

## VII Aviation and Space Law

### **Air law. Warsaw Convention and Hague Protocol. Civil aviation carriers' liability.**

On 16 February 1982 the Minister for Transport, Mr Hunt, provided the following written answer, in part (HR Deb 1982, Vol 126, 122-123):

International air carriers' liability limits for death or injury to passengers and for loss or damage to cargo and passenger baggage were established by the Warsaw Convention of 1929 and amended by the 1955 Hague Protocol to that Convention. Australia is a party to both treaties and the liability limits applying for carriage between Australia and a country which is a party to the Warsaw Convention are 125,000 Poincare gold francs per passenger. 250 Poincare gold francs per kilogram in the case of registered baggage and cargo, and 5,000 Poincare gold francs per passenger for cabin baggage. For carriage between Australia and a country which is a party to the Hague Protocol, the liability limit per passenger is 250,000 Poincare gold francs and the other limits are unchanged. However, since the abandonment of an official gold price, free market fluctuations in the price of gold have introduced a degree of uncertainty as to the present currency equivalents of these liability limits.

Accordingly, specified liability limits have been introduced on a voluntary basis by some airlines and on certain routes national governments have directed airlines to set a fixed limit.

Qantas has voluntarily accepted on all routes a limit of US\$75,000 per passenger, inclusive of legal fees and costs, except that in the case of a claim brought in a State where provision is made for separate award of legal fees and costs, the limit shall be the sum of US\$58,000 exclusive of legal fees and costs.

On 24 March 1982 Mr Hunt presented the Civil Aviation (Carriers' Liability) Amendment Bill 1982 to Parliament. Part of his second reading speech is as follows (HR Deb 1982, Vol 127, 1371-1372):

The purpose of this Bill is to amend Part IV of the Civil Aviation (Carriers' Liability) Act to accord with the Government's decision to increase the liability limits applying to domestic and non-Convention international air carriage and to make provision for the Act to cover the new air service licence classifications that are to be introduced. The Civil Aviation (Carriers' Liability) Act gives force of law in Australia to the Warsaw Convention and the Hague Protocol which limit the extent of airlines' liabilities in respect of damages arising from carriage on international flights. More specifically, Part IV of the Act applies similar conditions to domestic airline and charter operations in Australia and to non-Convention international carriage. Under Part IV of the Act the liability of domestic and non-Convention international carriers for death or injury to passengers, or damage to baggage, is limited. Passengers, or their relatives, do not need to prove negligence on the part of the operator. The injured party is required to prove the amount of damages being claimed and the amount awarded is then limited by the Act.

The Government has been concerned particularly at the adequacy of

domestic liability levels which were last reviewed in 1976. The 1976 amendments reflected the levels that generally applied to international operations. However, the liability limits provided by the Warsaw Convention and associated instruments are expressed in terms of gold francs, the value of which has fluctuated considerably in recent years with movements in the price of gold. To rectify this situation, an international conference in Montreal in 1975 sought to introduce new protocols which express the limits in International Monetary Fund special drawing rights. However, these protocols have yet to come into force and the Government is currently examining possible interim arrangements regarding limits on airline liability for international carriage until such time as the protocols take effect. The Government is also concerned with the broader question of compulsory insurance for the domestic carriers' liability to passengers. This matter is presently under consideration in joint Commonwealth-State government forums. The question of an even broader third party compulsory insurance scheme is also of concern and is, however, a much more complex issue for which consideration will be required by both the Commonwealth and the States. Undoubtedly they are issues that need urgent action . . .

Clause 4 of the Bill amend Part IV of the Civil Aviation (Carriers' Liability) Act 1959 to increase the level of liability for death or injury to passengers from \$45,000 to \$100,000. Similar increases apply for the liability limits for damage to baggage. For registered baggage the limit will be increased from \$300 to \$900. For baggage in the passengers' own care, the increase will be from \$30 to \$90. Provision is also made for these limits to be amended by regulation in future. This will facilitate introduction of what are essentially machinery amendments and allow a more regular review of the liability limits that apply. The Bill also makes provision for the existing liability limits to continue to apply to all accidents that may have taken place before the date of commencement of the increased liability provisions. I commend the Bill to the House.

The Bill became the *Civil Aviation (Carriers' Liability) Amendment Act 1982* (Act No. 71 of 1982) and commenced on 24 September 1982: *Commonwealth of Australia Gazette*, No G38, p 3.

#### **Air law. Air fares. Compliance with agreed tariffs. Enforcement.**

On 4 March 1981 the Minister for Transport, Mr Hunt, provided the following written answer (HR Deb 1981, Vol 121, 446):

Illegal discounting of international air fares was discussed at a Special Air Transport Conference convened in April 1977 by the International Civil Aviation Organisation (ICAO). Ninety-seven Contracting States of ICAO were represented at the Conference which adopted a recommendation calling on Member States of ICAO to make the violation of internationally agreed tariffs punishable by law, and to ensure that the relevant laws were enforced. Australia has followed this internationally agreed means of seeking to ensure compliance by airlines with tariffs that have been agreed between governments.

The subject of illegal discounting of agreed tariffs was raised at the Second Air Transport Conference convened by ICAO in February 1980.

One hundred and one Contracting States were represented. This Conference reconfirmed the recommendations adopted by the 1977 Conference.

For details of prosecutions for illegal discounting of international air fares since 1972, see the written answer of Mr Hunt on 9 April 1981: HR Deb 1981, Vol 122, 1597-1598.

**Air law. Air crimes. Hijacking. Government responses.**

On 12 March 1981 the Minister for Foreign Affairs, Mr Street, issued the following statement (Comm Rec 1981, 239):

12 March 1981 — The Minister for Foreign Affairs, the Hon. Tony Street, today strongly condemned the hijacking by terrorists of the Pakistani commercial aircraft now in Damascus and the continued holding hostage of a large number of passengers. He said:

This criminal act has violated the principles of international law and behaviour and endangered the lives of innocent people. I was appalled at the murder of one of the passengers, a Pakistani diplomat.

The Minister expressed concern for the wellbeing of the remaining hostages and hoped that the situation could be resolved as quickly as possible, without further loss of life or injury.

The Minister added that Australia had consistently condemned the use of terrorism, such as the taking of hostages and hijacking of aircraft, to further political ends. He said Australia would continue to support moves in international forums to develop effective measures against the use of terrorism.

On 16 February 1982 the Minister for Foreign Affairs, Mr Street, provided the following written answer (HR Deb 1982, Vol 126, 206):

My attention has been drawn to the proposal by Lord Duncan-Sandys that nations with key airports should announce that they will return hijackers to their country of origin and boycott flights to and from nations which do not agree to do the same.

The Government has, however, endorsed the Bonn declaration on terrorism made on 17 July 1978 by the seven heads of state and heads of government which attended the Economic Summit Meeting in Bonn. The English version of that statement reads as follows:

The Heads of State and Government concerned about terrorism and the taking of hostages declare that their Governments will intensify their joint efforts to combat international terrorism. To this end in cases where a country refuses extradition or prosecution of those who have hijacked an aircraft and/or do not return such aircraft, the Heads of State and Government shall take immediate action to cease all flights to that country. At the same time, their Governments will initiate action to halt all incoming flights from that country, or from any country by the airlines of the country concerned.

They urge other Governments to join them in this commitment.

The Prime Minister (Mr Malcolm Fraser) informed the House on 26 September 1978 that the Commonwealth Government strongly supported the constructive action taken by the "Bonn Seven" against the threat of terrorism and that the Government agreed completely with the objectives of the declaration. He said, "Australian support of the Bonn declaration means

that we consider ourselves committed to its objectives'' (*Hansard*, 26 September 1978, page 1360).

The Leader of the Opposition (Mr Hayden) in response to the Prime Minister's statement said that the Opposition supported the action of the Government in endorsing the Bonn statement on terrorism.

**Air law. Destruction of Korean airliner.**

Following the shooting down of the Korean airliner on 1 September 1983, the Prime Minister, Mr Hawke, issued a statement the next day, part of which read as follows (Comm Rec, 1396):

The Australian Government is absolutely appalled at the barbaric act that has been perpetrated.

I have been in contact with Bill Hayden and he is calling in the Soviet Ambassador today to register that attitude of my Government.

Also on 2 September 1983 Mr Hayden, the Foreign Minister, issued the following statements, in part (Comm Rec, 1383):

It is with concern and shock that we have learned of the circumstances of the loss of Korean Airlines flight 7 on 1 September.

There is no circumstance in which any nation can be justified in shooting down an unarmed civilian aircraft serving no military purpose. The fact that the aircraft may have strayed into Soviet airspace and the fact that the Soviet Union refuses to recognize the existence of the Republic of Korea provide no justification whatsoever for an attack on the aircraft.

I extend my sympathy and that of the Government to the Korean people and also to the relatives of the Australian citizen, Mr Neil Grenfell who was a passenger on the aircraft and to the relatives of others lost.

On instructions from the Minister for Foreign Affairs, the Hon. Bill Hayden, the Secretary of the Department, Mr Henderson, called in the Soviet Ambassador this afternoon to convey to him formally and forcefully the views of the Australian Government on the shooting down of the Korean airliner.

Mr Henderson gave Mr Samoteiken copies of statements made by the Prime Minister and the Foreign Minister and said, as stated by Mr Hayden, that the Australian Government was seeking an immediate full explanation from the Soviet Union. Mr Henderson said that, in addition to deploring what had happened on grounds of general principle and serious violation of international law, the Australian Government was particularly concerned that an Australian family had been amongst those who had lost their lives.

Also on the same day the Leader of the Opposition, Mr Peacock, issued the following statement (Comm Rec, 1417):

The Opposition is appalled at the shooting down of a South Korean Airlines aircraft and the tragic loss of life caused by this barbaric act.

There is absolutely no justification, either morally or under international law, for the shooting down of an unarmed civilian aircraft serving no military purpose.

The Opposition joins the Government in extending its deepest sympathy to the South Korean people and also to the relatives of the Australian citizen, Mr Neil Grenfell, who was a passenger of their aircraft, and to the relatives of others lost.

We totally support the Government's demand for an immediate

explanation from the Soviet Foreign Ministry and from the Soviet Ambassador to Australia.

Also on 2 September 1982 Australia's representative to the United Nations, Mr Joseph, made the following statement, in part, to the Security Council (S/PV.2470, pp 48-51):

The loss of the 269 on board makes this the fifth most serious air disaster in aviation history. The casualties include at least one Australian family, including two small children.

There is no circumstance in which any nation can be justified in shooting down an unarmed civilian aircraft serving no military purpose. The fact that the aircraft may have strayed into Soviet airspace provides no justification whatsoever for an attack on the aircraft.

Let me underline this point. The Korean aircraft concerned was clearly an unarmed commercial airliner. Standard procedures governing the situation where a civil aircraft may have strayed into another country's airspace are laid down in the 1944 Chicago Convention to which both the Soviet Union and the Republic of Korea are parties. An annex to that Convention, which covers the rules of the air, lays down specific procedures to be followed in the event of interception, which itself is to be used only as a last resort. An attack on a commercial civil aircraft which penetrates the air medium of a contracting State has been condemned by the International Civil Aviation Organization (ICAO), notably after the Libyan airliner incident of 1973.

It is abundantly clear that the Soviet fighter aircraft involved failed to follow the procedures laid down by that Convention and instead chose to exercise the singularly brutal option . . .

The Australian authorities are conscious that, while it was a Korean airliner that was shot down, such lawlessness in the skies has threatening implications for the civil aircraft of all nations. The incident must be of grave concern to every nation interested in the safety of air navigation.

While I would not wish to dwell on the matter, the episode is also a tragic illustration of the consequences of continued hostility relating to the Korean peninsula. It is our firm conviction that the attempts by the Soviet Union and others to deny the Republic of Korea its legitimate place in the international community and its rights in international law have contributed to the circumstances in which this appalling act has taken place.

On 6 September 1982 the Prime Minister, Mr Hawke, said in Parliament (HR Deb 1982, Vol 128, 355-362), in part:

I believe that this House would fully support the stance taken by this Government before the United Nations. This incident is one of the gravest concern to every nation. It is incompatible with accepted norms of civilised behaviour between nations and contrary to principles of international law. Moreover, it has very serious consequences for the safety of air navigation.

Sadly, this incident is not the first of its kind. Honourable members will recall that in 1978 Soviet fighters opened fire on, and forced to land, another KAL flight, also with some loss of life. Earlier, in 1973, a Libyan aircraft strayed unwittingly over the Sinai Desert and was shot down by Israeli fighters with a loss of over 100 passengers and crew. That action was taken only after the pilot acknowledged, but did not heed, the warnings and

signals given by the fighters. Furthermore, the Israeli Government promptly provided details of the incident, issued a statement expressing deep sorrow at the loss of life and announced *ex gratia* payments of compensation to the families of those killed in explicit deference to humanitarian considerations.

Mr Speaker, there is a grim irony in the fact that the Soviet representative in an emergency session of the International Civil Aviation Organisation in February 1973 described that incident as a "criminal act of international terrorism" and said that ICAO could not remain aloof from the barbaric act committed by Israel. In 1955, compensation was also offered by the Bulgarian Government after its air force had shot down an Israeli airliner in Bulgarian airspace, killing 64 passengers and crew. The Bulgarians offered to pay compensation to the families of those killed, to punish those responsible for the catastrophe and to take measures to prevent a repetition of such incidents. There are, therefore, precedents for the kind of response which the international community has every right now to expect of the Soviet Union . . .

The shooting down of the Korean aircraft was a clear infringement of customary international law and of the principles underlying the 1944 Chicago Convention on International Civil Aviation, to which the USSR is a party. It is open to the Government, under international law, to claim compensation from the USSR for the loss of Australian lives. We are giving close consideration to this possibility. Obviously any amount of compensation will not recompense the grief of those families who have lost loved ones in this disaster.

On 14 September 1982 the Minister for Foreign Affairs, Mr Hayden, said in Parliament in answer to a question about the Australian Government's protest and claim for compensation from the Soviet Union for its destruction of the Korean aircraft which led to the death of 269 people, including four Australians (HR Deb 1982, Vol 129, 756-757):

We examined Australia's relations with the Union of Soviet Socialist Republics in the civil aviation field, in common with many other governments which have been appalled by the Soviet Union's callous disregard for norms of behaviour relating to civilian aircraft. Recognizing that our commercial associations with the Soviet company, Aeroflot, are limited, nonetheless we decided that the Government would suspend co-operation with Aeroflot pending a satisfactory response from the Soviet Government to the other requests which Australia had made to it. We approved the terms of the initial Australian approach claiming reparations from the Soviet Union. It was agreed that that claim should be presented to the Soviet Government through diplomatic channels today, and that was done. I table the document.

Since the Cabinet meeting I have received advice from Mr Henderson, the Secretary to the Department of Foreign Affairs, that he personally handed the Soviet Ambassador a copy of the note and a copy of the parliamentary resolution which was supported unanimously by this Parliament last week. The Soviet Ambassador read them and responded along the familiar lines about the Soviet version of the facts. The Ambassador declined to accept the note or the resolution. Soviet authorities

adopted this practice in a similar set of circumstances quite recently on the occasions when the Government of the United States of America and the Canadian Government sought to present notes to government representatives of the Soviet Union in their countries.

Mr Henderson told the Soviet Ambassador that we clearly had a very different view of the facts from that which the Soviet authorities had expressed and which had been replicated by the Soviet Ambassador. However, Mr Henderson said that both he and the Ambassador agreed on one single fact, melancholy as it was — that the plane had been shot down by the Soviet Union. Australia therefore regarded itself as having a strong claim for reparations. Mr Henderson told the Soviet Ambassador that we did not accept that the plane was on a spying mission, or that the weather conditions were as described by the Soviet Union. Furthermore, he told the Ambassador that he could do no more now than report the Ambassador's response to me and to the Government. When Question Time is completed I will take the opportunity of consulting further with the Prime Minister on this matter. I should state for the sake of the record that the suspension of the commercial association with Aeroflot will be for a period of 60 days, or less should a suitable response come forth from the Soviet authorities.

The note tabled by the Minister read as follows:

Note No. 83

The Department of Foreign Affairs presents its compliments to the Embassy of the Union of Soviet Socialist Republics and has the honour to refer to the action of the armed forces of the Soviet Union in firing upon and destroying on 1 September 1983 an unarmed Boeing 747 aircraft, Korean Airlines Flight No. 007, in the vicinity of Sakhalin Island, thereby causing the deaths of 269 innocent persons.

The Australian Government considers this action to constitute a serious violation of both customary international law and treaty law. The Korean aircraft at no time represented any threat to the territory or population of the Soviet Union. The Soviet authorities should have taken sufficient and proper steps to make themselves aware both that it was a civilian airliner, and in addition that it was about to leave Soviet airspace and that its destruction could in no circumstances be justified. The Soviet action constituted a violation of the principles of the Chicago Convention on International Civil Aviation and was inconsistent with the procedures prescribed in Annex 2 of the Convention.

Accordingly the actions of the Soviet Union give rise to responsibility under international law to make reparation.

The Australian Government therefore requests that the Soviet Union provide prompt, adequate and effective compensation to the Australian Government for the lives of four Australian nationals aboard the Korean airliner, for any property or interest in property of Australian nationals that was lost or damaged as a result of the destruction of the aircraft, and for injury to Australian interests caused by the Soviet action. The Australian Government will advise the Soviet Union at a later date of the specific losses, damage and injury for which Australia considers the Soviet Union responsible under international law.

This request is in addition to any other form of redress that Australia may lawfully require from the Soviet Union for its wrongful action.

The Department of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the Union of Soviet Socialist Republics the assurances of its highest consideration.

CANBERRA

14 September 1983

The parliamentary resolution passed to the Soviet Ambassador by Mr Hayden read (HR Deb 1983, Vol 132, 357, (6 September 1983)):

That this House —

- (1) expresses Australia's shock and indignation at the totally unjustified destruction of a Korean Airlines Boeing 747 by Soviet fighter aircraft;
- (2) extends its deepest sympathy to the families of the Australian and other victims;
- (3) calls upon the USSR to give a full, truthful, prompt and appropriately regretful account of this tragic episode;
- (4) urges the international community to take measures to prevent the recurrence of such a tragedy; and
- (5) supports the response of the Australian Government as outlined in the Prime Minister's statement.

The Soviet Embassy in Canberra delivered the following Note to the Department of Foreign Affairs on 14 September 1983:<sup>1</sup>

No. 107

The Embassy of the Union of Soviet Socialist Republics presents its compliments to the Department of Foreign Affairs and has the honour to draw the Department's attention to the resolution of the ACTU Congress, imposing a ban on handling of air-travel of the USSR subjects and Soviet cargo inside Australia.

In the opinion of the Embassy this decision hampers normal activities of Soviet diplomats and official representatives. It could affect the delivery of Soviet diplomatic mail to Australia and movements of Soviet diplomats and their families.

It also creates difficulties for official Soviet delegations participating in the scheduled international and bilateral meetings and conferences.

All this could negatively affect the development of Soviet-Australian relations.

The USSR Embassy considers that such measures seriously contradict the generally accepted norms and principles of the international law and expects the Department of Foreign Affairs to clarify its position as regards to delivery of the USSR diplomatic mail, travel of the Soviet diplomats, other representatives in and out of Australia and take appropriate measures to ensure the normal conditions for the activities of the Embassy.

The Embassy of the Union of Soviet Socialist Republics avails itself of this opportunity to renew to the Department of Foreign Affairs the assurances of its highest consideration.

Canberra, 14 September, 1983.



Department of Foreign Affairs  
Canberra, A.C.T.

1 Text provided by the Department of Foreign Affairs.

On 15 September 1983 the Minister for Aviation, Mr Beazley, issued the following statement (Comm Rec, 1468):

Qantas and TAA have been directed by the Government to apply sanctions against Aeroflot, and other domestic airlines have been requested to co-operate in the measures. This was announced today by the Minister for Aviation, the Hon. Kim C. Beazley, and followed yesterday's announcement by the Minister for Foreign Affairs, Mr Hayden, that measures would be taken because of continued unsatisfactory responses by the U.S.S.R. Mr Beazley said:

Qantas has been directed by the Government to suspend the commercial interline arrangements it has with Aeroflot. These arrangements allow either airliner to issue tickets or cargo documents for carriage in which both participate.

In addition, both Qantas and TAA have been directed not to honour tickets or cargo documents that have been sold by Aeroflot outside Australia, and not to sell tickets or cargo documents for travel or carriage from Australia, which include travel or carriage on Aeroflot. Other Australian domestic airlines have been requested by the Government to take similar action.

As Aeroflot does not fly to Australia it is not possible to act directly against that airline through the powers of the air navigation regulations. The Government is therefore requesting all travel agents that they voluntarily apply the intended sanction against the sale of travel on Aeroflot. The Australian Federation of Travel Agents has been advised of this request.

Mr Beazley added that, as already announced by Mr Hayden, the measures would apply for a period of sixty days unless earlier revoked because of more satisfactory responses by the U.S.S.R.

For Australian support to action being taken in ICAO, see Mr Beazley's answer to a question on 21 September 1983 (HR Deb 1983, Vol 132, 1072). For Australia's views as to whether the Korean aircraft was on a spying mission, see Mr Hayden's written answer on 10 November 1983 (HR Deb 1983, Vol 133, 2650-2651).

**Space law. Remote sensing by satellites. Direct television broadcasting. Nuclear power sources in outer space. Legal status of the geostationary orbit.**

On 30 October 1981 Australia's representative on the Special Political Committee made a statement on the Report of the United Nations Committee on the Peaceful Uses of Outer Space, which is reported as follows (A/SPC/36/SR.19, p 6):

23. On the question of direct television broadcasting by satellite, his delegation did not share the view that progress had been unacceptably slow. It believed that progress had been made and that it should be possible to complete the elaboration of a set of principles in the near future. His

delegation would have preferred that work to have been done in the Legal Sub-Committee but had been prepared to join the consensus on referring the item to a parent committee. It strongly believed that with that item removed from its agenda, the Legal Sub-Committee would not need to meet for more than three weeks in 1982. The matter was now close to a conclusion and his delegation looked forward to a successful outcome in 1982.

24. His Government, having a particular interest in remote sensing, regarded it as appropriate that the matter had been considered again by the Scientific and Technical Sub-Committee on a priority basis in accordance with General Assembly resolution 35/14. It particularly welcomed the compilation by the Secretariat of a comprehensive remote sensing catalogue and hoped that the document could be maintained and updated so as to retain its usefulness for Member States, particularly developing countries. It might be advisable to concentrate on those aspects of the question where agreement would appear to be more readily attainable and to avoid dwelling on areas of known and repeated differences.

25. On the question of nuclear power sources, his delegation was gratified that agreement had been reached in a number of important areas and that the manner of handling the item in future had been settled.

26. His delegation, while recognizing the concern of a number of States that the present system of use of the geostationary orbit was inadequate and could result in the saturation and monopolization of the orbit by a small number of States, was hesitant to recognize any claims to sovereignty over the orbit. Such claims had no scientific or legal basis and would be in conflict with the provisions of the Treaty on Principles Governing the Activity of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. His country believed, however, that rational and equitable consideration should be given to ensuring that no country was precluded from utilizing the benefits provided by the orbit.

#### **Outer space. Maritime Satellite Communication.**

For Australia's participation in the International Maritime Satellite Organisation (INMARSAT), see Mr Hayden's written answer on 8 December 1983 (HR Deb 1983, Vol 134, 3603).

#### **Outer space. Crash of Cosmos 434. Convention on Registration of Objects.**

The threatened crash of Cosmos 434 over Australia caused some concern (see Mr Street's answer to a question on 26 August 1981: HR Deb 1982, Vol 124, 782). On 20 October 1981 Mr Street provided the following written answer (HR Deb 1981, Vol 125, 2259):

Australia is continuing to give consideration to becoming a party to the Convention on Registration of Objects Launched into Outer Space. Consultations among the interested Australian authorities are being held to this end. It is intended that the Department of Science and Technology should be the Department with operational responsibility for Australian activities under the Convention.<sup>1</sup>

#### **Outer space. Ozone layer. Proposed Convention.**

On 6 May 1982 the Minister for Home Affairs and Environment, Mr McVeigh, wrote in answer to a question (HR Deb 1982, Vol 127, 2542):

Australia has supported the proposal for a Convention. Development of the Convention is at a preliminary stage. It is expected that progress will be discussed at the next session of the Governing Council of the United Nations Environment Program in May 1982.<sup>2</sup>

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1. Australia acceded to the Convention on 11 March 1986.
  2. A Convention for the Protection of the Ozone Layer was concluded in Vienna on 22 March 1985. Australia had not signed the Convention by 31 December 1985.