

INTERNATIONAL AVIATION LAW MATERIAL

GROUND (SURFACE) DAMAGE CAUSED BY A FOREIGN AIRCRAFT TO THIRD PARTIES: AIRCRAFT OPERATOR LIABILITY MATTERS

KEYWORDS:

Aviation law, International aviation regulations, liability of aircraft operator, non-contractual relationship, the law of tort, ground (surface) damage, third party rights

1. GENERAL INFORMATION

In this article, I will discuss the **aircraft operator liability to the third party for the caused ground (surface) damage**.

Without detailing the essence of the “aircraft operator”, as there is no universally accepted definition, it must be noted that the “**aircraft operator**” is deemed to be **the registered owner of the aircraft unless proven otherwise [1]**.

To understand the article precisely, it must be noted that the **air carrier**, which transports passengers from one point to another point, considers **the legal, lawful operator of the aircraft**, therefore, the claims aroused from the caused ground damage must be addressed to it.

Operator liability for ground damage is a **non-contractual liability**. It is based on **non-contractual relationship**, as the damage is caused to the third parties, **i.e. persons or the owners of the property** who are not in the contractual relationship with the aircraft operator.

To understand the situation well, let’s imagine the scenario when an airplane [2] falls into houses and crashes, killing people onboard, **people at their houses, and destroying houses**.

The passengers **who died onboard**, their issues are covered by the 1999 Montreal convention, as they were in a contractual relationship with the air carrier.

The people who died at their home, the owner of buildings whose houses were destroyed **will be the ones who are not in a contractual relationship with the operator but suffer losses**, have been caused damage (harm, injury), therefore, they need to seek (are entitled to) compensation.

2. INTERNATIONAL LEGAL INSTRUMENTS

Those are conventions, protocols regulating the non-contractual relationships. Some of them are not legally binding. They include:

- 1933 Rome Convention, for the unification of certain rules relating to **damage caused by aircraft to third parties on the surface** (+ amended by 1938 Brussels Protocol): this convention was replaced by the 1952 Rome convention.

- 1952 Rome Convention, regarding the **damages caused by foreign aircraft to the third party on the surface** (+ amended by the 1978 Montreal protocol).

- 2009 Montreal Convention, to **compensate damages to third parties emerging from acts of unlawful interference involving aircraft [3]**. This **WILL SUPERSEDE** both the 1933 and 1952 Rome Conventions.

- 2009 Montreal Convention of 2009, on **compensation for damage caused by aircraft to third parties [4]**. This **WILL SUPERSEDE** both the 1933 and 1952 Rome Conventions.

The 2 conventions (**2 Montreal Conventions of 2009**) of the above-mentioned 4 conventions **are not in force**, as those have not been ratified by the necessary amount of countries yet.

As the 1933 convention **was replaced** by the 1952 convention, in this article **we will focus on the 1952 Rome convention, as an existing genuine legal instrument.**

3. SOME COUNTRIES PERSPECTIVE

ARMENIA

Unfortunately, the Republic of Armenia **has not signed, ratified, adhered none of the above-mentioned 4 conventions or protocols to them.** So, in case of the Republic of Armenia national law is available as a legal remedy.

NIGERIA

Nigeria adhered to the 1952 Rome convention in 1970, but **in 2002, unfortunately, Nigeria denounced its adhesion.** It means **no convention is applicable** if the damage is caused in the territory of Nigeria. In such a complicated situation, local laws are applicable, which, sure, cannot be as favorable as the conventional regulations.

4. EXISTING LEGAL BASIS

The 1952 Rome Convention regulates **damages caused by foreign aircraft to the third party on the surface.**

In this context:

1) **“third party”** means any person [5] who is **not onboard aircraft**, with who the operator **has no contractual relationship** concerning the damage,

2) **“foreign aircraft”** means any aircraft (airplane) registered in another country than the one where damage was caused. For example, if the damage was caused in Lagos city by the aircraft **registered in Namibia (Air Namibia)**, it means the aircraft of the air carrier (the operator (Air Namibia (Pty) Limited)) will be a “foreign aircraft” in terms of the given convention.

The conditions to seek remedy, claim damages (compensation) are as follows:

- the existence of **damage (loss of life, injury of a person, damage to property)**,
- damage must be **caused by aircraft**,
- the aircraft must be **foreign, i.e. registered in a foreign country** (holding foreign country national and registration marks) [6],
- damage must be a **direct (proximate) consequence of the incident (unusual or unexpected occurrence)**,
- damage must be **caused on the ground, surface** (not onboard),

- the third party (legal or natural person) **MUST NOT BE in a contractual relationship** with the aircraft operator (to wit, **it does not cover aircraft operator-passenger contractual relationship, if any**).

Here it is interesting to explain that “**DAMAGE CAUSED BY AIRCRAFT**” includes damage caused:

- by direct contact of aircraft (**e.g. aircraft crash**),
- by the impact, as consequence of aircraft parts, objects, other materials (**e.g. broken and fallen engine or chemical poured from aircraft**),
- by people (**both passengers and crew members**) from the aircraft,
- by breach of air navigation or flight related rules by aircraft (**flying over low altitude: as a result, a wheelchair person loses his/her balance and faces a car accident**).

5. LIABILITY: FROM COMPENSATION TO EXONERATION

EXPECTED COMPENSATION

According to the Rome Convention (Article 11), by the amendments of the 1978 Protocol, the liability in respect of **loss of life or personal injury shall not exceed 125000 Special Drawing Rights (SDR) per person** killed or injured [7]. It is equal to \$185000.

LIMITED OR UNLIMITED LIABILITY?

The first stage of liability: **It is LIMITED**, i.e. **the maximum payout** is \$185000 per person.

The second stage of liability: **It is UNLIMITED** if the damage is caused by a **deliberate act or omission** done intentionally. In this case, as much the claimant will prove the damage as much he/she will be compensated (even more than \$185000).

EXONERATION

The operator **IS EXONERATED** from liability if the damage is the **direct consequence** of:

- **armed conflict** or **civil disturbance**, or
- if such person (injured person) has been deprived of the use of the aircraft **by the act of public authority**.

ADVICE

It is important to bring an action **within 6 months** from the date of the incident which gave rise to the damage [8].

6. CONCLUSION, TIPS

Summarizing the above-mentioned, we can note that to get compensation for the damage caused to the person on the ground (surface) by the foreign aircraft:

1. The claimant has to prove **the existence (actually proven) of the damage** caused on the ground by aircraft (the burden of proof is the claimant duty).

2. The aircraft operator has 2 options:

2.1 Compensate (as much as proved, under the conditions set above)

2.2 Refuse to compensate invoking that (the burden of the proof is the operator duty) the damage is a consequence of:

A) armed conflict,

B) civil disturbance,

C) act of a public authority (mostly executive bodies).

3. If the aircraft operator proves the existence of 2.2 (A or B or C), **the claim will not be satisfied**, the claimant will not be granted compensation.

4. In the case of STEP 3, my advice to the claimant, his/her lawyer (counsel) is to discuss **the possibility to claim damages from another party [9]**, such as a state (under discussion set below).

7. NOTES, CLARIFICATIONS

[1] **Operator** means the person (legal entity mostly) **who was making use, actual control of the aircraft** at the time the damage was caused, i.e. when he is using it

personally or when his servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority.

[2] In general, different names are used denoting **airplane**, such as **aircraft** (this is in widespread use), **aeroplane**, **airship**, etc.

[3] In analytic discussions, as a short name for the convention, these names are also used: **Unlawful Interference Compensation Convention, Hijacking Convention.**

[4] In analytic discussions, as a short name for the convention, these names are also used: **Ground Damage Convention, Surface Damage Convention General Risk Convention.**

[5] Person means both **natural person** (human being), and **legal person** (juristic person, entity).

[6] Each aircraft which operates flights has to be registered in one country (**nationality of aircraft**). Each aircraft must hold **national mark and registration mark** (*Detailed regulation of those 2 marks can be found on **Annex 7** of the 1944 Chicago Convention. The full name of Annex 7 is **Aircraft Nationality and Registration Marks**. The full name of the 1944 Chicago Convention is **Convention on International Civil Aviation**).*

To know that the 1944 Chicago Convention considers the **CONSTITUTION OF AVIATION LAW**, the “**MOTHER**” **DOCUMENT OF PUBLIC INTERNATIONAL AVIATION LAW**.

[7] Special Drawing Right or SDR: This is a **so-called conditional currency**.

In the 1952 Rome convention “**FRANC**” is used as a currency, but later (by the 1978 protocol) it was changed to **SPECIAL DRAWING RIGHTS** (as in many aviation conventions). Each time, when compensation matters arise, SDR has to be converted into local currency.

In the website of the **International Monetary Fund (IMF)** we can access to the currency exchange, calculation: https://www.imf.org/external/np/fin/data/rms_sdrv.aspx).

[8] **General period of limitation (under the 1952 Rome Convention)** is two years from the date of the incident which caused the damage. **The specifications of the 6 months’ period** are regulated in Article 19.

[9] For example, if the damage is caused by the act of public authority, and in court proceedings, it is assessed **the non-proportionality, illegitimately the acts of public bodies**, etc., then the **state (country) will be held liable**. It is a highly delicate situation, sometimes even non-result oriented, but anyway it is a possible “arm”. These issues are regulated **by local laws**, and the **1952 Rome Convention will not be applicable**, as it regulates the **aircraft operator and specifically mentioned parties’ liability**.

THOUGH somehow, under conditions, the 1952 Rome Convention considers the **liability of the unlawful user of aircraft** (without the consent of the one who is entitled to the navigational control).

In the cases of **armed conflict or public unrest**, it is difficult to find the liable person (**A CLUE FOR A LAWYER**: In general, the state has an obligation, duty for the safety of the people).

NOTE: the 1999 Montreal convention uses “**air carrier**”, and the 1952 Rome Convention “**operator**” (it is about aircraft operator) term.