国 际 民 用 航 空 组 织

工 作 文 件

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法律委员会 — 第 33 届会议

（2008 年 4 月 21 日 — 5 月 2 日，蒙特利尔）

议程项目 3：在非法干扰行为或一般风险情况下航空器对第三方造成损害的赔偿

关于在发生非法干扰情况下航空器对第三方造成损害的赔偿的公约草案

对其他服务提供者的免责

（由德国提交）

1. INTRODUCTION

1.1 At its 182nd session the Council has decided to submit the Draft Convention on Compensation for Damage caused by Aircraft to Third Parties, in Case of Unlawful Interference to the 33rd session of the Legal Committee and requested that the Legal Committee takes into account the concerns raised by Germany in C-WP/13087 and pays attention to possible ways of protecting the interests of victims most efficiently and ensures the ratifiability of the revised Convention and the operability of the funding mechanism. One of the issues raised by Germany in C-WP/13087 concerns the vast exoneration of other service providers.

2. THE CURRENT DRAFT: VAST EXONERATION DISREGARDS INTERESTS OF VICTIMS AND AIRCRAFT OPERATORS

2.1 The Draft provides in Article 27 that the claim against the operator under the Convention is an exclusive remedy and therefore shields other entities, which could have contributed to the damage, from their liability. Additionally, Article 25 excludes almost any recourse of the operator liable for third party damage to anybody else who contributed to the damage. This complete exclusion of liability is granted to the other entities without obliging them to contribute to the SCM and regardless of the basics of tort and contract law. In consequence victims may well remain uncompensated, e.g. if the SCM is exhausted, whereas those who have contributed to the damage are protected by the Convention and continue to operate.

2.2 This “channelling” of claims onto the operator is especially critical concerning entities that are involved in operational areas of air traffic and therefore constitute severe risks for the operators’ safety, such as air navigation service providers, airports, security providers and ground handling service providers. In cases where the other entity has acted with fault and has thus contributed to the damage it is not justifiable that it benefits from the exclusion of liability – without even having contributed to the SCM – whereas the victims risk not receiving any compensation if the resources of the SCM are exhausted. The

other entity however is perfectly able to effect payments. Up to that point it has not touched its financial means since the first layer is borne by the operator's insurance and the second layer by the passengers, who have contributed to the SCM.

Additionally, it can hardly be considered fair if the operator, who is held strictly liable in case of an incident, should not have a right of recourse against those who actually caused or contributed to the damage.

Another issue to be taken into account is that the current exoneration concept does not set incentives to improve security measures and in the worst case could prompt service providers to reduce security measures as well as the costs spent on those measures, since there would be no liability in case of damage.

Apart from that, it cannot be neglected that such a general exclusion of liability would encompass manufacturers of aircraft as well. This however contradicts European Community law on product liability and must prevent EC Member States from ratifying the Convention.

The vast exoneration of entities and persons contributing to the damage in connection with the limited liability of the airlines puts the victims at a disadvantage that is by no means justifiable, clearly contradicts the aim of the Convention and makes it impossible for policymakers to implement such a system.

3. 提案

3.1 德国因此提议，仅向那些不参与运营过程的实体提供免责，例如航空器所有人或航空器出租人和融资人，但是对于那些参与运营过程因而可能会促成损害的实体，则保持其赔偿责任的可能性。此外，德国提议根据国家法律向运营人和补充赔偿机制提供追索权。

为此目的，德国建议做出下列修改：

— 应删除第二十七条。

— 应插入新的第四条分条，案文如下：

“在不妨碍第三条、第四条、第五条和第二十五条的情况下，不得要求航空器所有人、出租人和融资人支付本公约所涵盖的损害赔偿。”

— 最后，应删除第二十五条第一款和第二款，换成下列措辞：

“1. 本公约任何条款均不妨碍依照本公约规定应对损害负赔偿责任的人对任何人有无追索权的问题。追索权须以所有第三方获得充分赔偿为限。

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