



ICAO UNITING AVIATION

NO COUNTRY LEFT BEHIND



Ensuring accident victims and their families are treated the same the world over

Montreal Convention 1999

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History

- Warsaw Convention of 1929
- ICAO Assembly 31st Session (Sept/Oct 1995): directed Council to modernize “Warsaw System” expeditiously
- Council 146th Session (Nov 1995): established Secretariat Study Diplomatic Conference convened (May 1999)



Mr Hans Ephraimson-Abt (1922-2013)

International advocate for families of air-crash victims

- Daughter victim of KAL 007, shot down in 1983
- Chairman of American Association for the Families of KAL 007 & spokesperson for the Air Crash Victims Families Group
- Contributions:
 - Pushed for MC 99 to replace existing Warsaw-Hague regime in late 1980s
 - Aviation Disaster Family Assistance Act (US, 1996): empowered NTSB to notify families (instead of relying solely on airlines for information) and Red Cross to provide assistance



Source: Don Hogan Charles/The New York Times



Diplomatic Conference (mindful of Swissair Flight 111)

- Crashed into sea near Halifax, Nova Scotia, Canada, killing all 229 people
- Swissair immediately made voluntary payments of 15,000 SDRs per passenger as financial assistance
- Swissair subsequently offered 100,000 SDRs
 - 30% of families accepted offer as interim solution
- 8 months after crash: 75% of families indicated need for immediate financial support



Mandatory vs voluntary?

Mandatory (EC)

- 75% of families required financial support, which should not be left to goodwill of air carriers
 - Humanitarian need for fair and rapid compensation (Spain)
- Air carriers should make appropriate arrangements with insurers
- EC Regulation 2027/97 imposed mandatory advance payments



Mandatory vs voluntary?

Voluntary (International Union of Aviation Insurers)

- Insurers faced difficulties with implementation of EC Regulation 2027/97
- Not question of goodwill of air carriers/insurers
 - Advance payments made in Swissair Flight 111 far in excess of EC Regulation 2027/97 mandated amounts



Compromise: “if required by national law”

SSG: reluctant to endorse mandatory advance payments

- Facts of each case are diverse
- Local customs *vis-à-vis* compensation are varied
- Already common practice among air carriers to voluntarily provide swift financial assistance where warranted
- Should be left to legislative action by States
- Avoids question of quantum of payments



Compromise: “if required by national law”

Friends of the Chairman Group: Difficult to lay down basic rule applicable to any and all circumstances in all jurisdictions

- Quantum of payment would vary from situation to situation
- Liability could be addressed in national law
 - e.g. EU: advance payments $\neq$ admission of liability. If liability subsequently established, advance payments could be set off
- Resolution in Final Act: urge air carriers to make advance payments and encourage State Parties to promote such actions



Whose national law?

Carrier's national law (not victim's)

- Carrier's responsibility to make advance payments that is beyond any obligation arising from liability
- Allowing a multitude of national laws to mandate advance payments without established liability would create problems



Advance payments

Article 28 of the Montreal Convention 1999 (MC99):

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.



Resolution No. 2 of the Final Act

- Not legally binding; merely exhortatory
- *Urges* carriers to make advance payments without delay based on the immediate economic needs of families of victims, or survivors of accidents
- *Encourages* States Parties to the Montreal Convention 1999 to take appropriate measures under national law to promote such action by carriers



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THANK YOU