FEATURES

The Rome Convention Dealing With Damages Caused By Foreign Aircraft To Third Parties

The Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed in Rome on 7 October 1952 (‘Rome Convention’) is a unique animal in the international treaty system. It unifies laws with respect to surface damage caused by aircraft in flight counter to principles of fairness and ties compensation to a singularly unworkable formula. But for these, it could have been an integral piece in the international transportation law mosaic. It does not meet modern needs as to compensation. In the post-911 world in which the horrific damage that can be caused by aircraft has been demonstrated, denunciation of the Rome Convention would be wise. It does have some admirable features, however, that commend themselves to salvage. These, and the structural flaws, are examined in this article.

Reasons To Denounce The Rome Convention

Scope And Main Features

The Rome Convention covers damage caused directly to persons and property on the ground in a contracting state by aircraft registered in a foreign country that is also party to the Convention. The compensation is limited and pegged to the weight of the aircraft involved. This represents the aggregate of the operator’s or registered owner’s liability, which is strict. Hence all injured parties have to share the compensation upon proving damage.

Problems That Arise From This

Disharmony And Inequality

Harmony in the law on compensating surface
damage to persons and property by aircraft in flight is as yet unachieved. Only 48 countries are Rome Convention parties, with some important aviation nations, including the United States, United Kingdom, South Korea and Japan, not. Hence, the applicable liability regimes vary considerably.

For example, in the case of damage caused to persons or property in the territory of a convention party A by an aircraft from a non-party, or by an aircraft of A itself, compensation would be governed by domestic law. In such cases, the compensation would not be limited by the Rome Convention (though it may be limited by applicable domestic legislation). However, in cases that fall within the Convention, the compensation would be limited. This inequality militates against fairness and is difficult to justify to the constituents of the states parties. While carriers of states parties conversely would benefit from this should they ever cause direct surface damage in other contracting countries, this cannot justify continued adherence to the regime.

Unjustifiably Low Compensation And Inequitable Formula

The main purpose of the Rome Convention was to protect an infant industry in order not to hinder the development of international civil air transport and, hence, the limits on compensation were strict and low. The industry arguably no longer needs this protection. The limit is objectively inadequate because:

- It is set at 1958 levels. Note that Inflation and the rising cost of living have shrunk the real value of the amounts.
- The amount of damage an aircraft can do is pegged to its weight. This ignores that damage by aircraft is related less to size than to the circumstances and crash vicinity. For example, in a 1989 Amsterdam accident, an El Al Boeing 747-200 destroyed two apartment blocks, killing 43 people. The 9-11 events are another brutal reminder of this. In both cases the damage cannot be rationally related to the weight of the aircraft.
- Aggregate amounts being fixed mean that all parties suffering damage have to share the compensation among them. This means, astonishingly, that the more victims there are, the less each one receives.
- It is limited to direct damage. Damages from non-impact-related incidents, such as sonic booms,
engine emissions, fuel spillage, fire started by leaking fuel which causes damage, is ignored.

**What Is Salvageable From The Rome Convention?**

Despite its numerous limitations, the following are salvageable from the Rome Convention, including the following:

- **Strict liability upon proving damage** is a positive element coinciding with trends in transportation law, as proving aircraft operation faults is difficult.
- **Direct personal liability of the operator, registered owner or wrongful user** without consent clarifies the issue of responsibility.
- **The encouragement to use a single forum and preferably the jurisdiction where the incident occurred** would hopefully minimize forum shopping.
- **The guarantee and the power of states to ask for such ensure compensation.**
- **Allowing the submission of disputes to arbitration.**

**Recommended Course Of Action**

Although there are some salvageable points in the Rome Convention, on balance it is still not beneficial where damages caused by foreign aircraft to third parties arise. Hence, the preferred course of action is to still denounce the Rome Convention pursuant to Article 35 of the Rome Convention. This has precedent in that Canada denounced the Rome Convention on or about 29 June 1976 with effect from 29 December 1976, whilst Australia denounced it on or about 8 May 2000 with effect from 8 November 2000.

In the interim states denouncing the Rome Convention could work with their major aviation partners on mutual domestic schemes or craft bilateral agreements incorporating the salvageable elements. Alternatively, they could let local law govern damages, but statutorily enact the reversed burden of proof and/or strict liability. For example, in Australia, Bills Digest No. 147 1998-99 covering the Damage by Aircraft Bill 1999 sets out the patchwork of local law that exists there to cover surface damage. The Digest also highlights that the word from the insurance industry is that the
impact of denouncing the Rome Convention will be minimal.

Although aircraft insurance generally should include cover for surface damage, the insurance industry could be encouraged to come up with a rider that states considering denouncing the Rome Convention could insist aircraft licensed to fly into their territory are covered by.

Conclusion

This short article has provided only a glimpse into the problems surrounding the continued presence of the Rome Convention, and has made some recommendations to have it denounced. This is a practice that more states should adopt.

Francis Xavier
Partner, Commercial Litigation Practice Group
DID: 6232 0551
francis.xavier@rajahtann.com

Harveen Singh Narulla
Senior Associate, Commercial Litigation Practice Group
DID: 6232 0776
harveen.singh@rajahtann.com

For more information on the Rome Convention and the implications that flow therefrom, please contact the following: