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INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 20 April to 2 May 2009)

CONVENTION ON COMPENSATION FOR DAMAGE CAUSED BY AIRCRAFT TO THIRD PARTIES (GENERAL RISKS CONVENTION)

(Presented by the International Air Transport Association (IATA))

1. BACKGROUND

1.1 This Working Paper addresses IATA's views with regard to the draft *Convention on Compensation of Damage Caused by Aircraft to Third Parties* (General Risks Convention), which covers damages arising from the normal course of aircraft operations.

1.2 IATA's views on the draft *Convention on Compensation for Damage to Third Parties Resulting from Acts of Unlawful Interference Involving Aircraft* (Unlawful Interference Convention) are expressed in a separate Working Paper.

2. DISCUSSION

2.1 As we had already indicated at the 33rd Session of the ICAO Legal Committee, IATA and its member airlines are of the firm belief that the proposed General Risks Convention is not necessary. The domestic laws of ICAO Member States have adequately dealt with major aviation incidents involving damage to third party victims on the ground. Aviation insurance for this type of damage has always been available, and the insurance industry has no record of leaving such claims uncompensated. Furthermore, the casualty rate as a result of third party damages has historically been extremely low.

2.2 Notwithstanding the above view, IATA does recognise that a number of Member States strongly favour the adoption of the General Risks Convention for a number of reasons. For example, it has often been said that domestic legislation of some States in the field of compensation for damages caused to third parties is insufficient and that an international regime is needed to remedy this deficiency.

2.3 Should the Diplomatic Conference proceed with the adoption of the General Risks Convention, IATA strongly urges that the following amendments be adopted in the final text:

a) if an airline is held strictly liable (whether within the liability limits set out in Article 4 or in excess of those limits), it should retain full rights of recourse under applicable law against all other entities alleged to have contributed to the loss under applicable law;

* All language versions provided by IATA.

b) exclusion of armed conflicts and civil disturbances from the scope of recoverable damages (Article 3). This is already the case under Article 5 of the 1952 Rome Convention. Furthermore, domestic legislation in a number of ICAO Member States expressly excludes such incidents from recoverable damages;

c) exclusion of mental injury from recoverable damages (Article 3). In this regard, IATA sees no reason to depart from principles already adopted in *Convention for the Unification of Certain Rules for International Carriage by Air* signed in Montreal on 28 May 1999 (MC 99). MC99 constitutes an internationally accepted regime that thus far has received ninety ratifications;

d) modify the jurisdiction provision to mirror the single forum approach proposed in the Unlawful Interference Convention (Article 16). There is no justification to adopt a multi jurisdiction provision that will only encourage multiple litigation;

e) include a definition of "event" (Article 1);

f) address the issue of the unavailability of insurance, either as a result of market failure or as a consequence of multiple losses that might also have an impact on third party damages (Article 9). IATA proposes that in the event that insurance is not available to an airline on a per event basis, insurance can be obtained on an aggregate basis to suffice the insurance requirements set forth in the Convention;

g) mirror the wording of MC99 so that mere negligence on the part of the victim is required to trigger a claim for contributory negligence, rather than a higher recklessness standard (Article 10). IATA sees no justification in departing from the long-established principle that has been recognized in the Warsaw System, the 1952 Rome Convention and MC99;

h) reduce the limitation period for claims against the airline from three to two years (Article 19). In addition to being the common limitation period in the legal systems of most ICAO member States, the two year limitation period is firmly established in the Warsaw system, MC99 and the 1952 Rome Convention; and

i) as already suggested in Doc. No. 11 presented by Uruguay, IATA is of the view that this Convention should only enter into force when thirty-five or more ICAO Member States ratify it. This formula has already been recognized in Article 84 of the Vienna Convention on the Law of Treaties.

3. CONCLUSION

3.1 In IATA's views, the proposed amendments discussed in paragraph 2.3 of this Working Paper would strike a fair balance between the adequate protection of victims and the interests of the aviation industry. These amendments would also enhance the chances of ratification of the General Risks Convention.

3.2 Whilst reiterating its position set out in paragraph 2.1 above that the proposed General Risks Convention is unnecessary, in the event that the Diplomatic Conference decides to adopt the Convention, IATA strongly urges ICAO Member States to adopt the amendments proposed in this Working Paper.

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