



INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 20 April to 2 May 2009)

PROPOSALS ON THE TWO DRAFT CONVENTIONS

(Presented by Uruguay)

1. **DRAFT CONVENTION ON COMPENSATION FOR DAMAGE TO THIRD PARTIES, RESULTING FROM ACTS OF UNLAWFUL INTERFERENCE INVOLVING AIRCRAFT**
 - 1.1 **Final provisions**
 - 1.1.1 **Art.** Signature
 - 1.1.1.1 The present Convention shall be open for signature until (*date*) at the Headquarters of the International Civil Aviation Organization in Montreal.
 - 1.1.2 **Art.** Ratification
 - 1.1.2.1 The present Convention shall be subject to ratification. The instruments of ratification shall be deposited with the Secretary General of the International Civil Aviation Organization.
 - 1.1.3 **Art.** Accession
 - 1.1.3.1 The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary General of the International Civil Aviation Organization.
 - 1.1.4 **Art.** Entry into force
 - 1.1.4.1 The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.
 - 1.1.4.2 For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

1.2 **Grounds for the Proposal**

1.2.1 The text proposed makes it possible for any State, whether or not a member of the Organization, to accede to the Convention if said State deems it appropriate or expedient to do so.

1.2.2 The number of ratifications or accessions necessary for the Convention's entry into force coincides with the number established in Article 84 of the 1969 Vienna Convention on the Law of Treaties. The Vienna Convention is an instrument of international law which has been widely ratified and accession to which has been extensive; it is, essentially, a codification of customary international law.

1.2.3 Those in favour of providing for a small number of ratifications or accessions in order for a convention to enter into force usually base their justification for this on the precedent set by the 1948 Geneva Convention on the International Recognition of Rights in Aircraft, which requires only two ratifications for its entry into force. Those who cite said Convention as a precedent do not take into account that the number of independent States in existence in 1948 was significantly smaller than the number of independent States in existence today.

1.2.4 This international political reality has undergone a fundamental change since the mid-twentieth century, when several States achieved independence. Today, there are 199 States Parties to the Chicago Convention of 1944.

1.2.5 The draft Convention under study contains standards which will bind airlines and States and which will ultimately affect users. Basic common sense would dictate taking into account the will of more States than those for which the aforementioned Geneva Convention provided and of more States than those for which, regrettably, the 2001 Cape Town Convention on International Interests in Mobile Equipment provided.

2. **DRAFT CONVENTION ON COMPENSATION FOR DAMAGE CAUSED BY AIRCRAFT TO THIRD PARTIES**

2.1 **Chapter I – Principles**

2.1.1 **Article 1 – Definitions**

2.1.1.1 We propose the deletion of paragraph f), "Person", and paragraph g), "State Party".

2.1.2 **Grounds for the Proposal**

2.1.2.1 Article 31, *General rule of interpretation*, of the 1969 Vienna Convention on the Law of Treaties states that:

- a) 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty [...]; and
- b) 4. A special meaning shall be given to a term if it is established that the parties so intended.

2.1.3 **Article 2 – Scope**

2.1.3.1 3. This Convention shall also apply to damage caused by aircraft to an aircraft or ship registered in a State Party where said damage occurs in its Exclusive Economic Zone, the High Seas, or, in the case of an aircraft, above these areas.

2.1.3.2 4. Likewise, this Convention shall apply to damage caused by aircraft to drilling platforms and other installations permanently fixed to the soil in the Exclusive Economic Zone or the Continental Shelf over which platforms or installations a State Party has jurisdiction.

2.1.4 **Grounds for the Proposal**

2.1.4.1 We propose that the word “territory” not be used without a clear-cut meaning.

2.2 **Chapter II – Liability of the Operator and Related Issues**

2.2.1 **Article 7 – Court Costs and Other Expenses** [Translator’s note: “*Costas y costos*”, the wording proposed by Uruguay, does not change when translated into English]

2.2.1.1 The court may order, in accordance with its own law, payment of [the whole or part of] the court costs, or of the court costs and other expenses. The present provision shall not apply if the order to pay damages, excluding court costs and other expenses, does not exceed the sum which the operator has offered in writing to the complainant within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action if that is later than the expiry of such period.

2.2.2 **Grounds for the Proposal**

2.2.2.1 The court costs are the legal costs; the other expenses are extrajudicial expenses, such as, for example, lawyers’ fees. The “plaintiff” is the “complainant”. “The foregoing provision” referred to in the draft Convention is actually Article 6 (Events involving two or more operators or other persons). In reality, what shall not apply is “the present provision”, namely, Article 7.

2.2.2.2 The proposal does not use the verb “*adjudicar*” [“award”]. The Dictionary of the Real Academia gives the following definition of “*condenar a uno en costas*” [“to order to pay court costs”]: “In civil law, to command that a party to an action pay the expenses encountered by said party’s adversary/adversaries in the action”.

2.3 **Chapter III – Recourse and exoneration**

2.3.1 **Article 10 – Acts or omissions of victims**

2.3.1.1 If he operator proves that *the claimant* caused or contributed to the damage *by his or her own act or omission*, or that of the person from whom he or she derives his or her rights [...]

2.3.2 **Basis of the Proposal**

2.3.2.1 We believe that the Spanish version has omitted the words in bold italics included in our proposal. The objective of the proposal is that the standard regain its meaning and that it be clear.

2.4 Chapter IV – Exercise of Remedies and Related Provisions

2.4.1 Article 17 – Recognition and Enforcement of Judgements

2.4.1.1 5. Where a judgement is enforceable, payment of [any] court costs and other expenses recoverable under the judgement shall also be enforceable.

2.4.2 Grounds for the Proposal

2.4.2.1 We propose adding the words “court” and “and other expenses” in order to harmonize the standard with our proposal regarding Article 7; the objective is to include all the expenses incurred by the claimant, aside from the legal costs.

2.5 Chapter V – Application of the Convention

2.5.1 Article 22 – Nuclear Damage

2.5.1.1 The present Convention shall not apply to liability for damage caused by nuclear incidents, which shall continue to be governed by the 1960 Paris Convention on Nuclear Third Party Liability, the 1963 Vienna Convention on Civil Liability for Nuclear Damage, and any amendment or annex to these conventions in force at the time of the event.

2.5.2 Grounds for the Proposal

2.5.2.1 We propose not stating that “No liability shall arise [...] for damage caused by a nuclear incident”. Instead, we propose stating that said damage will continue to be governed by the specific conventions in force regarding nuclear damage.

2.6 Final provisions

2.6.1 Art. Signature

2.6.1.1 The present Convention shall be open for signature until (*date*) at the Headquarters of the International Civil Aviation Organization in Montreal.

2.6.2 Art. Ratification

2.6.2.1 The present Convention shall be subject to ratification. The instruments of ratification shall be deposited with the Secretary General of the International Civil Aviation Organization.

2.6.3 Art. Accession

2.6.3.1 The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary General of the International Civil Aviation Organization.

2.6.4 Art. Entry into force

2.6.4.1 The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

2.6.4.2 For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

2.7 **Grounds for the Proposal**

2.7.1 The text proposed makes it possible for any State, whether or not a member of the Organization, to accede to the Convention if said State deems it appropriate or expedient to do so.

2.7.2 The number of ratifications or accessions necessary for the Convention's entry into force coincides with the number established in Article 84 of the 1969 Vienna Convention on the Law of Treaties. The Vienna Convention is an instrument of international law which has been widely ratified and accession to which has been extensive; it is, essentially, a codification of customary international law.

2.7.3 Those in favour of providing for a small number of ratifications or accessions in order for a convention to enter into force usually base their justification for this on the precedent set by the 1948 Geneva Convention on the International Recognition of Rights in Aircraft, which requires only two ratifications for its entry into force. Those who cite said Convention as a precedent do not take into account that the number of independent States in existence in 1948 was significantly smaller than the number of independent States in existence today.

2.7.4 This international political reality has undergone a fundamental change since the mid-twentieth century, when several States achieved independence. Today, there are 199 States Parties to the Chicago Convention of 1944.

2.7.5 The draft Convention under study contains standards which will bind airlines and States and which will ultimately affect users and third parties on the surface. Basic common sense would dictate taking into account the will of more States than those for which the aforementioned Geneva Convention provided, of more States than those for which the 1952 Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface provided, and of more States than those for which, regrettably, the 2001 Cape Town Convention on International Interests in Mobile Equipment provided.

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