



ASSEMBLY — 40TH SESSION

LEGAL COMMISSION

Agenda Item 40: Other issues to be considered by the Legal Commission

**BEST PRACTICES ON VICTIM ASSISTANCE REGARDING
COMPENSATION OF INSURERS**

(Presented by Air Crash Victims' Families' Federation International)

EXECUTIVE SUMMARY

In general, the effects of an air accident have been reduced for victims and their families because of the evolution of commercial aviation in the world and the effective implementation of the ICAO Standards and Recommended Practices related to safety. In spite of this, insurers do not always apply the best practices in the treatment of people affected by an air tragedy according to compliance with the regulations that protect said processes.

Consequently, it is essential to focus on this aspect. Trying to collect from the States the best practices of insurers in the treatment. The aim is to extend their experiences and achieve the usual activities from the first step, which is the advance to be provided, to the compensation that should be received by victims and their families from an air disaster.

Action: The Assembly is invited to:

- a) Remind the States of the ICAO Resolutions regarding the compensation of victims, insurers and air operators;
- b) Urge the States Members, international organizations, industry, and donors to support the best practices of insurers in the treatment of victims and exchange information through ICAO, in order to facilitate access to information for States and International Organizations;
- c) Urge the Council the USOAP implements the adequate requirements so that the States contribute the best practices in terms of compliance with compensation to the victims and families of an air accident; and
- d) Organize a seminar next year on best practices in the States on the treatment of insurers/air operators.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objectives.
<i>Financial implications:</i>	Not applicable.
<i>References:</i>	Doc 9740, <i>Convention for the Unification of Certain Rules for International Carriage by Air</i> Doc 9919, <i>Convention on Compensation for Damage Caused by Aircraft to Third Parties</i> Doc 9920, <i>Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft</i> Doc 9973, <i>Manual on Assistance to Aircraft Accident Victims and their Families Global Aviation Security Plan (GASeP)</i> Doc 9998, <i>Policy on Assistance to air accident victims and their families</i> Doc 10123, <i>Second High-Level Conference on Aviation Security</i> Circular 285, <i>Guidance on Assistance to Aircraft Accident Victims and Their Families</i>

¹ English and Spanish versions were provided by Air Crash Victims' Families' Federation International.

1. INTRODUCTION

1.1 The Montreal Convention 1999 (MC99) defines the responsibilities of the parties involved in commercial aviation and the States. The preamble recognizes the need to ensure adequate compensation for third parties who suffer damages as a result of events involving an aircraft in flight. It also recognizes the importance of ensuring the protection of the interests of injured third parties and the need for fair compensation, as well as the need to ensure the stability of the aviation industry.

1.2 Chapter III establishes the measure of compensation for the damage as well as the assumptions of the obligation to repair. The Insurance Policies that air operators contract by this rule do not seem to be under control regarding the treatment of victims and their families in aviation accidents.

2. BACKGROUND

2.1 Circular 285 of 2001 and subsequently Doc 9998 and Doc 9973, include in the assistance to victims and their families, the treatment concerning compensation for the damage caused, however, they refer to the provisions of the MC99 and internal legislations.

2.2 The treatment of insurers to victims and their families has not been improved. Sometimes Affectees are subject to lengthy judicial proceedings, although the air operator has the necessary coverages in their insurance policies to deal with the emergency.

2.3 The MC99 has focused on the responsibility of the air operator but not on the treatment that insurers give to victims of air accidents and their families.

3. ANALYSIS

3.1 The importance of ensuring the protection of the interests of injured third parties and the need for fair compensation is recognized, as well as the need to ensure the stability of the aviation industry, as set out in the Convention on compensation for damages caused to third parties by aircraft. During the Compensation for Damage Caused by Aircraft to Third Parties Arising from Acts of Unlawful Interference or from General Risks held in Montreal from 20 April to 2 May 2009, it is considered vital that the States inform ICAO and exchange information on the best practices of their Insurers/Air Operators, to achieve that they extend and implement.

3.2 Assuming the convenience of an orderly development of international air transport operations, the circulation of persons and the protection of passengers rights, compliance with the principles of international civil aviation, done in Chicago on 7 December 1944, would be very beneficial for States and their citizens to enforce the best practices and pay attention to compliance by insurances with the clauses of the Insurance Policies of the Airline Companies.

3.3 Article 3 of the Convention on Compensation for Damage Caused by Aircraft to Third Parties refers to the “Liability of the operator” and Article 5 to the “Priority of compensation”. Article 9 refers to the “Insurance” that States will require their operators to maintain sufficient insurance or guarantee to cover their civil liability under the said agreement.