



LC/33
Flimsy No. 8
1/5/08

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 19, 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;
- b) is, other than the act of unlawful interference, the primary cause of the event.

3. An 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 regulatory requirements has been established and that the system was applied in relation to the event.

4. If a State 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 its territory if, as regards the relevant area of security, it proves that a system to facilitate and audit compliance with a commonly applied branch standard has been established, unless the aeronautical authority of the State Party, prior to an event, has issued a finding that the operator has not met all applicable security requirements established by the 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 with regard to the security aspect and prompt reaction to subsequent

information concerning servants and agents has been established by the senior management and that the system was applied in relation to the servant or agent.

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 significant roles of authority in making 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 an act of unlawful interference. No such claim may be enforced until all claims from persons suffering damage due to an event has been completed.
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 24, paragraph 1, have been completed.
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 an act of unlawful interference. No such claim may be enforced until all claims from persons suffering damage due to an event has been completed.
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, paragraph 1, have been completed.
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 19, paragraph 2.

Article 27 – Exclusive remedy

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

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