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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

REPORT OF THE RAPPORTEUR

(11 pages)

REPORT OF THE RAPPORTEUR ON THE DRAFT CONVENTION ON COMPENSATION FOR DAMAGE CAUSED BY AIRCRAFT TO THIRD PARTIES (THE GENERAL RISKS CONVENTION)

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1. INTRODUCTION

1.1 Although the background leading to the drawing up of the draft convention which is the subject of this report has been sufficiently expounded in the ICAO Secretariat's report (LC/33-WP/3-1), it should be recalled that its inclusion in the Legal Committee's agenda dates to the year 2000; to be more specific, it dates to the thirty-first session of the Committee, which took place from 28 August to 8 September 2000. During that time, the Swedish delegate presented a proposal for the Legal Committee Work Programme's inclusion of the consideration of the modernization of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed at Rome on 7 October 1952 (RC). The justification for this proposal was based on the need to review both the increase of the quantitative limits of compensation and environmental damage. The proposal was favourably received, and the matter was included in the Work Programme.

1.2 On account of this, in mid-2001, the Secretary General of the Organization sent all Member States a questionnaire in order to gather information on the reasons for which the instruments signed at Rome in 1952 and the amending Montreal Protocol of 1978 had not, in view of the small number of ratifications, been considered acceptable. Although only 55 countries responded to the aforementioned questionnaire, that number represents almost 30 % of the Organization's Member States. The opinion expressed in these questionnaires was largely in favour of a review of the international instruments, and almost all the States considered the liability limits contained therein to be insufficient to provide potential aircraft accident victims with reasonable compensation, in view of the socio-economic reality of the time. It bears noting that the terrible events of 11 September had not yet taken place.

1.3 We will not expand here on the consequences which this tragic occurrence had for aviation. However, the progress of the work we are outlining was also affected, and because of this repercussion, this Committee convenes to deal with two drafts, rather than one. How the division of the original draft into two different and independent drafts came about will be explained by Mr. Michael Jennison, who was the rapporteur on this matter at the last session of the Legal Committee, and who, on this occasion, will discuss the Convention on Compensation for Damage Caused by Aircraft to Third Parties in Case of Unlawful Interference, commonly known as the Unlawful Interference Compensation Convention. However, we cannot neglect to mention that, despite their apparent similarity, the legal nature of the risks dealt with by each draft convention are very different, and consequently, a differentiated solution regarding liability is needed.

1.4 Air law arose as an independent branch of the legal sciences with the purpose of analysing and responding to, *inter alia*, the conflicts born of aviation risk, which is a risk based on a fact which is not often given much attention: humans were not made to fly. Because of this, the development of aeronautical activity has necessarily been based entirely on technology. This technology has made tremendous progress, and thanks to the ongoing work of the International Civil Aviation Organization, which has succeeded in combining the efforts of practically all the countries of the world, the aircraft has become the safest means of transportation.

1.5 However, it must be borne in mind that as long as human error exists, as long as machines or aviation support systems can fail, the possibility of accidents will always be present. For this reason, since the very dawn of aviation, law has aimed to provide the best possible solution to the conflicts arising from this new activity. One of the first challenges faced by this new branch of law was to resolve the clash between the interests of the third parties on the ground foreign to aviation activity and those of the aircraft operators.

1.6 A brief background overview serving to familiarize us with the question which brings us together tells us that the matter was already addressed at the First Conference on Private International Law in Paris in 1925, and that out of the work of the International Committee of Experts on Air Law (CITEJA) came the unsuccessful Rome Convention of 1933. This was followed by the Rome Convention of 1952, adopted under ICAO auspices, whose modernization calls us together at present. However, the authors of the Convention signed at Rome in 1952 dealt with only one type of risk, the risk derived from the technical fact of aviation, and the solutions they provided addressed that aspect of the question. The authors never imagined that another type of risk could arise in addition to those rooted in this technical fact of aviation: the risks generated intentionally by the users of aviation themselves. Consequently, they did not establish a juridical approach which could reasonably offer a legal solution to such acts. The failure of Rome 1952 has often been mentioned. However, despite the Convention's relatively low number of ratifications, the Convention has influenced the domestic legislation of most ICAO Member States, fulfilling one of the Organization's objectives, and thereby concretizing one of the essential characteristics of aviation legislation: international consistency. This consistency has clearly facilitated international air commerce, making it possible for international airlines to structure their operational systems so that, resting on the certainty that the legal requirements in the majority of Member States follow a similar pattern, they naturally comply with the legal requirements of the States in which they operate.

1.7 Lastly, and before individually considering the different clauses which make up the draft convention we are discussing, it bears pointing out that, as of the new Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal in 1999, international air law has adapted to aviation's current circumstances, generating a radical change in one of its central notions: liability for damage caused by aviation activity has varied conceptually with respect to the liability established based on the noteworthy work of CITEJA and which constitutes the basis for practically all the international legal instruments and the majority of the national ones which refer to it. However, aeronautical liability has two major facets: liability with regard to passengers and objects transported, and liability with regard to third parties not related to the activity. The Montreal Convention of 1999 covers the former concept, and it is up to us now to establish the guidelines so that this new draft also covers the latter one. Thus the major task we are to undertake involves not only trying to produce a convention text which can reasonably be ratifiable by the majority of Member States, but also providing these Member States with the legal guidelines permitting them to establish, both internationally and domestically, a legal system to deal with damage caused by aircraft to third parties in a fair and equitable manner which best harmonizes the development of aviation with the interests of parties foreign to aviation activity.

2. ANALYSIS OF THE DRAFT CONVENTION

2.1 I have been entrusted with the task of summarizing the draft Convention on Compensation for Damage Caused by Aircraft to Third Parties, commonly known as the draft General Risks Convention. As this is a draft which aims to modernize the Rome Convention of 1952, the differences between the Rome Convention in force and its amendment done at Montreal in 1978 will be pointed out and proposed for study by the Legal Committee.

2.2 Before beginning the analysis of the draft, it is worth mentioning that both instruments which we are to discuss during this session of the Legal Committee were drafted *pari passu*, and consequently, their general standards, their structure, their procedural provisions and the rest of their formal text is almost identical. Because of this, what is said of the articles of the General Risks Convention is applicable, *mutatis mutandis*, to the Unlawful Interference Compensation Convention.

2.3 **Definitions (Article 1)**

2.3.1 For reasons of legislative methodology, all the definitions have been grouped together in Article 1.

2.3.2 Paragraph b) has broadened the concept of aircraft "in flight" with regard to its counterpart in Article 1, paragraph 2 of the Rome Convention of 1952. Consequently, the scope of the Convention has also been broadened, now extending to damage caused from the moment at which all external doors of the aircraft are closed following boarding or loading until the moment when any such door is opened for disembarkation or unloading. This broadening is the result of some comments made by Member States in respect of certain cases which are not covered by the definition in force, but is fundamentally due to the fact that the draft Convention also covers cases of collision.

2.3.3 The concept of "operator" in paragraph c) is similar to the one used in Rome, with some minor wording adjustments. However, the presumption with regard to the registered owner established in Article 2, paragraph 3 of the Rome Convention has not been retained. The difference with regard to the illegitimate user established in Article 12, paragraph 2 has also not been retained. The principle of "control" as a contributing factor to the condition of "operator" contained in the Rome Convention, is, however, retained.

2.3.4 The concept of "State Party" adopts the criterion of Montreal 1978, discarding the concepts of ratification or adhesion and relying on the circumstance that the Convention be in force, making no reference to the origin of this condition.

2.3.5 Lastly, the importance of the third party is fundamental insofar as the third party is, together with the operator, the main subject of the legal relationship which the agreement regulates. The concept of "third party" has been contemplated from a broad perspective, including not only third parties on the surface, but also passengers or crew members of another aircraft in flight or on the ground with which a collision may have occurred, as well as any other person who may have sustained damage, with the exception of the operator, passengers, or consignor or consignee of the cargo of the aircraft which caused the damage. The concept also includes persons at an aerodrome, and the owners, administrators or operators of such aerodrome.

2.4 **Scope (Article 2)**

2.4.1 Also for legislative technical reasons, the scope of the Convention has been transferred to the beginning of the draft, in contrast to the RC, where it is found almost at the end.

2.4.2 Article 2, paragraph 1 of the draft Convention contains a significant difference from the draft Unlawful Interference Compensation Convention: the latter also covers damage caused by aircraft from States not party to the Convention.

2.4.3 The draft which we have at hand discards the criteria of registry as a connecting factor between the one who causes the damage and the State Party; it limits itself to enabling its application when the operator has in a State Party its principal place of business, or if it has no such place of business,

its permanent residence. This reference to the principal place of business and permanent residence, which did not originally exist in the RC, was introduced by the Montreal Protocol of 1978, which, nevertheless, retained the criterion of registry. However, to eliminate the registry of the aircraft as a connecting factor, the draft takes into account that the Convention shall apply primarily to air transport, for which reason said connecting factor shall be centred on the principal place of business of the carrier. For general aviation, however, the connecting factor is the permanent residence of the operator.

2.4.4 Similarly, paragraph 2 establishes an important difference by introducing the possibility of also applying the system to cabotage flights. This invites States to standardize, through declaration to the Depositary, their domestic and international legislation by incorporating the Convention in question into their respective domestic legal systems. The importance of standardizing domestic legislation related to aviation is a principle of international civil aviation which arises from the Chicago Convention, particularly Chapter VI, and upon which it is not necessary to dwell in this forum.

2.4.5 Paragraph 3 repeats the solution provided by the RC, explaining that the scope of the Convention includes the Exclusive Economic Zone, and clarifying the legal status of drilling platforms and other installations permanently fixed to the soil in the Exclusive Economic Zone.

2.5 **Liability of the Operator (Articles 3 and 8)**

2.5.1 As far as the liability of the operator is concerned, despite their similarity, the draft General Risks and Unlawful Interference Compensation Conventions have developed completely different legal solutions which deal with the different legal natures of the risks to be addressed. As the criteria of the Unlawful Interference Compensation Convention will be duly explained by Mr. Jennison, I will limit my examination to the criteria contained in the draft General Risks Convention.

2.5.2 With regard to the cause of attribution of liability, a mixed approach has been established, combining strict liability with fault-based liability, and limited liability with unlimited liability in a two-tiered mechanism which uses the formula developed in the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal 1999).

2.5.3 The system is not completely novel in terms of the scope of liability for damage to third parties on the surface. You will recall that a similar system was proposed at the Taormina meeting of 1950, when the draft which would later become the RC was discussed. At Taormina, three levels were also put forth: the first, strict and limited; the second, also limited, but with a greater amount if there was fault; and finally, the third level, with total unlimited liability for cases in which the damage was caused deliberately. This solution was discarded at the ICAO Legal Committee meeting in Mexico in 1951, at which was developed the definitive draft with which the Rome Conference of 1952 worked.

2.5.4 We return to our draft, which provides for a system of strict liability when the damages claimed do not exceed a certain amount established in Special Drawing Rights. It bears keeping in mind that the amount is established for each injured third party, and there is not an overall amount per event, as is the case in the RC. It is deemed that the amount could be reasonably fixed between 250 000 and 500 000 Special Drawing Rights for each third party, and this amount has been put in brackets for the time being, to be fixed at the appropriate time.

2.5.5 The reasons which support the combination of limited liability and strict liability for compensation for damage to third parties on the surface have been discussed since the very beginnings of air law, and so we will not discuss them here. However, the introduction of the criterion of unlimited but fault-based liability with the burden of proof resting on the party invoking the exemptions to liability is a solution which has avoided the majority of objections made to the RC system.

2.5.6 The draft establishes that if - “upon condition only that”- the damage was caused by an aircraft in flight, this is a contributing factor to the liability of the operator. The draft does not make express reference to the case of persons or objects which have fallen from the aircraft, as this case is already covered in the general premise. The draft maintains, however, the differentiation between direct and indirect damage and the exclusion of damage resulting from the mere fact of passage of the aircraft. Such damage is addressed in a separate paragraph: Article 3, paragraph 3.

2.5.7 The draft thus attempts to find a balance in what has been one of the most controversial issues in air law, the question of the rights of the third party foreign to aviation activity and the interests of aviation. The importance of these interests need not be emphasized here, but they should be protected from events which entail a burden on the operator so extreme that it endangers the operator’s existence.

2.5.8 The criterion of distinction between both elements lies not only in the amount for the damage suffered by the victim, but also in the introduction of exemptions to the liability of the operator, which can be exonerated from full or partial compensation for such amount by proving that there is no fault on its part or that the damage was the fault of a third party for which the operator is not responsible. As the system’s inclusion in the Montreal Convention of 1999 has been the subject of extensive analysis, and it has thus been sufficiently discussed and debated on numerous occasions, we will not expand on the matter here.

2.5.9 It bears pointing out that the only exemption to liability which the operator can invoke for its whole or partial exoneration from liability on the first level is the so-called “fault of the victim” provided for in Article 8 of the draft. That is to say that, in keeping with the RC, the strict liability of this level is not absolute. In effect, Article 8 of the draft establishes that if the operator proves that the damage was caused wholly or partially by an act or omission of a claimant, whether done with intent or recklessly and with knowledge that damage would probably result, the operator shall be wholly or partly exonerated from its liability to the extent that such act or omission caused or contributed to the damage.

2.5.10 There no provision, however, for a cause for exoneration similar to the one established in Article 5 of the RC in respect of damage directly resulting from armed conflict or civil disturbance. With regard to this, it should be noted that this cause is not very compatible with the strict liability which the draft aims to establish. Thus is met one of the draft’s main objectives: to enable the directing of claims to a single person, that of the operator, which is normally in better circumstances to exercise its right of recourse.

2.5.11 For reasons similar to those stated above, the draft also does not include the case, which the RC also establishes as a cause for exoneration from liability, of a person who would otherwise be liable, but who has been deprived of the use of the aircraft by act of public authority. Application of the general standards has been deemed the best solution to this problem, taking into consideration the particularities which such cases could introduce to the concrete instance.

2.5.12 Although the draft contemplates environmental damage, establishment of the legal basis for a claim is remitted to domestic legislation. Likewise, the liability of the operator is limited to compensatory damages, with the express exclusion of punitive, exemplary or any other damages of a nature different from those indicated.

2.5.13 Finally, it should be pointed out with regard to this Article that the scope of the compensable damages sustained by third parties includes damage sustained by persons and by objects. Damages due to mental injury shall be compensable only if caused by a recognisable psychiatric illness resulting either from bodily injury or from a reasonable fear, directly resulting from the event, of exposure to death or bodily injury.

2.6 **Events involving two or more operators or other persons (Article 4)**

2.6.1 The draft provides for collision of aircraft through double regulation. Contrary to the case in the RC, Article 24 of which expressly forbids the Convention's application to damage caused by an aircraft in flight to persons or goods on board another aircraft, the draft we are presenting, as we have seen, includes the following as third parties to which the Convention applies: the operator, owner and crew of the other aircraft, as well as the passengers and consignor or consignee of the cargo on board.

2.6.2 As is similarly the case in the RC, Article 4 of the draft also includes damages on the surface resulting from a collision, establishing joint and several liability between the operators of the aircraft involved, and regulating the recourse between them. The liability of each operator in respect of the third parties and for the purpose of the recourse between them depends on their limits of liability, should there be any.

2.7 **Court Costs and Other Expenses (Article 5)**

2.7.1 On the subject of the awarding of court costs and of the other expenses of the litigation incurred by the plaintiff, the draft makes a provision in deference to local law as regards the distribution of the award. However, in order to encourage out-of-court settlements, the draft establishes a limit to the award where litigation is unnecessary due to the plaintiff's receipt in writing of an offer of compensation for an amount exceeding the amount obtained through litigation.

2.7.2 It should be noted that although the draft refers to "the carrier", it is clear that what is meant is "the operator".

2.8 **Advance Payments (Article 6)**

2.8.1 Advance payments are required by law in some States. In view of this, they are covered by the draft in a provision similar to Article 28 of the Montreal Convention of 1999.

2.8.2 However, in contrast to the provision of the Montreal Convention of 1999, such payments are not limited to the cases of death or injury of passengers; rather, they extend to all persons covered by the law of the State where the damage occurred.

2.9 **Insurance (Article 7)**

2.9.1 The question of the guarantees which are part of the system regulating damage caused by aircraft to third parties on the surface has been and continues to be one the issues of greatest importance.

2.9.2 There is no doubt that it is difficult to establish a system of guarantees which ensures that victims will be compensated for the damage sustained; it is even more difficult when this is attempted on an international scale.

2.9.3 We should recall an important point: the failure of the Rome Convention of 1933, which prompted the creation of the Brussels Protocol of 1938, has been ascribed to this issue. The solution provided by the RC also turned out to be unsatisfactory, despite the extensive and complex mechanism established in Chapter III of the Convention, which the Montreal Protocol of 1978 significantly amended.

2.9.4 In practice, however, the system of guarantees has adapted, following a principle which can be considered integral to the specificity of air law: the liability derived from aviation activity must be

guaranteed. This has been reflected in practice: States require their operators and operators planning to fly over their territory to maintain adequate guarantee – generally, insurance – covering their liability.

2.9.5 For this reason, the system of guarantees in the draft at hand has been simplified as much as possible so as not to be an obstacle; it has been simplified in accordance with current practice. The text, with slight changes, is similar to the text established in Article 50 of the Montreal Convention of 1999.

2.9.6 The system is limited to three basic principles: the obligation of States Party to require of their operators adequate insurance or guarantee covering their liability under the Convention; the power of States Party to require that operators operating over their territory furnish evidence that they maintain adequate insurance or guarantee covering said liability; and lastly, the restriction of all States Party from requiring operators from other States Party to maintain a guarantee greater than what they require of their own respective operators. This last point aims mainly, though not exclusively, to prevent foreign operators from being required to maintain guarantees for amounts which exceed those required of national operators. However, it also extends to any other guarantee-related requirement which could be considered discriminatory with regard to national and foreign operators.

2.10 **Recourse (Articles 9 and 10 *bis*)**

2.10.1 Article 9 of the draft makes a provision in respect of the right of recourse of the person liable for the damages. The clause, which acknowledges its antecedent in Article 10 of the RC, is similar to Article 37 of the Montreal Convention of 1999.

2.10.2 This clause can be related with Article 10 *bis* concerning the exoneration of the owner, lessor or financier retaining title or holding security of an aircraft without being the operator. Because of the implications of exonerating an important sector of the aviation industry from the liabilities of the Convention, the Article was deemed to require further consideration and analysis before being definitively included, and has been put in parentheses.

2.11 **Exclusive Remedy (Article 10)**

2.11.1 This clause was introduced in order to prevent the eluding, through the invocation of parallel regulations, of compliance with the conditions and limits of liability set out in the Convention. The clause stipulates that any action for compensation for damage to third parties caused by an aircraft in flight brought against the operator, or its servants or agents, whether founded under the Convention or in tort or otherwise, can only be brought subject to the aforementioned conditions and limits.

2.12 **Conversion of Special Drawing Rights (Article 11)**

2.12.1 Article 11 of the draft establishes the mechanism for converting the sums establishing the limit of liability and expressed in Special Drawing Rights into the national currency of the State where the action for damages was brought. The clause provides for conversion contemplating the two possible situations in respect of the International Monetary Fund, of which the State can be a Member or not.

2.12.2 The wording of the clause is similar to that of Article 23 of the Montreal Convention of 1999, though it has been considerably simplified.

2.13 **Review of Limits (Article 12)**

2.13.1 The draft also includes a clause on the review of limits in order to prevent the amounts which are established to limit the liability of the operator from becoming unsuitable due to inflation.

2.13.2 For this purpose, it is established that the sums prescribed shall be reviewed by the Depositary by reference to the rate of inflation accumulated since each revision and, in the event that the inflation factor exceeds 10 per cent, the Depositary shall notify the States Party of a revision of the limits of liability.

2.13.3 The measure of the rate of inflation shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right.

2.13.4 The revisions shall become effective six months after the notification to the States Party, unless a majority of the States Party register their disapproval.

2.13.5 The Article is similar to Article 24 of the Montreal Convention of 1999.

2.14 **Forum (Article 13)**

2.14.1 The draft, in keeping with the RC, adopts the system of a single forum, establishing the courts of the State Party where the damage occurred as the venue in which to bring actions for compensation under the provisions of the Convention.

2.14.2 The establishment of a single court, that of the State where the damage occurred, avoids the superimposition of any actions brought before different courts, as well as contradictory judgements in actions brought on account of the same events, and has the consequent advantage of consistency in terms of court decisions and the protection of the rights of the parties. If the damage occurs in more than one State Party, the solution does not change, and the draft establishes that, in such a case, the actions may only be brought before the courts of the State Party the territorial airspace of which the aircraft was in or about to leave when the event occurred.

2.14.3 However, such a limit of jurisdictional capacity does not apply with regard to the provisional measures, including protective measures, available which can be applied in any State Party in compliance with the law of that State; this serves to increase the legal certainty of potential victims.

2.15 **Recognition and Enforcement of Judgements (Article 14)**

2.15.1 With regard to the enforceability of the judgements entered by a competent court after trial or by default, the solution provided by the RC with the modifications of Montreal 1978 is expanded by the draft Convention. When such judgements are enforceable in the State Party of the court which entered them, the draft also makes them enforceable in any other State Party as soon as the formalities required by that State Party have been complied with.

2.15.2 This aims to ensure, as far as possible, the effectiveness of the judgements entered in accordance with the Convention.

2.15.3 However, the ability to seek recognition of the judgement or its enforcement in a court other than the one which entered it does not, according to this clause, authorize reopening the merits of the case of which the judgement is a result. Thus is avoided the use of the mechanism of enforcement to sidestep the legal certainty which was aimed for in the forum-related provisions.

2.15.4 The principle of enforceability we are discussing is not absolute, and consequently, the draft provides for cases in which recognition and enforcement of a judgement may be refused. The RC

established practically all of these cases in one way or another, and in general they have not been the subject of criticism from specialists.

2.15.5 The first of the cases contemplated is that in which the judgement's recognition would be manifestly contrary to public policy in the State Party where recognition or enforcement is sought. This is contemplated in Article 20, paragraph 7 of the RC.

2.15.6 Recognition and enforcement of a judgement may also be refused when the right of self-defence has been violated because the defendant was not served with notice of the proceedings in such time and manner as to allow him to prepare and submit a defence. This clause incorporates the protection provided for in Article 20, paragraph 5, subparagraphs a) and b) of the RC.

2.15.7 Refusal of recognition and enforcement of a judgement is also provided for by the draft if the judgement is in respect of a cause or action which had already, as between the same parties, formed the subject of a judgement or an arbitral award recognised as final and conclusive under the law of the State Party where recognition or enforcement is sought.

2.15.8 The obtaining of a judgement by fraud and the absence of the right to enforce the judgement are also provided for as grounds for the refusal to enforce the judgement.

2.15.9 Finally, also included is the situation in which the judgement awards damages, including exemplary or punitive damages, that do not compensate a third party for actual harm suffered, in which case it is also possible to refuse recognition and enforcement of a judgement.

2.15.10 In keeping with the principle laid down in the RC, the draft establishes that where a judgement is enforceable, payment of any costs recoverable under the judgement shall also be enforceable.

2.16 **Regional and multilateral agreements on the recognition and enforcement of judgements (Article 15)**

2.16.1 The draft seeks to encourage regional and multilateral agreements on the recognition and enforcement of judgements insofar as the level of protection afforded by the Convention to third parties or defendants is not affected.

2.16.2 In the event that such agreements are entered into, the draft establishes a mechanism for keeping the States Party informed of their existence.

2.17 **Period of Limitation (Article 16)**

2.17.1 The two-year period of limitation is maintained, but the formula contained in Article 35 of Montreal 1999 is adopted with the corresponding modifications.

2.17.2 It is interesting to note that in the draft Convention on Unlawful Interference, the period of limitation is three years, instead of two, due to the complexity of the type of event.

2.18 **Death of Person Liable (Article 17)**

2.18.1 In the event of the death of the person liable, the draft confers passive legal capacity upon those legally representing his or her estate, thereby making it possible to move forward with proceedings for damages in such circumstances.

2.19 **State Aircraft (Article 18)**

2.19.1 State aircraft are excluded from the scope of the Convention, thereby maintaining the principle provided for in Article 26 of the RC. The concept of State aircraft is taken from the Convention on International Civil Aviation.

2.20 **Nuclear Damage (Article 19)**

2.20.1 Finally, if damage is caused by a nuclear incident, the Convention refers to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or any amendment or Convention thereto which is in force, in the event that the operator of a nuclear installation is liable for such damage.

3. CONCLUSION

3.1 To conclude, I would like to highlight some issues which I consider appropriate. The draft being studied by this Committee aims to establish an equitable formula which respects the balance between the interests of aviation and those of third parties, and which satisfies the different legal systems of Member States in order to achieve international, and even national, consistency in the treatment of the victims of aircraft accidents.

3.2 For this reason, the working group which participated in the development of the draft has unfailingly taken into account the need to provide suitable protection to the victims of possible aircraft incidents. That, in general, these victims are third parties not related to aviation activity is fundamentally kept in mind, but so too, is the fact that said activity must be protected.

3.3 With this in mind, and considering the objections which hindered the ratification of the instruments signed at Rome in 1952 and at Montreal in 1978, the objective was a text free of complicated, and consequently inapplicable, provisions which could be accepted by Member States.

3.4 You will notice that the draft contains very few parentheses, which attests to the degree of consensus achieved by the working group.

3.5 The draft is considered sufficiently developed by the vast majority of States which participated in the 36th ICAO Assembly. The text, like any other product of human effort, is perfectible, and the draft ultimately produced by this Committee during this session will also be perfectible. However, this must not prevent us from concerting all our efforts in order to create a document of the highest possible quality, and to thereby fulfil the mandate of the Council which called us together.

— END —