



INTERNATIONAL CONFERENCE ON AIR LAW

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COMPENSATION FOR DAMAGE CAUSED BY AIRCRAFT TO THIRD PARTIES ARISING FROM ACTS OF UNLAWFUL INTERFERENCE OR FROM GENERAL RISKS

(Presented by the Kingdom of Saudi Arabia)

1. INTRODUCTION

1.1 Though the 1952 Rome Convention provides for limited liability on the part of the airline companies it was not ratified by a large number of States. The Convention as well as the Montreal Convention of 1999 has served the Civil Aviation Community and the Aviation victims in all fairness and transparency without discrimination between airlines companies in contrast to the proposed Convention in respect of damages caused to third parties resulting from acts of unlawful interference involving aircraft in which the liability could be absolute on the part of the operator and the maximum liability is flexible (unlimited liability). The Convention needs, as it stands, a lot of effort to change some of its provisions in order to achieve a fair balance between the interests of the victims and those of the aircraft industry and to assure the participation of a large number of States in order to ratify it and enforce it, especially when the current financial crisis and the global financial situation as a whole have affected many of the air carriers and negatively impacted their operations and performance.

2. DISCUSSION AND ANALYSIS

2.1 After the success of the International Community in lifting the special compensation paid to the passengers and the signing of the Montreal Convention for the Unification of Certain Rules for International Carriage by Air, in 1999, as a result of the damages suffered by them and resulting from the air accidents the thinking shifted to give justice to the victims on the ground who suffered some damages inflicted on themselves or on their property as a result of air accidents. That effort proceeded under the amendment of 1952 Rome Convention which organizes compensations provided in such cases and which defined very low limits that were not proportional to the degree of the damage. Hence a set of basis and principles was agreed upon that preserve the victims rights.

* Arabic version provided by Saudi Arabia.

2.2 The ICAO Legal Committee approved the following two texts in its 33rd Session:

- a) a Draft Convention on compensation for damage caused by aircraft to third parties; and
- b) another draft on compensation for damage to third parties resulting from acts of unlawful interference, which includes aircraft.

2.3 The draft of the second Convention relating to the compensation for damage to third parties resulting from acts of unlawful interference which include an aircraft, contains some provisions that need rewriting. In addition, the draft provides for a fund to compensate the victims and that imposes a new burden on the airline companies. And in spite of that, the concept as it stands, includes a lot of deficiencies. The Convention as a whole does not achieve a fair balance between the interests of the victims and those of the aircraft industry since the fund financing mechanism (Supplementary Compensation Mechanism) cannot in its current situation achieve the hope of the Fund in a smooth and fair method.

3. **THE SUPPLEMENTARY COMPENSATION MECHANISM**

3.1 The main objective of the Supplementary Compensation Mechanism is to pay compensations for the persons who suffered damages in the territory of a State Party and provide financial support when an operator of a State Party causes damages in a non-Party State and the Mechanism pays the compensation if it exceeds the total amount of the compensation. In other words in the case when the operator of the aircraft is liable and responsible for the damage he would pay the maximum amount imposed on him and the Mechanism would pay an additional amount above the maximum compensation. It is expected that the operators will get insurance to cover the maximum amount imposed on them. If the insurance is not available or if it is provided with a cost that affects the continuing operation of the air transport, the Supplementary Compensation Mechanism could provide the financial support to the operators to meet their liabilities. This is what the Special Group refers to as phased-in coverage process.

3.2 The fees under the Supplementary Compensation Mechanism are obligatory amounts collected for every departing passenger and for every tonne of cargo departing on a international commercial flight from an airport in a State Party.

3.3 The draft Convention does not estimate the issue of adequate funding. In addition, it could not be possible under the proposed funding method to achieve justice and transparency in estimating the fees and the degree of risk and the possibility of their occurrences. The funding regime does not include the general aviation which is carried out through private airlines and empty league and test flights. Of course this does not achieve justice between aircraft operators and would negatively affect the Supplementary Compensation Mechanism.

4. **CONCLUSIONS**

4.1 The maximum compensation limit must be known and fixed and applied in full transparency on all airlines without discrimination while giving due consideration to the degree of operation of each carrier.

4.2 The airlines must be protected from the exaggerated and unfair claims which could affect their operational performance and which would definitely affect also the participating entities in the executing areas of air traffic.

4.3 In order that the scope of liability for compensation should not exceed the persons and the properties and its circle be widened uncontrollably or abused, leading to the exaggeration of compensations imposed upon the operators, we suggest the simple addition to the second paragraph in Article 3 of the first and second Conventions which reads as follows:

- No right to compensation may arise under this convention if the damage did not result directly from the incident that led to its occurrence. Also, the right to compensation should not include indirect parties who are located out of the incident's range, and who may claim compensation on the grounds that they suffered psychologically or were subjected to other forms of damage as an indirect consequence of the incident.

5. **ACTION REQUIRED**

5.1 Requesting ICAO to revisit some of the convention provisions as outlined in this paper.

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