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LEGAL COMMITTEE – 33RD SESSION

(Montréal, 21 April – 2 May 2008)

PROPOSED TEXT BY FRIENDS OF CHAIR GROUP 3 FOR REVISED ARTICLE 19 PARAGRAPH 3 ON DROPDOWN

(Presented by Canada, France, Japan, Singapore (Chair), United States, AWG, IATA and LMBC)

REVISED ARTICLE 19 PARAGRAPH 3

3. If and to the extent that the Conference of Parties determines and for the period that it so determines that insurance in respect of the damage covered by the Convention is wholly or partially unavailable with respect to amounts of coverage or the risks covered, or is only available at a cost incompatible with the continued operation of air transport, whether generally or, in relation to a particular operator, following an event affecting that operator, the Conference of Parties may decide that the Supplementary Compensation Mechanism shall, in respect of future events causing damage compensable under this Convention, provide financial support to operators for the payment of pay the damages for which they the affected operator or operators are liable according to Articles 3 and 4, and such payment shall discharge such liability of the affected operator or operators. The Conference of Parties may decide on a fee, the payment of which by the affected operator or operators, for the period covered, shall be a condition for access to the protection given by such decision the Supplementary Compensation Mechanism taking the action specified in this paragraph.

Note

- (a) The revised wording ensures that the COP is required to make a determination that the conditions for the dropdown have indeed occurred, and that the COP will be empowered to determine the duration for the dropdown so as to not interfere with the functioning of the insurance market.
- (b) The revised wording also ensures that upon the operation of the dropdown, airlines will be able to continue operations, having regard to mandatory insurance requirements, contractual (lease) obligations and corporate obligations and directors' duties. This is made clear by providing for direct payment by the SCM of amounts for which insurance is not available.

FOR REFERENCE ONLY

**Article 19 — Compensation
[Current Text]**

1. The Supplementary Compensation Mechanism shall, under the same conditions as are applicable to the liability of the operator, provide compensation to persons suffering damage in the territory of a State Party, regardless of the State in which the operator had its principal place of business, or if it had no such place of business, its permanent residence. Compensation shall only be paid to the extent that the total amount of damages exceeds the limits according Article 4. Where the operator has its principal place of business, or if it has no such place of business, its permanent residence, in the State Party where the damage occurs, compensation shall only be provided if that State Party has made a declaration according to Article 2, paragraph 2.
2. The maximum amount of compensation available from the Supplementary Compensation Mechanism shall be [3 000 000 000] Special Drawing Rights for each event. Financial support given according to paragraph 3 and distribution of amounts recovered according to Article 25, paragraph 2, shall be in addition to the maximum amount for compensation.
3. If insurance in respect of the damage covered by the Convention is wholly or partially unavailable with respect to amounts of coverage or the risks covered, or is only available at a cost incompatible with the continued operation of air transport, the Conference of Parties may decide that the Supplementary Compensation Mechanism shall in respect of future events causing damage compensable under this Convention, provide financial support to operators for the payment of damages for which they are liable according to Articles 3 and 4. The Conference of Parties may decide on a fee, the payment of which, for the period covered, shall be a condition for access to the protection given by such decision.

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