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## **INTERNATIONAL CONFERENCE ON AIR LAW**

(Montréal, 20 April to 2 May 2009)

### **REPORT OF THE FRIENDS OF THE CHAIRMAN GROUP ON ARTICLES 23 TO 28 OF THE DRAFT CONVENTION ON COMPENSATION FOR DAMAGE TO THIRD PARTIES, RESULTING FROM ACTS OF UNLAWFUL INTERFERENCE INVOLVING AIRCRAFT**

(Presented by the President of the Conference and the Chairman of the Commission of the Whole)

The Report presents, for the consideration of the Conference, the results of the work of the Friends of the Chairman Group established to consider Articles 23 to 28 of the Draft Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft.

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### **Article 23 – Additional compensation**

To the extent the total amount of damages exceeds the aggregate amount payable under Articles 4 and 18, paragraph 2, a person who has suffered damage may claim additional compensation from the operator.

The operator shall be liable for such additional compensation to the extent the person claiming compensation proves that the operator or its employees have contributed to the occurrence of the event by an act or omission done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Where an employee has contributed to the damage, the operator shall not be liable for any additional compensation under this Article if it proves that an appropriate system for the selection and monitoring of its employees has been established and implemented.

An operator or, if it is a legal person, its senior management shall be presumed not to have been reckless if it proves that it has established and implemented a system to comply with the security requirements specified pursuant to Annex 17 to the *Convention on International Civil Aviation* (Chicago, 1944) in accordance with the law of the State Party in which the operator has its principal place of business, or if it has no such place of business, its permanent residence.

### **Article 24 — Right of recourse of the operator**

The operator shall have a right of recourse against:

- (a) any person who has committed, organised or financed the act of unlawful interference,
- (b) any other person.

### **Article 25 — Right of recourse of the Supplementary Compensation Mechanism**

The Supplementary Compensation Mechanism shall have a right of recourse against:

- (a) any person who has committed, organised or financed the act of unlawful interference,
- (b) the operator subject to the conditions set out in Article 23,
- (c) any other person.

### **Article 26 - Restrictions on rights of recourse**

1. The rights of recourse under Article 24, paragraph (b), and Article 25, paragraph (c), shall only arise to the extent that the person against whom recourse is sought could have been covered by insurance available on a commercially reasonable basis.
2. Paragraph 1 shall not apply if the person against whom recourse is sought under Article 25, paragraph (c) has contributed to the occurrence of the event by an act or omission done recklessly and with knowledge that damage would probably result.
3. The Supplementary Compensation Mechanism shall not pursue any claim under Article 25, paragraph (c) if the Conference of Parties determines that to do so would give rise to the application of Article 18, paragraph 3.

### **Article 26bis – Exoneration from recourse**

No right of recourse shall lie against an owner, lessor, or financier retaining title of or holding security in an aircraft, not being an operator, or against a manufacturer if that manufacturer proves that it has complied with the mandatory requirements in respect of the design of the aircraft, its engines or components.

## **Chapter VI**

Assistance in case of events in States non-party

### **Article 27 — Assistance in case of events in States non-party**

Where an operator, which has its principal place of business, or if it has no such place of business, its permanent residence, in a State Party, is liable for damage occurring in a State non-party, the Conference of Parties may decide, on a case by case basis, that the Supplementary Compensation Mechanism shall provide financial support to that operator.

Such support may only be provided:

- a) in respect of damage that would have fallen under the Convention if the State non-party had been a State Party;
- b) if the State non-Party agrees in a form acceptable to the Conference of Parties to be bound by the provisions of this Convention in respect of the event giving rise to such damage;
- c) up to the maximum amount for compensation set out in Article 18, paragraph 2; and
- d) if the solvency of the operator liable is threatened even if support is given, where the Conference of the Parties determines that the operator has sufficient arrangements protecting its solvency.

## **Chapter VII**

Exercise of remedies and related provisions

### **Article 28 — Exclusive remedy**

1. Without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights, any action for compensation for damage due to an act of unlawful interference, however founded, whether under this Convention or in tort or in contract or otherwise, can only be brought against the operator and, if need be, against the Supplementary Compensation Mechanism and shall be subject to the conditions and limits of liability set out in this Convention. No claims shall lie against any other person for compensation for such damage.

2. Paragraph 1 shall not apply to an action against a person who has committed, organised or financed an act of unlawful interference.