



INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 20 April to 2 May 2009)

DRAFT FINAL CLAUSES OF THE CONVENTION ON COMPENSATION FOR DAMAGE TO THIRD PARTIES, RESULTING FROM ACTS OF UNLAWFUL INTERFERENCE INVOLVING AIRCRAFT

(Presented by the Secretariat)

1. In conformity with established practice, the 33rd Session of the Legal Committee did not prepare Final Clauses of the draft Convention.
2. To facilitate the task of Conference, the Task Force* established by the Council Special Group on the Modernization of the Rome Convention of 1952 met in Paris on 23 and 24 March 2009 and submits the Articles in the Appendix for the consideration of the Conference.
3. References are provided in the margin to facilitate the identification of the origin of the various components of the draft Final Clauses.
4. The following assumptions formed the basis of Article 40 of the draft Final Clauses:
 - a) the initial contribution should not be more than 1 SDR. For the purpose of the calculation of the threshold in Article 40 a number of 1 SDR was used;
 - b) the threshold for entry into force should be a combination of number of States and number of passenger departures to which Article 12 (a) applies;
 - c) the threshold with regard to number of States should be set so that it ensures a reasonably balanced representation at the first COP but need not be as high as in MC99;

* The Task Force is an informal group composed of members and observers of the Council Special Group on the Modernization of the Rome Convention of 1952, with the objective to assist the Legal Committee and the Diplomatic Conference.

- d) the threshold for entry into force with respect to the number of passenger departures would be in respect of passengers on international flights and, if a State Party has made a declaration to this effect, passengers on domestic flights;
- e) the threshold for entry into force with regard to number of passengers should be set so that the SCM could collect the maximum amount in Article 18 (2) in four years;
- f) the threshold with respect to passenger departures should be set taking into account:
 - i) contributions not collected or not remitted;
 - ii) collection in respect of cargo and eventual collection with regard to general aviation;
 - iii) returns on funds collected; and
 - iv) growth of civil aviation traffic;
- g) the threshold for entry into force should not determine to what extent pre-funding shall take place according to Article 14 (2); and
- h) the remittance of contributions shall be made monthly, starting at the end of the first full calendar month after the entry into force of the Convention. It remains to be decided whether the system for monthly collections should be one of self-declaration with a subsequent scrutiny based on the statistics sent in by States Parties or one of up-front payments to be offset against subsequent invoices based on such statistics.

APPENDIX

**DRAFT FINAL CLAUSES OF THE CONVENTION ON COMPENSATION
FOR DAMAGE TO THIRD PARTIES, RESULTING FROM ACTS OF
UNLAWFUL INTERFERENCE INVOLVING AIRCRAFT**

	Source
Chapter IX Final Clauses	
38 – Signature, Ratification, Acceptance, Approval or Accession	
1. This Convention shall be open for signature in Montreal on 2 May 2009 by States participating in the International Conference on Air Law held at Montreal from 20 April to 2 May 2009. After 2 May 2009, the Convention shall be open to all States for signature at the headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with Article 40.	53(1), Montreal Convention of 1999 (“MC”) 47(1) Cape Town Convention (“CTC”)
2. This Convention shall be subject to ratification by States which have signed it.	CTC 47(2) MC 53(3)
3. Any State which does not sign this Convention may accept, approve or accede to it at any time.	CTC 47(3) MC 53(4)
4. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depository.	MC 53(5)
39 – Regional Economic Integration Organizations	
1. A Regional Economic Integration Organization which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The Regional Economic Integration Organization shall in that case have the rights and obligations of a State Party, to the extent that the Organization has competence over matters governed by this Convention. Where the number of States is relevant in this Convention, the Regional Economic Integration Organization shall not count as a Contracting State in addition to its Member States which are Contracting States.	CTC 48

<p>2. The Regional Economic Integration Organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organization by its Member States. The Regional Economic Integration Organization shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.</p> <p>3. Any reference to a "State Party" or "States Parties" in this Convention applies equally to a Regional Economic Integration Organization where the context so requires.</p>	
40 – Entry into force	
<p>1. This Convention shall enter into force on the ninetieth day after the deposit of the eighth instrument of ratification, acceptance, approval or accession on the condition, however, that the total number of passengers departing in the previous year from airports in the States that have ratified, accepted, approved or acceded is at least 750,000,000 as appears from the declarations made by ratifying, accepting, approving or acceding States. If, at the time of deposit of the eighth instrument of ratification, acceptance, approval or accession this condition has not been fulfilled, the Convention shall not come into force until the ninetieth day after this condition shall have been satisfied.</p> <p>2. This Convention shall come into force for each State ratifying, accepting, approving or acceding after the deposit of the last instrument of ratification necessary for entry into force of this Convention on the ninetieth day after the deposit of its instrument of ratification, acceptance, approval or accession.</p> <p>3. At the time of deposit of its instrument of ratification, acceptance, approval or accession a State shall declare the total number of passengers that departed from airports on its territory in the previous year. Such declarations may be amended from time to time to reflect passenger numbers in subsequent years. If a declaration is not amended, the number of passengers shall be presumed to be constant.</p>	

41– Denunciation	
1. Any State Party may denounce this Convention by written notification to the Depositary.	MC 54(1)
2. Denunciation shall take effect one year following the date on which notification is received by the Depositary; nevertheless, in respect of damage contemplated in Article 3 arising from events which occurred before the expiration of the one year period and the contributions required to cover such damage, the Convention shall continue to apply as if the denunciation had not been made.	MC 54(2). The one-year period is taken from 34(3) of the 1992 Fund Convention (“FC”) Rome Convention 35(2)
42– Extraordinary Meetings of the Conference of Parties¹	
1. Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly impair the ability of the Supplementary Compensation Mechanism to perform its functions, request the Director to convene an extraordinary meeting of the Conference of Parties. The Director may convene the Conference of Parties to meet not later than sixty days after receipt of the request.	FC 35(1)
2. The Director may convene, on his own initiative, an extraordinary meeting of the Conference of Parties to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will significantly impair the ability of the Supplementary Compensation Mechanism to perform its functions.	FC 35(2)
3. If the Conference of Parties at an extraordinary meeting convened in accordance with paragraph 1 or 2 decides by a two-thirds majority that the denunciation will significantly impair the ability of the Supplementary Compensation Mechanism to perform its functions, any State Party may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Convention with effect from that same date.	FC 35(3)

¹ These rules could be melded into Article 10 which also deals with extraordinary meetings of the Conference.

43- Termination	
1. This Convention shall cease to be in force on the date when the number of States Parties falls below eight or on such earlier date as the Conference of Parties shall decide by a two-thirds majority of States that have not denounced the Convention. ²	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Article 36 quinquies (FC), Article 36(1)
2. States which are bound by this Convention on the day before the date it ceases to be in force shall enable the Supplementary Compensation Mechanism to exercise its functions as described under Article 44 of this Convention and shall, for that purpose only, remain bound by this Convention.	FC 36(2)
44- Winding up of the Supplementary Compensation Mechanism	
1. If this Convention ceases to be in force, the Supplementary Compensation Mechanism shall nevertheless: <ul style="list-style-type: none"> (a) meet its obligations in respect of any event occurring before the Convention ceased to be in force and of any credits obtained pursuant to paragraph 4 of Article 17 while the Convention was still in force; (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under subparagraph (a), including expenses for the administration of the Supplementary Compensation Mechanism necessary for this purpose. 	FC 37(1)
2. The Conference of Parties shall take all appropriate measures to complete the winding up of the Supplementary Compensation Mechanism including the distribution in an equitable manner of any remaining assets for a purpose consonant with the aims of this Convention or for the benefit of those persons who have contributed to the Supplementary Compensation Mechanism.	FC 37(2)
3. For the purposes of this Article the Supplementary Compensation Mechanism shall remain a legal person.	FC 37(3)

² This qualified majority rule could also be inserted in Article 10(4).

45– Relationship to other treaties³	
<p>The rules of this Convention shall prevail over any rules in the following instruments which would otherwise be applicable to damages covered by this Convention:</p> <ul style="list-style-type: none"> (a) the <i>Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface</i> Signed at Rome on 7 October 1952; or (b) the <i>Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface</i> Signed at Rome on 7 October 1952, Signed at Montreal on 23 September 1978. 	MC 55
46– States with more than one System of Law	
<p>1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.</p>	MC 56(1)
<p>2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.</p>	MC 56(2)
<p>3. In relation to a State Party which has made such a declaration:</p> <ul style="list-style-type: none"> (a) the reference in Article 6 to "the law of the state" shall be construed as referring to the law of the relevant territorial unit of that State; and (b) references in Article 29 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State. 	MC 56(3)

³ With respect to collisions, the relationship between this Convention and the Montreal Convention of 1999 needs to be clarified either in these Final Clauses or in the substantive provisions of the Convention. The feeling of the Task Force was that this Convention should not supersede the rights of passengers under the Montreal Convention of 1999 but to grant them, where appropriate, additional compensation from the SCM.

47 – Reservations and Declarations	
<p>1. No reservation may be made to this Convention but declarations authorized by paragraph 2 of Article 2, paragraph 4 of Article 23, paragraph 2 of Article 39 and paragraph 3 of Article 40 may be made in accordance with these provisions.</p> <p>2. Any declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.</p>	CTC 56
48 – Functions of Depositary	
<p>The Depositary shall promptly notify all signatories and States Parties of:</p> <p style="padding-left: 40px;">(a) each new signature of this Convention and date thereof;</p> <p style="padding-left: 40px;">(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;</p> <p style="padding-left: 40px;">(c) the date of entry into force of this Convention;</p> <p style="padding-left: 40px;">(d) the date of the coming into force of any revision of the limits of liability established under this Convention;</p>	MC 53(8)
<p style="padding-left: 40px;">(e) each declaration made in accordance with this Convention, together with the date thereof;</p>	CTC 62(2)(a)(iii)
<p style="padding-left: 40px;">(f) the withdrawal of any declaration and the date thereof;</p>	CTC 62(2)(a)(iv)
<p style="padding-left: 40px;">(g) any denunciation together with the date thereof and the date on which it takes effect;</p>	New
<p style="padding-left: 40px;">(h) the termination of the Convention.</p>	New
<p>IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.</p> <p>DONE at Montreal on the 2nd day of May of the year two thousand and nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Convention, as well as to all States Parties to the Convention and Protocol referred to in Article 45.</p>	MC