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LEGAL COMMITTEE – 33RD SESSION

(Montréal, 21 April – 2 May 2008)

COMPROMISE PACKAGE

(Presented by Sweden)

Article 24 – Additional Compensation

1. To the extent the total amount of damages exceeds the limits applicable according to Articles 4 and 198, paragraph 2, a person who has suffered damage may, in accordance with this Article, claim compensation from the operator.

2. The operator shall be liable for such additional compensation to the extent the person claiming compensation proves that the operator, or, if it is a legal person, its senior management, has contributed to the occurrence of the event by an act or omission done with intent or recklessly and with knowledge that damage would probably result and which

- a) falls within the regulatory responsibility and actual control of the operator; and
- b) is, other than the act of unlawful interference, the primary cause of the event.

3. Without prejudice to paragraph 4, Aan operator, or, if it is a legal person, its senior management will be presumed not to have been reckless if, as regards the relevant area of security, it proves that a system to ensure compliance with ~~the relevant~~applicable regulatory requirements has been established and that the system was applied in relation to the event.

4. If a State ~~party~~Party so declares to the Depository, an operator shall conclusively be deemed to not have been reckless in respect of an event causing damage within the territory of that State Party~~its territory if~~ if, as regards the relevant area of security, it proves that a system to ~~ensure facilitate and audit~~ compliance with asuch commonly applied standard branch standard as has been specified by that State Party in its declaration has been established and audited. ~~The existence of such a system and completion of such an audit shall not be conclusive if, unless the aeronautical authority of the State Party, prior to thean event, the competent authority in that State Party, has issued a finding that the operator has not met all applicable security requirements established by theat State Party. The State party may in the declaration specify to which branch standard it applies.~~

5. Where a servant or agent of the operator has committed an act of unlawful interference, the operator shall not be liable if it proves that a system to ensure effective selection of ~~such~~ servants and agents has been established by its senior management and that such system [requires/provides for] [with regard to the security aspect and] a prompt ~~reaction-response~~ to subsequent security information concerning such servants and agents ~~has been established by the senior management~~ and ~~that the system~~ was applied in relation to the servant or agent [who committed the act].

Definition of senior management

“Senior management” means members of an operator’s supervisory board, members of its board of directors, or other senior officers of the operator who have the authority to make and have significant roles of authority in making binding decisions, ~~that are binding on the operator~~, about how the whole of or a substantial part of the operators activities are to be managed or organized.

Article 25 — Right of Recourse of the Operator

1. The operator liable for damage shall have a right of recourse against any person who has committed ~~the~~ act of unlawful interference. No such claim may be enforced until all claims from persons suffering damage due to an event ~~has~~ ve been finally settled and completed/satisfied.

2. Nothing in this Convention shall prejudice the question whether an operator liable for damage has a right of recourse against any other person, provided that no such claim may be enforced until all claims made under Article 3, paragraph 1, and Article ~~23~~4, paragraph 1, have been finally settled and completed/satisfied.

~~3. ————— Such right of recourse shall however only be available to the extent it could reasonably have been covered by insurance. No right of recourse shall be available with respect to owners, lessors or financiers retaining title or holding security of the aircraft involved in the event or manufacturers to the extent the contribution relates to approved design of an aircraft or component. An operator shall in no case have a right of recourse for amounts that the operator has been found liable for under Article 24.~~

Article 25bis — Right of Recourse of the Supplementary Compensation Mechanism

1. The Supplementary Compensation Mechanism shall have a right of recourse against any person who has committed ~~the~~ act of unlawful interference. No such claim may be enforced until all claims from persons suffering damage due to an event ~~have~~ ve been finally settled and s-been completed/satisfied.

2. Subject to paragraph 1 of this Article, the Supplementary Compensation Mechanism shall have a right of recourse against the operator for compensation subject to the conditions set out in Article 24, provided that no such claim may be enforced until all claims made under Article 3, paragraph 1, and Article ~~24~~3, paragraph 1, have been finally settled and completed/satisfied.

3. ~~The Supplementary shall also have a right of recourse against any other person than the operator or that has contributed to the damage by an act or omission done with intent or recklessly and with knowledge that such damage would probably result. There shall be no right of recourse against an owner, a lessor or financiers retaining title or holding security of the aircraft or a manufacturer to the extent the contribution relates to approved design of an aircraft or component. Such right of recourse shall however only be available to the extent it could reasonably have been covered by insurance. The Supplementary shall not pursue such recourse claim to the extent it could give rise to an application of Article 19, paragraph 3.~~

4. ~~Any amount recovered under paragraph 2 of this Article shall, in the first instance, be used to provide compensation for damages resulting from the event which gave rise to the recourse action, which exceed the maximum amount specified in Article 18, paragraph 2.~~

Article 25 ter - Restrictions on rights of recourse

1. No right of recourse shall lie under Article 25, paragraph 2 or 25bis, paragraph 2 against an owner, lessor or financier retaining title of or holding security in an aircraft, or against a manufacturer of an aircraft, its engines or component parts in relation to the approved design of an aircraft, its engines or components.
2. The rights of recourse under Article 25, paragraph 2 and 25bis paragraph 2 shall not arise to the extent that the damage caused by an event could not reasonably have been covered by insurance.
3. An operator shall have no right of recourse in relation to any additional compensation for which he is liable under Article 23.
4. The Supplementary Compensation Mechanism shall not pursue any claim under Article 25bis paragraph 2 if to do so could give rise to the application of Article 18, paragraph 3

Article 27 – Exclusive remedy

(Article stays as in WP/3-1, but maybe strengthen message about perpetrators liability).