

**ADMINISTRATIVE PACKAGE
FOR RATIFICATION OF OR ACCESSION TO
THE UNLAWFUL INTERFERENCE COMPENSATION CONVENTION**

1. Full Name:

Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft, done at Montréal on 2 May 2009 (Doc 9920)

2. History:

International Conference on Air Law, Montréal, 20 April to 2 May 2009.

3. Summary:

1) Under Article 2, paragraph 1, the Convention applies to damage to third parties which occurs in the territory of a State Party caused by an aircraft in flight on an international flight, as a result of an act of unlawful interference. This Article ensures that damage in any State Party will be compensated, whether or not the operator is from a State Party. In certain cases, the Convention can also apply to such damage that occurs in a State non-Party: where an operator from a State Party causes damage in a State non-Party, the Conference of Parties (COP) may decide to provide financial support to the operator (Article 28).

2) While there is an international element in paragraph 1, paragraph 2 of Article 2 provides for the possibility for application in essentially domestic situations. At the option of a State Party, the Convention will also apply to such damage that occurs in the territory of that Party which is caused by an aircraft in flight other than on an international flight, as a result of an act of unlawful interference.

3) The liability of the operator to compensate is strict. Article 3, paragraph 1, states that the operator shall be liable to compensate for damage upon condition only that the damage was caused by an aircraft in flight. There is no need for the claimant to prove fault. Damages due to death, bodily injury and mental injury are compensable, as is damage to property; environmental damage is also compensable, if such compensation is provided for under the law of the State where the damage occurred.

4) Under Article 4, the operator's liability is limited or capped, based on the weight of the aircraft, ranging from 750 000 Special Drawing Rights (SDRs) for the smallest aircraft to 700 000 000 SDRs for the largest aircraft. This liability cap may be broken in exceptional circumstances only (see paragraph 12) below).

5) Pursuant to Article 8, it is envisaged to create an organization called the International Civil Aviation Compensation Fund ("the International Fund"), with the principal purposes of paying compensation to persons suffering damage in the territory of a State Party, of providing financial support where an operator from a State Party causes damage in a State non-Party (as described above in paragraph 1) and of deciding whether to provide supplementary compensation to passengers on board an aircraft involved in an event. Compensation shall be paid by the International Fund to the extent that the total amount of damages exceeds the Article 4 limits (Article 18, paragraph 1). In other words, where there is damage for which the operator is liable, it will pay up to the level of its cap, and the International Fund will pay additional compensation above and beyond the level of the cap. It is expected that operators will be able to obtain insurance up to the amount of the cap. If insurance is unavailable, or is only available at a cost incompatible with the continued operation of air transport, the International Fund may pay the damages for which the operators are liable under Articles 3 and 4 (Article 18, paragraph 3).

6) In general, the maximum amount of compensation that would be available from the International Fund is set at 3 billion SDRs for each event (Article 18, paragraph 2).

7) The International Fund shall have international legal personality and shall comprise a Conference of Parties (COP) which will be the principal policy-making organ, made up of all States Parties, and a Secretariat headed by a Director. The COP would, *inter alia*, establish Regulations of the International Fund, Guidelines for Compensation, Guidelines on Investment, fix the contributions to be made to the International Fund and decide the cases where financial support should be given to the operator in cases of events in States non-Party. A full list of the powers and duties of the COP is provided in Article 9. The COP shall meet once a year unless it decides otherwise.

8) By virtue of Article 12, the contributions to the International Fund shall be mandatory amounts collected in respect of each passenger and each tonne of cargo departing on an international commercial flight from an airport in a State Party. Where a State Party has made a domestic opt-in declaration under Article 2, paragraph 2, such amounts shall also be collected in respect of each passenger and each tonne of cargo departing on a commercial flight between two airports in that State Party. Contributions in respect of each passenger and tonne of cargo shall not be collected more than once in respect of each journey, whether or not that journey includes stops or transfers. It is envisaged that the COP may specify amounts of contribution from general aviation. The operator shall collect the amounts and remit them to the International Fund. In general, the total amount of contributions collected by the International Fund within two consecutive years shall not exceed 9 billion SDRs (Article 14, paragraph 3).

9) Article 14 provides that the COP shall decide the period and rate of contributions in respect of passengers and cargo departing from a State Party to be made from the time of entry into force of the Convention for that State Party. Initial contributions shall also be paid in respect of passengers and cargo departing on flights covered by a domestic opt-in declaration. Contributions shall be fixed so that the funds available amount to 3 billion SDRs within four years. If the funds available are deemed sufficient in relation to likely compensation or financial assistance to be provided in the foreseeable future and reach the 3 billion SDRs figure, the COP may decide to stop collecting.

10) Where an operator fails to collect or remit contributions, the Director shall take appropriate measures for recovery of the amount due (Article 15, paragraph 2). Each State Party shall ensure that certain statistics and other data are provided to the International Fund; failure to do so could result in the liability of the State Party for any resulting shortfall in contributions (Article 16).

11) Where the damage was caused, or contributed to, by the claimant, or the victim, the operator or the International Fund shall be wholly or partially exonerated from the liability to pay compensation (Article 20).

12) As mentioned in paragraph 4) above, the limits of liability of the operator may be broken in exceptional cases. Under Article 23, where the total amount of damages exceeds the limits of liability of the operator under Article 4, plus the amounts payable by the International Fund under Article 18, paragraph 2 (i.e., the amount of damages exceeds the first and second layers), a person who has suffered damage may claim additional compensation from the operator. To succeed, the person must prove that the operator or its employees have contributed to the occurrence of the event by an act or omission done with intent to cause damage or recklessly and with knowledge that damage would probably result. Where an employee has contributed to the damage, the operator shall not be liable for such additional compensation if it proves that an appropriate system for the selection and monitoring of its employees has been established and implemented. Paragraph 4 of Article 23 sets out the circumstances where the operator or its senior management shall be presumed not to have been reckless.

13) According to Article 24, the operator shall have a right of recourse against any person who has committed, organized or financed the act of unlawful interference; and also against any other person. Similarly, where the International Fund has made payments to claimants, it shall have a right of recourse against any person who has committed, organized or financed the act; against the operator under the conditions established in Article 23; and against any other person (Article 25).

14) Article 26 sets out certain restrictions on the rights of recourse.

15) By virtue of Article 27, there shall be no right or recourse against an owner, lessor or financier of the aircraft which is not an operator, or against a manufacturer in certain circumstances.

16) Article 29 provides for an exclusive remedy. Essentially, any action for compensation for damage to a third party due to an act of unlawful interference can only be brought against the operator or the International Fund subject to the conditions and limits of liability in the Convention. No claims by a third party shall lie against any other person. However, the exclusive remedy provision does not apply to an action against a person who has committed, organized or financed the act.

17) Other procedural provisions are found in Chapter VII. Actions for compensation may be brought in a single forum only, namely, before the courts of the State Party where the damage occurred (Article 32, paragraph 1). Also, judgements entered by a court shall, when they are enforceable in the State Party of that court, be enforceable in any other State Party, although recognition and enforcement of a judgement may be refused under certain specified circumstances (Article 34).

4. Main reasons for ratification:

This Convention seeks to protect the interests of both victims and the air transport industry as a whole.

The Convention ensures in most cases the fullest compensation for victims; there are no limits in respect of individual victims and there is no need for claimants to prove the existence of fault on the part of the carrier or any other person. All third-party claims will be accepted to the full extent of proven damages regardless of the availability of insurance to cover them. With the adoption of the concept of channelling to the carrier of liability to compensate, victims will have a single identified point, namely, the carrier, against which to pursue claims. Overall treatment of third parties will result in a reduction of costly and time-consuming litigation.

Carriers are protected through the mechanism of a global cap on liability per event, based on the weight of the aircraft. This should result in a stable long-term environment for civil aviation as regards war risk insurance, by ensuring that operating costs are predictable and that the industry is free from uninsurable catastrophic losses beyond its control.

5. Entry into force:

In accordance with its Articles 38 and 39, the Convention shall be open to all States and Regional Economic Integration Organizations (REIOs) for signature at the headquarters of ICAO in Montréal until it enters into force.

In accordance with its Article 40, the Convention shall enter into force 180 days after the deposit of the 35th instrument of ratification, acceptance, approval or accession on condition that the total number of passengers departing in the previous year from airports in the States that have ratified is at least 750 000 000 as appears from declarations made by these States. A State which has made an opt-in declaration for domestic flights shall declare the total number of domestic passengers in the previous year and that number shall be counted toward the 750 000 000.

6. **Depositary:**

The International Civil Aviation Organization (ICAO)
Attention: Legal Affairs and External Relations Bureau
999 University Street
Montréal, Québec
Canada H3C 5H7

Attachments:

Model instrument of ratification and model instrument of acceptance, approval or accession

Important:

When depositing its instrument of ratification, acceptance, approval or accession, each State must declare, in accordance with Article 40, paragraph 3, of the Convention, the total number of passengers that departed on international commercial flights from airports in its territory in the previous year. A State which makes an opt-in declaration in accordance with Article 2, paragraph 2, must also declare the number of domestic passengers in the previous year.

**MODEL INSTRUMENT OF RATIFICATION OF THE
UNLAWFUL INTERFERENCE COMPENSATION CONVENTION**

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs)**

WHEREAS the Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft, was adopted at Montréal on 2 May 2009;

WHEREAS the said Convention was signed on behalf of the Government of [name of State] on [date];

AND WHEREAS Article 38, paragraph 2, of the Convention specifies that the latter is subject to ratification by signatory States;

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs], declare that the Government of [name of State], having considered the above-mentioned Convention, RATIFIES the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN SO DOING, I DECLARE, pursuant to Article 40, paragraph 3, of the Convention, that the total number of passengers that departed on international commercial flights from airports in the territory of [name of State] in the previous year of [year] was [number of passengers].

[I DECLARE ADDITIONALLY, in accordance with Article 2, paragraph 2, that this Convention shall also apply to damage to third parties that occurs in the territory of [name of State] which is caused by an aircraft in flight other than on an international flight, as a result of an act of unlawful interference and that the total number of domestic passengers in [name of State] in the previous year of [year] was [number of passengers]].

IN WITNESS WHEREOF, I have signed this instrument of ratification at [place] on [date].

[Signature] and [Seal]

**MODEL INSTRUMENT OF [ACCEPTANCE OF] [APPROVAL OF] [ACCESSION TO]
THE UNLAWFUL INTERFERENCE COMPENSATION CONVENTION**

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs)**

WHEREAS the Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft, was adopted at Montréal on 2 May 2009;

AND WHEREAS Article 38, paragraph 3, of the said Convention specifies that any State which does not sign this Convention may accept, approve or accede to it at any time;

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs], declare that the Government of [name of State], having considered the above-mentioned Convention, [APPROVES] [ACCEPTS] [ACCEDES TO] the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN SO DOING, I ALSO DECLARE, pursuant to Article 40, paragraph 3, of the Convention, that the total number of passengers that departed on international commercial flights from airports in the territory of [name of State] in the previous year of [year] was [number of passengers].

[I DECLARE ADDITIONALLY, in accordance with Article 2, paragraph 2, that this Convention shall also apply to damage to third parties that occurs in the territory of [name of State] which is caused by an aircraft in flight other than on an international flight, as a result of an act of unlawful interference and that the total number of domestic passengers in [name of State] in the previous year of [year] was [number of passengers]].

IN WITNESS WHEREOF, I have signed this instrument of [acceptance] [approval] [accession] at [place] on [date].

[Signature] and [Seal]
