In 1979, when John Balfour was admitted as a solicitor, the prospect of international civil aircraft being used as weapons for the pursuit of terrorist ideals was doubtless a distant and, to say the least, “unexpected” prospect, well beyond the imagination of most of the travelling public, if not most aviation lawyers.

By 2002, when I first had the pleasure of working under John’s supervision, the ‘ripple effects’ of the [9/11] attacks were so strong that they exposed the technical deficiencies of the existing security networks, as well as the fragility of the protective cocoon that was based upon the insurability of these risks at an international level.3

Despite those ripple effects, it took the international community a further seven years to develop its legal response to the issue of compensation to third party victims of aviation terrorism. This came in the form of the Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft done at Montreal on 2 May 1999 (“Unlawful Interference Convention”). Some four years later, that Convention has yet to enter into force.4

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* Senior Legal Counsel, IATA. This article is written in my personal capacity. I am grateful to Alejandro Piera, Permanent Advisor of the United Arab Emirates Diplomatic Mission on the ICAO Council (and a fellow member of the IATA delegation to the Diplomatic Conference that adopted the Montreal Conventions 2009) for his invaluable comments.

2 As an associate in Cabinet Garnault, at that time the Paris correspondent of Beaumont & Son.
This article will examine some of the key features of that Convention and attempt to address at least some of the reasons why entry into force has not happened and would appear unlikely in the near future.5

At the same Diplomatic Conference, a separate Convention on Compensation for Damage Caused by Aircraft to Third Parties (“General Risks Convention”) was also adopted. Notwithstanding its importance, the General Risks Convention remains outwith the scope of this article.

I believe that the academic in John Balfour will appreciate the intellectual challenge of evaluating some of the more unusual and innovative features of the Unlawful Interference Convention. I also expect that the practitioner in John, looking at the matter from the perspective of his airline and insurer clients, will take a fairly critical view of the overall scheme which the Convention seeks to implement.

1. Introduction and background

The issue of surface damage caused by aircraft has, of course, already been addressed by the international air law regime in the form of the Rome Conventions of 19336 and 19527 and the Montreal Protocol 1978.8 None of those treaties has met with any degree of success.

The Rome Convention 1933 has been ratified by only five States,9 the minimum for its entry into force, and only twenty years passed before the ICAO Legal Committee proposed a new convention “designed to supersede the earlier instrument.”10

The Rome Convention 1952 entered into force on 4 February 1958 and currently numbers only forty-nine parties.11 Unusually, it was denounced by Canada in 1976, by Australia in 2000 and by Nigeria in 2002. Indeed, a significant number of States had

5 This article does not purport to give a comprehensive overview of every aspect of the Unlawful Interference Convention. For a detailed analysis, see Shawcross & Beaumont, op. cit., Chapter 22 [598] to [617].
6 Convention for the Unification of Certain Rules Relating to Damage Caused by Aircraft to Third Parties on the Surface, signed at Rome on 29 May 1933 (“the Rome Convention 1933”).
7 Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed at Rome on 7 October 1952 (“the Rome Convention 1952”).
8 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.
9 Belgium, Brazil, Spain, Guatemala and Romania. See Shawcross & Beaumont, op. cit., Chapter 22 [551].
10 Shawcross & Beaumont, op.cit., Chapter 22 [556].