



INTERNATIONAL CONFERENCE ON AIR LAW

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

(Presented by the European Commission on behalf of the European Community)

1. SUMMARY

1.1 This document presents a proposal for a provision on the possibility for a Regional Economic Integration Organisation (REIO) to apply its internal rules relating to jurisdiction in the cases falling under the scope of the draft Convention, notably when the damage occurs in the territory of a Member State of that REIO and the defendant has its principal place of business in the territory of a Member State of that REIO as well. The document contains information on the background for and implications of the proposed provision.

1.2 It has thus to be underlined that the application of the jurisdictional system of a REIO would be limited only to situations internal to that REIO. Consequently such a proposal would affect in no way either the rights of the victims or of operators of other State Parties, as provided for in the draft Convention. State Parties other than the members of the REIO concerned will not be affected in any way by the proposal.

2. BACKGROUND

2.1 The European Community (EC) considers that the draft Convention raises a number of issues which are of fundamental relevance to its possibility to become a Party to the draft Convention. Certain of these issues stem from the fact that Article 16 of the draft General Risks Convention includes provisions on jurisdiction and thus covers matters which are regulated at the level of the EC by Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Regulation is binding upon all EC Member States. It establishes a common judicial area within the EC, by *inter alia* determining international jurisdiction of the courts. The possibility to continue the application of jurisdictional rules of Regulation (EC) 44/2001 as between EC Member States in civil and commercial matters is of considerable importance to the EC and its Member States.

3. INTRODUCTION OF AN ADDITIONAL PROVISION RELATING TO JURISDICTIONAL RULES OF A REIO IN THE DRAFT CONVENTION

3.1 Regulation (EC) 44/2001 is applicable to civil litigation concerning aviation matters and therefore to claims brought by persons having suffered damage falling under the scope of the draft Convention.

3.2 Article 16 of the draft Convention differs from the jurisdictional rules established at the EC level, since these provide for:

- a) Forum of the defendant's domicile; and
- b) Forum of the place where harmful event occurred.

3.3 Regulation (EC) 44/2001 foresees as a basic rule the forum of the domicile of the defendant. In the EC jurisdictional system, the defendant's domicile is the normal rule as it is regarded as the rule that best ensures the rights of defence for the defendant. In addition, an alternative forum improves access to justice to victims in the EC, where, because of the right for free movement within the EC, the probability of victims from several Member States increases. Under the general jurisdictional regime applicable in the EC, the victim could thus decide on the forum (either the place of damage or the principal place of business of the defendant), which he thinks would best protect his interests, while the operator with a principal place of business in the Member State of the EC would have the possibility to be sued in the court of that Member State.

3.4 Although the draft Convention provides for jurisdiction being concentrated in the courts of the State Party where the damage occurred, the EC would prefer to see these fundamental principles of its jurisdictional system safeguarded in the draft Convention, as this would facilitate its adhering to the draft Convention (and thus also of its Member States).

3.5 For this reason the EC proposes to provide for the possibility in the draft Convention for a Regional Economic Integration Organisation (REIO) to apply its internal jurisdictional rules in strictly internal situations, notably where the operator's principal place of business, or, if he has no such place of business, its permanent residence, is in the territory of a Member State of a REIO and also the place of damage is in the territory of a Member State of that REIO.

3.6 This could be achieved by inserting a "disconnection clause". Such a solution can be found in other international instruments, including conventions on transport liability¹, that enable Contracting States to continue to apply different mutual rules on jurisdiction.

3.7 It has to be underlined that the application of the EC jurisdictional system would be limited only to internal Community situations, and therefore such a disconnection clause would in no way affect neither the rights of the non-EC victims nor the rights of non-EC operators, as provided for in the draft Convention. Thus, State Parties to the Convention outside the EC will not be affected in anyway by the proposed clause. The insertion of the clause does not interfere with the functioning of the general scheme of the draft Convention but allows for the special needs of the EC arising from the jurisdictional system established between its Member States to be taken into account.

¹ See Article 21 of *Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (CRTD)*.

4. **PROPOSAL FOR A NEW ARTICLE 16A**

4.1 The EC proposes a “disconnection clause” relating to jurisdiction to be inserted in the draft Convention as follows:

(NEW) Article 16 a - Regional and multilateral agreements on forum

- a) States Parties may enter into regional or multilateral agreements which apply regarding jurisdiction in cases where both the damage occurred in the territory of a State Party that is party to such agreement, and the operator has its principal place of business in the territory of a State Party that is party to such agreement.
- b) States Parties shall inform each other, through the Depositary, of any such regional or multilateral agreements that they have entered into before or after the date of entry into force of this Convention.
- c) The provisions of Chapter IV of this Convention shall not affect rules on jurisdiction pursuant to such agreement.

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