



ASSEMBLY — 42ND SESSION

LEGAL COMMISSION

Agenda Item 29: Other issues to be considered by the Legal Commission

COMPENSATION: BEST PRACTICES OF INSURANCE COMPANIES IN THE ASSISTANCE TO VICTIMS

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

EXECUTIVE SUMMARY

This paper underscores the importance of ensuring the protection of third-party victims and the need for fair and equitable compensation, while also recognizing the importance of preserving the stability of the aviation industry, as reflected in the Convention on Compensation for Damage Caused by Aircraft to Third Parties, discussed during the International Conference on Air Law (Montreal, 20 April to 2 May 2009). It also emphasizes the critical importance of encouraging States to inform ICAO of their insurers and air operators in order to compile, share, and implement best practices. In light of this, it is proposed that ICAO initiate a process to review the Montreal Convention.

Action: The Assembly is invited to:

- a) Recognize the importance and relevance of this matter;
- b) Request ICAO to collect information from States, international organizations, industry, and donors regarding best practices by insurance companies in supporting victims of air accidents; to compile and publish this information to facilitate implementation by States;
- c) Request the Council to monitor the implementation of such best practices once published; and
- d) Consider including a review of the Montreal Convention in the Legal Committee's Work Programme, with a view to enabling more balanced compensation for victims in line with the insurance coverage held by airlines and operators.

<i>Strategic Goals:</i>	This working paper relates to Strategic Goals: The Economic Development of Air Transport Assure the Delivery of Economic Prosperity and Societal Well-Being for All.
<i>Financial implications:</i>	

¹ English and Spanish versions provided by ACVFII.

<i>References:</i>	Doc 9998, <i>ICAO Policy on Assistance to Aircraft Accident Victims and their Families</i> Doc 9973, <i>Manual on Assistance to Aircraft Accident Victims and Their Families</i> <i>Convention for the Unification of Certain Rules for International Carriage by Air</i> (Montreal Convention, 1999) Assembly Resolution A41-14 – <i>Assistance to victims of aviation accidents and their families</i>
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1. INTRODUCTION

1.1 The Montreal Convention outlines the responsibilities of the parties involved in commercial aviation. In its preamble, it recognizes the need to ensure that adequate compensation is provided to third parties who suffer harm as a result of events involving an aircraft in flight. It also acknowledges the importance of protecting the interests of affected third parties and the necessity of fair compensation, while also ensuring the stability of the aviation industry.

1.2 Chapter III of the Convention sets out the scope of compensation for damages, as well as the conditions under which the obligation to provide reparation arises. However, the insurance policies contracted by air operators in accordance with this framework do not appear to be subject to oversight with respect to how victims and their families are treated in the aftermath of aviation accidents

2. ANALYSIS

2.1 ICAO Documents 9998 and 9973 include, within the scope of assistance to victims, survivors, and families, considerations related to compensation for damages suffered. However, both documents refer primarily to the provisions of the Montreal Convention and domestic legislation.

2.2 Little attention has been given to the way insurance companies treat victims, survivors, and families following an accident. In many cases, they are subjected to lengthy legal proceedings, despite the air operator holding sufficient insurance coverage through its credit policies to address the emergency.

2.3 While the Montreal Convention defines the liability of air carriers, it does not address how their insurers treat victims, survivors, and families of air accidents.

2.4 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” requirement for Member States to ensure that their operators maintain adequate insurance or guarantees to cover civil liability under that Convention. Therefore, it is necessary for States to monitor the best practices of insurance entities through their audit and oversight mechanisms.

2.5 Article 17 of the Montreal Convention –Death and Injury of Passenger - Damage to Baggage – establishes that the carrier is liable for damage sustained in case of death or bodily injury of a passenger if the accident causing the injury or death occurred on board the aircraft or during any of the operations of embarking or disembarking. Accordingly, the insurance policy covering carrier liability should be fully dedicated to “compensating the damage caused to the passenger and/or their family in the event of death.”

3. CONCLUSION

3.1 Recognizing the importance of protecting the interests of affected third parties and the need for fair compensation, while also preserving the stability of the aviation industry, as reflected in the Convention on *Compensation for Damage Caused by Aircraft to Third Parties*, discussed at the International Conference on Air Law held in Montreal from 20 April to 2 May 2009, it is considered of vital importance that States inform ICAO of their insurers and air operators' best practices, in order to support of such practices their integration, based on their results.

3.2 Recommitting to the importance of the orderly development of international air transport operations, the smooth flow of passengers, and the protection of their rights, in accordance with the principles and objectives of the *Convention on International Civil Aviation* signed in Chicago on 7 December, 1944, it would be beneficial for States and their citizens to implement best practices and devote proper attention to the insurance policy terms agreed between airlines and their insurers.

3.3 Considering the need to ensure balance in compensation between the parties, it is essential that States monitor the practices of insurance companies and promote the allocation of greater resources to compensate victims, in accordance with the coverage requirements set forth in the policies underwritten by air carriers.

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