 The premium charges for subsequent years of the scheme would be maintained at approximately the same levels established in the first year, provided there are no losses.

6.7 It is intended that contributions by participating States to meet claims to be paid under the scheme over and above accumulated premiums will be repaid to the participating Contracting States from future premiums. Consequently, premium levels will need to be reviewed based on loss experience and the scheme should contain provision for premium review after a minimum of a 30-day notice following a loss. Most liability claims take many months to reach settlement so the actual amount of funding may be reduced or eliminated prior to settlement (see Attachment 5 of Appendix 1).

6.8 Premium rating levels will also need to be reviewed if and when passenger coverage is included.

7. **PREMIUM PAYMENT**

7.1 In order to allow the air carriers time to collate their actual passenger carried statistics it is suggested that premiums are payable within 45 days from the end of each quarterly period. Failure to pay within this time period should automatically attract a 30-day notice to cancel for non-payment.

8. **POLICY FEE**

8.1 All policyholders would be required to pay an annual policy fee of U.S.\$2,500 each to cover administration costs. Failure to pay such fee should automatically attract a 30-day notice to cancel for non-payment.

9. **CLAIMS HANDLING**

9.1 Where primary insurance exists, claims handling will follow primary policy claims adjustment and the scheme shall pay *pro rata* costs in addition to its liability settlements.

9.2 If the scheme is primary, for example if passenger cover is withdrawn as noted in paragraph 5.3, claims handling procedures/adjusters/lawyers shall be as established for the account in question or where none exists as appointed by the scheme administrators. Costs will be incurred in addition to liability settlements.

10. **REINSURANCE**

10.1 Continuous monitoring of the reinsurance markets will be maintained to take advantage of any cost-effective protection that may become available during the period of this scheme. Several major reinsurers who have been approached have indicated an interest to be involved and are willing to undertake a full analytical study of the exposures but only when they know the scheme will definitely commence.

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ATTACHMENT 2**SPECIMEN POLICY – AIRCRAFT OPERATORS
(INCLUDING ASSOCIATED SERVICE PROVIDERS)
COVERAGE****Policy Schedule****Policy No.****Item 1. Name and Address of the Insured****Item 2. Policy Period**

From
To

Item 3. Limits of Liability**(a) Limits of the Primary Policy****(1) Primary Limit**

A combined single limit (bodily injury/property damage) of U.S.\$ [to be completed with the combined single limit carried by the Insured] any one occurrence each aircraft.

(2) Primary Sub-Limit

A combined single limit (bodily injury/property damage) of U.S.\$50,000,000 any one occurrence and in the aggregate in respect of all occurrences in any one annual period of insurance, being within the Primary Limit and not in addition thereto.

(b) Limits of Liability under this Policy

A combined single limit (bodily injury/property damage) of U.S.\$1,500,000,000 any one occurrence each aircraft.

HOWEVER:

- (1) In the event that the Primary Limit stated in (a)(1) above is reduced or the coverage afforded by the Extended Coverage Endorsement (Aviation Liabilities) AVN52D contained in the Primary Policy is cancelled, the limit stated in (b) above is automatically increased to U.S.\$2,000,000,000 any one occurrence each aircraft.
- (2) In the event that the Primary Sub-Limit stated in (a)(2) above is reduced or exhausted this Policy shall apply in excess of such reduced limit or as primary insurance if the Primary Sub-Limit is exhausted.

Item 4. Primary Policy Details

Primary Insurers:

Policy Number:

Item 5. Premium**Item 6. Address for Notices**

All notices pursuant to the terms and conditions of this Policy shall be given to:

WHEREAS the Insured has in force an Aviation Liability Insurance (hereinafter referred to as the “Primary Policy”) containing the Extended Coverage Endorsement (Aviation Liabilities) AVN52D deleting all sub-paragraphs other than (b) of the War, Hi-jacking and Other Perils Exclusion Clause (Aviation) AVN48B.

AND WHEREAS the coverage afforded by the Extended Coverage Endorsement (Aviation Liabilities) AVN52D is subject to the limit as stated in Item 3(a)(1) of the Policy Schedule, in respect of the Insured’s liability to passengers and for cargo and mail, (hereinafter referred to as the “Primary Limit”) but is otherwise subject to a sub-limit as stated in Item 3(a)(2) of the Policy Schedule (hereinafter referred to as the “Primary Sub-Limit”).

NOW this Policy is to pay on behalf of the Insured all sums which the Insured shall become legally liable to pay as damages for bodily injury or property damage caused by an occurrence during the Policy Period arising out of the Insured's aviation operations as covered by and defined in the Primary Policy :

1. in excess of the Primary Sub-Limit, or
2. in the event of any reduction of the Primary Limit, in excess of such reduced Primary Limit, or
3. in the event of the cancellation of the coverage afforded by the Extended Coverage Endorsement (Aviation Liabilities) AVN52D contained in the Primary Policy, as primary insurance but only to the same extent, other than limit, as would have been afforded by such Endorsement had coverage not been cancelled.

PROVIDED ALWAYS THAT as regards 1 and 2 above, liability attaches to the Insurers only after the Primary Insurers have paid or have been held liable to pay the full amount of their respective Ultimate Net Loss as set forth in Item 3(a) of the Policy Schedule. The Insurers will only pay in excess of the limits of the Primary Policy as stated in Item 3(a) of the Policy Schedule up to an Ultimate Net Loss to the Insured of the limit of liability as stated in Item 3(b) of the Policy Schedule.

Definitions

1. The term "Ultimate Net Loss" means the amount payable in settlement of the liability of the Insured after making deductions for all recoveries and other valid and collectible insurances, excepting however the Primary Policy, and shall exclude all Costs.
2. The term "Costs" means interest accruing after entry of judgement, investigation, adjustment and legal expenses (excluding, however, all office expenses of the Insured, all expenses for salaried employees of the Insured and general retainer fees for counsel normally paid by the Insured).

Conditions

1. Terms and Conditions as the Primary Policy

To the extent of the coverage provided by this Policy, this Policy is subject to the same warranties, terms, conditions, definitions and exclusions (except as regards the premium, the obligation to investigate and defend, the renewal agreement, if any, the amount and limits of liability other than the deductible or self-insurance provision where applicable, AND EXCEPT AS OTHERWISE PROVIDED HEREIN) as are contained in or may be added to the Primary Policy prior to the happening of an occurrence for which claim is made hereunder.

To the extent that the Primary Policy incorporates the provisions of contracts and agreements entered into by the Insured this Policy shall likewise apply.

2. Incurring of Costs

In the event of claim or claims arising which appear likely to exceed limits of the Primary Policy, no Costs shall be incurred by the Insured without the consent of the Insurers.

3. Apportionment of Costs

Costs incurred by or on behalf of the Insured with the consent of the Insurers, and for which the Insured is not covered by the Primary Insurers, shall be apportioned as follows:-

- (a) Should any claim or claims become adjustable prior to the commencement of trial for not more than the limits of the Primary Policy, then no Costs shall be payable by the Insurers.
- (b) Should, however, the amount for which the said claim or claims may be so adjustable exceed the limits of the Primary Policy, then the Insurers, if they consent to the proceedings continuing, shall contribute to the Costs incurred by or on behalf of the Insured in the ratio that their proportion of the Ultimate Net Loss as finally adjusted bears to the whole amount of such Ultimate Net Loss.
- (c) In the event that the Insured elects not to appeal a judgement in excess of the limits of the limits of the Primary Policy the Insurers may elect to conduct such appeal at their own cost and expense and shall be liable for the taxable court costs and interest incidental thereto, but in no event shall the total liability of the Insurers exceed their limits of liability as provided for herein, plus the expenses of such appeal.

4. Application of Recoveries

Other than where this Policy applies as primary insurance, all recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Insured and the Insurers, provided always that nothing in this Policy shall be construed to mean that losses under this Policy are not payable until the Insured's Ultimate Net Loss has been finally ascertained.

5. Attachment of Liability

Liability to pay under this Policy shall not attach unless and until the Primary Insurers shall have admitted liability for the limits of the Primary Policy or unless and until the Insured has by final judgement been adjudged to pay an amount which exceeds the limits of the Primary Policy and then only after the Primary Insurers have paid or been held liable to pay the full amount of the limits of the Primary Policy.

6. Cancellation

This Policy is non-cancellable by either the Insurers or the Insured, however in the event of non-payment of premium or the annual policy fee the Insurers shall have the right to terminate the cover afforded by this Policy by the giving of not less than thirty (30) days notice in writing.

7. Limitation of Liability

Notwithstanding the inclusion hereon of more than one Insured the total liability of the Insurers in respect of any or all Insureds shall not exceed the Insurers' limit of liability as stated in Item 3.(b) of the Policy Schedule.

8. Notices

In the event of an occurrence likely to give rise to a claim hereunder, of any reduction of the Primary Limit or cancellation of the coverage afforded by the Extended Coverage Endorsement (Aviation Liabilities) AVN52D contained in the Primary Policy, notice shall be given by the Insured to the Insurers via the address set forth in Item 6. of the Policy Schedule as soon as reasonably possible.

9. False or Fraudulent Claims

If the Insured shall make any claim, knowing the same to be false or fraudulent as regards amount or otherwise, this Policy shall become void and all claims hereunder shall be forfeited.

10. Law and Jurisdiction

In the event of any dispute arising hereunder this Policy is subject to the law and jurisdiction as applicable under the Primary Policy.

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ATTACHMENT 3**SPECIMEN POLICY – SERVICE PROVIDERS COVERAGE****Policy Schedule****Policy No.****Item 1. Name and Address of the Insured****Item 2. Policy Period**

From:

To:

Item 3. Limits of Liability**(a) Primary Limit**

A combined single limit (bodily injury/property damage) of U.S.\$50,000,000 any one occurrence and in the aggregate in respect of all occurrences in any one annual period of insurance.

(b) Limits of Liability under this Policy

A combined single limit (bodily injury/property damage) of U.S.\$1,500,000,000 any one occurrence.

HOWEVER in the event that the Primary Limit stated in (a) above is reduced or exhausted this Policy shall apply in excess of such reduced limit or as primary insurance if the Primary Limit is exhausted.

Item 4. Primary Policy Details

Primary Insurers:

Policy Number:

Item 5. Premium**Item 6. Address for Notices**

All notices pursuant to the terms and conditions of this Policy shall be given to:

WHEREAS the Insured has in force an Aviation Liability Insurance (hereinafter referred to as the “Primary Policy”) containing the Extended Coverage Endorsement (Aviation Liabilities) AVN52F deleting all sub-paragraphs other than (b) of the War, Hi-jacking and Other Perils Exclusion Clause (Aviation) AVN48B.

AND WHEREAS the coverage afforded by the Extended Coverage Endorsement (Aviation Liabilities) AVN52F contains a sub-limit as stated in Item 3(a) of the Policy Schedule (hereinafter referred to as the “Primary Limit”).

NOW this Policy is to pay on behalf of the Insured all sums which the Insured shall become legally liable to pay as damages for bodily injury or property damage caused by an occurrence during the Policy Period arising out of the Insured's aviation operations as covered by and defined in the Primary Policy :

1. in excess of the Primary Limit, or
2. in the event of the cancellation of the coverage afforded by the Extended Coverage Endorsement (Aviation Liabilities) AVN52F contained in the Primary Policy, as primary insurance but only to the same extent, other than limit, as would have been afforded by such Endorsement had coverage not been cancelled.

PROVIDED ALWAYS THAT as regards 1 above, liability attaches to the Insurers only after the Primary Insurers have paid or have been held liable to pay the full amount of their respective Ultimate Net Loss as set forth in Item 3(a) of the Policy Schedule. The Insurers will only pay in excess of the limits of the Primary Policy as stated in Item 3(a) of the Policy Schedule up to an Ultimate Net Loss to the Insured of the limit of liability as stated in Item 3(b) of the Policy Schedule.

Definitions

1. The term “Ultimate Net Loss” means the amount payable in settlement of the liability of the Insured after making deductions for all recoveries and other valid and collectible insurances, excepting however the Primary Policy, and shall exclude all Costs.

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2. The term “Costs” means interest accruing after entry of judgement, investigation, adjustment and legal expenses (excluding, however, all office expenses of the Insured, all expenses for salaried employees of the Insured and general retainer fees for counsel normally paid by the Insured).

Conditions

1. **Terms and Conditions as the Primary Policy**

To the extent of the coverage provided by this Policy, this Policy is subject to the same warranties, terms, conditions, definitions and exclusions (except as regards the premium, the obligation to investigate and defend, the renewal agreement, if any, the amount and limits of liability other than the deductible or self-insurance provision where applicable, AND EXCEPT AS OTHERWISE PROVIDED HEREIN) as are contained in or may be added to the Primary Policy prior to the happening of an occurrence for which claim is made hereunder.

To the extent that the Primary Policy incorporates the provisions of contracts and agreements entered into by the Insured this Policy shall likewise apply.

2. **Incurring of Costs**

In the event of claim or claims arising which appear likely to exceed Primary Limit, no Costs shall be incurred by the Insured without the consent of the Insurers.

3. **Apportionment of Costs**

Costs incurred by or on behalf of the Insured with the consent of the Insurers, and for which the Insured is not covered by the Primary Insurers, shall be apportioned as follows:-

- (a) Should any claim or claims become adjustable prior to the commencement of trial for not more than the Primary Limit, then no Costs shall be payable by the Insurers.
- (b) Should, however, the amount for which the said claim or claims may be so adjustable exceed the Primary Limit, then the Insurers, if they consent to the proceedings continuing, shall contribute to the Costs incurred by or on behalf of the Insured in the ratio that their proportion of the Ultimate Net Loss as finally adjusted bears to the whole amount of such Ultimate Net Loss.
- (c) In the event that the Insured elects not to appeal a judgement in excess of the limits of the Primary Limit the Insurers may elect to conduct such appeal at their own cost and expense and shall be liable for the taxable court costs and interest incidental thereto, but in no event shall the total liability of the Insurers exceed their limits of liability as provided for herein, plus the expenses of such appeal.

4. Application of Recoveries

Other than where this Policy applies as primary insurance, all recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Insured and the Insurers, provided always that nothing in this Policy shall be construed to mean that losses under this Policy are not payable until the Insured's Ultimate Net Loss has been finally ascertained.

5. Attachment of Liability

Liability to pay under this Policy shall not attach unless and until the Primary Insurers shall have admitted liability for the Primary Limit or unless and until the Insured has by final judgement been adjudged to pay an amount which exceeds the Primary Limit and then only after the Primary Insurers have paid or been held liable to pay the full amount of the Primary Limit.

6. Cancellation

This Policy is non-cancellable by either the Insurers or the Insured, however in the event of non-payment of premium or the annual policy fee the Insurers shall have the right to terminate the cover afforded by this Policy by the giving of not less than thirty (30) days notice in writing.

7. Limitation of Liability

Notwithstanding the inclusion hereon of more than one Insured the total liability of the Insurers in respect of any or all Insureds shall not exceed the Insurers' limit of liability as stated in Item 3.(b) of the Policy Schedule.

8. Notices

In the event of an occurrence likely to give rise to a claim hereunder or cancellation of the coverage afforded by the Extended Coverage Endorsement (Aviation Liabilities) AVN52F contained in the Primary Policy, notice shall be given by the Insured to the Insurers via the address set forth in Item 6. of the Policy Schedule as soon as reasonably possible.

9. False or Fraudulent Claims

If the Insured shall make any claim, knowing the same to be false or fraudulent as regards amount or otherwise, this Policy shall become void and all claims hereunder shall be forfeited.

10. Law and Jurisdiction

In the event of any dispute arising hereunder this Policy is subject to the law and jurisdiction as applicable under the Primary Policy.

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Attachment 4
PREMIUM MODELS
Model 51% Participation

No Losses Scenario with 51% participation

	Year 1	Year 2	Year 3	Year 4	Year 5
Opening balance	0	454,675,000	977,571,250	1,576,581,825	2,260,656,857
Passenger numbers	1,700,000,000	1,785,000,000	1,874,000,000	1,968,000,000	2,066,000,000
Take up rate (% world Pa)	51%	51%	51%	51%	51%
Charge per passenger	0.50	0.50	0.50	0.50	0.50
Total premium	433,500,000	455,175,000	477,870,000	501,840,000	526,830,000
Admin cost	500,000	505,000	510,050	515,151	520,302.00
Investment income	21,675,000	68,226,250	121,650,625	182,750,183	252,407,186
Losses paid	-	-	-	-	-
	454,675,000	977,571,250	1,576,581,825	2,260,656,857	3,039,373,740

Loss in year five following clean years with 51% participation.

	Year 1	Year 2	Year 3	Year 4	Year 5
Opening balance	0	454,675,000	977,571,250	1,576,581,825	2,260,656,857
Passenger numbers	1,700,000,000	1,785,000,000	1,874,000,000	1,968,000,000	2,066,000,000
Take up rate (% world Pa)	51%	51%	51%	51%	51%
Charge per passenger	0.50	0.50	0.50	0.50	0.50
Total premium	433,500,000	455,175,000	477,870,000	501,840,000	526,830,000
Admin cost	500,000	505,000	510,050	515,151	520,302.00
Investment income	21,675,000	68,226,250	121,650,625	182,750,183	252,407,186
Losses paid	-	-	-	-	1,500,000,000
	454,675,000	977,571,250	1,576,581,825	2,260,656,857	1,539,373,740

Losses in years two, three and four with 51% participation

	Year 1	Year 2	Year 3	Year 4	Year 5
Opening balance	0	454,675,000	284,837,500	178,336,200	129,455,919
Passenger numbers	1,700,000,000	1,600,000,000	1,700,000,000	1,785,000,000	1,874,000,000
Take up rate (% world Pa)	51%	51%	51%	51%	51%
Charge per passenger	0.50	1.50	1.50	1.50	1.50
Total premium	433,500,000	1,224,000,000	1,300,500,000	1,365,525,000	1,433,610,000
Admin cost	500,000	505,000	510,050	515,151	520,302.00
Investment income	21,675,000	106,667,500	93,508,750	86,109,870	84,626,092
Losses paid	-	1,500,000,000	1,500,000,000	1,500,000,000	-
	454,675,000	284,837,500	178,336,200	129,455,919	1,647,171,709

Passenger Growth @ 5% per annum.

PREMIUM MODELS
Model 95% Participation

No losses Scenerio with . 95% participation

	Year 1	Year 2	Year 3	Year 4	Year 5
Opening balance	0	847,375,000	1,821,876,250	2,938,211,325	4,213,057,307
Passenger numbers	1,700,000,000	1,785,000,000	1,874,000,000	1,968,000,000	2,066,000,000
Take up rate (% world Pa	95%	95%	95%	95%	95%
Charge per passenger	0.50	0.50	0.50	0.50	0.50
Total premium	807,500,000	847,875,000	890,150,000	934,800,000	981,350,000
Admin cost	500,000	505,000	510,050	515,151	520,302.00
Investment income	40,375,000	127,131,250	226,695,125	340,561,133	470,373,231
Losses paid	-	-	-	-	-
	847,375,000	1,821,876,250	2,938,211,325	4,213,057,307	5,664,260,235

Loss in year five following clean years wit th 95% participation

	Year 1	Year 2	Year 3	Year 4	Year 5
Opening balance	0	847,375,000	1,821,876,250	2,938,211,325	4,213,057,307
Passenger numbers	1,700,000,000	1,785,000,000	1,874,000,000	1,968,000,000	2,066,000,000
Take up rate (% world Pa	95%	95%	95%	95%	95%
Charge per passenger	0.50	0.50	0.50	0.50	0.50
Total premium	807,500,000	847,875,000	890,150,000	934,800,000	981,350,000
Admin cost	500,000	505,000	510,050	515,151	520,302.00
Investment income	40,375,000	127,131,250	226,695,125	340,561,133	470,373,231
Losses paid	-	-	-	-	1,500,000,000
	847,375,000	1,821,876,250	2,938,211,325	4,213,057,307	4,164,260,235

Losses in years two, three and four with 95% participation

	Year 1	Year 2	Year 3	Year 4	Year 5
Opening balance	0	847,375,000	229,607,500	447,808,200	772,611,369
Passenger numbers	1,700,000,000	1,600,000,000	1,700,000,000	1,785,000,000	1,874,000,000
Take up rate (% world Pa	95%	95%	95%	95%	95%
Charge per passenger	0.50	0.50	1.00	1.00	1.00
Total premium	807,500,000	760,000,000	1,615,000,000	1,695,750,000	1,780,300,000
Admin cost	500,000	505,000	510,050	515,151	520,302.00
Investment income	40,375,000	122,737,500	103,710,750	129,568,320	166,276,137
Losses paid	-	1,500,000,000	1,500,000,000	1,500,000,000	-
	<u>847,375,000</u>	<u>229,607,500</u>	<u>447,808,200</u>	<u>772,611,369</u>	<u>2,718,667,204</u>

Passenger Growth @ 5% per annum.

1. SCHEME LOSS THRESHOLD AMOUNT

For the purposes of 4.2. of Appendix 1, the loss threshold amount shall be as follows:

- If all Contracting States participate in the scheme, then the overall loss threshold amount is 100% of U.S.\$15,000,000,000
- A Contracting State whose ICAO apportioned percentage is 3% (State A) has a loss threshold amount of U.S.\$450,000,000.
- If only 51% of Contracting States participate then the scheme loss threshold amount is 51% of U.S.\$15,000,000,000 = U.S.\$7,650,000,000.
- State A's loss threshold amount remains constant at 3% of U.S.\$15,000,000,000 = U.S.\$450,000,000.

2. CLAIMS PERCENTAGES

Based on the scheme limit of U.S.\$1,500,000,000 any one occurrence, any one aircraft, if all Contracting States participate in the scheme then State A has a maximum loss exposure of U.S.\$45,000,000 any one occurrence, any one aircraft, any one Insured.

If only 51% of Contracting States participate in the scheme, the scheme limit will remain at its full amount of U.S.\$1,500,000,000 and the percentage shares of those participating Contracting States totalling 51% are grossed up to 100% by multiplying by a factor of 1.9608.

In this case, State A's potential share of a loss of U.S.\$1,500,000,000 will be $3\% \times 1.9608 = 5.8824\%$. $U.S.\$1,500,000,000 \times 5.8824\% = U.S.\$88,236,000$.

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ATTACHMENT 5**AVN52 LOSS SUMMARY****1. AVN52 LOSS SUMMARY**

The attached summary provides details of all AVN52 losses settled by the primary aviation insurance market since 1977 and the amounts shown are mainly passenger but include some third party settlements.

Prior to 11 September, the highest AVN52 third party loss during the preceding 25 years was 1988 Pan Am Lockerbie loss which totalled U.S.\$36,165,881 in settlements.

The Aviation Insurance market has set the liability reserves for the four losses on September 11 at U.S.\$3,830,000,000. The third party element of these reserves is in excess of U.S.\$3,500,000,000 nearly 100 times larger than the Lockerbie amount.

There have been 31 AVN52 losses settled by the Aviation Insurance market over the last 25 years prior to the events of September 11, totalling U.S.\$850,000,000 in passenger and third party settlements.

Of this approximately U.S.\$676,000,000 arose out of two losses; the Korean Airlines 1983 B747 loss of U.S.\$154,000,000 and the Pan Am 1988 Lockerbie loss of U.S.\$522,000,000. The combined passenger settlement content of these two losses is approximately U.S.\$636,000,000.

None of the other 29 losses during the above period have exceeded U.S.\$38,000,000 including passenger settlements.

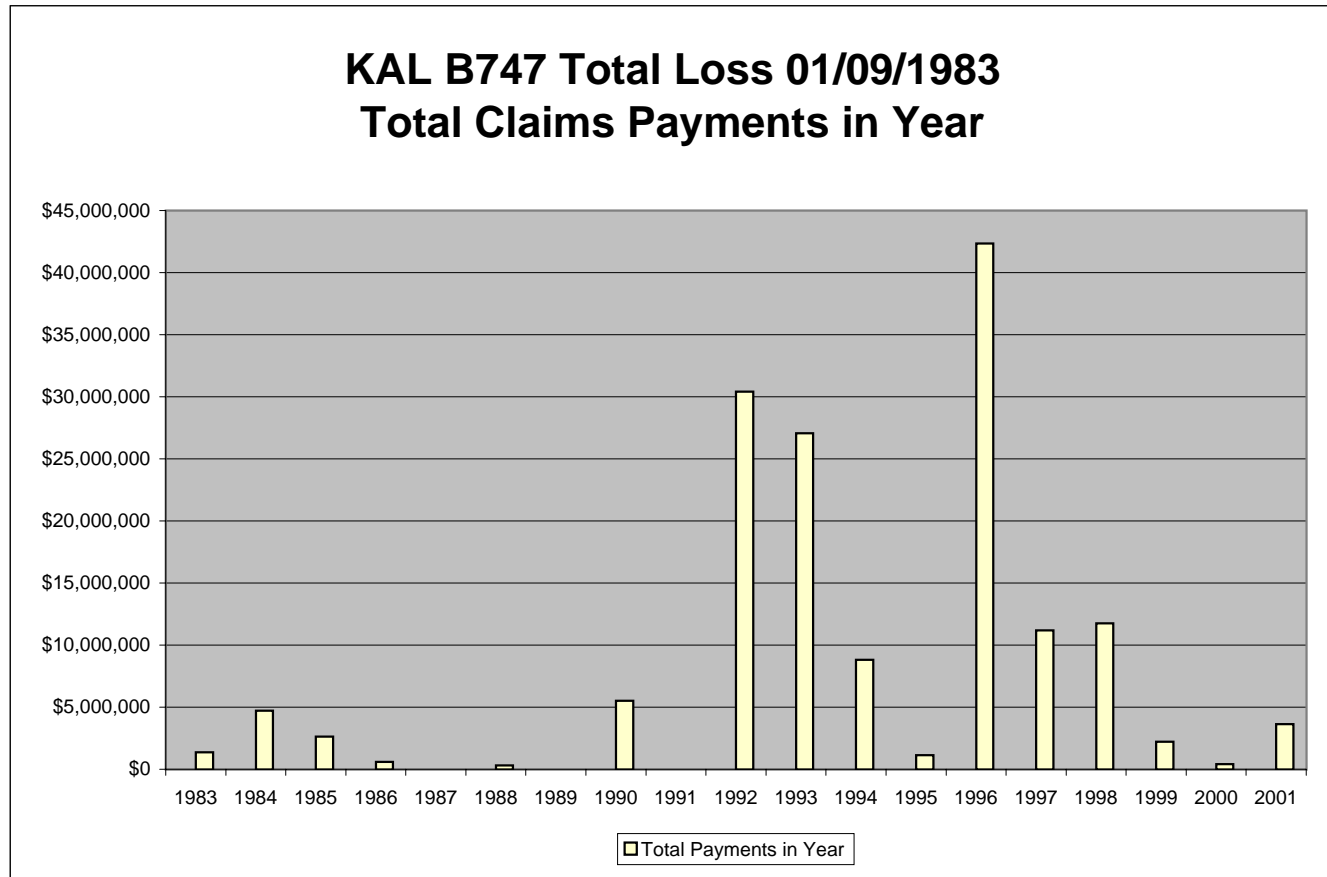
2. YEAR 2001 LOSS STATISTICS

The overall aviation hull and liability losses for 2001 are estimated to be U.S.\$5,140,000,000 compared to U.S.\$1,950,000,000 for 2000.

The overall aviation hull war losses for 2001 are estimated to be U.S.\$539,000,000 compared to U.S.\$5,000,000 for 2000.

KAL - Sakhalin Island Accident
Loss Date - 01/09/1983

<u>Year of Payment</u>	<u>Total Payments in Year</u>
1983	\$1,367,168
1984	\$4,717,402
1985	\$2,617,004
1986	\$602,739
1987	
1988	\$300,000
1989	
1990	\$5,514,615
1991	
1992	\$30,418,000
1993	\$27,053,880
1994	\$8,807,001
1995	\$1,125,000
1996	\$42,343,230
1997	\$11,176,621
1998	\$11,756,276
1999	\$2,215,978
2000	\$402,521
2001	\$3,631,495
	\$154,048,931



Airline War Risks Liability Losses

Event Date	Operator	Manufacturer	Aircraft Type	Registration	Liability Reserves (US\$)	Loss Type
04 Dec 1977	Malaysian Airlines System	Boeing	737	9M-MBD	4,102,000	Total
20 Apr 1978	Korean Air	Boeing	707	HL7429	871,000	Total
01 Sep 1983	Korean Air	Boeing	747	HL7442	154,048,931	Total
10 Mar 1984	UTA	Boeing (Douglas)	DC-8	F-BOLL	1,233,000	Total
04 Dec 1984	Kuwait Airways	Airbus Industrie	A310	9K-AHC	2,750,000	Partial
12 Jun 1985	Royal Jordanian Airlines	Boeing	727-200	JY-AFW	300,000	Total
23 Jun 1985	Air India	Boeing	747	VT-EFO	23,985,539	Total
23 Nov 1985	Egyptair	Boeing	737	SU-AYH	2,600,000	Total
02 Apr 1986	Trans World Airlines	Boeing	727	N54340	6,964,000	Partial
03 May 1986	Air Lanka	Lockheed	L-1011 TriStar	4R-ULD	1,569,881	Total
05 Sep 1986	Pan American World Airways	Boeing	747	N656PA	13,178,000	Major Partial
26 Oct 1986	Thai Airways International	Airbus Industrie	A300	HS-TAE	5,500,000	Partial
25 Dec 1986	Iraqi Airways	Boeing	737-200	YI-AGJ	3,788,963	Total
29 Nov 1987	Korean air	Boeing	707	HL7406	9,786,085	Total
08 Dec 1987	Pacific Southwest Airlines	British Aerospace (HS)	BAe 146	N350PS	37,920,552	Total
03 Jul 1988	Iran Air	Airbus Industrie	A300B2	EP-IBU	1,712,077	Total

Event Date	Operator	Manufacturer	Aircraft Type	Registration	Liability Reserves (US\$)	Loss Type
21 Dec 1988	Pan American World Airways	Boeing	747-100	N739PA	520,206,600	Total
28 Jun 1989	Somali Airlines	Fokker	F.27	60-SAZ	1,500,000	Total
19 Sep 1989	UTA	Boeing (Douglas)	DC-10	N54629	17,281,951	Total
27 Nov 1989	Avianca	Boeing	727	HK-1803	6,600,000	Total
11 May 1990	Phillippine Airlines	Boeing	737-300	EI-BZG	399,431	Total
02 Aug 1990	British Airways	Boeing	747	G-AWND	13,066,387	Total
02 Aug 1990	Kuwait Airways	(various)	(various)	VARIOUS	284,132	Total
02 Oct 1990	China Southern Airlines	Boeing	757	B-2812	3,164,859	Total
18 Feb 1991	ACES	De Havilland	DHC-6 Twin Otter 300	HK-2758X	2,565,000	Total
27 Nov 1992	LAV - Aeropostal	Boeing (Douglas)	DC-9-30	YV-37C	100,000	Partial
04 Jul 1993	Royal Swazi Airways	Fokker	F.28	3D-ALN	6,417	Partial
11 Dec 1994	Phillippine Airlines	Boeing	747-200B	EI-BWF	413,539	Partial
27 Dec 1994	Air France	Airbus Industrie	A300B2	F-GBEC	2,007,200	Partial
23 Nov 1996	Ethiopian Airlines	Boeing	767-200ER	ET-AIZ	12,065,469	Total
24 Jul 2001	SriLankan Airlines	(various)	(various)		1,000,000	
11 Sep 2001	American Airlines	Boeing	767-200	N334AA	1,540,000,000	Total
11 Sep 2001	United Airlines	Boeing	767-200	N612UA	1,540,000,000	Total
11 Sep 2001	American Airlines	Boeing	757-200	N644AA	600,000,000	Total

Event Date	Operator	Manufacturer	Aircraft Type	Registration	Liability Reserves (US\$)	Loss Type
11 Sep 2001	United Airlines	Boeing	757-200	N591UA	150,000,000	Total

AVN52 Loss Summary

(See Attachment 5 to Appendix 1 above)

ATTACHMENT 6**AVN48B
1.10.96****WAR, HI-JACKING AND OTHER PERILS EXCLUSION CLAUSE (AVIATION)**

This Policy does not cover claims caused by

- (a) War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power.
- (b) Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- (c) Strikes, riots, civil commotions or labour disturbances.
- (d) Any act of one or more persons, whether or not agents of a sovereign Power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.
- (e) Any malicious act or act of sabotage.
- (f) Confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any Government (whether civil military or de facto) or public or local authority.
- (g) Hi-jacking or any unlawful seizure or wrongful exercise of control of the Aircraft or crew in flight (including any attempt at such seizure or control) made by any person or persons on board the Aircraft acting without the consent of the Insured.

Furthermore this Policy does not cover claims arising whilst the Aircraft is outside the control of the Insured by reason of any of the above perils. The Aircraft shall be deemed to have been restored to the control of the Insured on the safe return of the Aircraft to the Insured at an airfield not excluded by the geographical limits of this Policy, and entirely suitable for the operation of the Aircraft (such safe return shall require that the Aircraft be parked with engines shut down and under no duress).

AVN 52D 12.12.01**EXTENDED COVERAGE ENDORSEMENT (AVIATION LIABILITIES)**

1. WHEREAS the Policy of which this Endorsement forms part includes the War, Hi-Jacking and Other Perils Exclusion Clause (Clause AVN 48B), IN CONSIDERATION of an Additional Premium of, it is hereby understood and agreed that with effect from, all sub-paragraphs other than of Clause AVN 48B forming part of this Policy are deleted SUBJECT TO all terms and conditions of this Endorsement.

2. EXCLUSION applicable only to any cover extended in respect of the deletion of sub-paragraph (a) of Clause AVN 48B.

Cover shall not include liability for damage to any form of property on the ground situated outside Canada and the United States of America unless caused by or arising out of the use of aircraft.

3. LIMITATION OF LIABILITY

The limit of Insurers' liability in respect of the coverage provided by this Endorsement shall be -US\$ 50,000,000 or the applicable policy limit whichever the lesser any one Occurrence and in the annual aggregate (the "sub-limit"). This sub-limit shall apply within the full Policy limit and not in addition thereto.

To the extent coverage is afforded to an Insured under the Policy, this sub-limit shall not apply to such Insured's liability:

- (a) to the passengers (and for their baggage and personal effects) of any aircraft operator to whom the Policy affords cover for liability to its passengers arising out of its operation of aircraft;
- (b) for cargo and mail while it is on board the aircraft of any aircraft operator to whom the Policy affords cover for liability for such cargo and mail arising out of its operation of aircraft.

4. AUTOMATIC TERMINATION

To the extent provided below, cover extended by this Endorsement shall TERMINATE AUTOMATICALLY in the following circumstances:

- (i) **All cover**
 - upon the outbreak of war (whether there be a declaration of war or not) between any two or more of the following States, namely, France, the People's Republic of China, the Russian Federation, the United Kingdom, the United States of America
- (ii) **Any cover extended in respect of the deletion of sub-paragraph (a) of Clause AVN 48B**
 - upon the hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter wheresoever or whensoever such detonation may occur and whether or not the Insured Aircraft may be involved

- (iii) **All cover in respect of any of the Insured Aircraft requisitioned for either title or use**
- upon such requisition

PROVIDED THAT if an Insured Aircraft is in the air when (i), (ii) or (iii) occurs, then the cover provided by this Endorsement (unless otherwise cancelled, terminated or suspended) shall continue in respect of such an Aircraft until completion of its first landing thereafter and any passengers have disembarked.

5. **REVIEW AND CANCELLATION**

- (a) **Review of Premium and/or Geographical Limits (7 days)**
Insurers may give notice to review premium and/or geographical limits - such notice to become effective on the expiry of seven days from 23.59 hours GMT on the day on which notice is given.
- (b) **Limited Cancellation (48 hours)**
Following a hostile detonation as specified in 4 (ii) above, Insurers may give notice of cancellation of one or more parts of the cover provided by paragraph 1 of this Endorsement by reference to subparagraphs (c), (d), (e), (f) and/ or (g) of Clause AVN 48B - such notice to become effective on the expiry of forty-eight hours from 23.59 hours GMT on the day on which notice is given.
- (c) **Cancellation (7 days)**
The cover provided by this Endorsement may be cancelled by either Insurers or the Insured giving notice to become effective on the expiry of seven days from 23.59 hours GMT on the day on which such notice is given.
- (d) **Notices**
All notices referred to herein shall be in writing.

AVN 52E 12.12.01**EXTENDED COVERAGE ENDORSEMENT (AVIATION LIABILITIES)**

1. WHEREAS the Policy of which this Endorsement forms part includes the War, Hi-Jacking and Other Perils Exclusion Clause (Clause AVN 48B), IN CONSIDERATION of an Additional Premium of, it is hereby understood and agreed that with effect from, all sub-paragraphs other than of Clause AVN 48B forming part of this Policy are deleted SUBJECT TO all terms and conditions of this Endorsement.
2. EXCLUSION applicable only to any cover extended in respect of the deletion of sub-paragraph (a) of Clause AVN 48B.

Cover shall not include liability for damage to any form of property on the ground situated outside Canada and the United States of America unless caused by or arising out of the use of aircraft.

3. **LIMITATION OF LIABILITY**

The limit of Insurers' liability in respect of the coverage provided by this Endorsement shall be or the applicable policy limit whichever the lesser any one Occurrence and in the annual aggregate (the "sub-limit"). This sub-limit shall apply within the full Policy limit and not in addition thereto.

To the extent coverage is afforded to an Insured under the Policy, this sub-limit shall not apply to such Insured's liability:

- (a) to the passengers (and for their baggage and personal effects) of any aircraft operator to whom the Policy affords cover for liability to its passengers arising out of its operation of aircraft;
- (b) for cargo and mail while it is on board the aircraft of any aircraft operator to whom the Policy affords cover for liability for such cargo and mail arising out of its operation of aircraft.

4. **AUTOMATIC TERMINATION**

To the extent provided below, cover extended by this Endorsement shall TERMINATE AUTOMATICALLY in the following circumstances:

- (i) **All cover**

- upon the outbreak of war (whether there be a declaration of war or not) between any two or more of the following States, namely, France, the People's Republic of China, the Russian Federation, the United Kingdom, the United States of America

-
- (ii) **Any cover extended in respect of the deletion of sub-paragraph (a) of Clause AVN 48B**
- upon the hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter wheresoever or whensoever such detonation may occur and whether or not the Insured Aircraft may be involved
- (iii) **All cover in respect of any of the Insured Aircraft requisitioned for either title or use**
- upon such requisition

PROVIDED THAT if an Insured Aircraft is in the air when (i), (ii) or (iii) occurs, then the cover provided by this Endorsement (unless otherwise cancelled, terminated or suspended) shall continue in respect of such an Aircraft until completion of its first landing thereafter and any passengers have disembarked.

5. REVIEW AND CANCELLATION

(a) **Review of Premium and/or Geographical Limits (7 days)**

Insurers may give notice to review premium and/or geographical limits - such notice to become effective on the expiry of seven days from 23.59 hours GMT on the day on which notice is given.

(b) **Limited Cancellation (48 hours)**

Following a hostile detonation as specified in 4 (ii) above, Insurers may give notice of cancellation of one or more parts of the cover provided by paragraph 1 of this Endorsement by reference to sub-paragraphs (c), (d), (e), (f) and/ or (g) of Clause AVN 48B - such notice to become effective on the expiry of forty-eight hours from 23.59 hours GMT on the day on which notice is given.

(c) **Cancellation (7 days)**

The cover provided by this Endorsement may be cancelled by either Insurers or the Insured giving notice to become effective on the expiry of seven days from 23.59 hours GMT on the day on which such notice is given.

(d) **Notices**

All notices referred to herein shall be in writing.

AVN 52F 17.10.01
(applicable to coverage provided to service providers)

EXTENDED COVERAGE ENDORSEMENT (AVIATION LIABILITIES)

1. WHEREAS the Policy of which this Endorsement forms part includes the War, Hi-Jacking and Other Perils Exclusion Clause (Clause AVN 48B), IN CONSIDERATION of an Additional Premium of, it is hereby understood and agreed that with effect from, all sub-paragraphs other than of Clause AVN 48B forming part of this Policy are deleted SUBJECT TO all terms and conditions of this Endorsement.

2. EXCLUSION applicable only to any cover extended in respect of the deletion of sub-paragraph (a) of Clause AVN 48B.

Cover shall not include liability for damage to any form of property on the ground situated outside Canada and the United States of America unless caused by or arising out of the use of aircraft.

3. LIMITATION OF LIABILITY

The limit of Insurers' liability in respect of the coverage provided by this Endorsement shall be a sub-limit of US\$ 50,000,000 or the applicable Policy limit whichever the lesser any one Occurrence and in the annual aggregate. This sub-limit shall apply within the full Policy limit and not in addition thereto.

4. AUTOMATIC TERMINATION

To the extent provided below, cover extended by this Endorsement shall TERMINATE AUTOMATICALLY in the following circumstances:

- (i) **All cover**
 - upon the outbreak of war (whether there be a declaration of war or not) between any two or more of the following States, namely, France, the People's Republic of China, the Russian Federation, the United Kingdom, the United States of America
- (ii) **Any cover extended in respect of the deletion of sub-paragraph (a) of Clause AVN 48B**
 - upon the hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter wheresoever or whensoever such detonation may occur and whether or not the Insured Aircraft may be involved
- (iii) **All cover in respect of any of the Insured Aircraft requisitioned for either title or use**
 - upon such requisition

PROVIDED THAT if an Insured Aircraft is in the air when (i), (ii) or (iii) occurs, then the cover provided by this Endorsement (unless otherwise cancelled, terminated or suspended) shall continue in respect of such an Aircraft until completion of its first landing thereafter and any passengers have disembarked.

5. REVIEW AND CANCELLATION

- (a) **Review of Premium and/or Geographical Limits (7 days)**

Insurers may give notice to review premium and/or geographical limits - such notice to become effective on the expiry of seven days from 23.59 hours GMT on the day on which notice is given.

(b) **Limited Cancellation (48 hours)**

Following a hostile detonation as specified in 4 (ii) above, Insurers may give notice of cancellation of one or more parts of the cover provided by paragraph 1 of this Endorsement by reference to sub-paragraphs (c), (d), (e), (f) and/ or (g) of Clause AVN 48B - such notice to become effective on the expiry of forty-eight hours from 23.59 hours GMT on the day on which notice is given.

(c) **Cancellation (7 days)**

The cover provided by this Endorsement may be cancelled by either Insurers or the Insured giving notice to become effective on the expiry of seven days from 23.59 hours GMT on the day on which such notice is given.

(d) **Notices**

All notices referred to herein shall be in writing.

AVN 52G 17.10.01
(applicable to coverage provided to service providers)

EXTENDED COVERAGE ENDORSEMENT (AVIATION LIABILITIES)

1. WHEREAS the Policy of which this Endorsement forms part includes the War, Hi-Jacking and Other Perils Exclusion Clause (Clause AVN 48B), IN CONSIDERATION of an Additional Premium of, it is hereby understood and agreed that with effect from, all sub-paragraphs other than of Clause AVN 48B forming part of this Policy are deleted SUBJECT TO all terms and conditions of this Endorsement.

2. EXCLUSION applicable only to any cover extended in respect of the deletion of sub-paragraph (a) of Clause AVN 48B.

Cover shall not include liability for damage to any form of property on the ground situated outside Canada and the United States of America unless caused by or arising out of the use of aircraft.

3. LIMITATION OF LIABILITY

The limit of Insurers' liability in respect of the coverage provided by this Endorsement shall be a sub-limit of _____ or the applicable Policy limit whichever the lesser any one Occurrence and in the annual aggregate. This sub-limit shall apply within the full Policy limit and not in addition thereto.

4. AUTOMATIC TERMINATION

To the extent provided below, cover extended by this Endorsement shall TERMINATE AUTOMATICALLY in the following circumstances:

- (i) **All cover**
- upon the outbreak of war (whether there be a declaration of war or not) between any two or more of the following States, namely, France, the People's Republic of China, the Russian Federation, the United Kingdom, the United States of America
- (ii) **Any cover extended in respect of the deletion of sub-paragraph (a) of Clause AVN 48B**
- upon the hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter wheresoever or whensoever such detonation may occur and whether or not the Insured Aircraft may be involved
- (iii) **All cover in respect of any of the Insured Aircraft requisitioned for either title or use**
- upon such requisition

PROVIDED THAT if an Insured Aircraft is in the air when (i), (ii) or (iii) occurs, then the cover provided by this Endorsement (unless otherwise cancelled, terminated or suspended) shall continue in respect of such an Aircraft until completion of its first landing thereafter and any passengers have disembarked.

5. REVIEW AND CANCELLATION

(a) **Review of Premium and/or Geographical Limits (7 days)**

Insurers may give notice to review premium and/or geographical limits - such notice to become effective on the expiry of seven days from 23.59 hours GMT on the day on which notice is given.

(b) **Limited Cancellation (48 hours)**

Following a hostile detonation as specified in 4 (ii) above, Insurers may give notice of cancellation of one or more parts of the cover provided by paragraph 1 of this Endorsement by reference to subparagraphs (c), (d), (e), (f) and/ or (g) of Clause AVN 48B - such notice to become effective on the expiry of forty-eight hours from 23.59 hours GMT on the day on which notice is given.

(c) **Cancellation (7 days)**

The cover provided by this Endorsement may be cancelled by either Insurers or the Insured giving notice to become effective on the expiry of seven days from 23.59 hours GMT on the day on which such notice is given.

(d) **Notices**

All notices referred to herein shall be in writing.

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**APPENDIX 2
LIST OF PARTICIPANTS**

MEMBER STATES	
Australia	S. Clegg
Brazil	A. Pereira C.B. Rodrigues R.M. Barreda M.A. Castro A.C. Romera F. de Asis Leme Franco D.M. Silva
Canada	R. Dean (AHAC) E. Macnab M. Skrobica
Egypt	M. El Bagoury F.A.A. Ghoneimy F. Aly N. El Koussy S. El Maghloub M. El Serafi
France	P. Gabelle V. Jost A. Veillard
Germany	R. Müenz C. Henrichs
India	A.P. Singh
Japan	T. Kawanishi M. Ogiso T. Okawara
Mexico	R. Rodríguez Garduno H. Vázquez G. Delgado S. Retana
Saudi Arabia	S. Al-Ghamdi
Singapore	S.H. Tan L. Tan

MEMBER STATES

South Africa	J. Morrison V. Naidoo P.D. Moeti
United Kingdom	P. Smith
United States	J. Rodgers P. Bloch

OBSERVER INTERNATIONAL ORGANIZATIONS

Airports Council International (ACI)	R. Heitmeyer S. Hub
European Commission (EC)	F. Morgan
International Air Transport Association (IATA)	L. Clark H. Goldberg
International Coordinating Council of Aerospace Industries Associations (ICCAIA)	J. Wool C. Brandes
International Union of Aviation Insurers (IUAI)	D. Gasson P.L. Butler
London Market Brokers Committee – Aviation Section	J. Palmer-Brown K. Coombes

OBSERVER STATES

China	T.F. Zhao J. Yuan
Czech Republic Delegation	O. Gorgol
Finland	M. Tupamaki
Russian Federation	I.M. Lysenko
Senegal	B. Gueye
Spain	L. Adrover

APPENDIX 3
AGENDA OF THE MEETING

Agenda Item 1: Review of Action Taken in Response to Cancellation/Reduction of War-Risk Insurance Coverage

The Special Group will be invited to briefly review the action taken by States and by the industry in relation to this matter since SGWI/1.

Agenda Item 2: Possible Mechanisms for Government and Industry Action

The Special Group will be invited to discuss proposals for government and industry action (medium- and long-term) and their implications.

Agenda Item 3: Development of Recommendations for Consideration by the ICAO Council

Agenda Item 4: Any Other Business

APPENDIX 4 LIST OF DOCUMENTATION

WORKING PAPERS:

WP No.	Item No.	Title	Presented by
1	–	Provisional agenda	Secretariat
2	2	Aviation third party liability in respect of war/hijacking/terrorism cover, etc.	LMBC in conjunction with ACI, IATA and ICCAIA
3	2	Long-term measures	Germany
4	2	Observations and proposals	IATA and ICCAIA
5	2	Brazil's comments on aviation third party liability in respect to war/hijacking/terrorism cover, etc.	Brazil
6	2	Joint procedural recommendation from the SGWI to the ICAO Council: Relating to liability reform	Finland, Germany and IATA/ICCAIA
7	3	Proposed scheme for aviation third party war risk coverage	Chairman, Vice-Chairman and the Secretariat

INFORMATION PAPERS:

IP No.	Item No.	Title	Presented by
1	2	Aviation mutual war risk and liability insurance	United Kingdom
2	1	Aviation insurance pre- and post-11 September 2001	IUAI
3	2	War risk insurance requirement	Finland
4 (Revised)	1	Survey of members regarding national measures in respect of war risk insurance	IATA

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