Strategic Airport Management Programme

9-13 April 2007

LACAC-SAA Strategic Airport Management Programme:
Airport Liability Limitation & Rome Convention Modernisation Efforts

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Civil Aviation Authority of Singapore -
A Quick Look at the Airline Situation

Airline Third Party Liability & Insurance

- U.S. - Fault Liability: Statutory Limitation
  - FAA Insurance Program

- E.U. - Strict & Unlimited Liability in many States
  - Minimum Insurance Requirements

- Others - Liability: some similar to EU; some fault-based
  - Some have minimum insurance requirements

- ICAO Action: Modernization of the Rome Convention of 1952
A Quick Look at the Airport Situation

Airport Third Party Liability & Insurance

- Generally
  - Fault Liability: No Statutory Limitation
  - No Minimum Insurance Requirements

- U.S.
  - Indirectly covered by FAA Insurance Programme
    - Thru airline indemnity coverage

- Canada
  - Airports included in Government War Risk Insurance Cover

- ICAO Action: Modernization of the Rome Convention of 1952
  - Q as to whether or not to include airports
Focus of this Presentation

**ICAO Action:**

*Modernization of the Rome Convention of 1952*

- A Brief History
- Current Status
- What’s Next?
A Brief History

Undoubtedly, 9/11 & WMD threat has an important part ...
A Brief History

The Genesis: 2 important decisions (Pre- & Post- 9/11)

- Decision to modernise Rome Convention of 1952 taken in 2000
  at ICAO 31st Legal Committee Meeting

- Recommendations of ICAO Special Group on Aviation War Risk Insurance (SGWI) in early 2002
  - medium term solution: Globaltime
  - long term solution: a new international convention for aviation third party liability, with specific focus on a limit for damages arising out of war and other perils (including terrorism)

The Follow Up (2000 to 2004):

- ICAO Secretariat Questionnaire
- Secretariat Study Group
- 32nd Legal Committee
- Draft Convention on Damage Caused by Foreign Aircraft to Third Parties
A Brief History

2005 to 2007: Post-9/11 & 7/7

่า ICAO Special Group on the Modernization of the Rome Convention of 1952 (SGMR)

- Task: To further develop & refine the text of the Draft Convention on Damage Caused by Foreign Aircraft to Third Parties both on substantive policy issues as well as drafting & editorial matters

- Members: Argentina, Australia, Bahrain, Brazil, Cameroon, China, Egypt, France, Germany, Ghana, India, Italy, Japan, Mexico, Russian Federation, Singapore, South Africa, Sweden, Turkey & United Kingdom.

Ex-Officio Members: Chairman of the Legal Committee & Rapporteur. Observers: Belgium, EC, South Korea & Switzerland.

ACVFA, AWG, ALADA, CANSO, Eurocontrol, IATA, IUAI & LMBC.
Current Status
**Current Status**

**SGMR Meetings & Progress**

- Meetings (Jan 2005 to Nov 2006): 5 Formal & 2 Informal
- 2 Draft Conventions
  - Draft Convention on Compensation for Damage Caused by Aircraft to Third Parties, in case of Unlawful Interference ("Unlawful Interference Risks Convention");
  - Draft Convention on Compensation for Damage Caused by Aircraft to Third Parties ("General Risks Convention").

- Work Item on Legal Committee Work Programme amended by ICAO Council at its 6 Dec 2006 meeting to “Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks” & accorded Priority No. 1
Unlawful Interference Risks Convention:

Objectives

- To protect airlines: by limiting airline liability for damage to third parties
- To protect victims: by making available an additional layer of compensation funds
  - Supplementary Compensation Mechanism (SCM)
Unlawful Interference Risks Convention to apply when:

- damage occurs to third parties in a State Party, is caused by an aircraft in flight & results from an act of unlawful interference, &
- airline’s principal place of business / permanent residence is in another State (whether or not a State Party).

Domestic application: at State Party’s option

To protect airline of a State Party when the damage occurs in a non-State Party

- Conference of Parties (COP) may decide to provide financial support in certain circumstances
Unlawful Interference Risks Convention:

- **Airline Strict Liability**
  - on condition only that damage is caused by an aircraft in flight
  - direct consequence
  - punitive, exemplary & other non-compensatory damages not recoverable
  - environmental damage under national law

- **Limitation per event & per aircraft**
  - global (not individual claimant) limit
  - based on aircraft weight
  - with reference to available insurance e.g. EU minimum insurance
Unlawful Interference Risks Convention:

- **Advance Payments (like Montreal Convention 99)**
  - if required by national law
  - to natural persons
  - to meet immediate economic needs
  - non-recognition of liability & may be offset

- **Insurance Requirement (like Montreal Convention 99)**
  - adequate insurance from national carriers
  - proof of adequate insurance from foreign carriers
  - similar criteria
Current Status

Unlawful Interference Risks Convention:

- Supplementary Compensation Mechanism (SCM)
  - to comprise Conference of Parties (COP) & Secretariat headed by Director
  - to provide compensation (& financial support, if applicable) above airline strict liability limit / insurance
    - reduced compensation: if damages exceed both airline liability limit & SCM limit
  - if insurance unavailable or at cost incompatible with continued air transport operation, COP may decide SCM provide financial support
  - max SCM compensation amount: 3 billion SDRs
  - contributions from ultimate users - passengers & cargo shippers
Current Status

Unlawful Interference Risks Convention:

→ Right of recourse
  - if the damage resulted from an act or omission, committed with intent to cause such damage, or recklessly and with knowledge that such damage would probably result by the person or, if the person is a legal person, by its senior management.

→ Other provisions
  → acts or omissions of victims
  → exclusive remedy
  → review of limits
  → forum
  → intervention by SCM
  → limitation period: 3 years?
  → nuclear damage: excluded
What's Next?
What's Next?

Outstanding Issues / Further Work

- Airline Liability Limit: Breakable or Unbreakable?
- Max SCM Limit: Per Event or Per Annum Aggregate?
- Inclusion or Not of Other Entities:
  - Airports, ANSPs, Ground-Handlers, Others?
- SCM Financing & Contributions
  - pre- &/or post- event funding etc
What’s Next?

Next Meetings

- Informal Meeting (Singapore, May 2007)
  - Task Force: Major Issues

- SGMR 6th Meeting (Montreal, Jun 2007)
  - Report to ICAO Council

- ICAO Treaty-Making Process
  - Legal Committee
  - Diplomatic Conference
Can We Succeed?

Can we afford not to?
- Strict & Unlimited Liability exists in many jurisdictions
- War Risk Insurance is limited
- WMD threat remains

Consider the potential benefits:
- Limited Liability
- Insurance Availability at reasonable/lower cost
- Compensation for Victims

What does it take?
Hard work, Determination &
... Joint government & industry effort!
That’s All for Now

THANK YOU
for your kind attention

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