



LEGAL COMMITTEE – 33RD SESSION

(Montréal, 21 April – 2 May 2008)

Agenda Item 3: Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks

DRAFT CONVENTION ON COMPENSATION FOR DAMAGE CAUSED BY AIRCRAFT TO THIRD PARTIES, IN CASE OF UNLAWFUL INTERFERENCE

WORK OF THE SUPPLEMENTARY COMPENSATION MECHANISM (SCM) TASK FORCE – GUIDELINES ON COMPENSATION

(Presented by the Supplementary Compensation Mechanism Task Force)

1. As noted in LC/33-WP/3-8, following the example of the negotiations on the Cape Town Convention, the Supplementary Compensation Mechanism Task Force was created at the fifth meeting of the SG-MR¹. The Task Force was set up to develop drafts of the documents making up the secondary regulatory level under the Convention. The work of the Task Force has been carried out informally, its membership is open-ended and it decided its own Terms of Reference.
2. The Task Force has developed draft documents in relation to three items listed in the Terms of Reference and an outline of the likely content of a fourth document. The three draft documents are annexed to LC/33-WP/3-8. The document that exists in outline only is the Draft Guidelines on Compensation. It is appended to this Information Paper and will need to be considered further in the light of discussions at and decisions taken by the Legal Committee
3. The secondary regulatory level will have to be agreed at the first Conference of the Parties following entry into force of the Convention. As was the case with the Cape Town Convention, it can be anticipated that a preparatory commission would be established to facilitate entry into force of the Convention and what needs to be in place at that point in time. Such preparatory commission would finalise the draft documents making up the second regulatory level.

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¹ See paragraphs 1.111 and 1.113 of the Report on the Fifth Meeting of the Special Group.

APPENDIX

CONVENTION ON COMPENSATION FOR DAMAGE CAUSED BY AIRCRAFT TO THIRD PARTIES, IN CASE OF UNLAWFUL INTERFERENCE GUIDELINES ON COMPENSATION

ENTITLEMENT

Anyone who has suffered damage in the territory of a State Party to the Convention which was directly caused by an aircraft in flight as a result of an act of unlawful interference may make a claim for compensation, provided that the operator of the aircraft has its principal place of business or permanent residence in a State other than the State where the damage occurred. Claims for compensation against an operator of the aircraft which has its principal place of business or permanent residence in the State where the damage occurred can only be brought on the basis of the Convention if the State has made a declaration to that effect. A list of State Parties to the Convention and a list of States that have made a declaration may be obtained from the Secretariat of the Special Compensation Mechanism (SCM) or from the Mechanism's website (www.....org).

Claimants may be individuals, corporations, partnerships, companies, and public bodies, including States or local authorities or any parties entitled in the applicable jurisdiction to make claims if they have suffered provable damages as consequence of the occurrence. The operator of the aircraft, the passengers, and the consignors/consignees and others with an interest in cargo on board the aircraft are excluded from claiming under this Convention. The Convention provides that claims for compensation will be handled by the courts of the State where the damage occurred, or as otherwise prescribed in the Convention. The laws of the State with jurisdiction over the claim will govern various matters to be determined with regard to compensation including the amount and recoverability of various types of damages as well as procedural matters so these guidelines are necessarily general in nature and subject to amendment by the laws governing any particular claim.

PRESENTATION OF CLAIMS

Claims may be made by natural persons or their legal representatives or any other entity/person legally entitled to make claims. Claims should be submitted in writing to the address established for the purpose by the operator's insurers and/or the SCM. The operator's insurers and/or the SCM will publish in the media, on television, and on the internet the address where claims may be filed and establish a toll free telephone number for informational purposes. Given the possibility of a large number of claims it is suggested that claims be filed as soon as possible. Insurers/SCM may provide claims forms to expedite evaluation and handling of claims.

The claim should contain:

- A concise statement of the nature of the damage claimed.
- The facts necessary to prove the claimant's cause of action.
- The full name and the address at which the claimant resides or carries on business as well as the name and address of any legal representative.
- The date, place and the relation of the claimant to the accident.
- Details of the claimant's personal injuries/property damage.

- Relevant supporting documents such as photographs, plans, invoices, tax certificates, identity proofs, witness statements/affidavits, medical reports about the personal injuries alleged in the claim, and other experts' reports (engineers, surveyors etc.) will be required in due course.
- In fatal accident claims, the claimant must provide details of the nature of any dependency claim.

Receipt of the claim will be confirmed promptly.

To expedite the claim process, the claimant may be asked at this stage to submit additional information or documents required.

Any communication addressed to the claimant and/or negotiations should be in writing.

TIME PERIODS

Claimants are encouraged to submit their documented claims as soon as possible after the accident has occurred. If they cannot make a documented claim soon after the accident, they are advised to contact the operator's insurers and the SCM with all available information. Insurers and the SCM will use their best endeavours to resolve claims promptly, and without the need for litigation.

Claimants will lose their right to compensation from the operator of the aircraft unless they bring a court action against them within [three] years from the date of the incident which caused the damage. Similarly, claimants will lose their right to compensation from the SCM unless they bring a court action against the Fund within [three] years from the date when the damage occurred.

ADMISSIBILITY

Under the Convention, damage is taken to mean death, bodily injury or damage to property caused by an aircraft in flight as a result of an act of unlawful interference, or any other damage permitted under the laws of the State where the action is brought or the State which governs the determination of damages.

A claim therefore qualifies for compensation only to the extent that the amount of the loss or damage is actually demonstrated. All elements of proof are considered, but sufficient evidence must be provided to give the operator of the aircraft, its insurers and the SCM the possibility of determining the amount of the expense, loss or damage actually suffered.

SETTLEMENT PROCEDURES

It is very important that once settlement terms have been agreed, they are clearly and accurately recorded in writing and that any procedures required by applicable law are satisfied. These may include the approval by a competent court of the settlement of claims of minors and others suffering from a disability. All other claims will be settled pursuant to the terms of a release and discharge, the language of which shall be as simple and clear as local law permits.

ADVANCE PAYMENTS

Following the accident and to the extent and in the manner required by applicable law, the insurers of the operator and, where appropriate, the SCM will without delay provide advance payments.

COMPLIANCE AND ENFORCEMENT

The SCM implementing Regulations should include suitable Compliance and Enforcement provisions and proceedings.