



INTERNATIONAL CIVIL AVIATION ORGANIZATION

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ASSEMBLY — 35TH SESSION

LEGAL COMMISSION

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

MODERNIZATION OF THE ROME CONVENTION

(Presented by Turkey)

SUMMARY

The absence of consensus on the crucial elements of the draft Convention requires further study which will involve a new questionnaire to States inviting views on specific issues.

Action by the Assembly is in paragraph 5.

1. INTRODUCTION

1.1 Recognizing the absence of a globally accepted regime with respect to liability for damage on the ground and the need to modernize the existing legal framework, ICAO established a Study Group (SG) to review and modernize the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, 1952. Turkey has actively participated in the efforts to establish a new instrument.

1.2 The outcome of the work of the SG was presented to the 32nd Session of the Legal Committee (LC/32). However, due to the time constraints the Committee was not able to finalize the new Convention. Work on modernizing the Rome Convention continues and, in this respect, Turkey would like the following additional observations and views to be taken into consideration by the 35th Session of the Assembly.

2. VIEWS ON THE PROGRESS REPORT

2.1 During LC/32, no consensus was reached on the key areas of the existing draft text of the SG. The scope of air carriers' liability and the insurability of the risks giving rise to that liability were the main points of disagreement and differences of opinion.

2.1.1 With respect to basic risks for damage to third parties on the ground, the draft text introduces a liability system similar to the one under the Montreal Convention of 1999; Turkey believes that the structure proposed in the draft text is generally acceptable; however, the level of compensation should be higher than the amount determined by the Montreal Convention.

2.1.2 The Montreal Convention provides a first tier liability limit of 100,000 SDRs. The purpose of limiting the liability of international air carriers is based on the need to protect the air transport sectors of all countries as well as to facilitate speedy recoveries by victims and to establish a uniform law.

2.1.3 On the other hand, the scope of the Rome Convention is confined to damages to third parties on the ground. Unlike passengers, third parties on the ground do not have a legal relationship with the air carriage that caused the damage. Nevertheless, the air transport sector of a country is an integral part of the national economy, and in a general sense, third parties on the ground, including the travelling public, have indirect economic benefits from every single air carriage that navigates in their national airspace. Therefore, the philosophy of the Montreal Convention, based on the distribution of the inherent risk of air carriage among all participants, is partially applicable to the Rome Convention. Hence, Turkey maintains the view that, limiting the liability of air carriers would be fair only if basic risk limits are set at least at 300,000 SDRs.

2.1.4 The provisions of the draft Convention related to damage caused as a result of an act of unlawful interference created much discussion in the LC/32 and the views of the delegates were extremely divided. The critical questions were whether carriers should be considered liable for damage resulting from an act of unlawful interference, and if so, to what extent.

2.1.5 Acts of unlawful interference usually end up with wider damages than accidents and, with regard to consequences, they are more unpredictable; hence, they must be treated differently. The critical question is whether these acts should be considered within the State responsibility.

2.1.6 Turkey believes that, within the internationally recognized obligation of an operator to take necessary security measures, risks and liability should be distributed between State and operator on an equitable basis, with specific limits.

3. Due to the absence of consensus on critical issues, and for the purpose of elucidation of the different perspectives mentioned above, the ICAO Secretariat might deem it necessary to issue a further questionnaire consisting of different Convention options, and inviting the member States to give their views, particularly on the ratifiability of a new Convention within a certain set of parameters.

4. Turkey's view is that the outcome of the questionnaire will provide the ICAO Secretariat with a better database on the acceptability and ratifiability of a new Convention, and if necessary, to develop a new draft text along with the views supported by the majority of the respondents.

5. **ACTION BY THE ASSEMBLY**

5.1 The Assembly is invited to:

- a) note the views and the proposals presented in this paper; and
- b) recommend ICAO to continue its work on the modernization of the Rome Convention, within the views in para. 4 above.

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