



LEGAL COMMITTEE – 33RD SESSION

(Montréal, 21 April – 2 May 2008)

Agenda Item 8: Report on work done at the Session

DRAFT REPORT ON THE WORK OF THE LEGAL COMMITTEE DURING ITS 33RD SESSION

The attached paragraphs 3:145 to 3:156 of the draft Report of the Legal Committee relate to Agenda Item 3.

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

3:145 The Chairman suggested that, in the absence of a representative of the Air Crash Victims Families Group to introduce its working papers LC/33-WP/3-12 through LC/33-WP/3-15, LC/33-WP/3-17 and LC/33-WP/3-19, the Committee take note thereof and take into account proposals made therein as appropriate in considering the relevant draft provisions on general risks. The Chairman further suggested that there should be no need to introduce information papers LC/33-WP/3-18 and LC/33-WP/3-20 presented by the Supplementary Compensation Mechanism Task Force and by the Chairman of the Special Group on the Modernization of the Rome Convention of 1952, respectively. The Committee agreed with these suggestions.

3:146 The Committee turned to the consideration of the Draft Convention on Compensation for Damage Caused by Aircraft to Third Parties. The Chairman encouraged the Committee to concentrate on the principles behind the draft provisions and leave drafting details for the Drafting Committee.

3:147 In considering article by article, the Committee approved without changes the title of the Convention and **paragraphs b), c), d), e) and f)** of **Article 1** regarding definitions. With respect to **paragraph a)**, it was decided to change the definition of an act of unlawful interference in line with the change which had been made to the same definition in paragraph a) of Article 1 of the draft Convention on terrorist risks. As regards paragraph f), one observer proposed to exclude the consignor or consignee of cargo in the case of collision, but this proposal was not supported.

3:148 In relation **Article 2, paragraph 1**, and in line with what had been decided for the equivalent provision in the draft Convention on terrorist risks, it was decided to qualify the flight as international, give the States the possibility of declaring that this provision also applies to their domestic flights and insert in Article 1 a definition of international flight. To this end, paragraph 1 was sent to the Drafting Committee.

3:149 In addition, one observer, supported by another observer, proposed that an exoneration similar to the one established in Article 5 of the Rome Convention of 1952 in respect of damage directly resulting from armed conflicts or civil disturbances should be contemplated. In view of the hesitation shown by some States in adopting the proposed exoneration because of the strict liability regime of the operator, it was decided to leave this issue in abeyance.

3:150 **Article 3, paragraph 1**, was approved without change. With respect to **paragraph 2**, one observer, supported by two delegations, proposed to redraft **paragraph 2 a)** in a positive fashion rather than the current negative formula. Another observer, proposed that the two-tier liability regime provided for in the Montreal Convention of 1999 and an overall liability cap of the operator based on the actual weight of the aircraft be adopted, in line with Article 4 of the draft Convention on terrorist risks. Another observer proposed that a liability cap should also apply to the rest of the industry sector, considering that if the cap was to be limited to the operator this would only serve to shift the liability to others in the industry. A number of delegations, taking into account that the establishment of a cap for the operator would facilitate the insurability of its liability, supported this proposal but opposed to extending such cap to the rest of the industry, considering that operators have strict liability while the other sectors of the industry do not. It was decided to set up a group composed of Argentina, Germany, Romania, Uganda, AWG and IATA to study this matter and present a solution on the following day. **Paragraphs 3 and 5** were approved without changes and **paragraphs 4 and 6** were referred to the Drafting Committee to be aligned with the equivalent provisions approved for the draft Convention on terrorist risks.

3:151 **Article 4** was approved without changes; **Article 5** was approved with the replacement of the word “carrier”, appearing in the fourth line, by “operator”; **Article 6** was approved without changes; **Article 7** was approved with the insertion of the term “in or” after “State Party” appearing in the beginning of the third line; **Articles 8, 9 and 10** were approved without changes.

3:152 As regards **Article 10 bis** on the exoneration of status liability, there was some discussion as to whether the square brackets around the provision should be removed. There were views in favour, considering that the parties covered by this provision have no involvement in the operation of the aircraft, and against, considering that such exoneration should not be granted because there is no global cap. Even if there was a majority in favour of removing the square brackets, it was decided to refer this matter to the group set up to study paragraph 2 of Article 3.

3:153 **Article 11** was approved, subject to an amendment in the Spanish version regarding the translation of the English term “judicial proceedings” which should be translated to “procesos judiciales”, and **Article 12** was approved without changes.

3:154 With respect to **Article 13**, it was indicated that the title in the French version should be “For”. One delegation proposed to add to **paragraph 1** the jurisdiction of the State where the operator has its principal place of business. One observer, supported by some delegations, was of the view that there was no valid reason to give the victims in this draft Convention a treatment different from that given in the draft Convention on terrorist risks. A number of delegations recognizing merits in the proposed additional jurisdiction voiced support thereto. It was decided to refer this matter to the Drafting Committee with the guidance that the additional jurisdiction be inserted in square brackets and the Drafting Committee analyze its impact in the process of distribution of the compensation to various victims in the case of intervention of different jurisdictions. **Paragraphs 2 and 3** were approved without changes.

3:155 As regards **Article 14**, it was decided to remove the square brackets around the **subparagraphs** under **paragraph 3** and include a clause along the lines of that added to Article 32 of the draft Convention on terrorist risks. **Article 15** was approved, subject to a correction in the Spanish version, and **Article 16** was approved with the increase from two to three years of the time limit for bringing action, in line with what was adopted in the draft Convention on terrorist risks.

3:156 **Articles 17 and 18** were approved without changes and **Article 19** was approved subject to the changes which had been made to Article 37 of the draft Convention on terrorist risks and a correction in the Russian version.