International Civil Aviation Organization

WORKING PAPER

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(English only)

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 CONVENTIONS ON COMPENSATION FOR DAMAGE CAUSED BY AIRCRAFT TO THIRD PARTIES (GENERAL RISKS CONVENTION AND UNLAWFUL INTEFERENCE COMPENSATION CONVENTION)

BREAKABILITY AND CAP ADJUSTMENTS TO THE OPERATOR'S LIABILITY

General Risks – Article 3
Unlawful Interference – Articles 3, 4, 19 and 24

(Presented by the Air Crash Victims Families Group)

1. BACKGROUND

1.1 The "*Draft Convention On Compensation For Damages Caused by Aircraft to Third Parties, in Case of Unlawful Interference"* provides in Article 3 (1) (*Liability of the Operator)* – operators' strict liability and in Article 3 (paragraphs 2-5) specific, partial, qualified or no liability.

1.2 Article 4 (*Limit of Operator's Liability*) of the Convention, cited above, lists the monetary limits of the Article 3 strict liability – subdivided in ten weight segments – (values in brackets).

1.3 Article 19 (2) of the Convention cited above *(Unlawful Interference Compensation Convention)* lists the maximum amount of compensation available from the Supplementary Compensation Mechanism with a bracketed figure.

1.4 The *Draft Convention On Compensation for Damage Caused by Aircraft To Third Parties* lists in Article 3 (2) *(Liability of the Operator)* a qualified strict liability with an amount in parenthesis.

2. DISCUSSION

2.1 The bracketed amounts of liability caps in the Unlawful Interference Compensation Convention listed in Article 4 (a-j) and the maximum amount of the "Supplementary Compensatory Mechanism" listed in Article 19 (2) were set in 2000 – when those issues became first part of the Special Group's discussions.

(3 pages)

2.2 The amount (100,000 SDRs) of qualified strict liability listed in Article 3 (2) is a Present Day Value update from Article 21 (1) of the *“Convention for the Unification of Certain Rules for International Carriage by Air” (Montreal Convention, 1999)*, carried over from the *“Guatemala City Protocol 1971 to the Convention for the Unification of Certain Rules Relating to International Carriage by Air” (Warsaw Convention, 1929).*

2.2.1 The MR Special Group was advised that the Present Day Value of the 1971 strict liability would be in the range of $250,000-SDR500,000 in the year 2000 and correspond to the strict adjusted liability – adopted in some States prior to the 1999 by Special Contract, admissible in WC Article 22 (1).

2.3 In the discussions leading up to MC 1999, the strict liability figure of SDRs100,000, strongly maintained by IATA, became acceptable to the conferees (although **it was introduced** in Guatemala 1971 – **twenty eight years before**) – as long as the Montreal Convention allowed recovery of full provable economic and non economic damages, without prior adjudicated proceedings of tort (elimination of the WC Article 25 proof of “Wilful Misconduct” requirement).

2.4 The proposed reintroduction of various forms or corporate levels of liability and/or escape provisions like “evaluation certificates” and “Senior management responsibilities” – as laudable as those initiatives may be to gain consensus – are in fact a step backwards – resulting unfailingly in substantial disputes, lengthy and costly legal proceedings **-** detrimental to victims right to timely and full claims settlements **-** akin to the Korean Airlines Flight 007 of September 1, 1983 – seventeen years of litigation.

2.5 How to define “Senior Management”?

2.6 Does a “valid evaluation certificate” confer immunity on the operator from liability?

3. **CONCLUSION**

3.1 The figures cited in the various valuations should best be fairly and realistically finalized at the time when the Convention(s) enter into force, at then Present Day Values.

3.2 A suitably worded paragraph stating the above should be added.

3.3 Liability should be absolute and not be limited by the possession of any “evaluation” – or other “certificate”.

3.4 Proof of the responsibilities of ambiguous “senior management” should not be a retarding element in the settlement or adjudication of victims damages.

3.5 Full damages compensation should be assured and funds should flow: from carrier/insurer (where justified from jointly liable third parties/insurers) to the “Supplemental Compensatory Mechanism” – when required – to Governments (in apocalyptic tragedies – see September 11, 2001).

4. ACTION

4.1 Article 1 in both Conventions – Definitions – may add the following as item (i):

The monetary amounts listed in the Convention are for informational purposes only. The final amounts shall be the respective Present Day Value at the time the Convention comes into force.

4.2 **Strike** any references to the need to prove "Senior Management's" responsibility/liability.

4.3 **Define** "Senior Management".

4.4 **Strike** any reference to exoneration because of valuation or any other certificate award.

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