

**PROTOCOL TO AMEND THE CONVENTION ON DAMAGE
CAUSED BY FOREIGN AIRCRAFT TO THIRD PARTIES ON
THE SURFACE, SIGNED AT ROME ON 7 OCTOBER 1952,
SIGNED AT MONTREAL, ON 23 SEPTEMBER 1978
(MONTREAL PROTOCOL 1978)**

THE GOVERNMENTS UNDERSIGNED

CONSIDERING that it is desirable to amend the Convention on
Damage Caused by Foreign Aircraft to Third Parties on the Surface signed
at Rome on 7 October 1952,

HAVE AGREED as follows:

CHAPTER I

AMENDMENTS TO THE CONVENTION

Article I

The Convention which the provisions of the present Chapter modify
is the Convention on Damage Caused by Foreign Aircraft to Third Parties
on the Surface signed at Rome on 7 October 1952.

Article II

In Article 2 of the Convention the following shall be added as new
paragraph 4:-

"4. If the aircraft is registered as the property of a State, the
liability devolves upon the person to whom, in accordance with the law of
the State concerned, the aircraft has been entrusted for operation."

Article III

Article 11 of the Convention shall be deleted and replaced by the
following:-

"Article 11

1. Subject to the provisions of Article 12, the liability for damage
giving a right to compensation under Article 1, for each aircraft and
incident, in respect of all persons liable under this Convention shall not
exceed:

- (a) 300 000 Special Drawing Rights for aircraft weighing
2 000 kilogrammes or less;
- (b) 300 000 Special Drawing Rights plus 175 Special

Drawing Rights per kilogramme over 2 000 kilogrammes for aircraft weighing more than 2 000 but not exceeding 6 000 kilogrammes;

(c) 1 000 000 Special Drawing Rights plus 62.5 Special Drawing Rights per kilogramme over 6 000 kilogrammes for aircraft weighing more than 6 000 but not exceeding 30 000 kilogrammes;

(d) 2 500 000 Special Drawing Rights plus 65 Special Drawing Rights per kilogramme over 30 000 kilogrammes for aircraft weighing more than 30 000 kilogrammes.

2. The liability in respect of loss of life or personal injury shall not exceed 125 000 Special Drawing Rights per person killed or injured.

3. "Weight" means the maximum weight of the aircraft authorized by the certificate of airworthiness for take-off, excluding the effect of lifting gas when used.

4. The sums mentioned in terms of the Special Drawing Right in paragraphs 1 and 2 of this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that Contracting State.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraphs 1 and 2 of this Article and of this paragraph may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability provided for in this Convention shall, in judicial proceedings in their territories, be fixed as follows:

(a) 4 500 000 monetary units for aircraft referred to in subparagraph (a) of paragraph 1 of this Article;

(b) 4 500 000 monetary units plus 2 625 monetary units per kilogramme for aircraft referred to in subparagraph (b) of paragraph 1 of this Article;

(c) 15 000 000 monetary units plus 937.5 monetary units per kilogramme for aircraft referred to in subparagraph (c) of paragraph 1 of this Article;

(d) 37 500 000 monetary units plus 975 monetary units per

kilogramme for aircraft referred to in subparagraph (d) of paragraph 1 of this Article;

(e) 1 875 000 monetary units in respect of loss of life or personal injury referred to in paragraph 2 of this Article.

The monetary unit referred to in this paragraph corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum into the national currency shall be made according to the law of the State concerned."

Article IV

Article 14 of the Convention shall be deleted and replaced by the following:-

"Article 14

If the total amount of the claims established exceeds the limit of liability applicable under the provisions of this Convention, the following rules shall apply, taking into account the provisions of paragraph 2 of Article 11:

(a) if the claims are exclusively in respect of loss of life or personal injury or exclusively in respect of damage to property, such claims shall be reduced in proportion to their respective amounts;

(b) if the claims are both in respect of loss of life or personal injury and in respect of damage to property, the total sum distributable shall be appropriated preferentially to meet proportionately the claims in respect of loss of life and personal injury. The remainder, if any, of the total sum distributable shall be distributed proportionately among the claims in respect of damage to property."

Article V

In the title of Chapter III the word "SECURITY" shall be deleted and replaced by "GUARANTEE".

Article VI

In Article 15 of the Convention-

(a) paragraph 1 shall be deleted and replaced by the following:-

"1. Any Contracting State may require that the operator of an aircraft referred to in paragraph 1 of Article 23 shall be covered by insurance or guaranteed by other security in respect of his liability for damage sustained in its territory for which a right of compensation exists under Article 1 up to the limits applicable according to the provisions of Article 11. The operator shall provide evidence of such guarantee if the State overflown so requests."

(b) paragraphs 2, 3, 4, 5 and 6 shall be deleted;

(c) paragraph 7 shall be renumbered as paragraph 2 and shall read as follows:-

"2. A Contracting State overflown may at any time require consultation with the State of the aircraft's registry, with the State of the operator or with any other Contracting State where the guarantees are provided, if it believes that the insurer or other person providing the guarantee is not financially capable of meeting the obligations imposed by this Convention."

(d) paragraph 8 shall be renumbered as paragraph 3;

(e) paragraph 9 shall be deleted.

Article VII

In Article 16 of the Convention-

(a) the word "security" in paragraph 1 shall be deleted and replaced by "guarantee";

(b) subparagraph (a) of paragraph 1 shall be deleted and replaced by the following:-

"(a) that the damage occurred after the guarantee ceased to be effective. However, if the guarantee expires during a flight, it should be continued in force until the next landing specified in the flight plan, but no longer than twenty-four hours;"

(c) subparagraph (b) of paragraph 1 shall be deleted and replaced by the following:-

"(b) that the damage occurred outside the territorial limits provided by the guarantee, unless flight outside of such limits was caused by force majeure, assistance justified by the circumstances or an error in piloting, operation or navigation."

(d) paragraphs 2 and 3 shall be deleted;

(e) paragraph 4 shall be renumbered as paragraph 2 and the word "security" shall be deleted and replaced by "guarantee";

(f) paragraph 5 shall be renumbered as paragraph 3 and the words "governing the contract of insurance or guarantee" shall

be deleted and replaced by "applicable to the guarantee"; in subparagraph (a) of that paragraph the word "security" shall be deleted and replaced by "guarantee";

(g) paragraphs 6 and 7 shall be renumbered as paragraphs 4 and 5, respectively, and in the new paragraph 4 the word "security" shall be replaced by "guarantee".

Article VIII

In Article 17 of the Convention-

(a) paragraph 1 shall be deleted and replaced by the following:-

"1. If a guarantee is furnished in accordance with Article 15, it shall be specifically and preferentially assigned to payment of claims under the provisions of this Convention."

(b) in paragraph 2 the word "security" shall be deleted and replaced by "guarantee";

(c) paragraph 3 shall be deleted and replaced by the following:-

"3. As soon as notice of a claim has been given to the operator, he shall ensure that the guarantee is maintained up to a sum equivalent to the aggregate of:

(a) the amount of the guarantee then required by paragraph 2 of this Article, and

(b) the amount of the claim not exceeding the applicable limit of liability.

The above-mentioned sum shall be maintained until every claim has been disposed of."

Article IX

In Article 19 of the Convention no amendment has been made in the English text.

Article X

In Article 20 of the Convention-

(a) in paragraph 4 delete the words "or of any territory, State or province thereof" and replace by "or of any of its constituent subdivisions, such as States, Republics, territories or provinces";

(b) in paragraph 9 the subparagraphs shall be designated as (a), (b) and (c), respectively;

(c) paragraph 11 shall be deleted and replaced by the following:-

"11. Interest may be allowed on the judgment debt according to the law of the Court seized of the case."

(d) in paragraph 12 delete the word "five" and replace by "two".

Article XI

In Article 21 of the Convention no amendment has been made in the English text.

Article XII

In Article 23 of the Convention paragraph 1 shall be deleted and replaced by the following:-

"1. This Convention applies to damage contemplated in Article 1 caused in the territory of a Contracting State by an aircraft registered in another Contracting State or by an aircraft, whatever its registration may be, the operator of which has his principal place of business or, if he has no such place of business, his permanent residence in another Contracting State."

Article XIII

Article 26 of the Convention shall be deleted and replaced by the following:-

"Article 26

This Convention shall not apply to damage caused by aircraft used in military, customs and police services."

Article XIV

In the Convention after Article 26 insert Article 27 as follows:-

"Article 27

This Convention shall not apply to nuclear damage."

Article XV

Articles 27 and 28 of the Convention shall be renumbered as Articles 28 and 29, respectively.

Article XVI

Article 29 of the Convention shall be deleted.

Article XVII

In Article 30 of the Convention the last two paragraphs shall be deleted and replaced by the following:-

" - "Contracting State" means a State for which this Convention is in force."

" - "State of the Operator" means any Contracting State other than the State of registry on whose territory the operator has his principal place of business or, if he has no such place of business, his permanent residence."

Article XVIII

Articles 36 and 37 of the Convention shall be deleted and in Article 38, which shall be renumbered as Article 36, the words "or of any declaration of notification made under Articles 36 and 37" shall be deleted; Article 39 shall be renumbered as Article 37.

CHAPTER II

FINAL PROVISIONS

Article XIX

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the Rome Convention of 1952 as Amended at Montreal in 1978.

Article XX

Until the date on which this Protocol comes into force in accordance with Article XXII, it shall remain open for signature by any State.

Article XXI

1. This Protocol shall be subject to ratification by the signatory States.

2. Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of accession to the Convention as amended by this Protocol.

3. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

Article XXII

1. As soon as five of the signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the date of the deposit of the fifth instrument of ratification. It shall come into force, for each State which deposits its instrument of ratification after that date, on the ninetieth day after its deposit of its instrument of ratification.

2. As soon as this Protocol comes into force, it shall be registered with the United Nations by the Secretary General of the International Civil Aviation Organization.

Article XXIII

1. This Protocol shall, after it has come into force, be open for accession by any non-signatory State.

2. Accession to this Protocol by any State which is not a Party to the Convention shall have the effect of accession to the Convention as amended by this Protocol.

3. Accession shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take

effect on the ninetieth day after the deposit.

Article XXIV

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the International Civil Aviation Organization.

2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation; nevertheless, in respect of damage contemplated in Article 1 of the Convention arising from an incident which occurred before the expiration of the six months period, the Convention shall continue to apply as if the denunciation had not been made.

3. As between the Parties to this Protocol, denunciation by any of them of the Rome Convention of 1952 in accordance with Article 35 thereof shall not be construed in any way as a denunciation of the Rome Convention of 1952 as Amended at Montreal in 1978.

Article XXV

No reservations may be made to this Protocol.

Article XXVI

1. The Secretary General of the International Civil Aviation Organization shall give notice to all States Parties to the Rome Convention or to that Convention as amended by this Protocol, all signatory and adhering States and to all States members of the Organization or of the United Nations:

(a) of the deposit of any instrument of ratification of, or adherence to, this Protocol and the date of, thereof, within thirty days from the date of the deposit, and

(b) of the receipt of any denunciation of this Protocol and the date thereof, within thirty days from the date of the receipt.

2. The Secretary General of the Organization shall also notify these States of the date on which this Protocol comes into force in accordance with Article XXII.

Article XXVII

This Protocol shall remain open for signature at the Headquarters of the International Civil Aviation Organization until it comes into force in accordance with Article XXII.

DONE at Montreal on the twenty-third day of September of the year One Thousand Nine Hundred and Seventy-eight in four authentic texts in the English, French, Russian and Spanish languages.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol in the name of