LC/33-WP/8-9
1/5/08

LEGAL COMMITTEE – 33RD SESSION

(Montréal, 21 April – 2 May 2008)

Agenda Item 8: Report on work done at the Session

DRAFT REPORT ON THE WORK OF THE LEGAL COMMITTEE DURING ITS 33RD SESSION

The attached paragraphs 3:157 to 3:218 of the draft Report of the Legal Committee relate to Agenda Item 3.

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(10 pages)

Agenda Item 3: Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks

3:157 The Committee thereafter considered LC/33-WP/3-22 which contained the Report of the Drafting Committee in relation to the text of the Unlawful Interference Compensation Convention, save as regards the three distinct Articles 24, 25 and 27 which remained the subject of ongoing consultations.

3:158 In relation to the **title of the instrument**, the Chairperson of the Drafting Committee, the delegate of the United Kingdom, explained that the change in the title was due to the expressed desire to more accurately reflect that the damage caused by the aircraft was due to an act of unlawful interference .

3:159 The definitions contained in **Article 1 paragraphs a) and b)** were **adopted** without discussion. In relation to the newly introduced definition for "international flight" in **paragraph d),** the Chairperson recalled that the Committee had decided to focus on the nature of the flight instead of the nationality of the air carrier. It was explained that the said provision was linked to the article on scope (Article 2).

3:160 In relation to the proposed definition, one delegation observed that in Article 12 (Contributions to the Supplementary Compensation Mechanism) mention was made to the term "international commercial flight". This delegation raised a query as regards the difference in terminology. Another delegation submitted for consideration to use the definition of "international flight" which was found in the Chicago Convention. In relation to this latter intervention, it was explained that the Drafting Committee had been inspired by the notion of what is contained in the 1999 Montreal Convention. Subject to the above comments, paragraph d) was **adopted**.

3:161 In relation to **Article 2** (Scope), it was observed that the text inadvertently created an incongruous situation insofar as it did not provide for the possibility of the application of the Convention in the case of events involving domestic flights for a State Party which has not made a statement of opt-in consistent with **paragraph 2**. The Committee **agreed** to address this point when considering the new Article 25 (Assistance in case of events in States non-Parties) (former Article 26).

3:162 As regards the amendments to **Article 3, paragraph 1**, the Chairperson explained that they were designed to give more prominence to the fact that the damage was principally due to an act of unlawful interference, as now highlighted in the revised scope article (Article 2).As regards **paragraph 3** of Article 3, it was remarked that the text endeavoured to address the situations were persons on the ground were literally on the scene of the accident and fearing for their lives. In relation to **paragraph 4**, the Chairperson noted that the issue of the interrelationship with other air law instruments such as the 1999 Montreal Convention and the potential windfall for the consignor of cargo in case of mid-air collisions constituted a complicated issue which could ultimately only be addressed in the Final Clauses. Explanations were also provided with respect to **paragraphs 5 and 6**.

3:163 Based on an intervention made by one delegation, the Committee **agreed** to tighten the text in Article 3, paragraph 3 by inserting the word "only" before "if" in line two. The Committee also agreed to have the sentence conclude with "likelihood of imminent death or bodily injury". In taking into account the possibility for an application of the Convention in States non-Parties, the Committee further **agreed** to delete in paragraph 5 of the Article the word "Party". The Delegation of France would contact the Secretariat concerning the French text.

3:164 **Article 4** (Limit of Operator's Liability), **Article 5** (Events involving two or more operators or other persons) and **Article 6** (Advance Payments) were **adopted** without discussion.

3:165 In relation to **Article 7** (Insurance), it was noted that the proper reference should be in both instances to Article 11, paragraph 1 e).

3:166 The Committee thereafter adopted **Article 8**. (The constitution and objectives of the Supplementary Compensation Mechanism) on the understanding that necessary changes to the Arabic text would be made. In relation to **paragraphs 5 and 6** of the Article, one delegation was invited to submit a working paper so as to record its comments.

3:167 **Article 9** (The Conference of Parties), **Article 10** (The meetings of the Conference of Parties) and **Article 11** (The Secretariat and the Director) were **approved** without discussion.

3:168 In the consideration of **paragraph b)** of **Article 12** (Contributions to the Supplementary Compensation Mechanism), views were divided as to how and to what extent general aviation should be captured under this provision. While several delegations preferred to refer only to "general aviation" with no further qualification, a number of other delegations were of the view that a qualification was required in order to avoid the inclusion of entities such as leisure pilots, aerial flight clubs, etc. which did not perform carriage for reward or hire. Commenting on the views expressed, the Chairman suggested to leave it to the discretion of the Conference of Parties to consider both in terms of scope of persons and amounts to be collected the extent to which general aviation ought to be captured. Mindful of the diversity of operations involving general aviation, the Committee agreed to substitute the term "for business purposes" with "or any sector thereof". **With this modification**, the Article was **adopted** by the Committee.

3:169 As regards **Article 13** (Basis for fixing the Contributions) (formerly Article 14), in light of the earlier decision as regards Article 12, the Committee **agreed** to add at the end of **paragraph d)** the expression "taking into account the diversity that exists in this sector".

3:170 The Chairperson of the Drafting Committee presented the two principal changes made to **Article 14** (formerly Article 15) (Contributions). First, **paragraph 3** set out the aggregate limit on the collection of contributions which had been contained in Article 13 of the previous draft. Second, the text of **paragraph 4** was moved from former Article 14, paragraph 2 to emphasize that a State Party will not pay for terrorist incidents that occur before they become members of the SCM. It was also pointed out that "States" at the last line of paragraph 1, was misspelled. One delegation, supported by another delegation, felt that the title of the Article was too vague and too vast, and suggested the alternative wording "Period and rate of contributions". Article 14 was **approved** by the Committee subject to the change of title and the above-mentioned editorial correction.

3:171 **Article 15** (formerly Article 16) (Collection of the Contributions) was **approved** subject to an amendment to the French text **in paragraph 2** which replaces "perçoit" with "collecte".

3:172 In considering **paragraph 2**, **subparagraph a)** of **Article 16** (formerly Article 17) (Duties of States Parties), one delegation, supported by another delegation, stated that there was a lack of clarity as to how contributions would be made to the SCM in respect of general aviation. To that end, the supporting delegation proposed the insertion of a new **subparagraph b)** to read "such information on general aviation flights as the Conference of Parties may decide". The Chairperson of the Drafting Committee averred that general aviation activities also needed to be reflected in the context of domestic traffic, with the Chairman proposing that "such information on general aviation flights as the Conference of Parties may decide," be

inserted after "State Party" in the second to last line of paragraph 2. The Committee **adopted** Article 16 with the two changes mentioned above.

3:173 **Article 17** (formerly Article 18) (The funds of the Supplementary Compensation Mechanism) was **adopted** by the Committee without comment**.**

3:174 The Chairperson of the Drafting Committee explained that the changes to **Article 18** (formerly Article 19) (Compensation), **paragraph 1**, were in line with the amendments to paragraphs 1 and 2 of Article 2 (Scope) with regard to, respectively, the Convention's automatic application to all international flights into a State Party and the opt-in provision for domestic flights. The Chairperson of the Drafting Committee clarified that, as proposed in Flimsy No. 4 by Friends of the Chairman Group 3, the term "financial support" in **paragraph 2** was replaced by "payments made" in order to more accurately reflect the drop-down facility's application to the payment of damages *per se*. One delegation, supported by two other delegations, expressed some concern as to the vagueness of the term "an event affecting that operator" in the fifth line of **paragraph 3** in that it could be understood to refer to an event involving one particular operator only. One of the supporting delegations clarified that the employed terminology such as "whether generally" and "If and to the extent that the Conference of Parties determines" already sufficiently denoted that the situation would also encompass events that did not affect the operator directly. On this basis, the Committee **approved** Article 18.

3:175 **Article 19** (formerly Article 20) (Advance Payments and other measures)**, Article 20** (formerly Article 21) (Acts or omissions of victims), **Article 21** (formerly Article 22) (Court Costs and other Expenses) and **Article 22** (formerly Article 23) (Reduced Compensation) were **approved** by the Committee without comment.

3:176 The Chairman deferred the discussion on **Article 23** (formerly Article 24) (Additional Compensation), **Article 24** (formerly Article 25) (Right of Recourse), **Article 25** (formerly Article 26) (Assistance in case of events in States non-party) and **Article 26** (formerly Article 27) (Exclusive Remedy).

3:177 The Committee **approved** without comment **Article 27** (formerly Article 28) (Conversion of Special Drawing Rights) and **Article 28** (formerly Article 29) (Review of Limits).

3:178 With regard to **Article 29** (formerly Article 30) (Forum), one delegation, expressing concern as to the problem of competency if damage occurs in a State non-Party, suggested that wording be added stating that an action could be brought before the courts of a State non-Party pursuant to Article 25 (formerly Article 26). The Chairman suggested that Article 25 itself permitted the Conference of Parties to impose on States non-Parties the rules which would be appropriate. The same delegation, supported by another delegation, suggested that the title of Article 29 in the French text be changed to "juridiction compétente" in line with Article 33 of the 1999 Montreal Convention. The Committee **approved** Article 29 subject to the change of title in the French text.

3:179 **Article 30** (formerly Article 31) (Intervention by the Supplementary Compensation Mechanism), **Article 31** (formerly Article 32) (Recognition and Enforcement of Judgements), **Article 32** (formerly Article 33) (Regional and multilateral agreements on the recognition and enforcement of judgements), **Article 33** (formerly Article 34) (Period of Limitation), **Article 34** (formerly Article 35) (Death of Person Liable) and **Article 35** (formerly Article 36) (State Aircraft) were **approved** without comment.

3:180 The deletion of **Article 37** was **accepted** given that the concept of nuclear damage was now covered under Article 3, paragraph 6.

3:181 Flimsy No. 5, presented by Japan, proposed a revised text to Article 8, paragraph 6 and a new paragraph 7 dealing with the immunity respectively of the SCM and its funds, and of the Director and other personnel. This delegation stressed the importance of including such immunity in the draft Convention in line with other conventions and requested that this point be taken into account for the future when this issue is next discussed.

3:182 One observer wished it noted in this Report that the industry encourages States Parties to express their support with regard to the third layer (as referred to in paragraph 2.3.1 of the Rapporteur's Report). In this context, it was submitted that this could be included as a statement in the Preamble to the Convention.

3:183 One delegation wanted to reiterate its views that passengers, inasmuch as they are victims of acts of unlawful interference, should not be deprived of the right to claim compensation from the SCM. In a similar vein, another delegation deemed it appropriate to consider the interrelationship of this Convention and the 1999 Montreal Convention.

3:184 The Committee thereafter considered **Flimsy No. 8**, presented by the Delegate of Sweden, which contained a compromise package comprising the articles which dealt with "Additional Compensation"(former Article 24), "Right of Recourse" (former Article 25) and "Exclusive Remedy" (former Article 27). Commenting on the aim which was behind the proposal, the Chairman of the Legal Committee stated that the endeavour was to broaden the consensus as far as possible in the Committee with a view to attempting to satisfy the largest group possible.

3:185 The Delegate of Sweden explained that the proposal confirmed the principle of breakability above the second tier, as well as the principles of recourse and channelling. In relation to paragraph 2 of Article 24 (Additional Compensation), the delegate explained that the term "intent or recklessly " was now featured as had been proposed. In relation to paragraph 3, the delegate noted that it had not been possible in the Group to find consensus how to qualify these concepts further. The proposal provided for a protection for a careful operator by virtue of a presumption in favour of the operator in case of compliance with relevant regulatory requirements. To take into account that the standard in assessing and interpreting reckless behaviour differed in the various jurisdictions, the proposal contained an option for States to introduce an absolute (objective) standard in terms of a commonly applied branch standard shared among a large number of airlines, such as the IATA Operational Safety Audit (IOSA) Programme.

3:186 As far as "agents" and "servants" were concerned, the delegate remarked that the views remained divergent. The proposal suggested to include these persons if they committed the act of unlawful interference and required the operator to have a system in place which ensured proper control in terms of selection of personnel (security screening). If subsequent to the hiring new information would come to light in terms of a security risk regarding an employee, it was further incumbent upon the operator to promptly react. The delegate of Sweden informed that the proposal contained a definition for "senior management" which encompassed persons who had decision-making powers in relation to the overall operations of the operator concerned.

3:187 Turning to Article 25 (Right of Recourse of the Operator), the delegate of Sweden confirmed that paragraph 1 maintained recourse claims against the perpetrator of the act of unlawful interference. In relation to paragraph 3 of the Article, which limited the general principle set out in paragraph 2, the delegate noted that it was not considered fair on the one side to protect the financial position of the operator while permitting on the other to pursue through recourse actions other, smaller industry participants

in an unrestricted fashion. As the goal was also to protect the entire aviation sector following an act of unlawful interference, it was therefore considered adequate to permit recourse actions only to the extent the other entities could reasonably be covered for such claims by insurance. It was further explained that the proposal did not provide for a right of recourse against non-operational parties such as financiers or lessors, nor for such right against manufacturers to the extent the contribution related to the approved design. The proposal also confirmed that an operator who had been found liable to pay additional compensation had no right of recourse.

3:188 The Delegate of Sweden explained that Article 25 had been split into two separate articles so as to distinguish between the right of recourse of the operator and the right of recourse of the SCM. With respect to the latter, the new Article 25 *bis* mirrored in paragraphs 1, 2 and most of paragraph 3 in substance what had been proposed as regards the operator's right of recourse. In relation to paragraph 3, the right of recourse against entities other than the operator was conditional upon their intentional or reckless behaviour, the delegate explained. It was further explained that the last sentence of paragraph 3 was deemed necessary so as to provide that the SCM could not pursue a recourse action to the extent it could give rise to the application of the drop-down mechanism. This was considered appropriate in light of the fact that the SCM's limit of liability per event by far exceeded that of the operator and aimed to prevent a situation where the unavailability of insurance cover was not due to the act of unlawful interference itself, but rather as a result of recourse actions by the SCM against multiple entities.

3:189 As regards Article 27 (Exclusive Remedy), the Delegate of Sweden remarked that the proposal retained the provision as contained in the text set out in LC/33-WP/3-1, Appendix B. The Diplomatic Conference should nevertheless pay particular attention to paragraph 2, the delegate submitted. Concluding his presentation of the compromise package, the delegate stated that the proposals contained therein constituted in his assessment a reasonable basis for the future work.

3:190 The Chairman, on behalf of the Committee, thanked the Delegate of Sweden for the enormous effort which he and the Group had undertaken, a sentiment which was shared by all delegations and observers who spoke on this point.

3:191 In the ensuing discussion, while acknowledging that the proposal did not have unanimous support, many delegations stated that significant progress had been made and remarked that the proposal represented a reasonable basis which could be submitted to a Diplomatic Conference for the future work to be carried out.

3:192 Addressing the substance of some of the provisions, one of these delegations commented favourably on the solution proposed in Article 25, paragraph 5, in a situation where terrorists had infiltrated an airline. This delegation also found it sensible to leave it to the national law how to exercise the right of recourse. As regards paragraph 4, this delegation expressed its preference to focus more on the domestic law of each State instead on the particulars of security operations of a given airline. This delegation considered the proposed definition of "senior management" as being too narrow. In the view of another of these delegations, the package struck a balance between the interests concerned. This delegation remarked that the element of "agents" and "servants" required further reflection, as did the insurance aspect introduced in paragraph 3 of Articles 25 and 25 *bis*.

3:193 Acknowledging the good intent behind the compromise package, one delegation stated that the proposal did not address the concerns which had been expressed by it. The feature of channelled liability in combination with a virtually unbreakable limit unjustly deprived the victims of compensation, this delegation stated. Unless Article 24 was revised, this delegation considered the retention of Article 27

unacceptable. Concerns regarding the exoneration provision were also expressed by an observer, remarking that these entities would be unduly absolved from any liability even though they did not even contribute to the SCM. This observer further saw the need to address in a more stringent way the aspect of organizational duties of the operator in terms of selection and supervision of staff.

3:194 One delegation, supported by another, stated that the proposal continued to depart in too significant a manner from basic tort-law principles and expressed similar concerns to the ones which had been mentioned earlier with respect to Articles 24 and 27. Like two other delegations, this delegation considered the threshold of breakability as being too high, and recalled its comments set out in LC/33-WP/3-5 and LC/33-WP/3-6. It submitted to keep in mind the basic principle which was sought to be achieved by the Convention, namely fair and just compensation for the victims. As regards the "change of thinking" which was advocated by the proponents of the new approach, the delegation remarked that the Committee dealt with a liability Convention after damage had occurred. This delegation nevertheless regarded the proposal contained in Flimsy No. 8 as a viable basis for further discussions.

3:195 In the view of another delegation, the proposal went a long way to meeting the concerns which had been expressed. Linguistic amendments to Article 24, paragraph 5, had to be considered. Similar to a point raised earlier, this delegation also deemed it necessary to more adequately capture the situation involving the middle management of the operator. This delegation noted for attention that the term "person" mentioned in paragraph 2 of Article 25 encompassed "States", on the basis of the definition contained in Article 1 g). As regards the required "change of thinking", this delegation stated that the attempt had been to move away from the vision of a liability convention towards a scheme dealing primarily with the aspect of victim compensation.

3:196 In the view of one observer, the proposed compromise was barely acceptable to the industry. This observer expressed particular concern with the lack of certainty and diversity of standards in Article 24, leaving it to the State concerned to determine when the operator could benefit from the safe-harbour clause. It represented a huge concession on the part of airlines which required further reflection, the observer stated. Another observer regarded the proposal in relation to Article 25 *bis*, paragraph 3, to be significantly less favourable to what had been featured in the original text.

3:197 In his summary, the Chairman stated that there was consensus that Flimsy No. 8 represented a good document which could be forwarded to the Diplomatic Conference. Regarding certain linguistic issues, the Chairman wondered if these could still be addressed by the Committee.

3:198 The Chairman invited the Delegate of the United Kingdom to introduce **Flimsy No. 10** containing proposed amendments to Article 25 of the draft Convention on terrorist risks regarding assistance in non-Party States. The delegate recalled that the objective of the proposed amendments, in accordance with the policy guidance given by the Committee, was to provide for compensation to third parties for damage caused by an aircraft in the course of a domestic flight in a State Party that has not made a declaration under Article 2, paragraph 2. She explained that the introduction of this concept in Article 25 required the enlargement of the scope of the Convention in Article 2. Accordingly, a new provision was introduced as paragraph 3 b) in Article 2 consistent with the new provision introduced as paragraph 2 in Article 25. She further explained that the text in square brackets at the end of paragraph 2 of Article 25 was meant to establish a connecting factor with the State concerned and that the changes proposed to the text of paragraph 3 resulted from the new paragraph 2.

3:199 During the ensuing discussion, it was realized that the proposed amendments were complicating the system as it had been designed and, more importantly, would give protection to parties which, possibly by choice, have not consented to contributions to the system. Strong and prevailing concerns were expressed that it would not be fair to expand the Convention to allow such protection. The delegations voicing these concerns advocated that the original texts should be maintained. Subsequently, the Committee decided not to approve the proposed changes to Articles 2 and 25 set out in Flimsy No. 10.

3:200 The Committee considered the Report of the Drafting Committee attached to LC/33-WP/3-23. One delegation requested clarification of the term "as amended and in force from time to time" in Article 1, paragraph a), since the term was not clear in the Russian version. For example, a State may consider that the amendment is in force upon its ratification but in fact it is not so until a certain period of time specified in the final clauses of the treaty has lapsed. The Chairperson of the Drafting Committee explained that the term "from time to time" is an "ambulatory" reference designed to track automatically all amendments. Another delegation proposed to use the term "as amended and in force at the time of the event" and this proposal was **accepted** by the Committee. The Committee also **instructed** the Secretariat to align the different language versions taking into account the input of the relevant delegations.

3:201 One delegation proposed to include a definition of "event" in this Convention. While this proposal would merit consideration, it was **decided** that this issue should be raised in the Diplomatic Conference.

3:202 Referring to Article 3, one delegation mentioned that the text was not adequately drafted for environmental damage. The Chairman considered this matter as a substantive issue which should not be discussed at this stage.

3:203 The Committee then considered **Flimsy No. 6** presented by the Chairperson of the Special Sub-Group on Article 3 and Article 10 *bis* of the General Risks Convention. It was agreed to delete Article 3, paragraph 2, and to accept Article 3 *bis* and 3 *ter* as proposed in the flimsy. In response to a question why Article 3 *bis*, paragraphs 2) a) and b) were drafted in the negative sense, it was explained that the drafting followed the text of the Montreal Convention of 1999. With respect to Article 10 *bis*, it was **decided** to remove the square brackets and to retain the text therein. The Committee also **agreed** to include the definition of "maximum mass" following Article 1 e) of the Unlawful Interference Compensation Convention.

3:204 The Aviation Working Group proposed in **Flimsy No. 7** to include the following new text:

> Article 3 *qtr*
> "Limit of the Manufacturer's Liability
> Any liability under applicable law of the manufacturer of an aircraft, or its engines or component parts, for damage sustained by third parties which is caused by the aircraft in flight, shall not exceed in aggregate the limit for such aircraft specified in Article 3 *bis*."

3:205 This proposal was supported by some delegations. Others preferred not to accept the text at this stage. It was decided to note the text for the purpose of further study.

3:206 With respect to Article 3, **paragraph 4**, it was suggested to delete the word "Party" to align the text with the comparable provision in the Unlawful Interference Compensation Convention, but it was explained that in the latter Convention, the deletion was necessary to cover cases of assistance in case of

events in States non-Party. The Committee **decided** to leave paragraph 3 unamended. The Committee **agreed** with the suggestion of a delegation to align paragraph 6 with the comparable provisions in the Unlawful Interference Compensation Convention.

3:207 **Articles 5** (Court Costs and other Expenses), **6** (Advance Payments), **7** (Insurance) and **8** (Acts or omissions of victims) were **approved** without comment.

3:208 As regards **Article 9** (Right of Recourse), the Committee **agreed** to remove the square brackets in the first line.

3:209 **Article 10** (Exclusive Remedy) was **accepted** without comment.

3:210 In respect of **Article 10 *bis*** (Exoneration of Status Liability), the Committee **agreed** with the recommendation of the Group on Articles 3 and 10 *bis* that the brackets be removed around the title and body of the Article. One delegation expressed its understanding that "lessor" referred to a financial lessor and not those involved in operational aspects, such as of wet and damp leased aircraft.

3:211 **Articles 11** (Conversion of Special Drawing Rights) and **12** (Review of Limits) were **accepted** without comment.

3:212 On **Article 13** (Forum), certain modifications were agreed in the French version to ensure linguistic accuracy and consistency. As regards the words in square brackets in **paragraph 1**, the Chairperson of the Drafting Committee explained that the Legal Committee had requested an additional forum where the operator had its principal place of business. One observer recalled that the intention of the Legal Committee had been to provide an additional jurisdiction, namely the headquarters of the operator, and not a third jurisdiction where the operator might have an additional office. The Chairman confirmed that the Legal Committee had intended to refer to the headquarters of an operator. The Committee **decided** to leave the text in square brackets for decision by the Diplomatic Conference. **Paragraphs 2 and 3** were **accepted** without comment.

3:213 **Articles 14** (Recognition and Enforcement of Judgements) and **15** ((Regional and multilateral agreements on the recognition and enforcement of judgements) were **approved** without comment.

3:214 With respect to **Article 16** (Period of Limitation), one delegation believed that the word "event" should be defined. Another delegation supported this idea, pointing out that wording could be borrowed from Article 2, paragraph 1. These suggestions were **noted** for future consideration by the Diplomatic Conference.

3:215 **Articles 17** (Death of Person Liable) and **18** (State Aircraft) were **approved** without comment.

3:216 As regards **Article 19** (Nuclear Damage), the Chairperson of the Drafting Committee explained that it was aligned with the other draft convention, although the placement in the text was different. As regards the phrase "in force from time to time", the Committee **agreed** that appropriate adjustments would be made in the French and Russian texts to make it "ambulatory", and it would be made consistent with the amended text in the final clause of Article 1, paragraph a).

3:217 Reverting to **Article 2, paragraph 1**, one delegation noted that the new draft had significantly widened the scope of application of the Convention. While the broadening was appropriate in the case of the other convention, this was not the case here. It was fair that this convention would not apply only in the case of damage in the territory of a State Party; the operator should come from another State Party. This concern was shared by one observer and another delegation. The Chairman stated that the Drafting Committee had been tasked to adopt the same policy in respect of both conventions. In any case, there were advantages with the current text as States could implement this for domestic accidents also. A State could have a single regime and would also benefit from execution of judgements in all States, not necessarily only in that of the operator.

3:218 The text of the draft Convention on Compensation for Damage Caused by Aircraft to Third Parties, found in LC/33-WP/3-23, was **approved as amended.**