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INTERNATIONAL CIVIL AVIATION ORGANIZATION

ASSEMBLY — 35TH SESSION

LEGAL COMMISSION

Agenda Item 34: Progress report on the modernization of the Rome Convention of 1952

PROGRESS REPORT ON THE MODERNIZATION OF THE ROME CONVENTION OF 1952

SUMMARY

This paper presents for the information of the Assembly a progress report on the above subject.

Action by the Assembly is in paragraph 4.

1. BACKGROUND

1.1 The 31st Session of the Legal Committee (Montreal, 28 August to 8 September 2000) included in its Work Programme the subject: *Consideration of the modernization of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface*, signed at Rome on 7 October 1952, with priority No. 4. The Council, at the tenth meeting of its 161st Session on 24 November 2000, and the 33rd Session of the Assembly, confirmed this subject with priority No. 4 in the Work Programme of the Legal Committee.

1.2 Work on this subject, in particular on a Study by the Secretariat on the modernization of the Rome Convention, commenced in early 2001. A questionnaire to collect information for the Study was sent to States under cover of State letter LE 3/14.2-01/62 dated 15 June 2001. The letter also contained explanatory material on the subject. A reminder was sent to States by State letter LE 3/14.2-01/98 dated 18 October 2001.

1.3 As a result of the events of 11 September 2001 in the United States, a seven-day notice of cancellation of war risk insurance coverage was given by insurance writers to airlines, effective 24 September 2001. Since then, war risk cover was partly reinstated. Additional capacity was eventually provided by a limited number of commercial insurers. The 33rd Session of the Assembly adopted Resolution A33-20 requesting the Council to establish a Special Group on this matter.

2. DEVELOPMENTS SINCE THE 33RD SESSION OF THE ASSEMBLY

2.1 The Special Group was duly established by the Council and held two meetings. In relation to damage on the ground arising from war and terrorist risks, it considered potential reform to third-party liability rules, and the question of possible limitations of liability and recommended for the long term the expedited consideration of a new international convention on third-party liability. On 4 March 2002, the Council decided that this long-term issue would be addressed under Item 4 of the Work Programme of the Legal Committee concerning the modernization of the Rome Convention of 1952.

2.2 With respect to the Study on the modernization of the Rome Convention, fifty-five Contracting States replied to the State letters. The Study, which was largely based on an analysis of the replies to the questionnaire, was noted by the Council on 5 June 2002. On that same date, the Council also agreed to the establishment of a Secretariat Study Group to assist the Secretariat in the future work in this area. The Secretariat Study Group on the Modernization of the Rome Convention held four meetings during 2002 and 2003. The Secretariat, with the assistance of the Group, produced a Draft Convention on Damage Caused by Foreign Aircraft to Third Parties.

2.3 By letter dated 26 March 2002, the Chairman of the Legal Committee, in consultation with the President of the Council, the Secretary General and the Director of the Legal Bureau, and acting under Rules 6 and 17 of the *Rules of Procedure of the Legal Committee*, appointed Mr. M.B. Jennison (United States) as Rapporteur of the Legal Committee on the subject: Consideration of the modernization of the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface*, signed at Rome on 7 October 1952.

2.4 The Council, at the tenth meeting of its 167th Session on 25 November 2002, raised the priority of this item in the General Work Programme of the Legal Committee to No. 3; this priority was confirmed by the 32nd Session of the Committee (Montreal, 15 to 21 March 2004).

2.5 This item was the main subject considered by the 32nd Session of the Committee under the chairmanship of Mr. G. Lauzon (Canada), on the basis of the draft text of the Convention prepared by the Secretariat, the Rapporteur's Report, as well as a number of working papers and other documents presented by members of the Committee and observers. The Committee reviewed the texts of all the draft articles, following which the Chairman stated that a number of problems had been identified for which solutions had been found. While considerable progress had been made, further work was needed in certain areas, especially on what would apply beyond the level of caps and with respect to insurability. Also, the private international law rules needed to be reviewed. In summary, more work was needed on the modernization of the Rome Convention.

2.6 Thus, the draft Convention cannot yet be regarded as mature for submission to a Diplomatic Conference nor as a "final draft" in terms of Assembly Resolution A31-15, Appendix B: *Procedure for Approval of Draft Conventions on International Air Law*. At the 6th meeting of its 172nd Session on 31 May 2004, the Council decided to establish a Special Group on the Modernization of the Rome Convention of 1952 to advance the work. During the discussion, a Representative referred to the issue of ratifiability of any resulting instrument and the possible development of a convention dealing solely with liability in relation to war and terrorist risks. No dates have yet been set for the first meeting of the Group.

3. FINANCIAL IMPACT OF THE PROPOSED ACTION

3.1 It is expected that the costs of the meeting or meetings of the Special Group will be minimal, and if held in the next triennium (and not already in 2004), will be covered by the resources available under Programme 4.3 (Development and Codification of International Air Legislation) of the draft Programme Budget 2005-2007.

4. ACTION BY THE ASSEMBLY

4.1 The Assembly is invited to note the information in this paper.

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