



INTERNATIONAL CIVIL AVIATION ORGANIZATION
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15 June 2001

Subject: Study on the Modernization of the Rome Convention of 1952 – damage caused by foreign aircraft to third parties on the surface

Action Required: Complete and return the questionnaire at Attachment B to reach ICAO Headquarters in Montreal no later than 28 September 2001

Sir/Madam,

I have the honour to refer to a study by the Organization regarding the legal regime governing damage caused by foreign aircraft to third parties on the surface.

The *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface* was adopted and signed in Rome on 7 October 1952 to unify, on an international level, the law relating to recovery by persons who suffer damage caused on the surface by foreign aircraft, while limiting the liabilities of those responsible for such damage. The Convention also deals with a host of related matters such as apportionment of claims, financial security requirements, jurisdiction and enforcement of judgements.

The *Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface* was adopted and signed at Montreal on 23 September 1978, which in particular increased the limits of liability.

However, neither the Convention nor the Protocol have received wide acceptance: the Convention has 45 parties after 49 years of existence; the Protocol has 4 parties after 23 years and is still not in force.

One of the reasons for this situation is that the limits of liability in the Convention and the Protocol are perceived as inadequate. Furthermore, the regime of absolute liability, the jurisdictional clauses, and provisions relating to financial security have also been regarded by some as not fully satisfactory.


More recently, the rights of claimants in respect of death of, or injury to, airline passengers have been improved with the adoption of the *Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal, 1999), which evidences an evolution in legal and social thinking on the rights of those damaged by certain aviation activities, and on limitations of liability of the carrier.

The 31st Session of the Legal Committee last year recommended to include, as priority No. 4 in its Work Programme, the subject "Consideration of the Modernization of the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface*, signed at Rome on 7 October 1952". The Council endorsed this action at the tenth meeting of its 161st Session on 24 November 2000.

The attached questionnaire will serve to collect the relevant information for a study on the modernization of the Rome Convention. In order to assist States to answer it, a note is provided at **Attachment A** which briefly describes the main provisions of the Convention and the Protocol, and related developments.

I should be grateful if you would complete the questionnaire at **Attachment B** and return it to reach ICAO Headquarters no later than **28 September 2001**.

Accept, Sir/Madam, the assurances of my highest consideration.



R.C. Costa Pereira
Secretary General

Enclosures:

- A — Status of Instruments on Damage Caused by Foreign Aircraft to Third Parties on the Surface
- B — Questionnaire on the Modernization of the Rome Convention (1952)

**STATUS OF INSTRUMENTS ON DAMAGE CAUSED BY FOREIGN
AIRCRAFT TO THIRD PARTIES ON THE SURFACE**

1. BACKGROUND

1.1 In 1952, the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface* was adopted in Rome ("The Rome Convention"). According to its preamble, the signatory States were "moved by a desire to ensure adequate compensation for persons who suffer damage caused on the surface by foreign aircraft, while limiting in a reasonable manner the extent of the liabilities incurred for such damage in order not to hinder the development of international civil air transport". The States also saw "the need for unifying to the greatest extent possible, through an international convention, the rules applying in the various countries of the world to the liabilities incurred for such damage."

1.2 The Convention applies to damage caused on the surface of one Contracting State by aircraft in flight registered in another Contracting State. It imposes absolute liability on those responsible. Liability exists regardless of fault on the part of the responsible party, and only very limited defences are available. Article 1 provides that "any person who suffers damage on the surface shall, upon proof only that the damage was caused by an aircraft in flight or by any person or thing falling therefrom, be entitled to compensation".

1.3 Liability attaches to the operator of the aircraft, in general, the person making use of the aircraft at the time the damage is caused. The registered owner is presumed to be the operator unless he can prove that some other person is the operator.

1.4 Article 11(1) provides that the liability for damage for each aircraft and incident, in respect of all persons liable under the Convention, shall not exceed:

- (a) 500 000 gold francs (approximately U.S.\$ 40 000) for aircraft weighing 1 000 kilogrammes or less;
- (b) 500 000 gold francs plus 400 francs (approximately U.S.\$ 32) per kilogramme over 1 000 kilogrammes for aircraft weighing more than 1 000 but not exceeding 6 000 kilogrammes;
- (c) 2 500 000 francs (approximately U.S.\$ 200 000) plus 250 francs (approximately U.S.\$ 20) per kilogramme over 6 000 kilogrammes for aircraft weighing more than 6 000 but not exceeding 20 000 kilogrammes;
- (d) 6 000 000 francs (approximately U.S.\$ 480 000) plus 150 francs (approximately U.S.\$ 12) per kilogramme over 20 000 kilogrammes for aircraft weighing more than 20 000 but not exceeding 50 000 kilogrammes; and
- (e) 10 500 000 francs (approximately U.S.\$ 840 000) plus 100 francs (approximately U.S.\$ 8) per kilogramme over 50 000 kilogrammes for aircraft weighing more than 50 000 kilogrammes.

1.5 In addition to the limit per aircraft, Article 11(2) states that liability in respect of loss of life or personal injury shall not exceed 500 000 gold francs per person killed or injured.

1.6 Article 14 contains rules on apportionment in case the total amount of claims established exceeds the limits of liability.

1.7 In 1978, the Montreal Protocol to amend the Convention was adopted. In particular, the limits of liability were upwardly revised, with the Special Drawing Rights (SDRs) replacing the gold franc as the unit of currency. The weight categories have been reduced from five to four, as follows:

- (a) 300 000 SDRs (approximately U.S.\$ 379 500) for aircraft weighing 2 000 kilogrammes or less;
- (b) 300 000 SDRs plus 175 SDRs (approximately U.S.\$ 221) per kilogramme over 2 000 kilogrammes for aircraft weighing more than 2 000 but not exceeding 6 000 kilogrammes;
- (c) 1 000 000 SDRs (approximately U.S.\$ 1 265 000) plus 62.5 SDRs (approximately U.S.\$ 79) per kilogramme over 6 000 kilogrammes for aircraft weighing more than 6 000 but not exceeding 30 000 kilogrammes; and
- (d) 2 500 000 SDRs (approximately U.S.\$ 3 162 500) plus 65 SDRs (approximately U.S.\$ 82) per kilogramme over 30 000 kilogrammes for aircraft weighing more than 30 000 kilogrammes.

The maximum liability in respect of life or personal injury is limited to 125 000 SDRs (approximately U.S.\$ 158 125) per person killed or injured.

1.8 The rules on apportionment between claims in case they exceed these liability limits have been modified to give higher preference to claims in respect of loss of life or personal injury.

2. THE PRESENT SITUATION

2.1 Acceptance of the Convention by States has been slow, with only 45 parties since its adoption 49 years ago. After 23 years, the Protocol has received four ratifications, one short of the required five for its entry into force; in addition, two instruments of accession have been deposited which will become effective only upon the entry into force of the Protocol.

2.2 In 1976, Canada denounced the Convention; Australia did so in 2000. A number of large aviation nations have not ratified these instruments. At least since the 1970s, a number of States have indicated that there should be no liability limits. It is clear that the instruments are not acceptable to any notable extent to the international community, and that they do not reflect the needs of that community.

2.3 The 31st Session of the Legal Committee (Montreal, 28 August to 8 September 2000) considered a proposal by Sweden to include in the General Work Programme of the Committee an item on the modernization of the Rome Convention. The delegate explained that the Convention should be modernized to reflect recent developments, including liability limits and environmental damage on the ground caused by aircraft. The item was included with priority No. 4 in the Work Programme.

2.4 Parallel to these developments, the last few years have seen an enhancement in the rights of claimants in respect of death of, or injury to, airline passengers. In 1999, the *Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal, 1999) was adopted.

2.5 With respect to accidental death or injury of passengers, the 1999 Convention establishes a two-tier liability regime. First, for proven damage per passenger not exceeding 100 000 SDRs (approximately U.S.\$ 126 500), the carrier is liable irrespective of fault, and only the case of contributory negligence may result in partial or total exoneration of the carrier. For proven damages over 100 000 SDRs, there are no pre-specified limits of liability, with the carrier's liability based on presumed fault. For such damage the carrier is not liable if it proves (the burden of proof is on the carrier) that the damage was not due to its negligence or was due solely to the negligence of a third party.

2.6 The 1999 Convention has a provision according to which in case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to natural persons entitled to claim compensation in order to meet the immediate economic needs of such persons.

2.7 A third element from the 1999 Montreal Convention is a mechanism for review of the limits. To take into account world inflation and consequent devaluation of the Montreal Convention limit, ICAO is required to review the limits every five years, taking into account the accumulated rate of inflation. Where such rate exceeds 10 per cent, a revision is made and shall become effective unless a majority of parties to the Convention disapprove.

3. CONCLUSION

3.1 Recent developments would seem to indicate that the time is ripe to re-examine the legal regime created by the Rome Convention and its 1978 Protocol. History suggests, however, that some difficult issues need to be resolved in order to achieve a widely accepted instrument of unification of the law, but that several sources of inspiration, including the 1999 Montreal Convention, may assist in this regard.

**QUESTIONNAIRE ON THE MODERNIZATION
OF THE ROME CONVENTION (1952)**

NAME OF STATE

Important

Replies to this questionnaire concerning possible future arrangements regarding damage caused by foreign aircraft to third parties on the surface are intended to be purely indicative and to be used only for the purposes of study. They do not entail a binding commitment by a State in respect of its future position on this subject.

Note to the respondent – If you wish to elaborate on some of the answers, please check the related box, then use separate paper as an attachment to the questionnaire and name it numerically with the corresponding question (for example, an elaboration to Question 5 should be named Attachment Q5). Any other comments which you consider relevant or useful for the study are also welcome.

1. Which liability regime for damage caused by foreign aircraft to third parties on the surface currently applies for your State:

- a) Rome Convention (1952)
- b) National legislation which incorporates a) above
- c) National legislation which incorporates the provisions of the Montreal Protocol of 1978
- d) Other (please specify)

2. If your State is not party to the Rome Convention (1952) or that Convention as amended by the Montreal Protocol (1978), are there any plans to become party to:

- | | YES | NO |
|-----------------------------------|--------------------------|--------------------------|
| a) the Rome Convention (1952) ? | <input type="checkbox"/> | <input type="checkbox"/> |
| b) the Montreal Protocol (1978) ? | <input type="checkbox"/> | <input type="checkbox"/> |

3. If your State is not a party to one or more of these instruments, could you provide the main reasons why it is not a party?

.....
.....

	YES	NO
4. Do you believe that there is a need to modernize, on an international level, the liability regime to govern damage caused by foreign aircraft to third parties on the surface, i.e. the provisions of the Rome Convention (1952) and the Montreal Protocol?	<input type="checkbox"/>	<input type="checkbox"/>

5. If the answer to Question 4 is YES, which provision(s)?

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6. Do you consider appropriate that there should be a limit of liability for damage caused to third parties on the surface? YES NO

7. a) Does your State have a global limit on the liability for each aircraft and incident (as per Article 11(1) of the Convention and that Article as amended by the Protocol) for damage caused by foreign aircraft to third parties on the surface? YES NO

b) Do you consider appropriate that there should be a global liability limit for each aircraft and incident?

c) If YES, should such limit be based on the weight of the aircraft?

d) If the answer to c) above is NO, what formula would you suggest for a limitation?

.....
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e) Should you have to settle for a single amount of a limit to be applied on a worldwide basis, what would be the lowest/highest figure in SDR (1 SDR = 1.265 U.S. dollars approximately) that you could accept?

Lowest Highest

f) Has any unilateral action, to increase the global liability limits for each aircraft and incident:

- been taken:

i) by your Government? YES NO

ii) by air carriers of your State?

- been planned:

- | | YES | NO |
|------------------------------------|--------------------------|--------------------------|
| iii) by your Government? | <input type="checkbox"/> | <input type="checkbox"/> |
| iv) by air carriers of your State? | <input type="checkbox"/> | <input type="checkbox"/> |

If YES to any of the above, please indicate

v) the amount involved

- | | YES | NO |
|--|--------------------------|--------------------------|
| vi) whether the higher limits apply only to air carrier(s) of your State | <input type="checkbox"/> | <input type="checkbox"/> |
| vii) whether the higher limits also apply to foreign air carriers operating to/from/via your State | <input type="checkbox"/> | <input type="checkbox"/> |

viii) the year these limits were established

ix) the year they were last updated

x) any cost recovery mechanism associated with the higher limits (e.g. a passenger charge or included in the fare).
.....
.....

	YES	NO
8. a) Does your State have a liability limit per person in respect of loss of life or personal injury caused by foreign aircraft to third parties on the surface (as per Article 11(2) of the Convention and that Article as amended by the Protocol)?	<input type="checkbox"/>	<input type="checkbox"/>

b) Do you consider it appropriate that there should be a liability limit per person in respect of loss of life or personal injury caused by foreign aircraft to third parties on the surface?	<input type="checkbox"/>	<input type="checkbox"/>
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c) Should you have to settle for a single amount of a limit to be applied on a worldwide basis, what would be the lowest/highest figure in SDR that you could accept?

Lowest Highest

d) Has any unilateral action to increase the liability limit per person in respect of loss of life or personal injury caused by foreign aircraft to third parties on the surface:

- been taken:

- | | YES | NO |
|------------------------------------|--------------------------|--------------------------|
| i) by your Government? | <input type="checkbox"/> | <input type="checkbox"/> |
| ii) by air carriers of your State? | <input type="checkbox"/> | <input type="checkbox"/> |

- been planned:

- | | YES | NO |
|------------------------------------|--------------------------|--------------------------|
| iii) by your Government? | <input type="checkbox"/> | <input type="checkbox"/> |
| iv) by air carriers of your State? | <input type="checkbox"/> | <input type="checkbox"/> |

If YES to any of the above, please indicate

v) the amount involved

- | | YES | NO |
|--|--------------------------|--------------------------|
| vi) whether the higher limits apply only to air carrier(s) of your State | <input type="checkbox"/> | <input type="checkbox"/> |
| vii) whether the higher limits also apply to foreign air carriers operating to/from/via your State | <input type="checkbox"/> | <input type="checkbox"/> |

viii) the year these limits were established

ix) the year they were last updated

x) any cost recovery mechanism associated with the higher limits (e.g. a passenger charge or included in the fare)

- | | YES | NO |
|--|--------------------------|--------------------------|
| 9. a) Does your State support a liability regime similar to the one adopted in the <i>Convention for the Unification of Certain Rules for International Carriage by Air</i> (Montreal, 1999), i.e. a two-tier approach as explained in paragraph 2.5 of Attachment A , for damage caused by foreign aircraft to third parties on the surface? | <input type="checkbox"/> | <input type="checkbox"/> |

YES NO

- b) If YES, would you prefer this regime to apply:
 - i) in respect of death or injury to persons only? YES NO
 - ii) also in respect of damage to property? YES NO
- c) If the answer to b) ii) above is NO, what liability regime would you prefer to apply to damage to property?
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.....

10. If it is deemed necessary to modernize the Rome Convention and its Protocol, what mechanism would you favour to achieve this objective:

- a) a Protocol to the Convention?
- b) a new Convention?

YES NO

- 11. a) Would you favour compulsory no-fault up-front payment of a certain amount to be made to the victims within a short time from the accident, to be off-set against the final settlement? YES NO
- b) If YES, should this be made:
 - i) mandatory in the new instrument? YES NO
 - ii) left to national legislation? YES NO

If YES to a) above, please indicate whether the up-front payment should be a fixed amount or established as a percentage of the maximum amount (the advantage of the latter is that this figure would be automatically updated each time the maximum amount is revised):

- a) fixed amount
- b) percentage
- c) other (please specify)

- | | YES | NO |
|---|--------------------------|--------------------------|
| 12. If new limits would be adopted, then changes to the liability limits should be: | | |
| a) agreed by States parties at a meeting convened, say, every three years for this purpose? | <input type="checkbox"/> | <input type="checkbox"/> |
| b) incorporated through a similar procedure and by a similar methodology to that used in the Montreal Convention of 1999 and explained above in paragraph 2.7 of Attachment A (i.e. review by ICAO every five years taking into account the accumulated rate of inflation, unless a majority of States parties disapprove such increase)? | <input type="checkbox"/> | <input type="checkbox"/> |
| c) other (please specify) | | |
| | | |
| | | |
| 13. Should a regime be adopted comprising no global limitation per aircraft and incident, but with a two-tier system similar to that of the Montreal Convention of 1999 for death and injury to persons and damage to property, what effect do you believe this would have on insurance premiums payable by carriers from your State: | | |
| a) reduction in premiums | | <input type="checkbox"/> |
| b) no effect on premiums | | <input type="checkbox"/> |
| c) small increase in premiums | | <input type="checkbox"/> |
| d) significant increase in premiums | | <input type="checkbox"/> |
| | YES | NO |
| 14. a) Do you think that a modernization of the Rome Convention and its Protocol should address environmental damage caused by aircraft? | <input type="checkbox"/> | <input type="checkbox"/> |
| b) If YES, what kind of environmental damage should be covered: | | |
| i) environmental damage on the ground, for example, caused by aviation fuel venting, or hazardous matter falling from an aircraft or resulting from aircraft impact? | <input type="checkbox"/> | <input type="checkbox"/> |
| ii) aircraft noise? | <input type="checkbox"/> | <input type="checkbox"/> |
| iii) engine emissions? | <input type="checkbox"/> | <input type="checkbox"/> |
| iv) other (please specify) | | |
| | | |
| | | |

