

LXXIII REUNIÓN DEL COMITÉ EJECUTIVO DE LA CLAC

(Bogotá, Colombia, 17 de junio de 2008)

PRESENTACIÓN DEL REPRESENTANTE DE EMBRAER,
SR. JOSÉ SERRADOR NETO

Buenas tardes,

Primeramente me gustaría agradecer a la CLAC por la oportunidad de estar en Bogotá y presentarnos como la EMBRAER y el Aviation Working Group en la modernización del Convenio de Roma.

Mi nombre es José Serrador, yo soy Director de Políticas Comerciales de EMBRAER, el tercer fabricante mundial de aeronaves comerciales. EMBRAER es también una fuerza en la aviación ejecutiva y defensa, con clientes en más de 60 países en el mundo, incluso las fuerzas aéreas brasileña y colombiana.

Desde 1999 EMBRAER viene trabajando junto con el Aviation Working Group, entidad empresarial compuesta por los principales fabricantes de aeronaves comerciales en el mundo, empresas de leasing y grandes instituciones financieras mundiales. El Aviation Working Group viene siendo muy activo en diversas discusiones con la OACI incluso en asuntos como el Convenio de Roma. Hoy venimos con el objetivo de discutir con ustedes algunas reflexiones sobre este importante tema que es la modernización del Convenio de Roma y como la industria puede apoyar técnicamente las discusiones de los gobiernos. Es importante decir que los trabajos del Comité Legal han cerrado el mes pasado y este asunto está en discusión en la presente Reunión del Consejo de Ministros de la OACI.

Sobre los aspectos técnicos del Convenio EMBRAER ha invitado al Sr. Jeffrey Wool, Secretario General de la Aviation Working Group, que hablará sobre los desafíos que todavía están en los dos convenios que impactan la industria aeronáutica mundial: el Convenio General de Riesgos y el Convenio Específico sobre Riesgo Terrorista .

Ahora entonces paso la palabra al Sr. Jeffrey Wool.

Modernization of the Rome Convention



Comision Latinoamericana de Aviacion Civil

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Overview of Topics

- A. Aviation Working Group (**AWG**)
- B. AWG and the Rome Convention(s)
- C. Convention on Compensation for Damages Caused by Aircraft to Third Parties (**General Risks Convention**)
- D. Convention on Compensation for Damages Caused by Aircraft to Third Parties, in the case of Unlawful Interference (**Terrorism Convention**)
- E. Proposed Further Steps

A. Aviation Working Group

- **Formed** - at Unidroit's request in 1994 to work on the Convention; now formalized as non-profit entity
- **Purpose** - to 'contribute to the development of policies, laws, and regulations that facilitate advanced aviation financing and leasing'
- **Members** - Major aviation manufacturers and financiers from Latin American, North America, Europe, Middle East, and Asia
- Manufacturers: Embraer, Airbus, Boeing, Bombardier, ATR, General Electric, Rolls Royce, Pratt & Whitney, and Snecma
- Leasing Companies: GECAS, ILFC, Bank of China Aviation, AWAS, ACG, Aircastle, AerCap, Dubai Aerospace (in process)
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- Financial Institutions: Mitsubishi, Calyon, BNP Paribas, Citibank, JPMorgan, KfW Ipex, DvB, Royal Bank of Scotland, Morgan Stanley

A. Aviation Working Group

- **Current Activities** - (1) committed to global implementation of Cape Town; (2) aviation insurance and liability; (3) environmental issues; (4) Eurocontrol (air navigation charges/related liens); (5) export credit; (6) lease accounting; (7) export credit; (8) technical requirements (re transferability of aircraft); and (9) standard documentation. Other industry focus groups
- **Working Relations** – have been established working relations with many international organizations (e.g., ICAO; OECD; Unidroit; Uncitral) and national and regional authorities; close relations with IATA and other industry partners
- **CLAC** – AWG consulted closely with CLAC on the Cape Town Convention, and has worked with several of its members on their ratifications of that text

B. AWG and the Rome Conventions

- AWG played a significant role in war risk insurance issues from (literally) the day after September 11
- Was an observer to the Special Group on War Risk Insurance
- Was an observer to the Special Group on Modernization of the Rome Convention
- Was an observer to the both ICAO Legal Committees that addressed the Rome Conventions
- Attended and actively participated in every session of the foregoing groups, and all their technical sub-groupings (e.g., on the Supplemental Compensation Mechanism)
- Took coordinated positions with the airline, insurer, and airport representative groups

C. General Risks Convention

- Historical and recent background
- Work within Special Group on the Modernization of Rome
- Report of Mr. A. H. Mutti (Argentina)
- Treatment at the recent ICAO Legal Committee
- The problem: last minute inclusion of an aggregate cap on airline's liability increases the risk to others, most particularly, manufacturers
- AWG proposal at the Legal Committee (see Report paras 3:204 and 3:205): Art 3 *qtr* ('Any liability under applicable law of the manufacturer of an aircraft, or its engines component parts, for damages sustain by third parties which is caused by an aircraft in flight, shall not exceed in aggregate the limit for such aircraft specified in Article 3bis {now Article 4(1)}')

C. General Risks Convention

- If a cap should apply to the potential unbounded airline liability, logic and policy require that a cap should apply equally to potential manufacturer liability
- Discussion options to address the unwarranted shift of risk (AWG's initial perspective, yet no firm position at this stage):
 - 1. Provide manufacturers with an aggregate cap (see above)
 - 2. Remove airline cap
 - 3. Broaden exclusive remedy clause (Art. 12), to align with the provision in the Terrorism Convention (Art. 28) up the airline cap
- Support for Art. 13 (former Art. 10*bis*) – exoneration of status liability

D. Terrorism Convention

- Historical and recent background, including on the aviation war insurance markets
- Evolution from Globaltime to the Rome text
- General principles as set out in the Joint Industry Paper:
 - 1. Victims protection (prompt, certain and substantial compensation)
 - 2. Airline victim protection (substantially unbreakable cap)
 - 3. Liability channeling, to protect other participants in the aviation sector

D. Terrorism Convention

- Treatment at the recent ICAO Legal Committee
- Industry in assessing the situation, with the following as key points to be addresses at the diplomatic conference
 - 1. Airline points
 - Acts by servants and agents must not break the cap
 - Safe harbor must be workable in practice
 - ‘Senior management’ must exclude operations personnel
 - 2. Other industry participants points (structure is sound)
 - Clarity needed that recourse is limited to insured amounts
 - Recourse not asserted through principles of various liability
 - Recourse is limited to that in favor of an airline under law

D. Proposed Further Steps

- Close consultations between AWG (and other industry) and CLAC and its members in advance of, and at, the diplomatic conference
- Need for informal consultations among States and observers to work through issues on the general risks convention, including on the problem noted above
 - There are several options for arranging such consultations
 - Such informal consultations could result in constructive recommendations to the diplomatic conference
- AWG is available for consultations, and may be contacted through its Secretary: jeffrey.wool@awg.aero; + 44 7841 000 447