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THE INTERNATIONAL CERTIFICATE OF INSURANCE

BY OFFICERS OF THE INTERNATIONAL UNION OF AVIATION
INSURERS

(1) The Problems of Aviation Insurance¹

I believe I am not mistaken in saying that it is the first time that the C.I.T.E.J.A. meets officially in conference with an organization representing those upon whom, in practice, the task will be incumbent to put in application the legal work of the C.I.T.E.J.A.

May I express the wish that the results of this Conference will be such that they will induce a general adoption of this procedure. We cannot all be competent in all matters, and questions such as the drafting of conventions are peculiarly within your field, Gentlemen, since you are experts in such matters. However, when it comes to putting into practice the legal ideal which you have set for yourselves, I should like to assure you that our profound experimental knowledge of practical problems of insurance will always be at your disposal, and that all your efforts will be directed toward helping you.

We are representing in the I.U.A.I., those who have made a special study of the somewhat complex problems of aviation insurance since its inception. Our Association not only includes the representatives of the principal countries of Europe, but also those of the United States of America. We trust that whenever you deal with these questions which, directly or indirectly, require the coöperation of insurers on an international basis, you will be good enough to consider that the I. U. A. I. is entirely at your disposal.

Unfortunately, when the draft for the text of an international convention on civil liabilities was prepared, our Union was not yet in existence. So we were not in a position to call your attention to the practical difficulties which might arise in connection with the import of the text for certain parts of the Rome Convention.

This, of course, is unfortunate, and if any one is to blame, we

1. Opening Address by Marcel Henri de Trégomain on behalf of the President of the I.U.A.I., at the joint meeting of representatives of the C.I.T.E.J.A., the I.U.A.I., and the I. A. T. A., held in Paris, Sept. 20, 1935; from Document 278, p. 2, of the C.I.T.E.J.A. Third Committee, dated Oct., 1935; translation furnished by the U. S. Department of State.

insurers are; and we are compelled to accept such blame, and regret that we did not create our Union sooner.

In beginning our work today we are well aware of the fact that the problem must be considered in the light of the Rome Convention, as it has been duly signed. Neither you nor we can change a single word of that text; and if we wish to follow in all their breadth and ideal recommendations made in the Convention, that will have to be done by following the wording such as it exists at this time, and not otherwise.

At the same time, I should like to take this occasion to insist very strongly on the fact that if Article XIV of the Convention could be modified and made to conform more logically with the remainder of the Convention, the problem of insurance against risks would be very much simplified, and in all probability it would no longer be necessary to seek such compromises as those which we are going to attempt to make today.

Another difficulty flows from the fact that, while the Convention had been conceived—at least, that is what we think—for the purpose of facing only such exigencies as arise under normal conditions of life, it contains no exception for very special types of risks, such as those which refer to the periods of hostility between nations, or civil wars, which risks are normally excluded from all branches of insurance and are covered only by the payment of special premiums collected over and above the principal premium.

If I mention some of these difficulties it is only to show you and to stress the importance there would be in considering any solution which we might reach here merely as temporary expedients.

We believe that the main idea of the Convention is basically sound, recommendable, and could be put into practice. As insurers we are very desirous of helping in the achievement of such an ideal. But we cannot help seeing that there are difficulties ahead, and we do not yet have sufficient experience with aviation insurance to permit us to gauge such risks with accuracy. It is our desire to prepare, in full harmony with you, a work of an essentially practical character which, without introducing into aviation insurance too much unknown matter, too many untried novelties, will remain in harmony with the ideas and purposes of the Convention. In a few years, when we shall all have acquired more experience with the practical operation of the Convention, we

firmly hope that a new international diplomatic conference can be called, and that we will be able to prepare a final test.

It has been said that, because automobile insurance, following much the same principles as those used in this Convention, had been tested and found to be satisfactory in certain countries, there was no longer any reason to believe that aviation insurance might encounter greater difficulties.

But, in the first place, it is admitted that the automobile driver, in certain cases, can be discharged from his liabilities, whereas the airplane pilot will always remain automatically liable.

Secondly, at the present time, the total amount of premiums covering civil liability all over Europe is barely sufficient to pay, each year, for a single serious aviation accident causing damage to third parties. When the number of airplanes increases, this difficulty will have a tendency to disappear, but at the present time, it is not the least one.

Furthermore, at the present time, those of us who have to insure aviation risks are still being guided largely by their personal knowledge of each type of aircraft used, by the technical qualifications and the service record of the pilot who must fly it, and by the particular use for which each airplane is intended. The personal nature of the insurance contract is perhaps more stressed in aviation than in any other type of insurance. If you accept this view, you will immediately understand the greatest of difficulties confronting the insurers when applying this Convention. If we had about a hundred thousand airplanes among which we might distribute risks, the same difficulty might still remain from the theoretical standpoint; but, in practice, its importance would be much lessened. We have not yet reached that point, however.

I know that the answer to this is that any payment made to an injured third party as a result of negligence on the part of our insured may legally be recovered from the insured; but this type of protection exists much more in theory than in practice. Those of us who have had experience with insurance are aware that, actually, a company rarely avails itself of its right to sue the insured; and, in practice, I am not exaggerating when I say that any insurance company that would allow itself too often to adopt this method would, within a very short time, be put out of business.

In the letter which we sent you before your last meeting at Paris, we included a list of exceptions and a group of additional problems which we had found after a long series of eliminations extending over several years. Some of these proposals, it seems

to me, must have been discussed by you in your last meeting, at Paris. Others were not discussed. I would be very grateful for your kindness in going over these proposals and studying them with us, one after another. We shall explain the reasons which have led us to believe that each of them is necessary, and when you are unable to approve of them, will you be kind enough to tell us your reasons from a legal standpoint for not being able to accept them.

I hope that, by this method, we will arrive at a solution which will remain in strict accord with the ideas and principles laid down in the Convention, until time, in the light of experience, decides which amendments are to be introduced by a later international agreement.

In conclusion, I would like you to be fully convinced of our sincere desire to work in full collaboration with you, and of our intention to give a practical effect to an example of international social legislation upon which no reasonable man can fail to place his full approval.

(2) Letter of President Lamplugh Transmitting the I. U. A. I. Report to the C. I. T. E. J. A.²

At the general meeting which was held at London on September 27 last, the I. U. A. I. again considered the question of the Rome Convention (third party liability) and considered also the report of the subcommittee that had been appointed to prepare a new blank form of international third party insurance certificate.

After very careful study we approved in substance the recommendations of the subcommittee and I send you herewith a copy of the said recommendations as modified at the general meeting.

It is, perhaps, desirable that I should add certain explanatory remarks. The difficulties, both of a practical and theoretical nature, growing out of the compulsory insurance that is required by the Convention have been the subject of discussions between the Aviation Insurers of the chief European countries for the past two years approximately. The principles introduced by the Convention are, in several respects, absolutely contrary to the current principles and practices of insurance in many of the countries that are concerned therewith and this circumstance, added to the uncertainty as to the way in which the liabilities and the obligations imposed by the Convention will be interpreted and on the comparatively small volume of the third party premium income available to meet the serious

2. A translation of Document 242 of the Proceedings of the C.I.T.E.J.A.; being a report dated October 8, 1934, transmitting the views of the I.U.A.I.

obligations imposed by the Convention, has rendered it a question of the greatest difficulty to decide unanimously.

In discussing the real exclusions that I now propose, I would like to mention the following points:

1. We do not usually grant days of grace in an accident policy, but it would seem to be essential, where a Convention is involved, to introduce this practice in order to give time for the governments of the states concerned to distribute the necessary notices. The insurers are disposed to consent to this, and it should be assumed that each contracting state will designate a governmental agency to handle such notices.

2. The Convention stipulates that the Insurers should have the right to limit the territorial attribution of the policy. While such a limitation is necessary from the point of view of the insurers, it is possible that too strict a limitation will entail unjust privation both with respect to the insured and to the third party in case of an involuntary deviation from the course due to *force majeure* and the insurers propose that a concession be made in favor of the insured in this respect.

3. It will be remembered that the original proposal of the insurers in this connection was that the liability should be excluded if the aircraft was not in a good airworthy condition at the beginning of the flight. It has been recognized that, without any deliberate intention on the part of the insured, the aircraft might, in fact, be in a bad condition of airworthiness and that such fact alone should not invalidate the insurance. This exclusion has, therefore, been corrected so as to exclude only the aircraft which do not possess a valid certificate of airworthiness.

4. The original proposal was that fraud or the withholding of facts of any nature whatever when obtaining the insurance would invalidate the policy. It has been appreciated that in practice that might give rise to technical defenses of a kind which should not be encouraged. Consequently, while in principle certain insurance interests which were affected thereby found it impossible to completely waive this exclusion, they agreed to modify it in such a way as to limit the exclusion by putting it in such a form that it could not be invoked except very rarely and then only in case of fraud of the most serious nature.

5. Article 14 of the Convention gave rise to great difficulties. The Convention places on the operator of aircraft an absolute liability much more serious than that which attaches to other kinds of

transportation. On the other hand it gives him the advantage of limited liability, which enables him to insure the risk. What is given with one hand, however, is taken away from him with the other in Article 14, and while the insurers can offer protection only up to the limit fixed by the Convention, with respect to "*faute lourde*" (gross negligence) they are not at present in a position to go further than that or to offer any insurance with respect to "dol" (willful misconduct) on the part of the insured himself.

6. This is a new exclusion which we have not considered heretofore. Although that is not definitely indicated in the Convention, one may suppose that it should, as a matter of fact, apply to the ordinary conditions of life as it would be difficult, if not impossible, to extend the protection to include also the abnormal conditions in time of war and civil commotions which are designated in the exclusion.

7. Again, although the Convention does not expressly indicate it, one may suppose that its object is the protection of the blameless third party who has suffered damages and that the intention thereof is not to give rights to a claimant who supports a claim through fraudulent methods. This exclusion is not intended to deprive a blameless insured party of protection, but only to protect the said insured and the insurers against fraudulent claims which might otherwise be considered valid under the Convention.

It is recognized that a certificate of this nature is insufficient with respect to the small details of the complete attainment of the ideals of the Convention which could not be attained except by an absolute, and unconditional, guarantee on behalf of the third party who has suffered an injury. Up to the present time such an attainment has not been possible, but it must be admitted that from the practical point of view the certificate which is now suggested would embrace the ideals of the Convention in all respects. The operator of the aircraft himself would always be protected against the risks, unless it be because of his deliberate action. The blameless third party claimant would always maintain his rights against the operator of the aircraft, and he would not be deprived of his rights, relative to the insurance, except in circumstances which probably would only very rarely present themselves. It should be observed very specially that the certificate now proposed accepts the principle of an insurance which attaches to the aircraft without restriction as to the person who is operating it, or the purpose for which it is used.

In closing, I must add that the proposals the I. U. A. I. is now

making are subject to serious doubt in the minds of many of the members, with respect to their soundness from the point of view of practical insurance. These doubts cannot be settled except through the practical experience of the application of the Convention and I am requested to emphasize strongly the circumstance that these proposals must be considered from an experimental point of view, intended to meet the immediate practical requirements of the Convention so far as is possible. The I. U. A. I. deems that it is of the highest importance that, four years after the date when the Convention becomes effective, an International Conference should be convoked to examine the text of the Convention and the insurance requirements from the point of view of practical experience.

It is unnecessary to add that if certain points present themselves which call for discussions or explanations, the Union places itself entirely at the disposal of the CITEJA and I shall be very happy, if the occasion arises, to arrange for a meeting between the two parties for this purpose.

I present to you, gentlemen, the expression of my distinguished consideration.

THE PRESIDENT.

(3) Report to the C. I. T. E. J. A. on the Subject of the Use of the International Third Party Insurance Certificate with Reference to the Rome Convention

The aim of the Convention, namely, the compensation of third parties for damages caused them by an aircraft without their having incurred in any fault is, as a matter of principle, an aim worthy of support.

So far as may be possible the practical application of the Convention ought to aim to encourage international aviation and it should not put any new obstacles in the way of it.

Consequently, in view of the fact that most operators of aircraft will probably prefer insurance rather than a bank deposit or guaranty, it is important that there should be a form of international third party insurance certificate agreed upon and accepted by all the countries which ratify the Convention.

The ideal form of the certificate would be that of an absolute and unconditional guaranty which would attach to the aircraft itself, no matter where it is, nor how, nor by whom it is operated.

There are several reasons why such an ideal cannot be realized immediately on a universal basis, especially the profound divergen-

cies among the insurance laws and practices in the various signatory countries.

If it is desired to put the Convention in action and make it really practicable, the aviation insurers of each country concerned and their respective Governments must be prepared to sacrifice up to a certain point their individual regulatory bases in order to arrive at an understanding.

There are several points on which the ideal certificate, which is mentioned in paragraph 4, would be out of harmony with the existing national laws and insurance practice. One of the most serious of these points is that it is the practice of nearly all aviation insurers to accept and fix the premium for each risk individually, taking into consideration in the case of aerial lines such things as the organization and the operation of the company and, in the case of individual aircraft owners, such things as the experience, skill and reputation of the pilot. The contract is, therefore, really an individual matter between the insurer and the insured, which requires unshakeable good faith on both sides. (This aspect of aviation insurance may have a tendency to diminish in importance with the development of aviation, but for the time being this consideration is of great importance from the point of view of the insurers.)

Other points of practical difficulty present themselves, but it is felt that they can be taken into consideration with the help of practical experience in the course of the revision recommended in the last paragraph of these remarks. If, however, the possibility exists that this recommendation may not be accepted, the I. U. A. I. reserves the right to emphasize the points of difficulty indicated above.

(4) Proposals for the Certificate, October, 1934

Recognizing the difficulties and also the fact that we cannot immediately correct the wording of the Convention itself, the International Union of Aviation Insurers, desiring to assist in putting the Convention in force, submits the following proposals:

A—That the signatories of the Convention be invited to sign a protocol, agreeing upon a form of certificate which will be accepted internationally in satisfaction of the insurance requirements of the Convention.

B—That the certificate should contain the registry letters of the aircraft, the name, address and nationality of the operator and the insurers respectively, the countries covered by the certificate, its

term of validity and the defences that the insurers may oppose to the claim of a third party who suffers damages.

C—That the defences should be the following ones only:

(1) That the accident took place more than fourteen days following the date of notice of the expiration or the end of the insurance; this notice should be given by the insurers, both to the insured and to a competent division of the Government designated for this purpose.

(2) That the accident occurred outside the territorial limits of the insurance, unless the flight beyond the territorial limits was caused by *force majeure*.

(3) That the aircraft does not possess a certificate of airworthiness valid at the time of the accident.

(4) That the insurance was obtained through fraud of such a nature that if the insurers had known the real circumstances they would have refused the risk.

(5) That the damage was caused through malicious and voluntary misconduct on the part of the insured.

(6) That the damage is the result of war conditions or civil disturbances.

(7) That fraud on the part of the claimant or on the part of the insured and the insured together must invalidate any claim under the Convention.

It is of course understood that stricter exclusions as between the insurer and the insured may be, and will doubtless be imposed, the violation of which will give the insurer a right against the insured, but this right will not affect the rights of the third party who has suffered the damage.

While these proposals, as is admitted, constitute a compromise, they represent very important concessions in view of the normal insurance practices of many of the countries concerned. Accordingly, as a certain degree of protection, the Union suggests to the CITEJA that, with respect to the protocol, the ratifying states should be requested to consent to introducing the following supplementary legislation in their respective laws, wherever it is necessary:

(1) That it will be a criminal offense punishable by fine and imprisonment, for any person who shall obtain or try to obtain an international third party insurance certificate by

means of fraudulent statements or fraudulent withholding of essential facts.

(2) That contributory negligence on the part of the third party (fault on the part of the victim) will always be taken into consideration in an action by a third party against an insurer or operator of an aircraft under the Convention. At the present time Article 2 of the Convention leaves some doubt on this point.

(3) That the defendant will have the right with respect to any claim brought under the Convention to offer to the claimant or to pay in court a sum in satisfaction of a claim, on condition that if the claimant refuses to accept such sum, continues with his action, and that he is not accorded more than the sum which was offered or paid to the court, the defense will be entitled to the costs of the action from the date on which it had paid the money to the court.

(4) That the arrangement indicated above will be considered as experimental and will form the subject of new international collective consideration jointly with the I. U. A. I. based on practical experience at the end of a period which shall not exceed four years from the date on which the Convention became effective.

**(5) Revised Proposal of the I. U. A. I. at the
Meeting of Sept. 20, 1935**

TO THE SECRETARY GENERAL OF THE CITEJA.

Mr. Secretary General:

Pursuant to the request which you have stated to us this afternoon, we are hereby submitting the defenses which the I. U. A. I. is proposing, after revising them on the basis of our discussions of this afternoon.

1. That the effect of the insurance ceases 15 days after notice of expiration or cancellation sent to the proper Government.

2. That the damage occurred outside of the territorial limits stipulated in the contract, unless flight outside of such limits was caused by *force majeure* or the obligation to assist.

3. Concerning this defense in connection with the certificate of airworthiness, we support the text suggested by Mr. Clyde, at the meeting of this afternoon.

4. For this defense, concerning an untruthful statement by the insured and the personnel indispensable for the operation of the

aircraft, we support the text proposed by the British Delegation, in Document No. 260 (d) 1) and 2).

5. Fraud of the insured.—Following the discussion we have had on this subject with the CITEJA, we are willing to abandon this defense. However, we are taking the liberty of calling the attention of the CITEJA to the advisability of revising Article 14 of the Rome Convention, in order to avoid difficulties of a practical nature which the insurers believe are already very considerable.

6. That the damage is the direct consequence of war or civil disturbance.

7. Fraudulent claims.—We are willing to abandon this defense, after discussing with the CITEJA the numerous difficulties which it might bring about.

The defense clauses which have been submitted to you represent the fruit of the I. U. A. I.'s experience. We are taking the liberty of adding that the I. U. A. I. represents the interests of the great majority of aviation insurers in Europe, including, in Great Britain, two large groups of the Lloyd insurers.

Among the defense clauses which we are submitting to you, allow us to stress particularly clause No. 1 which makes it possible for the insurer to get rid of a risk which it has found to be undesirable, within a suitable period of time, and clause No. 6 whereby the insurer is able to disregard risks of war, civil war, revolt and riots, in computing the premium.

Of course, the I. U. A. I. fully recognizes that it devolves upon the CITEJA, as a legal organization, to determine how far it will go to meet the views that were expounded. Subject to the payment of an adequate premium, the members of the I. U. A. I. will certainly consider it their duty to accept the conclusions reached by the CITEJA.

We are taking this opportunity to tell you once more how much we have been happy to be able to collaborate in the work undertaken by the CITEJA.

Please accept, Mr. Secretary General, etc. . . .

Signed: LAMPLUGH,
PRESIDENT OF THE IUAI.