

2022 ICAO Legal Seminar

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Session 5. Current Issues in Aviation Law and Practice
14:50 – 15:05 (Korean Time)
Assistance to Aircraft Accident Victims and Their Families
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Thank you. Greetings from Spain.

I am grateful for this opportunity to present to you, on behalf of The International Federation of Air Accident Victims and their Families, a proposal for the common good for the users and professionals of the international civil aviation. This federation, created in Madrid in 2015 by the victims' association of Spain (AVJK-5022), Germany (HIP-447) and Pakistan (AB-202), is the first and only Federation of Victims recognized by ICAO. It was born with the idea of giving a voice to the victims and families of air accidents in International Organizations. The International Federation of Air Accident Victims and their Families motto is VICTIMS HELPING VICTIMS. Its Chairwoman is Mrs. Pilar Vera Palmés, also President of the victims' associations of Spain AVJK5022.

As a pro-bono collaborating lawyer for the International Federation of Air Accident Victims and their Families in this ICAO Legal Forum, I will first talk about the Working Paper 434 that the Federation presented at the last 40th ICAO General Assembly, based on the different experiences suffered by victims belonging to the Federation regarding the treatment that the different insurers have given to the victims of air accidents according to the State in which the accident occurred.

The Assembly discussed it and the purpose was for the States to recall the ICAO resolutions regarding compensation to victims, insurers and air operators, urging all agents involved in an air accident to support the best practices of insurers in the treatment of assistance to victims and to inform and exchange information through ICAO and to facilitate access to this information to States and International Organizations.

Likewise, the Council was urged to implement the appropriate requirements through the ICAO Universal Safety Oversight Audit Programme so that the States provide the best practices in compliance with compensation to the victims, survivors and families of an air accident.

Secondly, I refer to the historic 1st ICAO International Symposium on Assistance to Victims and Families of Air Accidents, held in Spain, on the Island of Gran Canaria, on December 2021, in which I shared with some of those present in this Legal Forum my assistance as a speaker. There, 30 Conclusions were established that were approved by the ICAO Council held on February. Among them, is the organization under the auspices of ICAO of a Seminar on best practices by States in the treatment in their territory of indemnities by insurers and air operators.

In the aforementioned Symposium I explained my vision of how to approach this problem from a professional point of view as a Defense Lawyer for victims of air accidents in Spain. It gives me great pleasure to present this today to my colleagues from the legal world of ICAO Member States and the Organization itself:

I must tell you about my experience with the fatal accident of Spanair Flight JK5022, a scheduled domestic passenger flight from Madrid–Barajas Airport to Gran Canaria Airport, Spain, that crashed just after take-off from Madrid Airport on 20th August 2008 (of the 172 passengers and crew on board, 154 died and 18 survived). A lot of things went wrong that day. But the airline did one thing right. The lives of all and each one of the victims of that air crash were covered with a total amount of one thousand five hundred million dollars. I beg you to consider this figure for a second. One thousand and five hundred million dollars for each plane and for each accident, meaning that each victim had their personal damages covered in an average of nine million dollars.

Being so, what compensation received the eighteen survivors and the families of the one hundred and fifty four deceased? Thanks to a parliamentary investigation commission, we now know that the total compensation paid by the insurer for this air crash approximately totals to forty three million dollars. That means an average of two hundred and fifty thousand dollars for victim. Two hundred and fifty thousand dollars of the nine million dollars covered by the insurance policy for each victim, that's less than a three percent. As you can imagine, neither the victims nor their families regard such figure as a fair amount.

The reasons behind that miserly three percent of compensation are not exclusive of the Spanish or Europeans legal systems. The problem is shared by the whole civilized world. It is difficult that the compensation could reach a ten percent of an insurance coverage like this one. That means that, if the air companies make a huge economic effort to grant a millionaire coverage for the possible victims of an air crash, the states fail when it comes to executing that opportunity. Old laws and ancient legal customs promote that more than ninety percent of the provided compensation does not meet its goal. ICAO must react promptly against this sad reality.

The international civil aviation is undoubtedly the most efficient expression of the humankind, even above the space exploration or the military corps. No mistake is permitted. Because the most insignificant error can lead to a tragedy like what happened with Spanair's flight JK5022. So, if the international civil aviation must comply with an efficiency ratio of one hundred percent, it must pursue that the compensations to the victims when the system fails, does not total only a three percent of the coverage of the insurance that the airlines have paid to protect the lives of the passengers.

How could ICAO and aviation improve the compensation system of damages from an air crash? In Spain we had an only ruling, one sentence from a Provincial Court that implemented the international legislation and multiplied by almost four times the average compensation. That judgment was later revoked by the Supreme Court. But that sentence showed us the way. I invite you to follow that example and change the future. Change the world. In an easy and feasible way.

The article twenty five of the Montreal Convention says clearly that the air companies may increase, without limits, their responsibility. So they can increase the coverage of the damages as much as they want or need. The problem is that if an airline applies article twenty five of the Montreal Convention, assuring the damages caused by its activity in millions of dollars, as did Spanair in 2008, the final compensation will be only a very small percentage of that amount, regardless of the country where that compensation is due.

I think that ICAO must work in the immediate future to establish a proportionality between the coverage of the insurance and the compensation, enforcing the true meaning of the article twenty five of the Montreal Convention. But this is just an ideal. You can implement it in the

Montreal Convention or in any other international law that you see fit. It can be this sentence, or any other you find proper to reach one simple goal: To establish a direct and proportional link between the compensation to the victims and families of an air crash, and the insurance coverage.

You may hear that this proportionality will risk the economic stability of the civil aviation sector. Really? I don't think so. If the victims of an air crash and their families receive, instead of a two or three percent of the coverage of the policy, a fair amount (fifty percent or forty or thirty of that coverage, depending on its amount), that proportional bridge between the compensations and the coverages will make a better future and a more caring world.

Including in this ICAO Legal Forum a section on assistance to victims is a very good first step, but ICAO should lead – in view of the appalling air accidents of the last 5 years – a great meeting between all the parties involved, who study and seek a consensus that balances the interests of victims and insurers. I formally request not only on behalf of the President of the International Federation of Air Accident Victims and their Families, but also of the legal professionals who defend victims, that ICAO include among its events, specific seminars on this matter to carry out the modifications and innovations that update and harmonize the necessary balance between the aforementioned parties.

The Montreal Convention, European and American regulations, etc..., show the way, it would only be a matter of complying with it, to avoid people who suffer the loss of their loved ones additional suffering that can even last for years.

The air accidents that have occurred in the last 10 years in the world have overwhelmed us all. International civil aviation has advanced a lot in all possible aspects, except in the one dedicated to the treatment that insurers give to the victims. The requirements demanded by the Authorities to the Airlines to be able to operate are very strict; however, in the event of an accident, compliance with their obligations is not required with the same intensity. As legal professionals, practicing lawyers, we are also responsible for ensuring that our clients receive fair, dignified treatment in accordance with the contracts required and in force between the parties involved in an air disaster.

By last, from the International Federation of Air Accident Victims and their Families I convey the message of its President, Pilar Vera, that although it is an illusion now, we must believe that the exchange of these best practices can effectively contribute to making it a reality. We can all become, if we fly, victims, let's do everything we can to try to solve this problem because it will be good for the entire international civil air transport community in the world.

Thank you very much.