



INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 20 April to 2 May 2009)

PROPOSED TEXT FOR INSERTION OF NEW PARAGRAPH [ARTICLE 8] OR [ARTICLE 18] OF THE DRAFT CONVENTION ON COMPENSATION FOR DAMAGE TO THIRD PARTIES, RESULTING FROM ACTS OF UNLAWFUL INTERFERENCE INVOLVING AIRCRAFT

(Presented by the Republic of Korea)

1. COMMENTS

1.1 The Supplementary Compensation Mechanism will enjoy international legal personality (Draft Article 8(4)). Consequently the SCM can make transactions if necessary. For example, in case where the SCM is not able to meet valid compensation claims because insufficient contributions have been collected, it may obtain credits from financial institutions for the payment of compensation and may grant security for such credits (Draft Article 17(4)).

1.2 However, if the SCM cannot pay off its debt or cannot meet its liability towards creditors, the creditors might institute actions for settling claims not only against the SCM but also against Member States. *'International Tin Council Case'* and *'Westland Helicopters Company Case'* illustrate this quite well.

1.3 For protecting Member States from eventual and unwanted legal claims provoked by an international organization's own financial activities, several international treaties creating international organizations insert a safeguard clause. Article 13 of the Establishment Agreement of KEDO (Korean Peninsular Energy Development Organization) concluded between EU, Japan, Republic of Korea and USA is a good example. Also the International Law Commission of the UN continues a study on 'Responsibility of International Organizations' and we can find a similar draft clause there.

2. PROPOSAL

2.1 A new paragraph as follows should be inserted in an appropriate place, for example Article 8 or Article 18.

2.2 “No State Party shall be liable, by reason of its status or participation as a Member, for acts, omissions, or obligations of the Supplementary Compensation Mechanism.”