



CONFERENCE ON INTERNATIONAL AVIATION LIABILITY AND INSURANCE

30 – 31 October 2009

Updating the Rome Convention

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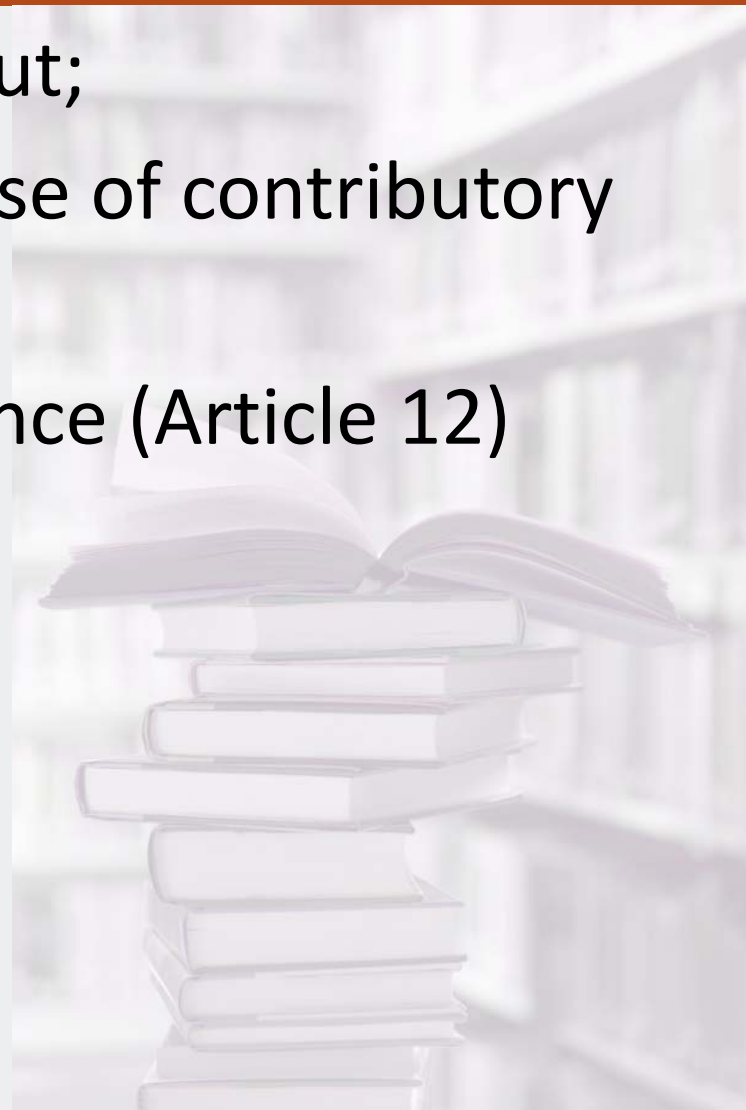
1933 Rome Convention

- Compensation for damage if there is damage attributable to the aircraft
- Included falling objects
- Exception in the case of damage inflicted by third party



1933 Rome Convention (cont.)

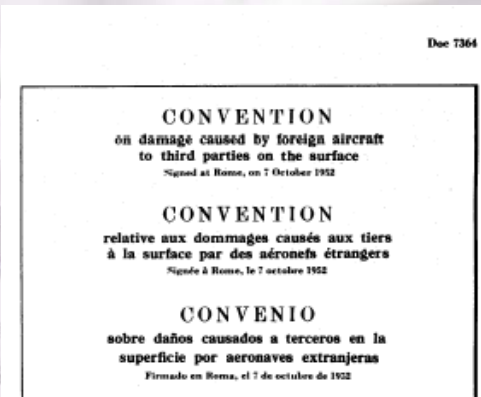
- Not based on fault liability but;
- Damages mitigated in the case of contributory negligence
- Aircraft had to obtain insurance (Article 12)



Rome '33 and Insurance

- Liability based on 250 francs for each kg of aircraft up to 2,000,000
- 1938 Brussels Protocol gave insurer defence
 - Cessation of coverage
 - Force majeure
 - Justifiable deviation of aircraft

From beginning of operations of departure
Until the end of the operations of arrival



1952

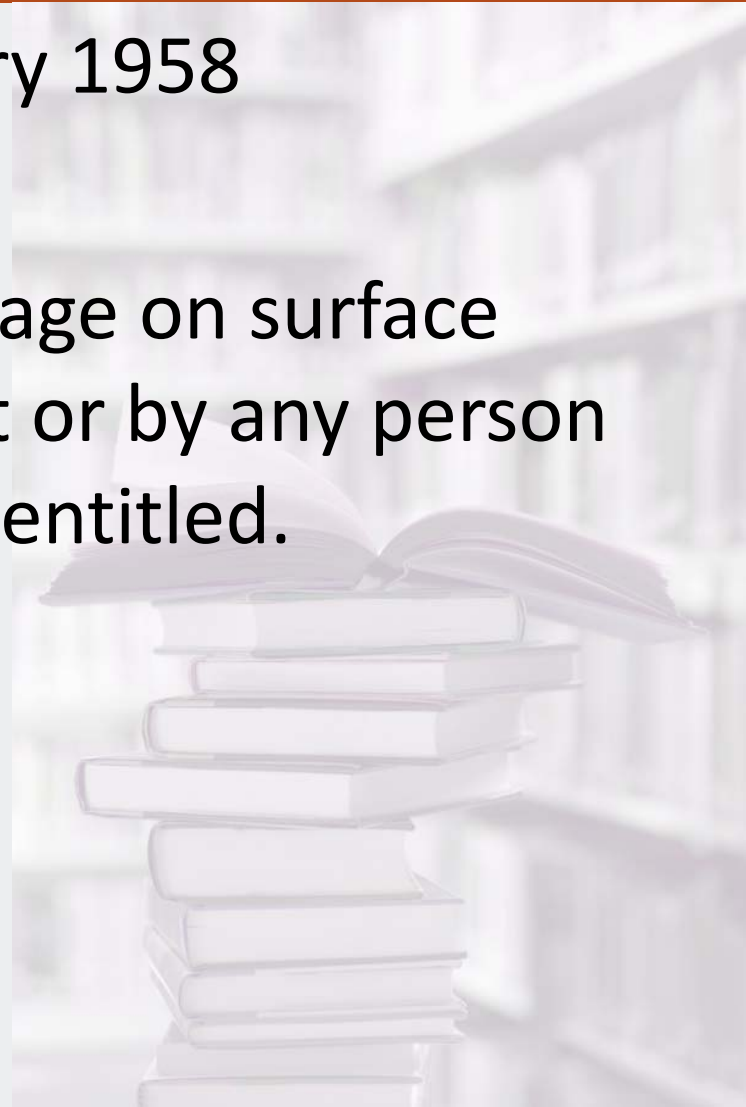
Onwards to Rome '52

- 23rd meeting of ICAO Legal Committee (21 January 1950)
- Definition of '33 "in-flight" inadequate
- Limit should extend to f.6,000,000

From beginning of operations of departure until the end of the operations of arrival

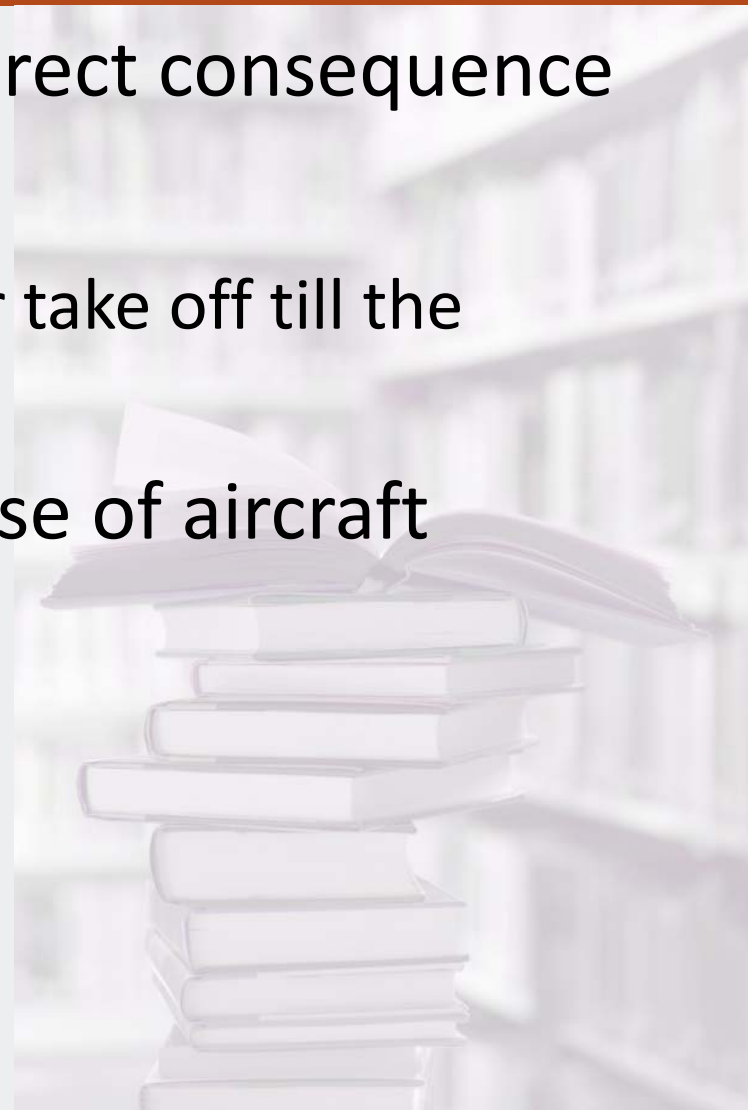
Rome Convention of 1952

- Entered into force in February 1958
- Ratified only by 46 States
- Any person who suffers damage on surface caused by an aircraft in flight or by any person or thing falling therefrom, is entitled.



Rome '52 (cont.)

- No compensation without direct consequence
- Definition of in-flight revised
 - From application of power for take off till the landing run ends
- Operator is person making use of aircraft



Diplomatic Conference

April/May 2009

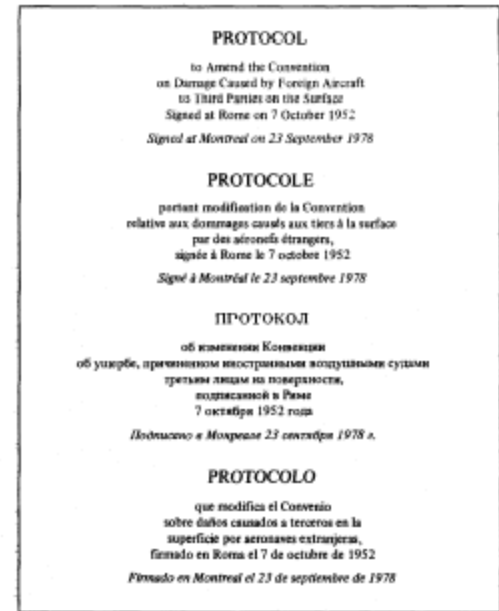
- Adopted
 - General Risks Convention (Compensation for Damage Caused by Aircraft to Third Parties)
 - Unlawful Interference Compensation Convention



General Risks Convention

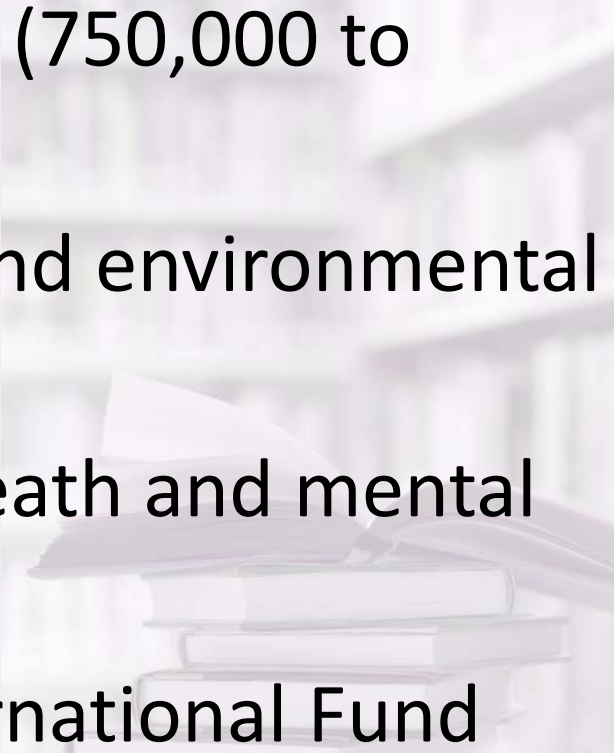
- Rationale:
 - Ensure adequate compensation to third parties who suffer damage from aircraft in-flight
 - Modernize Rome Convention 1952 and its Protocol of 1978

Doc 9257



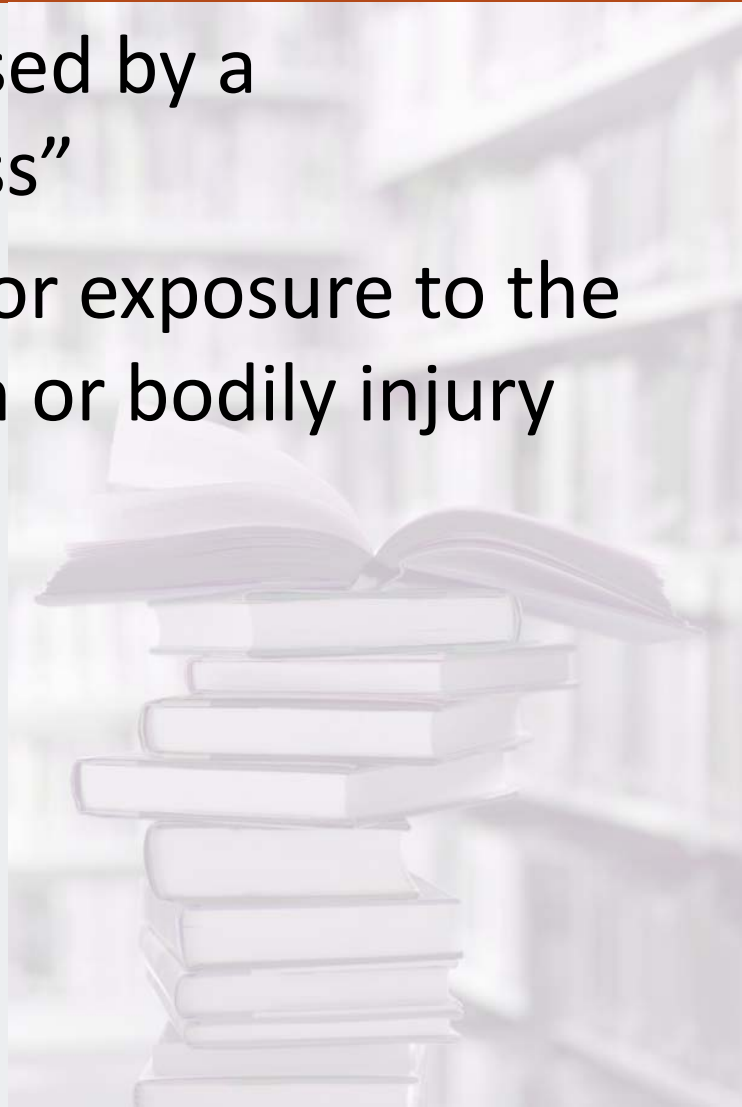
INTERNATIONAL CIVIL AVIATION ORGANIZATION
ORGANISATION DE L'AVIATION CIVILE INTERNATIONALE
МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ГРАЖДАНСКОЙ АВИАЦИИ
ORGANIZACION DE AVIACION CIVIL INTERNACIONAL

General Risks Convention

- Imposes liability on operator (750,000 to 700,000,000 SDR)
 - Extend liability to property and environmental damage
 - Damages for bodily injury, death and mental injury
 - Does not provide for an International Fund
- 

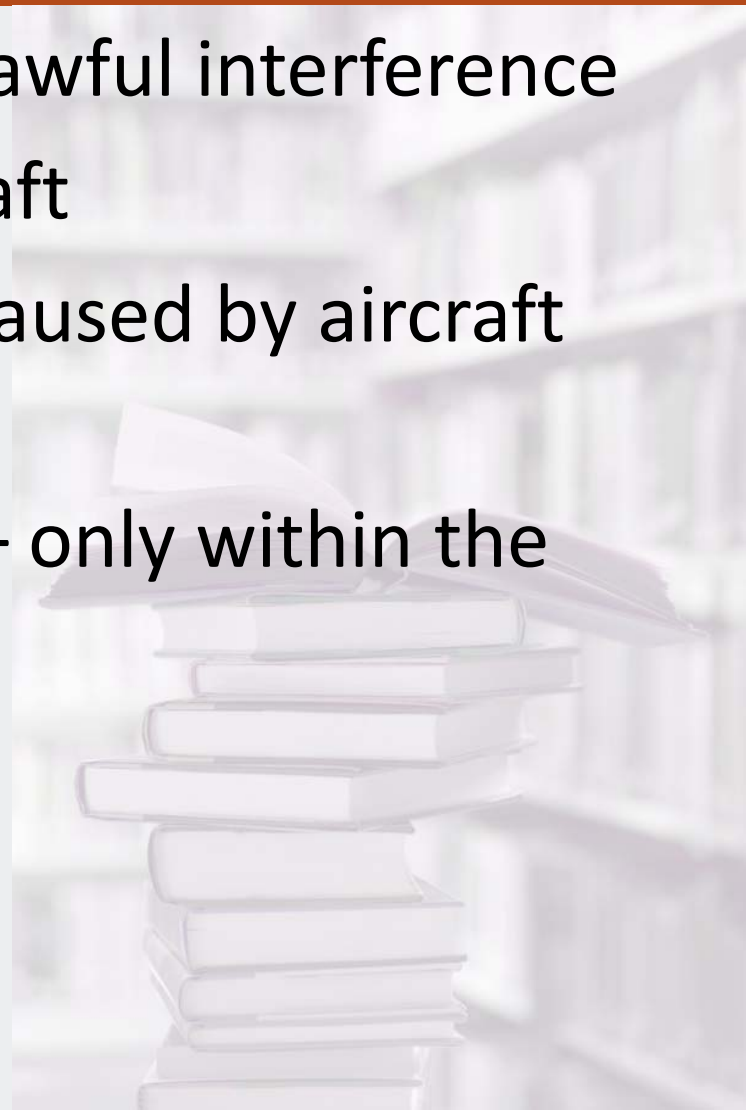
General Risks Convention

- Mental injury should be caused by a “recognized psychiatric illness”
- Resulting from bodily injury or exposure to the likelihood of imminent death or bodily injury



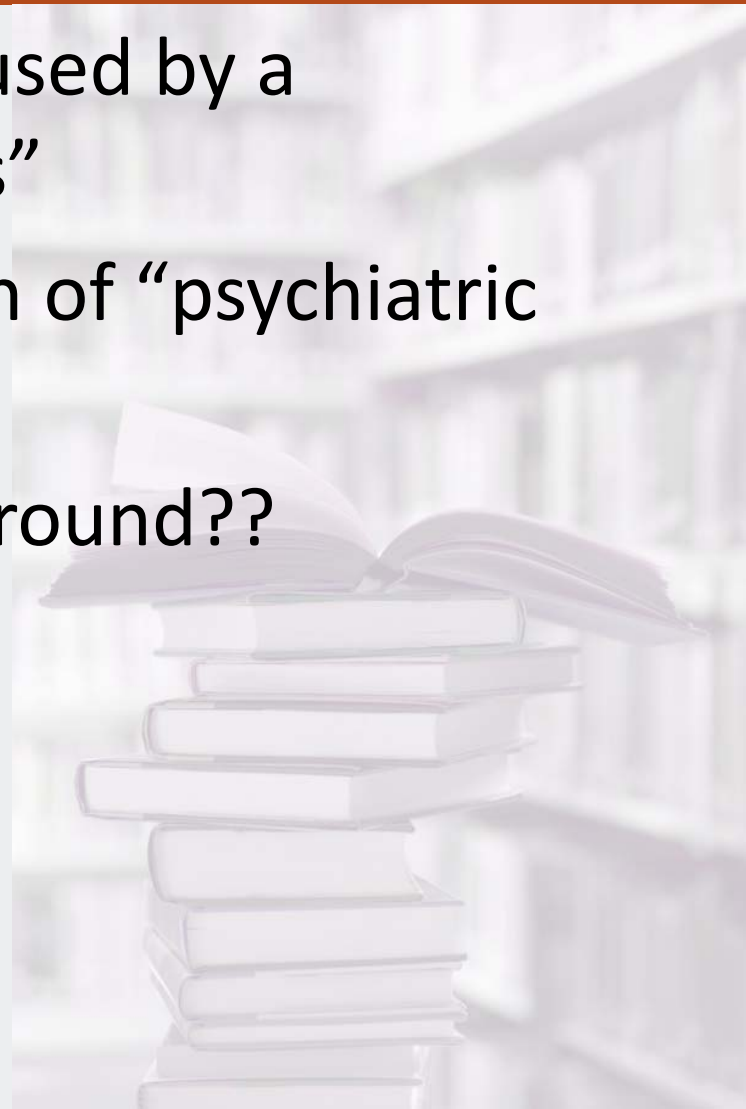
General Risks Convention

- Not applicable to acts of unlawful interference
- Not applicable to State aircraft
- Only applicable to damage caused by aircraft in flight
- Exclusive remedy provision – only within the purview of the Convention

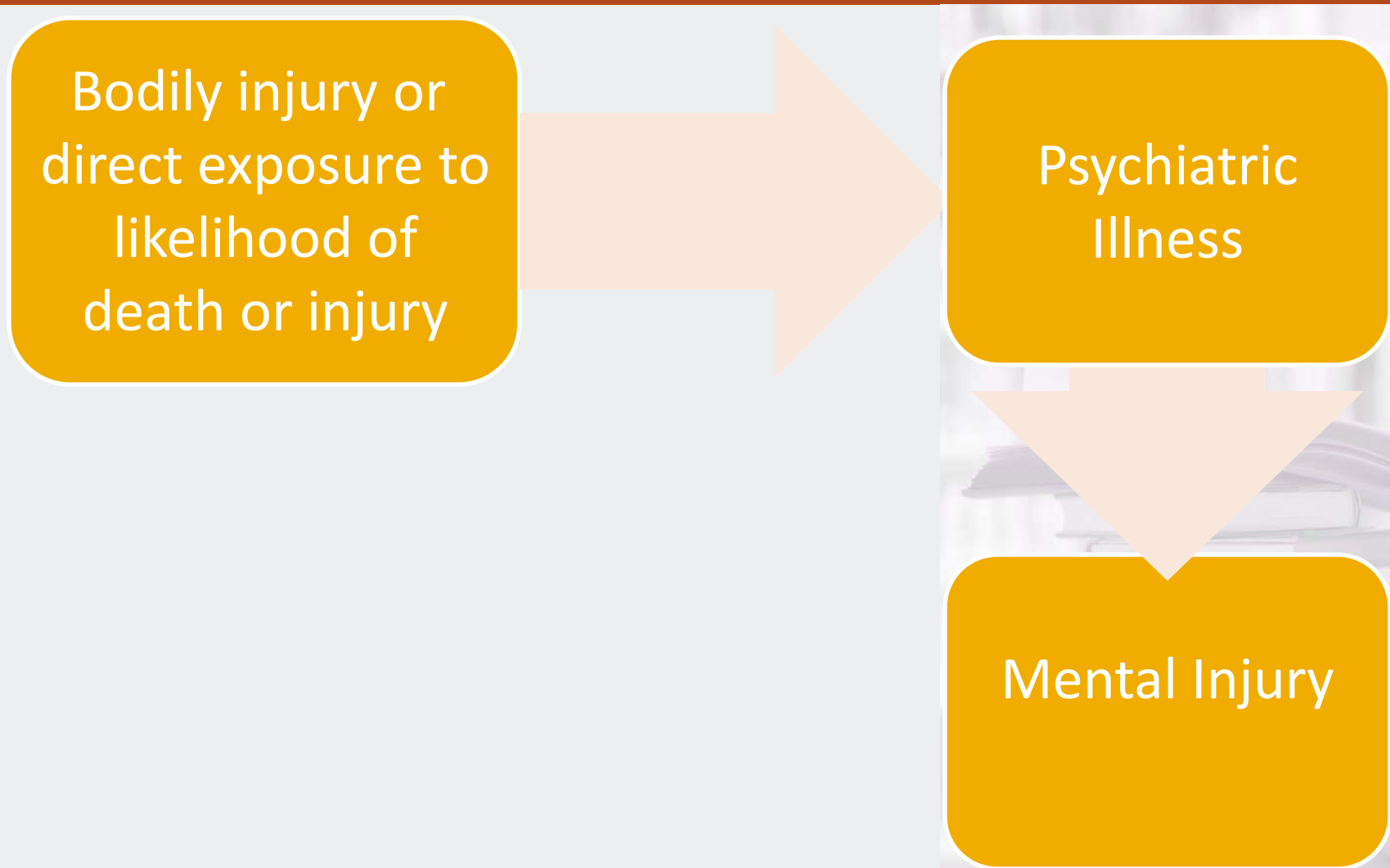


Emerging Issues

- “Mental injury should be caused by a recognized psychiatric illness”
- No precise medical definition of “psychiatric illness”
- Should it be the other way around??



Cycle of Compensation for Mental Injury

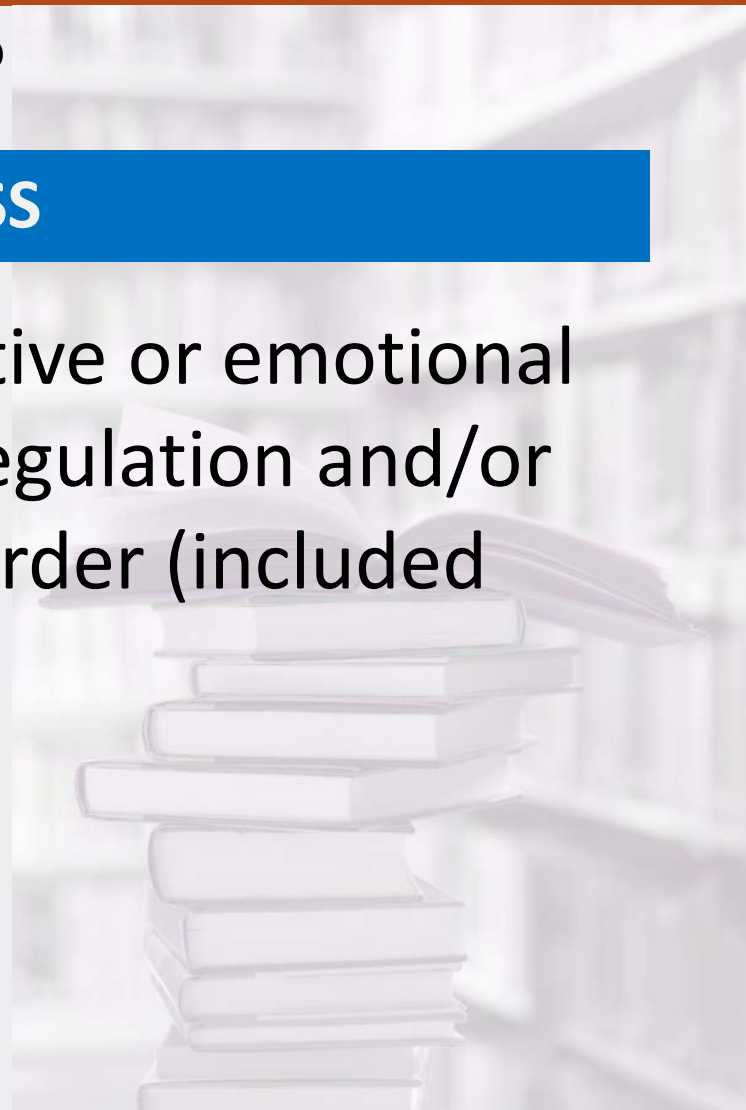


Emerging Issues

1. What is a Psychiatric Illness?

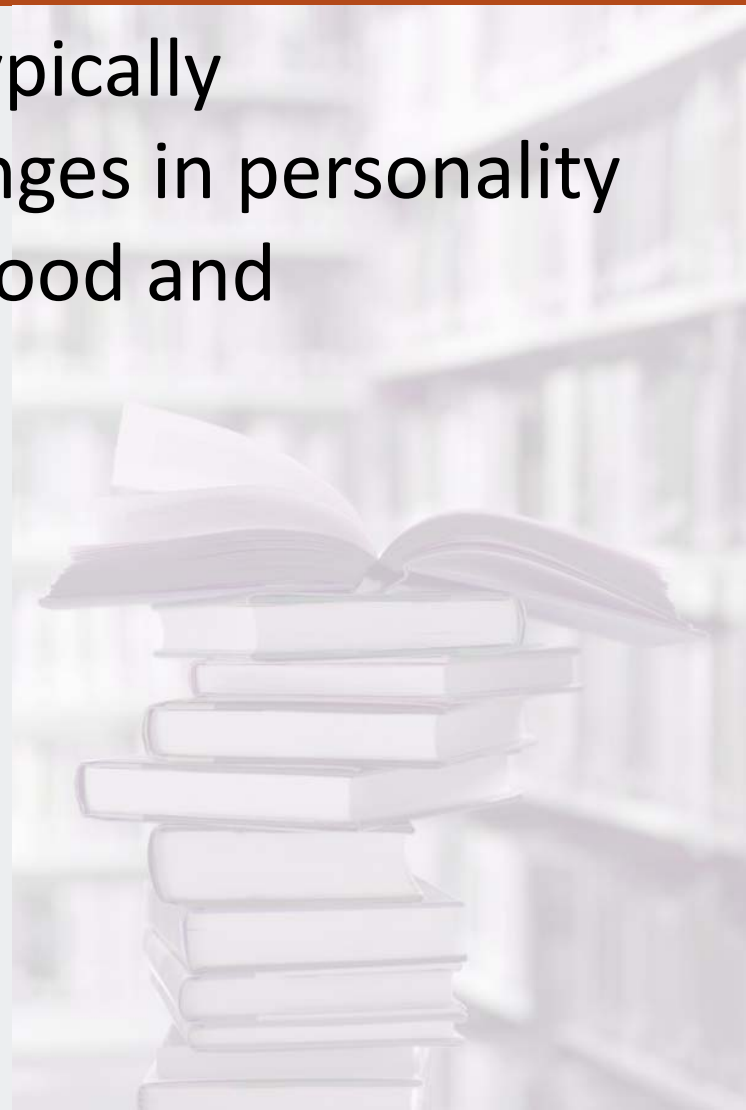
MENTAL ILLNESS

Broad general label for affective or emotional instability, behavioural, dysregulation and/or cognitive dysfunction or disorder (included even ADHD)



Psychotic Illness

- A feature of mental illness typically characterised by radical changes in personality (hallucinations/delusions, mood and personality disorders)



Emerging Issues

“Environmental Damage”??

Def: Harm done to the Environment

- How is this compensated?



Some Factors of Environmental Damage

- Local air quality affected
- Jet fuel leakage
- Turbulence caused by low flying
- Noise effects
- Bird Strikes

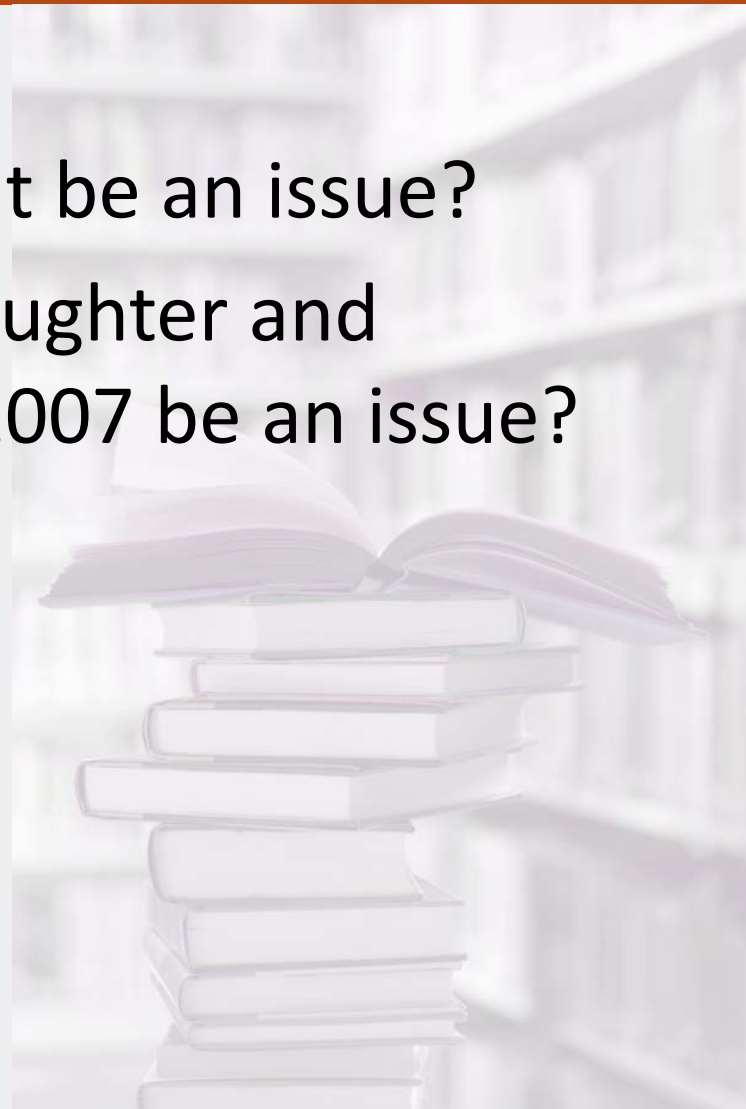


Quantification of Environmental Damage

- Assessment by EPA
- Report
- Damages according to local assessments



- Who is an Operator?
- Would negligent entrustment be an issue?
- Would the corporate manslaughter and corporate homicide acct of 2007 be an issue?



Who are the Stakeholders?

- Airlines

IATA proposed that the Convention is not necessary. Domestic laws are adequate and Insurance is always available

- Manufacturers

AWG said that manufacturers share equal burden, but operators have more protection

- Other categories