



INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 20 April to 2 May 2009)

RECOMMENDATIONS OF THE AERIAL COLLISIONS WORKING GROUP

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

INTERACTION WITH 1999 MONTREAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR, AND OTHER RELEVANT LAW

1. STATEMENT OF PROBLEM

1.1 As presently drafted, the Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft conflicts with the Montreal Convention of 1999 in the case of a collision involving an aircraft which has been the subject of an act of an unlawful interference with an aircraft engaged in international carriage within the scope of the Montreal Convention of 1999. The conflict arises primarily from the interaction of the definitions of “event” and “third party” with the provisions of Article 28 on exclusivity.

1.2 While the Montreal Convention of 1999 provides that the passengers on board the “other aircraft” have the right to compensation as against that carrier, Article 28 of the Unlawful Interference Convention provides for channelling of all claims arising from an event of unlawful interference against the operator to the exclusion of all other causes of action. The language of Article 28 as presently drafted would bar the claims of passengers on board the “other aircraft” under the Montreal Convention of 1999.

2. RECOMMENDED SOLUTION

2.1 Amend Article 1 j) as follows:

j) “Third party” means a person other than the operator, passenger, or consignor or consignee of cargo; ~~in the case of a collision, “third party” also means the operator, owner and crew of the other aircraft and the passenger or consignor or consignee of cargo on board the other aircraft.~~

2.2 Insert a new paragraph j) in Article 9 as follows:

j) shall decide whether and in what circumstances supplementary compensation may be payable by the Supplementary Compensation Mechanism to passengers on board an aircraft involved in an event in circumstances where the damages recovered by passengers according to applicable law did not result in the recovery of compensation commensurate with that available to third parties under this Convention. In exercising this discretion the Conference of Parties shall seek to ensure that passengers and third parties are treated equally.

2.3 Amend paragraph 1 of Article 28 as follows:

1. Without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights, any action for compensation for damage to a third party due to an act of unlawful interference, however founded, whether under this Convention or in tort or in contract or otherwise, can only be brought against the operator and shall be subject to the conditions and limits of liability set out in this Convention. No claims by a third party shall lie against any other person for compensation for such damage.

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