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SPECIAL SUB-GROUP ON ARTICLE 3 AND ARTICLE 10 *BIS* OF THE GENERAL RISKS CONVENTION

(Presented by Argentina/Rapporteur, Uganda, Romania, IATA, AWG and Germany)

The Special Sub-Group on Article 3 and Article 10 *bis* of the General Risks Convention was mandated by the Chair of the Legal Committee to:

- ▶ draft a wording proposal for the concept of limiting the liability with regard to the maximum mass of the aircraft, as provided for in the Draft on unlawful interference
- ▶ issue a recommendation as to the question on how to proceed with regard to Article 10 *bis*

1. Limits to liability

An overall cap on the operator's liability depending on the maximum mass of the aircraft shall be implemented. This cap does not limit the liability with regard to the individual damages compensable. Therefore the following changes to the draft would be necessary:

- Article 3 paragraph 2 should be deleted
- New Articles 3 *bis* and 3 *ter* should be inserted, reading:

Article 3 *bis* – Limit of the operator's liability

(1) The liability of the operator arising under Article 3 shall not exceed for each aircraft and event:

- a) [750 000 Special Drawing Rights for aircraft having a maximum mass of 500 kilogrammes or less;
- b) 1 500 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 kilogrammes but not exceeding 1 000 kilogrammes;

- c) 3 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 1 000 kilogrammes but not exceeding 2 700 kilogrammes;
- d) 7 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 2 700 kilogrammes but not exceeding 6 000 kilogrammes;
- e) 18 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 6 000 kilogrammes but not exceeding 12 000 kilogrammes;
- f) 80 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 12 000 kilogrammes but not exceeding 25 000 kilogrammes;
- g) 150 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 25 000 kilogrammes but not exceeding 50 000 kilogrammes;
- h) 300 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 50 000 kilogrammes but not exceeding 200 000 kilogrammes;
- i) 500 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 200 000 kilogrammes but not exceeding 500 000 kilogrammes;
- j) 700 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 000 kilogrammes.]

(2) The limits in paragraph 1 of this Article shall only apply if the operator proves that the damage

- a) was not due to its negligence or other wrongful act or omission or that of its servants or agents; or
- b) was solely due to the negligence or other wrongful act or omission of another person.

● As regards the priority of compensation of death, bodily injury, mental injury etc. the provisions of the Draft on unlawful interference have to be included also in the Draft concerning general risks. Article 3 *ter* would then read:

Article 3 *ter* – Reduced Compensation

If the total amount of the damages to be paid exceeds the amounts available according to Article 3 *bis*, the total amount shall be awarded preferentially to meet proportionately the claims in respect of death, bodily and mental injury in the first instance. The remainder, if any, of the total amount distributable shall be awarded proportionately among the claims in respect of other damage.

- The term of “maximum mass” has to be defined according to Article 1 lit e) of the Draft on unlawful interference. This wording should be included in Article 1 of the current draft.

2. Recommendation on Article 10 *bis*

Concerning the question on how to proceed with Article 10 *bis*, the Group took into account that the exoneration in Article 10 *bis* only concerns owners, lessors and financiers. Since they are not part of the operational area, these entities do not constitute risks for the operator. Therefore an interference with the preventive effect of tort law by exonerating these entities is not to be expected. Furthermore the Group took the view that retaining Article 10 *bis* would clarify the scope of the Convention and due to this can be considered useful.

Therefore the Special Sub Group recommends to retain Article 10 *bis* of the Draft and recommends to delete the square brackets.

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