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Hermann Doring

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INTERNATIONAL INSURANCE LIABILITY POLICIES*

HERMANN DÖRING†

Many times, the question whether it would be desirable to issue international types of policy for the insurance of transport, has been treated theoretically and practically. In shipping insurance the value of such types of policy has been pointed out several times, however without result until now. Recently two proposals for types of policy for air insurance were made known, one for aircraft, the other for shipped goods, proposed by Henry Fabry, solicitor, in Paris and submitted to the study of the Committee for Transports by Air of the International Chamber of Commerce. They show, if not literally, at least essentially, the text of the types of policy of the Insurance Union, Consortium Aviation, in Paris. These proposals of Mr. Fabry have met with the opposition of many of the air traffic Companies, for it is thought that this kind of insurance does not lend itself to uniformity. This also is my point of view. The wishes of the air traffic Companies differ too much in regard with the insurance of aircrafts. Partly they want a complete security, preferring to pay a higher premium to this purpose, partly they prefer to pay a lower premium for a somewhat limited security. It will not be of any use to make a special international type of policy for air transport, as long as a type for general transport has not been made.

Just as, for the moment, you will have to renounce an international type of policy for the insurance of aircraft, you must also renounce the insurance against accidents of the crew on board of aircrafts. In the different countries there are entirely different laws for the compulsory insurance of the staff and especially of the crew of the aircrafts. Therefore the policies for insurance against accidents of the crew can only have a national character.

Nevertheless there are other air insurances which can be adapted to the creation of international policies. From this point of view the insurance securing responsibility in regard to passengers, goods and luggage transported by aircraft must be considered, as soon as the proposal of the C.I.T.E.J.A. about air carrier's responsi-

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† Counsel for the International Air Traffic Association.

bility shall be adopted by the conference of the C.I.T.E.J.A., and as the I.A.T.A. shall have adopted it later for the new general transport conditions. Here it must be considered whether the types of insurance policy against accidents of passengers shall be compulsory or only optional. So too may be considered the type of insurance policy for the responsibility towards a third party (persons belonging neither to the crew nor to the passengers) as soon as the C.I.T.E.J.A. shall have finished its proposal regarding liability towards a third party, and this proposal shall have been ratified by the different Governments.

Before considering these questions one by one, one has to keep in mind that the elaboration of these types of policy by the I.A.T.A. must be effected not only by the scientific, but even more by the commercial considerations. Each policy of insurance is a contract between the insurer and the insured, which is made according to the commercial point of view, i. e., according to the laws of demand and supply. Therefore the members of the I.A.T.A. must take care that these types of policy give them the security wished for, on endurable conditions, i. e., that they take into account the actual needs of the regular air transport service.

I. INSURANCE OF LIABILITY IN REGARD TO PASSENGERS, GOODS AND LUGGAGE.

As it is probable that the proposal of the C.I.T.E.J.A. for the international regulation of the air carrier's liability will be adopted, and that the new general transport conditions of the I.A.T.A. will be adapted to it, it would perhaps be possible to insure this liability in accord with those points of view. In this case the creation of an international type of policy would be of a very special interest. If the I.A.T.A. is likely to take up this task, it must undertake it exclusively according to the interests of its own members, which in some particulars may differ from the interests of other carriers. In case the members of the I.A.T.A. would esteem it useful to make a more detailed study of this question, your reporter will draw up a proposal which will then be discussed in the small committee composed by Messrs. Bastaki, Beaumont and Döring.

After such a proposal it will be possible to decide whether to go still further and to formulate a general policy which all the members of the I.A.T.A. could accept, without however making it obligatory. To put into practice this idea, it would perhaps be of use to discuss the matter with some insurance companies of gen-

eral repute in order to obtain more favorable conditions and premiums if a greater number of air carriers would unite to insure jointly their liability risks. As soon as the small Committee shall have come to an agreement about the essential text of the type of policy, it will be well, or at least there will be no objection, to inquire as to the point of view of the large insurance companies, however without binding oneself to any one or another.

II. INSURANCE OF PASSENGERS.

In the air transport of different countries an obligatory insurance of passengers against accident has been meanwhile put into practice. This insurance obtains at present in Germany, Austria, Denmark, France, Russia and Czecho-Slovakia.

Some countries certainly will consider it worth while to maintain this insurance of passengers, because it has favored the efforts to attract passengers and enlarged the repute of the carriers. The premium for this insurance is not paid separately by the passenger, but is included in the price of the ticket. A payment for the premium is only received in the case of passengers who are transported free or at reduced prices.

This insurance has almost always succeeded in preventing disputes to which the question of liability gave rise and the concessions which are commonly asked by the air traffic companies. Even those companies which have entirely refused the insurance of passengers have felt themselves bound to pay in the case of more serious accident (as a measure of liberality) compensation to injured passengers, even risking that this might be interpreted as an admission of liability on their part. And the draft text of the C.I.T.E.J.A. will indeed increase that risk, because generally it provides for compensation only in the case of liability on the part of the carrier. And since the carriers can never assume liability, either direct or indirect, they will, for the lack of an obligatory insurance of passengers, always be forced to let the passengers resort to a lawsuit, which will give them the repute of being not very obliging.

The air traffic companies that will think it desirable to maintain the system of compulsory insurance of passengers, or to install it newly, will not find it necessary to offer a specific insurance policy to cover the liability to passengers (see my proposals sub. I), because they could make an arrangement with the passengers to take over their rights arising from the insurance, and could arrange

with the companies insuring the accidents to renounce the latter's claims of recourse [for negligence].

The carriers who would like to preserve or to undertake such compulsory insurance of passengers will find it advantageous to use an identical type of policy. Such a policy is now in use by the Deutsche Luft Hansa Co., the Deutsch-Russische Luftverkehrs Gesellschaft, the Farman Air Lines, and the Czecho-Slovakian Air Traffic Company. If however you are to discuss the formulation of such a type of policy for the I.A.T.A., it will not be sufficient to consider only the above mentioned type, but you will have to consider also the policies used by other air traffic companies. Your reporter is ready to draw up also a proposal on this question, and to submit it to your small committee for discussion.

Moreover a general contract, valid for several air traffic companies, has already been framed for this kind of insurance, under which the insurance companies offer lower premiums and better conditions and renounce the condition of a minimum premium for certain carriers. And this would lead to the idea of collective contracts for several carriers.

Even though you may not take up the proposals under I and the obligatory insurance of passengers, it will be necessary for the air traffic companies to enable their passengers, at the ticket-offices and the agencies, at their own discretion and expense, to obtain special insurance against aeronautical accidents. For this kind of insurance the need of an international regulation is not so urgent. However an identical text of all the policies would give certain advantages also in this case, for these policies should not only be valid on the lines of a single air traffic company, but for all the companies and on all the lines.

You should therefore also in this case endeavor to formulate a type of policy and contract in which all the companies, members of the I.A.T.A., would join if they wish. Here also there has been experience similar to that of the obligatory insurance of passengers; for the Deutsch-Russische Luftverkehrs Gesellschaft, the Farman Air Lines, the Oesterreichische Luftverkehrs Co., the Czecho-Slovakian Air Traffic Company and the Deutsche Luft Hansa Co., have formed a kind of insurance syndicate, with the same policy-wording and the same insurance and reinsurance companies.

III. INSURANCE FOR THE TRANSPORT IN AIRCRAFT OF GOODS AND LUGGAGE.

A transport insurance by the air traffic companies corresponding to the obligatory insurance of passengers against accidents, is not to be recommended, because mostly their patrons possess already general transport policies, or at least luggage policies valid on all modes of transport and for a specific time. So in this case it would only be necessary to enable the clients to insure their goods or luggage at the ticket-offices or the agencies of the air traffic companies. Of course, as to insurance policies for goods and luggage, offered by the air traffic companies, the latter will have to make an agreement with the insurance companies for the exclusion of recourse [for such loss]. Furthermore it must be considered whether it will be necessary to go so far as to frame identical texts for these insurance policies. According to the experience of your reporter, the patrons make so little use of these policies that it would not be worth the trouble to formulate an international type of policy. The conditions are quite different with the railway companies, which already some time ago agreed on an international type for insurance of goods and luggage in Europe, which their clients can use. If later the demand for such policies at the air traffic offices becomes greater, you could always follow the example of the railways.

IV. INSURANCE OF THE LIABILITY TOWARDS THIRD PARTIES.

The time has not yet come for the air traffic companies to unite in regard to this insurance. The laws of the different countries on the liability are so different that it is not possible to regulate this insurance in that same way without too great difficulties. As soon as the proposal of the C.I.T.E.J.A. in regard to liability towards a third party shall be adopted, it will be necessary to deal with the question whether a type of policy for all the Companies, members of the I.A.T.A., will be feasible. However it will then be necessary to meet the difficulty resulting from the special conditions which certain countries attach to the insurance of liability. Switzerland, for instance, requires that the contract be made with a Swiss insurance company; while in the Netherlands the insurance company must have a representative in the Netherlands, with whom the claim may be filed.