



LEGAL COMMITTEE – 39TH SESSION

(Montréal, 25 – 28 June 2024)

Agenda Item 6 : Any other business

BEST PRACTICES FOR INSURERS IN ASSISTING VICTIMS WITH COMPENSATION

(Presented by Air Crash Victims' Families' Federation International - ACVFFI)

1. INTRODUCTION

1.1 The Convention for the Unification of Certain Rules for International Carriage by Air (Doc 9740), Montreal Convention, defines the responsibilities of parties involved in commercial aviation and States. It acknowledges the necessity of providing sufficient compensation to third parties who incur damages due to incidents involving an in-flight aircraft. It also underscores the importance of safeguarding the interests of the injured parties and the imperative of fair compensation. Furthermore, it recognizes the need to maintain the stability of the aviation industry.

1.2 Chapter III establishes the method of compensation for damage and the assumptions of the obligation to repair. The Insurance Policies contracted by the air operators adjusted to this regulation, do not seem to be controlled regarding the treatment received by the victims and their families in aviation accidents.

2. BACKGROUND

2.1 The *ICAO Policy on Assistance to Victims of Aviation Accidents and Their Families* (Doc 9998) and the *Manual on Assistance to Victims of Aviation Accidents and Their Families* (Doc 9973) include in the assistance to victims, survivors and families, considerations regarding compensation for the damage caused, however, they refer to the provisions of the Montreal Convention and internal legislations.

2.2 Little or nothing has been delved into the treatment after the accident given by the insurers to the victims, survivors, and families. Sometimes, the victims and loved ones are subjected to long legal processes even though the air operator has an Insurance Policy to deal with the emergency.

2.3 The Montreal Convention has dealt with the delimitation of the liability of the air operator, but not with respect to the treatment given by insurers to the air accidents victims, survivors and families.

2.4 Article 3 of the *Convention on Compensation for Damage Caused to Others by Aircraft* (Doc 9919) refers to the "civil liability of the operator" and Article 5 to the "priority of compensation". Article 9 refers to the "insurance" that States Parties will require from their operators to maintain sufficient insurance or guarantee to cover their civil liability within the framework of the Convention, and it is necessary for States to monitor the best practices of Insurance Entities through their audit mechanisms.

2.5 Article 17 Death and Injury of Passengers-Damage to Baggage. 1. The carrier is liable for damage caused in the event of death or bodily injury of a passenger for the sole reason that the accident causing the death or injury occurred on board the aircraft or during any of the embarkation or disembarkation operations, so that the entire Insurance Policy referring to the carrier's liability should be devoted to "repairing the damage caused to the passenger and/or his/her next of kin in the event of death."

3. CONCLUSION

3.1 Recognizing the importance of ensuring the protection of the interests of injured third parties and the need for fair compensation, as well as the need to ensure the stability of the aviation industry, as set out in the *Convention on Compensation for Damage Caused to Third Parties by Aircraft* (Doc 9919), discussed at the International Conference on Aviation Law held in Montreal from 20 April to 2 May 2009, it is considered vitally important that States inform ICAO of their Air Insurers/Operators, in order to ensure that they are extended and implemented, in view of their results.

3.2 Reaffirming the desirability of an orderly conduct of international air transport operations, the smooth movement of passengers and the protection of their rights, in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944, it would be of great benefit to States and their citizens to give effect to best practices and to pay due attention to compliance with the provisions of the Insurance Policies of Airlines with their Insurance Entities.

3.3 Considering the balance between the parties, that the States monitor the practices of the insurers and that a greater amount be dedicated to compensate the victims, given the requirements that the Policies require of the Airlines for their air operations.

3.4 Consequently, it is essential to delve into this aspect, trying to obtain from the States their best practices regarding the treatment of Insurers to extend their experiences is the advance that they must provide to the compensation that the survivors, air accident victims and their families must receive. The Legal Committee is invited to:

- a) to remind States of ICAO Resolutions on compensation for victims, insurers, and air operators;
- b) urge States, international organizations, industry and donors to support insurers' best practices in the treatment of victim assistance and to report and exchange information through ICAO, and to make this information available to States and International Organizations;
- c) urge the Council to monitor the implementation of appropriate requirements for States to provide best practices in the enforcement of compensation to victims, survivors, and families of an air accident through the ICAO USOAP.