



INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 20 April to 2 May 2009)

**REPORT OF THE COMMISSION OF THE WHOLE ON THE
DRAFT CONVENTION ON COMPENSATION
FOR DAMAGE CAUSED BY AIRCRAFT
TO THIRD PARTIES**

(Presented by the Chairman of the Commission of the Whole)

1. This Report sets out the text of the Draft Convention on Compensation for Damage Caused by Aircraft to Third Parties, as agreed in the Commission of the Whole. For convenience of reference, a text showing the changes made to DCCD Doc No. 32 (draft Preambular Clauses), DCCD Doc No. 30 (Report of the Drafting Committee) and DCCD-FCC No. 1 (draft Final Clauses) is also included.
2. The Plenary is invited to adopt the text of the draft Convention.

DRAFT

**CONVENTION ON COMPENSATION FOR DAMAGE
CAUSED BY AIRCRAFT TO THIRD PARTIES**

THE STATES PARTIES TO THIS CONVENTION

RECOGNIZING the need to ensure adequate compensation for third parties who suffer damage resulting from events involving an aircraft in flight;

RECOGNIZING the need to modernize the *Convention on damage caused by foreign aircraft to third parties on the surface*, signed at Rome on 7 October 1952, and the *Protocol* to amend the Convention, signed at Montreal on 23 September 1978;

RECOGNIZING the importance of ensuring protection of the interests of third-party victims and the need for equitable compensation, as well as the need to enable the continued stability of the aviation industry;

REAFFIRMING the desirability of the orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944; and

CONVINCED that collective State action for further harmonization and codification of certain rules governing the compensation of third parties who suffer damage resulting from events involving aircraft in flight through a new Convention is the most desirable and effective means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

Chapter I

Principles

Article 1 — Definitions

For the purposes of this Convention:

- (a) an “act of unlawful interference” means an act which is defined as an offence in the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970, or the *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971, and any amendment in force at the time of the event;
- (b) an “event” occurs when damage is caused by an aircraft in flight other than as a result of an act of unlawful interference;

- (c) an aircraft is considered to be “in flight” at any time from the moment when all its external doors are closed following embarkation or loading until the moment when any such door is opened for disembarkation or unloading;
- (d) “international flight” means any flight whose place of departure and whose intended destination are situated within the territories of two States, whether or not there is a break in the flight, or within the territory of one State if there is an intended stopping place in the territory of another State;
- (e) “maximum mass” means the maximum certificated take-off mass of the aircraft, excluding the effect of lifting gas when used;
- (f) “operator” means the person who makes use of the aircraft, provided that if control of the navigation of the aircraft is retained by the person from whom the right to make use of the aircraft is derived, whether directly or indirectly, that person shall be considered the operator. A person shall be considered to be making use of an aircraft when he or she is using it personally or when his or her servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority;
- (g) “person” means any natural or legal person, including a State;
- (h) “State Party” means a State for which this Convention is in force; and
- (i) “third party” means a person other than the operator, passenger or consignor or consignee of cargo.

Article 2 — Scope

1. This Convention applies to damage to third parties which occurs in the territory of a State Party caused by an aircraft in flight on an international flight, other than as a result of an act of unlawful interference.
2. If a State Party so declares to the Depositary, this Convention shall also apply where an aircraft in flight other than on an international flight causes damage in the territory of that State, other than as a result of an act of unlawful interference.
3. For the purposes of this Convention:
 - (a) damage to a ship in or an aircraft above the High Seas and the Exclusive Economic Zone shall be regarded as damage occurring in the territory of the State in which it is registered; however, if the operator of the aircraft has its principal place of business in the territory of a State other than the State of Registry, the damage to the aircraft shall be regarded as having occurred in the territory of the State in which it has its principal place of business; and
 - (b) damage to a drilling platform or other installation permanently fixed to the soil in the Exclusive Economic Zone or the Continental Shelf shall be regarded as having occurred in the territory of the State which has jurisdiction over such platform or installation in accordance with international law including the *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982.

4. This Convention shall not apply to damage caused by State aircraft. Aircraft used in military, customs and police services shall be deemed to be State aircraft.

Chapter II

Liability of the operator and related issues

Article 3 — Liability of the operator

1. The operator shall be liable for damage sustained by third parties upon condition only that the damage was caused by an aircraft in flight.
2. There shall be no right to compensation under this Convention if the damage is not a direct consequence of the event giving rise thereto, or if the damage results from the mere fact of passage of the aircraft through the airspace in conformity with existing air traffic regulations.
3. Damages due to death, bodily injury and mental injury shall be compensable. Damages due to mental injury shall be compensable only if caused by a recognizable psychiatric illness resulting either from bodily injury or from direct exposure to the likelihood of imminent death or bodily injury.
4. Damage to property shall be compensable.
5. Environmental damage shall be compensable, in so far as such compensation is provided for under the law of the State Party in the territory of which the damage occurred.
6. No liability shall arise under this Convention for damage caused by a nuclear incident as defined in the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy or for nuclear damage as defined in the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, and any amendment or supplements to these Conventions in force at the time of the event.
7. Punitive, exemplary or any other non-compensatory damages shall not be recoverable.
8. An operator who would otherwise be liable under the provisions of this Convention shall not be liable if the damage is the direct consequence of armed conflict or civil disturbance.

Article 4 — Limit of the operator's liability

1. The liability of the operator arising under Article 3 shall not exceed for an event the following limit based on the mass of the aircraft involved:
 - (a) 750 000 Special Drawing Rights for aircraft having a maximum mass of 500 kilogrammes or less;
 - (b) 1 500 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 kilogrammes but not exceeding 1 000 kilogrammes;

- (c) 3 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 1 000 kilogrammes but not exceeding 2 700 kilogrammes;
 - (d) 7 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 2 700 kilogrammes but not exceeding 6 000 kilogrammes;
 - (e) 18 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 6 000 kilogrammes but not exceeding 12 000 kilogrammes;
 - (f) 80 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 12 000 kilogrammes but not exceeding 25 000 kilogrammes;
 - (g) 150 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 25 000 kilogrammes but not exceeding 50 000 kilogrammes;
 - (h) 300 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 50 000 kilogrammes but not exceeding 200 000 kilogrammes;
 - (i) 500 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 200 000 kilogrammes but not exceeding 500 000 kilogrammes;
 - (j) 700 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 000 kilogrammes.
2. If an event involves two or more aircraft operated by the same operator, the limit of liability in respect of the aircraft with the highest maximum mass shall apply.
3. The limits in this Article shall only apply if the operator proves that the damage:
- (a) was not due to its negligence or other wrongful act or omission or that of its servants or agents; or
 - (b) was solely due to the negligence or other wrongful act or omission of another person.

Article 5 — Priority of compensation

If the total amount of the damages to be paid exceeds the amounts available according to Article 4, paragraph 1, the total amount shall be awarded preferentially to meet proportionately the claims in respect of death, bodily injury and mental injury, in the first instance. The remainder, if any, of the total amount payable shall be awarded proportionately among the claims in respect of other damage.

Article 6 — Events involving two or more operators

1. Where two or more aircraft have been involved in an event causing damage to which this Convention applies, the operators of those aircraft are jointly and severally liable for any damage suffered by a third party.
2. If two or more operators are so liable, the recourse between them shall depend on their respective limits of liability and their contribution to the damage.

3. No operator shall be liable for a sum in excess of the limit, if any, applicable to its liability.

Article 7 – Court costs and other expenses

1. The court may award, in accordance with its own law, the whole or part of the court costs and of the other expenses of the litigation incurred by the claimant, including interest.
2. Paragraph 1 shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the operator has offered in writing to the claimant within a period of six months from the date of the event causing the damage, or before the commencement of the action, whichever is the later.

Article 8 — Advance payments

If required by the law of the State where the damage occurred, the operator shall make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, in order to meet their immediate economic needs. Such advance payments shall not constitute a recognition of liability and may be offset against any amount subsequently payable as damages by the operator.

Article 9 — Insurance

1. Having regard to Article 4, States Parties shall require their operators to maintain adequate insurance or guarantee covering their liability under this Convention.
2. An operator may be required by the State Party in or into which it operates to furnish evidence that it maintains adequate insurance or guarantee. In doing so, the State Party shall apply the same criteria to operators of other States Parties as it applies to its own operators.

Chapter III

Exoneration and recourse

Article 10 — Exoneration

If the operator proves that the damage was caused, or contributed to, by the negligence or other wrongful act or omission of a claimant, or the person from whom he or she derives his or her rights, the operator shall be wholly or partly exonerated from its liability to that claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

Article 11 — Right of recourse

Subject to Article 13, nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any person.

Chapter IV

Exercise of remedies and related provisions

Article 12 — Exclusive remedy

1. Any action for compensation for damage to third parties caused by an aircraft in flight brought against the operator, or its servants or agents, however founded, whether under this Convention or in tort or otherwise, can only be brought subject to the conditions set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.
2. Article 3, paragraphs 6, 7 and 8, shall apply to any other person from whom the damages specified in those paragraphs would otherwise be recoverable or compensable, whether under this Convention or in tort or otherwise.

Article 13 — Exclusion of liability

Neither the owner, lessor or financier retaining title or holding security of an aircraft, not being an operator, nor their servants or agents, shall be liable for damages under this Convention or the law of any State Party relating to third party damage.

Article 14 — Conversion of Special Drawing Rights

The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value in a national currency shall be calculated in accordance with the method of valuation applied by the International Monetary Fund for its operations and transactions. The value in a national currency, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State to express in the national currency of the State Party as far as possible the same real value as the amounts in Article 4, paragraph 1.

Article 15 — Review of limits

1. Subject to paragraph 2 of this Article, the sums prescribed in Article 4, paragraph 1, shall be reviewed by the Depositary by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of this Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in Article 14.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify the States Parties of a revision of the limits of liability. Any such revision shall become effective six months after the notification to the States Parties, unless a majority of the States Parties register their disapproval. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

Article 16 — Forum

1. Subject to paragraph 2 of this Article, actions for compensation under the provisions of this Convention may be brought only before the courts of the State Party in whose territory the damage occurred.

2. Where damage occurs in more than one State Party, actions under the provisions of this Convention may be brought only before the courts of the State Party the territory of which the aircraft was in or about to leave when the event occurred.

3. Without prejudice to paragraphs 1 and 2 of this Article, application may be made in any State Party for such provisional measures, including protective measures, as may be available under the law of that State.

Article 17 — Recognition and enforcement of judgements

1. Subject to the provisions of this Article, judgements entered by a competent court under Article 16 after trial, or by default, shall when they are enforceable in the State Party of that court be enforceable in any other State Party as soon as the formalities required by that State Party have been complied with.

2. The merits of the case shall not be reopened in any application for recognition or enforcement under this Article.

3. Recognition and enforcement of a judgement may be refused if:

- (a) its recognition or enforcement would be manifestly contrary to public policy in the State Party where recognition or enforcement is sought;
- (b) the defendant was not served with notice of the proceedings in such time and manner as to allow him to prepare and submit a defence;
- (c) it is in respect of a cause of action which had already, as between the same parties, formed the subject of a judgement or an arbitral award which is recognized as final and conclusive under the law of the State Party where recognition or enforcement is sought;
- (d) the judgement has been obtained by fraud of any of the parties; or
- (e) the right to enforce the judgement is not vested in the person by whom the application is made.

4. Recognition and enforcement of a judgement may also be refused to the extent that the judgement awards damages, including exemplary or punitive damages, that do not compensate a third party for actual harm suffered.

5. Where a judgement is enforceable, payment of any court costs and other expenses incurred by the plaintiff, including interest recoverable under the judgement, shall also be enforceable.

Article 18 – Regional and multilateral agreements on the recognition and enforcement of judgements

1. States Parties may enter into regional and multilateral agreements regarding the recognition and enforcement of judgements consistent with the objectives of this Convention, provided that such agreements do not result in a lower level of protection for any third party or defendant than that provided for in this Convention.

2. 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.

3. The provisions of Chapter IV of this Convention shall not affect the recognition or enforcement of any judgement pursuant to such agreements.

Article 19 — Period of limitation

1. The right to compensation under Article 3 shall be extinguished if an action is not brought within two years from the date of the event which caused the damage.

2. The method of calculating such two-year period shall be determined in accordance with the law of the court seised of the case.

Article 20 — Death of person liable

In the event of the death of the person liable, an action for damages lies against those legally representing his or her estate and is subject to the provisions of this Convention.

CHAPTER V

Final Clauses

Article 21 – Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Montréal on 2 May 2009 by States participating in the International Conference on Air Law held at Montréal 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 Montréal until it enters into force in accordance with Article 23.

2. This Convention shall be subject to ratification by States which have signed it.
3. Any State which does not sign this Convention may accept, approve or accede to it at any time.
4. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depository.

Article 22 – 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 that Organization has competence over matters governed by this Convention.
2. The Regional Economic Integration Organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the Depository 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 Depository of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
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.

Article 23 – Entry into force

1. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depository between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organization shall not be counted for the purpose of this paragraph.
2. For other States and for other Regional Economic Integration Organizations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

Article 24 – Denunciation

1. Any State Party may denounce this Convention by written notification to the Depository.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depository; in respect of damage contemplated in Article 3 arising from an event which occurred before the expiration of the one hundred and eighty day period, the Convention shall continue to apply as if the denunciation had not been made.

Article 25 – Relationship to other treaties

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:

- (a) the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface*, Signed at Rome on 7 October 1952; or
- (b) the *Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface Signed at Rome on 7 October 1952*, Signed at Montréal on 23 September 1978.

Article 26 – States with more than one system of law

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.
2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which this Convention applies.
3. For a declaration made under Article 2, paragraph 2, by a State Party having two or more territorial units in which different systems of law are applicable, it may declare that this Convention shall apply to damage to third parties that occurs in all its territorial units or in one or more of them and may modify this declaration by submitting another declaration at any time.
4. In relation to a State Party which has made a declaration under this Article:
 - (a) the reference in Article 8 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 14 to “national currency” shall be construed as referring to the currency of the relevant territorial unit of that State.

Article 27 – Reservations and declarations

1. No reservation may be made to this Convention but declarations authorized by Article 2, paragraph 2, Article 22, paragraph 2, and Article 26 may be made in accordance with these provisions.
2. Any declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 28 – Functions of the Depositary

The Depositary shall promptly notify all signatories and States Parties of:

- (a) each new signature of this Convention and date thereof;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;
- (c) each declaration and the date thereof;
- (d) the modification or withdrawal of any declaration and the date thereof;
- (e) the date of entry into force of this Convention;
- (f) the date of the coming into force of any revision of the limits of liability established under this Convention; and
- (g) any denunciation with the date thereof and the date on which it takes effect.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Montréal 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 Conventions and Protocol referred to in Article 25.

DRAFT**CONVENTION ON COMPENSATION FOR DAMAGE
CAUSED BY AIRCRAFT TO THIRD PARTIES**

THE STATES PARTIES TO THIS CONVENTION

RECOGNIZING the need to ensure adequate compensation for third parties who suffer damage resulting from events involving an aircraft in flight;

RECOGNIZING the need to modernize the *Convention on damage caused by foreign aircraft to third parties on the surface*, signed at Rome on 7 October 1952, and the *Protocol* to amend the Convention, signed at Montreal on 23 September 1978;

RECOGNIZING the importance of ensuring protection of the interests of third-party victims and the need for equitable compensation, as well as the need to enable the continued stability of the aviation industry;

REAFFIRMING the desirability of the orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944; and

CONVINCED that collective State action for further harmonization and codification of certain rules governing the compensation of third parties who suffer damage resulting from events involving aircraft in flight through a new Convention is the most desirable and effective means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

Chapter I

Principles

Article 1 — Definitions

For the purposes of this Convention:

- (a) ~~(a) Anan~~ “act of unlawful interference” means an act which is defined as an offence in the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970, or the *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971, and any amendment in force at the time of the event;
- (b) ~~(b) Anan~~ “event” occurs when damage is caused by an aircraft in flight other than as a result of an act of unlawful interference;
- (c) ~~(c) Anan~~ aircraft is considered to be “in flight” at any time from the moment when all its

external doors are closed following embarkation or loading until the moment when any such door is opened for disembarkation or unloading.

- (d) ~~(d)~~ ~~“International~~ “international flight” means any flight whose place of departure and whose intended destination are situated within the territories of two States, whether or not there is a break in the flight, or within the territory of one State if there is an intended stopping place in the territory of another State.
- (e) ~~(e)~~ ~~“Maximum~~ “maximum mass” means the maximum certificated take-off mass of the aircraft, excluding the effect of lifting gas when used.
- (f) ~~(f)~~ ~~“Operator~~ “operator” means the person who makes use of the aircraft, provided that if control of the navigation of the aircraft is retained by the person from whom the right to make use of the aircraft is derived, whether directly or indirectly, that person shall be considered the operator. A person shall be considered to be making use of an aircraft when he or she is using it personally or when his or her servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority.
- (g) ~~(g)~~ ~~“Person~~ “person” means any natural or legal person, including a State.
- (h) ~~(h)~~ ~~“State Party”~~ means a State for which this Convention is in force. and
- (i) ~~(i)~~ ~~“Third~~ “third party” means a person other than the operator, passenger or consignee 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 consignee or consignee of cargo on board the other aircraft.~~

Article 2 — Scope

1. This Convention applies to damage to third parties which occurs in the territory of a State Party caused by an aircraft in flight on an international flight, other than as a result of an act of unlawful interference.
2. If a State Party so declares to the Depositary, this Convention shall also apply where an aircraft in flight other than on an international flight causes damage in the territory of that State, other than as a result of an act of unlawful interference.
3. For the purposes of this Convention:
 - (a) damage to a ship in or an aircraft ~~in or~~ above the High Seas and the Exclusive Economic Zone shall be regarded as damage occurring in the territory of the State in which it is registered; however, if the operator of the aircraft has its principal place of business in the territory of a State other than the State of Registry, the damage to the aircraft shall be regarded as having occurred in the territory of the State in which it has its principal place of business; and
 - (b) damage to a drilling platform or other installation permanently fixed to the soil in the Exclusive Economic Zone or the Continental Shelf shall be regarded as having occurred in the territory of the State which has jurisdiction over such platform or installation in accordance with international law including the *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982.

Option 1

4. This Convention shall not apply to damage caused by ~~state~~State aircraft. Aircraft used in military, customs and police services shall be deemed to be ~~state~~State aircraft.

Option 2

~~4. This Convention shall not apply to damage caused by an aircraft operated directly by a state for non-commercial purposes in respect of its sovereign functions and duties.~~

Chapter II

Liability of the ~~Operator~~operator and ~~Related Issues~~related issues

Article 3 — Liability of the operator

1. The operator shall be liable for damage sustained by third parties upon condition only that the damage was caused by an aircraft in flight.
2. There shall be no right to compensation under this Convention if the damage is not a direct consequence of the event giving rise thereto, or if the damage results from the mere fact of passage of the aircraft through the airspace in conformity with existing air traffic regulations.
3. Damages due to death, bodily injury and mental injury shall be compensable. Damages due to mental injury shall be compensable only if caused by a recognizable psychiatric illness resulting either from bodily injury or from direct exposure to the likelihood of imminent death or bodily injury.
4. Damage to property shall be compensable.*
5. Environmental damage shall be compensable, in so far as such compensation is provided for under the law of the State Party in the territory of which the damage occurred.
6. No liability shall arise under this Convention for damage caused by a nuclear incident as defined in the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy or for nuclear damage as defined in the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, and any amendment or supplements to these Conventions in force at the time of the event.
7. Punitive, exemplary or any other non-compensatory damages shall not be recoverable.
8. ~~Any person~~An operator who would otherwise be liable under the provisions of this Convention shall not be liable if the damage is the direct consequence of armed conflict or civil disturbance.

Article 4 ~~—~~— Limit of the operator's liability

1. The liability of the operator arising under Article 3 shall not exceed for an event the following limit based on the mass of the aircraft involved:

~~[* The Final Clauses will need to make clear the relationship between this Convention and other international legal instruments with reference to claims for damage to property.]~~

- (a) 750 000 Special Drawing Rights for aircraft having a maximum mass of 500 kilogrammes or less;
 - (b) 1 500 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 kilogrammes but not exceeding 1 000 kilogrammes;
 - (c) 3 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 1 000 kilogrammes but not exceeding 2 700 kilogrammes;
 - (d) 7 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 2 700 kilogrammes but not exceeding 6 000 kilogrammes;
 - (e) 18 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 6 000 kilogrammes but not exceeding 12 000 kilogrammes;
 - (f) 80 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 12 000 kilogrammes but not exceeding 25 000 kilogrammes;
 - (g) 150 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 25 000 kilogrammes but not exceeding 50 000 kilogrammes;
 - (h) 300 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 50 000 kilogrammes but not exceeding 200 000 kilogrammes;
 - (i) 500 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 200 000 kilogrammes but not exceeding 500 000 kilogrammes;
 - (j) 700 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 000 kilogrammes.
2. If an event involves two or more aircraft operated by the same operator, the limit of liability in respect of the aircraft with the highest maximum mass shall apply.
3. The limits in ~~paragraph 1 of~~ this Article shall only apply if the operator proves that the damage:
- (a) was not due to its negligence or other wrongful act or omission or that of its servants or agents; or
 - (b) was solely due to the negligence or other wrongful act or omission of another person.

Article 5 ~~Order of priority~~ Priority of compensation

Option 1

If the total amount of the damages to be paid exceeds the amounts available according to Article 4, paragraph 1, the total amount shall be awarded preferentially to meet proportionately the claims in respect of ~~:- firstly,~~ death, ~~secondly,~~ bodily injury and ~~thirdly,~~ mental injury, in the first instance. The remainder, if any, of the total amount payable shall be awarded proportionately among the claims in respect of other damage.

Option 2

~~If the total amount of the damages to be paid exceeds the amounts available according to Articles 4 and 18, the total amount shall be awarded preferentially to meet proportionately the claims in respect of death, bodily injury and mental injury in the first instance. The remainder, if any, of the total amount payable shall be awarded proportionately among the claims in respect of other damage.~~

Article 6 — Events involving two or more operators ~~or other persons~~

1. Where two or more aircraft have been involved in an event causing damage to which this Convention applies, the operators of those aircraft are jointly and severally liable for any damage suffered by a third party.
2. If two or more operators are so liable, the recourse between them shall depend on their respective limits of liability and their contribution to the damage.
3. No operator shall be liable for a sum in excess of the limit, if any, applicable to its liability.

Article 7 — Court costs and other expenses

1. The court may award, in accordance with its own law, the whole or part of the court costs and of the other expenses of the litigation incurred by the claimant, including interest.
2. Paragraph 1 shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the operator has offered in writing to the claimant within a period of six months from the date of the event causing the damage, or before the commencement of the action, whichever is the later.

Article 8 — Advance payments

If required by the law of the State where the damage occurred, the operator shall make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, in order to meet their immediate economic needs. Such advance payments shall not constitute a recognition of liability and may be offset against any amount subsequently payable as damages by the operator.

Article 9 — Insurance

~~Option 1~~

~~1. Having regard to Article 4, States Parties shall require their operators to maintain adequate insurance or guarantee covering their liability under this Convention. If such insurance or guarantee is not available to an operator on a per event basis, the operator may satisfy this obligation by insuring on an aggregate basis.~~

Option 2

1. Having regard to Article 4, States Parties shall require their operators to maintain adequate insurance or guarantee covering their liability under this Convention.
2. An operator may be required by the State Party in or into which it operates to furnish evidence that it maintains adequate insurance or guarantee. In doing so, the State Party shall apply the same criteria to operators of other StateStates Parties as it applies to its own operators.

Chapter III

Exoneration and ~~Recourse~~recourse

Article 10 — Exoneration

If the operator proves that the damage was caused, or contributed to, by the negligence or other wrongful act or omission of a claimant, or the person from whom he or she derives his or her rights, the operator shall be wholly or partly exonerated from its liability to that claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

Article 11 — Right of recourse

Subject to Article 13, nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any person.

Chapter IV

Exercise of ~~Remedies~~remedies and ~~Related Provisions~~related provisions

Article 12 — Exclusive remedy

1. Any action for compensation for damage to third parties caused by an aircraft in flight brought against the operator, or its servants or agents, however founded, whether under this Convention or in tort or otherwise, can only be brought subject to the conditions set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.
2. Article ~~33~~33 paragraphs 6, 7 and ~~88~~88 shall apply to any other person from whom the damages specified in those paragraphs would otherwise be recoverable or compensable, whether under this Convention or in tort or otherwise.

Article 13 — ~~Exclusion of liability~~

Neither the owner, lessor or financier retaining title or holding security of an aircraft, not being an operator, nor their servants or agents, shall be liable for damages under this Convention or the law of any State Party relating to third party damage.

Article 14 — Conversion of Special Drawing Rights

The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value in a national currency shall be calculated in accordance with the method of valuation applied by the International Monetary Fund for its operations and transactions. The value in a national currency, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State to express in the national currency of the State Party as far as possible the same real value as the amounts in Article ~~4.4~~, [paragraph 1](#).

Article 15 — Review of limits

1. Subject to paragraph 2 ~~below~~ [of this Article](#), the sums prescribed in Article [4.4, paragraph 1](#), shall be reviewed by the Depository by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of ~~the~~ [this](#) Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in Article 14.

~~2.~~ ~~2.~~ — If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depository shall notify the States Parties of a revision of the limits of liability. Any such revision shall become effective six months after the notification to the States Parties, unless a majority of the States Parties register their disapproval. The Depository shall immediately notify all States Parties of the coming into force of any revision.

Article 16 — Forum

1. Subject to paragraph 2 of this Article, actions for compensation under the provisions of this Convention may be brought only before the courts of the State Party in whose territory the damage occurred ~~[for the State in which the operator of the aircraft has its principal place of business]~~.

2. Where damage occurs in more than one State Party, actions under the provisions of this Convention may be brought only before the courts of the State Party the territory of which the aircraft was in or about to leave when the event occurred.

3. Without prejudice to paragraphs 1 and 2 of this Article, application may be made in any State Party for such provisional measures, including protective measures, as may be available under the law of that State.

Article 17 — Recognition and enforcement of judgements

1. Subject to the provisions of this Article, judgements entered by a competent court under Article 16 after trial, or by default, shall when they are enforceable in the State Party of that court be enforceable in any other State Party as soon as the formalities required by that State Party have been complied with.

2. The merits of the case shall not be reopened in any application for recognition or enforcement under this Article.

3. Recognition and enforcement of a judgement may be refused if:
 - (a) ~~(a)~~ its recognition or enforcement would be manifestly contrary to public policy in the State Party where recognition or enforcement is sought;
 - (b) ~~(b)~~ the defendant was not served with notice of the proceedings in such time and manner as to allow him to prepare and submit a defence;
 - (c) ~~(c)~~ it is in respect of a cause of action which had already, as between the same parties, formed the subject of a judgement or an arbitral award which is recognized as final and conclusive under the law of the State Party where recognition or enforcement is sought;
 - (d) ~~(d)~~ the judgement has been obtained by fraud of any of the parties; or
 - (e) ~~(e)~~ the right to enforce the judgement is not vested in the person by whom the application is made.
4. Recognition and enforcement of a judgement may also be refused to the extent that the judgement awards damages, including exemplary or punitive damages, that do not compensate a third party for actual harm suffered.
5. Where a judgement is enforceable, payment of any court costs and other expenses incurred by the plaintiff, including interest recoverable under the judgement, shall also be enforceable.

Article 18 – Regional and multilateral agreements on the recognition and enforcement of judgements

1. ~~State~~States Parties may enter into regional and multilateral agreements regarding the recognition and enforcement of judgements consistent with the objectives of this Convention, provided that such agreements do not result in a lower level of protection for any third party or defendant than that provided for in this Convention.
2. ~~State~~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.
3. The provisions of Chapter IV of this Convention shall not affect the recognition or enforcement of any judgement pursuant to such agreements.

Article 19 — Period of limitation

1. The right to compensation ~~according to~~under Article 3 shall be extinguished if an action is not brought within two years from the date of the event which caused the damage.
2. The method of calculating such two-year period shall be determined in accordance with the law of the court seized of the case.

Article 20 — Death of person liable

In the event of the death of the person liable, an action for damages lies against those legally representing his or her estate and is subject to the provisions of this Convention.

CHAPTER V

Final Clauses

Article ~~23~~²¹ – Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Montréal on 2 May 2009 by States participating in the International Conference on Air Law held at Montréal 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 Montréal until it enters into force in accordance with Article ~~25~~²³.
2. This Convention shall be subject to ratification by States which have signed it.
3. Any State which does not sign this Convention may accept, approve or accede to it at any time.
- ~~4.~~ ^{4.} Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depository.

Article ~~24~~²² – 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 that Organization has competence over matters governed by this Convention. ~~Where the number of Contracting 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.~~
2. The Regional Economic Integration Organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the Depository 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 Depository of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
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.

Article ~~25~~²³ – Entry into force

1. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depository between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organization shall not be counted for the purpose of this paragraph.

2. For other States and for other Regional Economic Integration Organizations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

Article ~~26~~24 – Denunciation

1. Any State Party may denounce this Convention by written notification to the Depository.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depository; ~~nevertheless~~, in respect of damage contemplated in Article 3 arising from an event which occurred before the expiration of the one hundred and eighty day period, the Convention shall continue to apply as if the denunciation had not been made.

Article ~~27~~25 – Relationship to other treaties[†]

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:

- (a) ~~a)~~ the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface*, Signed at Rome on 7 October 1952; or
- (b) ~~b)~~ the *Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface Signed at Rome on 7 October 1952*, Signed at Montréal on 23 September 1978.

Article ~~28~~26 – States with more than one system of law

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.
2. Any such declaration shall be notified to the Depository and shall state expressly the territorial units to which ~~the~~this Convention applies.
3. For a declaration made under Article 2, paragraph 2, by a State Party having two or more territorial units in which different systems of law are applicable, it may declare that this Convention shall apply to damage to third parties that occurs in all its territorial units or in one or more of them and may modify this declaration by submitting another declaration at any time.
4. In relation to a State Party which has made ~~such~~ a declaration under this Article:
 - (a) ~~a)~~ the reference in Article 8 to “the law of the State” shall be construed as referring to the law of the relevant territorial unit of that State; and
 - (b) ~~b)~~ references in Article 14 to “national currency” shall be construed as referring to the currency of the relevant territorial unit of that State.

~~1—With respect to collisions, the relationship between this Convention and the Montreal Convention of 1999 may need to be clarified. In assessing this issue, the provisions of the latter Convention could be taken into account, in particular Article 21. This issue has been referred to the Small Group on Article 5.~~

Article 29~~27~~ – Reservations and declarations

1. No reservation may be made to this Convention but declarations authorized by Article 2, paragraph 2, Article 24~~,22~~, paragraph 2, and Article 28~~26~~ may be made in accordance with these provisions.
2. Any declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 30 – Functions of the Depositary

~~The Depositary shall promptly notify all signatories and States Parties of:~~

- a) ~~each new signature of this Convention and date thereof;~~
- b) ~~each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;~~
- c) ~~the date of entry into force of this Convention;~~
- d) ~~the date of the coming into force of any revision of the limits of liability established under this Convention; and~~
- e) ~~any denunciation with the date thereof and the date on which it takes effect.~~

~~IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.~~

~~DONE at Montréal 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 Conventions and Protocol referred to in Article 27.~~

DRAFT FINAL CLAUSES OF THE CONVENTION ON COMPENSATION FOR DAMAGE CAUSED BY AIRCRAFT TO THIRD PARTIES

CHAPTER VI

Final Clauses Article 23 – Signature, ratification, acceptance, approval or accession

1. ~~This Convention shall be open for signature in Montréal on 2 May 2009 by States participating in the International Conference on Air Law held at Montréal 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 Montréal until it enters into force in accordance with Article 25.~~
2. ~~This Convention shall be subject to ratification by States which have signed it.~~

~~3. Any State which does not sign this Convention may accept, approve or accede to it at any time.~~

~~4. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.~~

~~Article 24—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 that Organization has competence over matters governed by this Convention. Where the number of Contracting 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.~~

~~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.~~

~~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.~~

~~Article 25—Entry into force~~

~~1. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty fifth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organization shall not be counted for the purpose of this paragraph.~~

~~2. For other States and for other Regional Economic Integration Organizations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.~~

~~Article 26—Denunciation~~

~~1. Any State Party may denounce this Convention by written notification to the Depositary.~~

~~2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary; nevertheless, in respect of damage contemplated in Article 3 arising from an event which occurred before the expiration of the one hundred and eighty day period, the Convention shall continue to apply as if the denunciation had not been made.~~

~~Article 27—Relationship to other treaties¹~~

~~1. With respect to collisions, the relationship between this Convention and the Montreal Convention of 1999 may need to be clarified. In assessing this issue, the provisions of the latter Convention could be taken into account, in particular Article 21. This issue has been referred to the Small Group on Article 5.~~

~~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:~~

- ~~a) the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952; or~~
- ~~b) the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface Signed at Rome on 7 October 1952, Signed at Montréal on 23 September 1978.~~

Article 28 – States with more than one system of law

~~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.~~

~~2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.~~

~~3. For a declaration made under Article 2, paragraph 2, by a State Party having two or more territorial units in which different systems of law are applicable, it may declare that this Convention shall apply to damage to third parties that occurs in all its territorial units or in one or more of them and may modify this declaration by submitting another declaration at any time.~~

~~4. In relation to a State Party which has made such a declaration:~~

- ~~a) the reference in Article 8 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 14 to “national currency” shall be construed as referring to the currency of the relevant territorial unit of that State.~~

Article 29 – Reservations and declarations

~~1. No reservation may be made to this Convention but declarations authorized by Article 2, paragraph 2, Article 24, paragraph 2, and Article 28 may be made in accordance with these provisions.~~

~~2. Any declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.~~ **Article 30** ~~28~~ – **Functions of the Depositary**

The Depositary shall promptly notify all signatories and States Parties of:

- ~~(a) a) each new signature of this Convention and date thereof;~~
- ~~(b) b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;~~
- ~~(c) e) each declaration and the date thereof;~~
- ~~(d) the modification or withdrawal of any declaration and the date thereof;~~

- (e) ~~d~~—the date of entry into force of this Convention;
- (f) ~~e~~—the date of the coming into force of any revision of the limits of liability established under this Convention; and
- (g) ~~f~~—any denunciation with the date thereof and the date on which it takes effect.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Montréal 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 Conventions and Protocol referred to in Article ~~27~~25.

— END —