



LC/33  
Flimsy No. 3  
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## **LEGAL COMMITTEE – 33RD SESSION**

(Montréal, 21 April – 2 May 2008)

### **FRIENDS OF THE CHAIR GROUP 2**

(Presented by Brazil, Japan, Italy (Chair), Nigeria, Singapore, Sweden, United States/Rapporteur)

1. In establishing the Group of the Friends of the Chairman 2, the Chairman of the Legal Committee charged the Group to find the involvements between ICAO and the Supplementary Compensation Mechanism.
2. The following items, raised during the discussion on the Plenary, were set out in a flimsy to be considered by the Group:
  - a) the SCM established by Article 8 of the Convention should be considered as a Special Agency of ICAO;
  - b) the SCM should seat in Montreal;
  - c) how the assistance of ICAO to the SCM could be foreseen;
  - d) how the Conference of the Parties, as the governing body of the SCM, should benefit from the experience of other international agencies, mainly from ICAO;
  - e) how to establish the guarantee that the financial resources gathered from contributions will be used only to compensate damages to third parties and how the role of the ICAO, on this purpose, could be conceived;
  - f) how to extend the privileges of ICAO to the Mechanism; and
  - g) the first meeting of the Conference of Parties should be arranged by ICAO.
3. The Group recognized that, once settled the questions of the relationship between the Mechanism and ICAO and how to insure to the SCM the benefit of the experiences of other international Agencies and primarily of ICAO, the other aspects were covered by the present draft Convention.
4. On the question of the relationship between the Mechanism and ICAO, the Group examined:
  - a) the Agreement between the United Nations and ICAO;

- b) Chapter XIII of the Chicago Convention: “Other International Arrangements”;
- c) the Den-Ice Agreements;
- d) the International Air Services Transit Agreement and the Air Transport Agreement of 1944; and
- e) the Cape Town Convention of 2001.

5. The Group considered in particular the Agreement between the United Nations and the International Civil Aviation Organization, and Articles 64, 65, 66 of the Chicago Convention.

6. The proposal of the Group is to conceive the relationship between ICAO and the SCM along the following ideas:

- a) ICAO is an Organization able to facilitate the work of the SCM; and
- b) the SCM will enter into arrangements with ICAO under Article 65 of the Chicago Convention, as may be appropriate, for the accomplishment of the SCM purposes set for in the draft Convention, subject to the decisions of the Conference of Parties.

7. These principles should be inserted into the draft Convention, according to the proposals set in the Attachment to this report.

8. In the time being, between the 33rd Session of the Legal Committee and the Diplomatic Conference, studies could be developed in order to verify and better define the final text to be inserted in the Convention.

9. The above to build up the foundations:

- a) to secure, through the role of ICAO, that the financial resources gathered by from contributions will be used only to compensate damages to third parties in accordance with Article 18.1; and
- b) to extend the privileges of ICAO to the Supplementary Compensation Mechanism.

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## **ATTACHMENT**

### **RELATIONSHIP BETWEEN ICAO AND SCM**

- 1) The Preamble of the Convention is expected to describe the relationship between ICAO and the SCM including that the SCM has been set up under the auspices of ICAO.
- 2) The square brackets in **Article 8**, paragraph 3, shall be deleted but the language within them retained.
- 3) A new sub paragraph would be inserted in **Article 9** with the following wording: “as appropriate, enter into arrangements on behalf of the Supplementary Compensation Mechanism with the International Civil Aviation Organisation and other international bodies”.
- 4) The words “or the International Civil Aviation Organisation” be inserted after the words “State Party” in **Article 9 m)**. This would allow ICAO to enter points on the Agenda of the Conference of Parties.
- 5) A new sentence reading “The International Civil Aviation Organisation shall have the right to be represented, without voting rights, at the Conference of Parties” at the end of **Article 10**, paragraph 3.
- 6) The Regulations of the SCM are expected to set out what the report of the Director according to **Article 11**, paragraph 1 a), would include. The report would include deliberation on the relations with ICAO and other international organisations.
- 7) The regulations are expected to include that the Director shall promote the Convention and specifically assist developing States in ratifying the Convention.
- 8) A resolution by the Diplomatic Conference would set out that the first meeting of the Conference of Parties should take place in Montreal at the premises of ICAO.

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