



**INTERNATIONAL CONFERENCE ON AIR LAW**

(Montréal, 20 April to 2 May 2009)

**REPORT OF THE DRAFTING COMMITTEE  
ON THE DRAFT CONVENTION ON COMPENSATION  
FOR DAMAGE TO THIRD PARTIES, RESULTING FROM ACTS  
OF UNLAWFUL INTERFERENCE INVOLVING AIRCRAFT**

(Presented by the Chairman of the Drafting Committee)

1. During its six meetings, the Drafting Committee examined issues referred to it by the Commission of the Whole in relation to the Draft Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft contained in DCCD Doc No. 3.
2. As a result of its work, the Drafting Committee made a number of modifications which are reflected in the text set out in this Report. For convenience of reference, the Report also contains a text indicating the changes made to DCCD Doc No. 3.

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**DRAFT CONVENTION ON COMPENSATION FOR DAMAGE TO  
THIRD PARTIES, RESULTING FROM ACTS OF UNLAWFUL  
INTERFERENCE INVOLVING AIRCRAFT**

**Chapter I**

Principles

**Article 1 — Definitions**

For the purposes of this Convention:

- (a) An “act of unlawful interference” means an act which is defined as an offence in the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970, or the *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971, and any amendment in force at the time of the event.
- (b) An “event” occurs when damage results from an act of unlawful interference involving an aircraft in flight.
- (c) An aircraft is considered to be “in flight” at any time from the moment when all its external doors are closed following embarkation or loading until the moment when any such door is opened for disembarkation or unloading.
- (d) “International flight” means any flight whose place of departure and whose intended destination are situated within the territories of two States, whether or not there is a break in the flight, or within the territory of one State if there is an intended stopping place in the territory of another State.
- (e) “Maximum mass” means the maximum certificated take-off mass of the aircraft, excluding the effect of lifting gas when used.
- (f) “Operator” means the person who makes use of the aircraft, provided that if control of the navigation of the aircraft is retained by the person from whom the right to make use of the aircraft is derived, whether directly or indirectly, that person shall be considered the operator. A person shall be considered to be making use of an aircraft when he or she is using it personally or when his or her servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority. The operator shall not lose its status as operator by virtue of the fact that another person commits an act of unlawful interference.
- (g) “Person” means any natural or legal person, including a State.
- (h) “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 the authority to make and have significant roles in making binding decisions about how the whole of or a substantial part of the operator’s activities are to be managed or organized.
- (i) “State Party” means a State for which this Convention is in force.

- (j) “Third party” means a person other than the operator, passenger or consignor or consignee of cargo[; in the case of a collision, “third party” also means the operator, owner and crew of the other aircraft and the passenger or consignor or consignee of cargo on board the other aircraft].

## Article 2 — Scope

1. This Convention applies to damage to third parties which occurs in the territory of a State Party caused by an aircraft in flight on an international flight, as a result of an act of unlawful interference. This Convention shall also apply to such damage that occurs in a State non-Party as provided for in Article 27.
2. If a State Party so declares to the Depositary, this Convention shall also apply to damage to third parties that occurs in the territory of that State Party which is caused by an aircraft in flight other than on an international flight, as a result of an act of unlawful interference.
3. For the purposes of this Convention:
  - (a) damage to a ship or aircraft in or above the High Seas and the Exclusive Economic Zone shall be regarded as damage occurring in the territory of the State in which it is registered; however, if the operator of the aircraft has its principal place of business in the territory of a State other than the State of Registry, the aircraft shall be regarded as having occurred in the territory of the State in which it has its principal place of business; and
  - (b) damage to a drilling platform or other installation permanently fixed to the soil in the Exclusive Economic Zone or the Continental Shelf shall be regarded as having occurred in the territory of the State Party which has jurisdiction over such platform or installation in accordance with international law, including the *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982.

### *Option 1*

4. This Convention shall not apply to damage caused by State aircraft. Aircraft used in military, customs and police services shall be deemed to be State aircraft.

### *Option 2*

4. This Convention shall not apply to damage caused by an aircraft operated directly by a State for non-commercial purposes in respect of its sovereign functions and duties.

## Chapter II

### Liability of the operator and related issues

## Article 3 — Liability of the operator

1. The operator shall be liable to compensate for damage within the scope of this Convention upon condition only that the damage was caused by an aircraft in flight.

2. There shall be no right to compensation under this Convention if the damage is not a direct consequence of the event giving rise thereto.
3. Damages due to death, bodily injury and mental injury shall be compensable. Damages due to mental injury shall be compensable only if caused by a recognizable psychiatric illness resulting either from bodily injury or from direct exposure to the likelihood of imminent death or bodily injury.
4. Damage to property shall be compensable.
5. Environmental damage shall be compensable, in so far as such compensation is provided for under the law of the State in the territory of which the damage occurred.
6. No liability shall arise under this Convention for damage caused by a nuclear incident as defined in the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy or for nuclear damage as defined in the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, and any amendment or supplements to these Conventions in force at the time of the event.
7. Punitive, exemplary or any other non-compensatory damages shall not be recoverable.

#### **Article 4 — Limit of operator's liability**

- 1 The liability of the operator arising under Article 3 shall not exceed for an event the following limit based on the mass of the aircraft involved:
  - (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. If an event involves two or more aircraft operated by the same operator, the limit of liability in respect of the aircraft with the highest maximum mass shall apply.

#### **Article 5 — Events involving two or more operators or other persons**

1. Where two or more aircraft have been involved in an event causing damage to which this Convention applies, the operators of those aircraft are jointly and severally liable for any damage suffered by a third party.
2. If two or more operators are so liable, the recourse between them shall depend on their respective limits of liability and their contribution to the damage.
3. No operator shall be liable for a sum in excess of the limit, if any, applicable to its liability.

#### **Article 6 — Advance payments**

If required by the law of the State where the damage occurred, the operator shall make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, in order to meet their immediate economic needs. Such advance payments shall not constitute a recognition of liability and may be offset against any amount subsequently payable as damages by the operator.

#### **Article 7 — Insurance**

1. Having regard to Article 4, States Parties shall require their operators to maintain adequate insurance or guarantee covering their liability under this Convention. If such insurance or guarantee is not available to an operator on a per event basis, the operator may satisfy this obligation by insuring on an aggregate basis. States Parties shall not require their operators to maintain such insurance or guarantee to the extent that they are covered by a decision made pursuant to Article 11, paragraph 1(e) or Article 18, paragraph 3.
2. An operator may be required by the State Party in or into which it operates to furnish evidence that it maintains adequate insurance or guarantee. In doing so, the State Party shall apply the same criteria to operators of other States Parties as it applies to its own operators. Proof that an operator is covered by a decision made pursuant to Article 11, paragraph 1(e) or Article 18, paragraph 3, shall be sufficient evidence for the purpose of this paragraph.

### Chapter III

#### The International Fund for Civil Aviation Compensation

##### **Article 8 — The constitution and objectives of the International Fund for Civil Aviation Compensation**

1. An organization named the International Fund for Civil Aviation Compensation, hereinafter referred to as “the International Fund”, is established by this Convention. The International Fund shall be made up of a Conference of Parties, consisting of the States Parties, and a Secretariat headed by a Director.
2. The International Fund shall have the following purposes:
  - (a) to provide compensation for damage according to Article 18, paragraph 1, pay damages according to Article 18, paragraph 3, and provide financial support under Article 27;
  - (b) to make advance payments under Article 19, paragraph 1, and to take reasonable measures after an event to minimize or mitigate damage caused by an event, according to Article 19, paragraph 2; and
  - (c) to perform other functions compatible with these purposes.
3. The International Fund shall have its seat at the same place as the International Civil Aviation Organization.
4. The International Fund shall have international legal personality.
5. In each State Party, the International Fund shall be recognized as a legal person capable under the laws of that State of assuming rights and obligations, entering into contracts, acquiring and disposing of movable and immovable property and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director of the International Fund as the legal representative of the Mechanism.
6. The International Fund shall enjoy tax exemption and such other privileges as are agreed with the host State. Contributions to the International Fund and its funds [, and any proceeds from them,] shall be exempted from tax in all States Parties.
7. The International Fund shall be immune from legal and administrative actions, except in respect of actions relating to credits obtained in accordance with Article 17 or to compensation payable in accordance with Article 18. The Director of the International Fund shall be immune from legal and administrative actions in relation to acts performed by him or her in his or her official capacity. The immunity of the Director may be waived by the Conference of Parties. The other personnel of the International Fund shall be immune from legal and administrative actions in relation to acts performed by them in their official capacity. The immunity of the other personnel may be waived by the Director.
8. No State Party [or the International Civil Aviation Organization] shall be liable for acts, omissions or obligations of the International Fund.

### **Article 9 — The Conference of Parties**

The Conference of Parties shall:

- (a) determine its own rules of procedure and, at each meeting, elect its officers;
- (b) establish the Regulations of the International Fund and the Guidelines for Compensation;
- (c) appoint the Director and determine the terms of his or her employment and, to the extent this is not delegated to the Director, the terms of employment of the other employees of the International Fund;
- (d) delegate to the Director, in addition to powers given in Article 11, such powers and authority as may be necessary or desirable for the discharge of the duties of the International Fund and revoke or modify such delegations of powers and authority at any time;
- (e) decide the period for, and the amount of, initial contributions and fix the contributions to be made to the International Fund for each year until the next meeting of the Conference of Parties;
- (f) in the case where the aggregate limit on contributions under Article 14, paragraph 3, has been applied, determine the global amount to be disbursed to the victims of all events occurring during the time period with regard to which Article 14, paragraph 3, was applied;
- (g) appoint the auditors;
- (h) vote budgets and determine the financial arrangements of the International Fund including the Guidelines on Investment, review expenditures, approve the accounts of the International Fund, and consider the reports of the auditors and the comments of the Director thereon;
- (i) examine and take appropriate action on the reports of the Director, including reports on claims for compensation, and decide on any matter referred to it by the Director;
- (j) decide whether to apply Article 27 and set the maximum amount of such assistance and the further conditions for it, if necessary;
- (k) determine which States non-Party and which intergovernmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Conference of Parties and subsidiary bodies;
- l) establish any body necessary to assist it in its functions, including, if appropriate, an Executive Committee consisting of representatives of States Parties, and define the powers of such body;
- m) decide whether to obtain credits and grant security for credits obtained pursuant to Article 17, paragraph 4;
- n) as appropriate, enter into arrangements on behalf of the International Fund with the International Civil Aviation Organisation and other international bodies; and
- o) consider any matter relating to this Convention that a State Party or the International Civil Aviation Organization has referred to it.

### **Article 10 — The meetings of the Conference of Parties**

1. The Conference of Parties shall meet once a year, unless a Conference of Parties decides to hold its next meeting at another interval. The Director shall convene the meeting at a suitable time and place.
2. An extraordinary meeting of the Conference of Parties shall be convened by the Director:
  - (a) at the request of no less than one-fifth of the total number of States Parties;
  - (b) if an aircraft has caused damage falling within the scope of this Convention, and the damages are likely to exceed the applicable limit of liability according to Article 4 of this Convention by more than 50 per cent of the available funds of the International Fund;
  - (c) if the aggregate limit on contributions according to Article 14, paragraph 3, has been reached;  
or
  - (d) if the Director has exercised the authority according to Article 11, paragraph 1 (d) or (e).
3. All States Parties shall have an equal right to be represented at the meetings of the Conference of Parties and each State Party shall be entitled to one vote. The International Civil Aviation Organization shall have the right to be represented, without voting rights, at the meetings of the Conference of Parties.
4. A majority of the States Parties is required to constitute a quorum for the meetings of the Conference of Parties. Decisions of the Conference of Parties shall be taken by a majority vote of the States Parties present and voting. Decisions under Article 9, subparagraphs (a), (b), (c), (d), (e), (j), (l) and (m) shall be taken by a two-third majority of the States Parties present and voting.

### **Article 11 — The Secretariat and the Director**

1. The International Fund shall have a Secretariat led by a Director. The Director shall hire personnel, supervise the Secretariat and direct the day-to-day activities of the International Fund. In addition, the Director:
  - (a) shall report to the Conference of Parties on the functioning of the International Fund and present its accounts and a budget;
  - (b) shall collect all contributions payable under this Convention, administer and invest the funds of the International Fund in accordance with the Guidelines on Investment, maintain accounts for the funds, and assist in the auditing of the accounts and the funds in accordance with Article 17;
  - (c) shall handle claims for compensation in accordance with the Guidelines for Compensation, and prepare a report for the Conference of Parties on how each has been handled;
  - (d) may decide to temporarily take action under Article 19 until the next meeting of the Conference of Parties;
  - (e) shall decide to temporarily take action under Article 18, paragraph 3, until the next meeting of the Conference of Parties called in accordance with Article 10, paragraph 2 (d);



- (f) shall review the sums prescribed under Articles 4 and 18 and inform the Conference of Parties of any revision to the limits of liability in accordance with Article 30; and
- (g) shall discharge any other duties assigned to him or her by or under this Convention and decide any other matter delegated by the Conference of Parties.

2. The Director and the other personnel of the Secretariat shall not seek or receive instructions in regards to the discharge of their responsibilities from any authority external to the International Fund. Each State Party undertakes to fully respect the international character of the responsibilities of the personnel and not seek to influence any of its nationals in the discharge of their responsibilities.

### **Article 12 — Contributions to the International Fund**

1. The contributions to the International Fund shall be:
  - (a) the mandatory amounts collected in respect of each passenger and each tonne of cargo departing on an international commercial flight from an airport in a State Party. Where a State Party has made a declaration under Article 2, paragraph 2, such amounts shall also be collected in respect of each passenger and each tonne of cargo departing on a commercial flight between two airports in that State Party; and
  - (b) such amounts as the Conference of Parties may specify in respect of general aviation or any sector thereof.

The operator shall collect these amounts and remit them to the International Fund.

2. Contributions collected in respect of each passenger and each tonne of cargo shall not be collected more than once in respect of each journey, whether or not that journey includes one or more stops or transfers.

### **Article 13 — Basis for fixing the contributions**

1. Contributions shall be fixed having regard to the following principles:
  - (a) the objectives of the International Fund should be efficiently achieved;
  - (b) competition within the air transport sector should not be distorted;
  - (c) the competitiveness of the air transport sector in relation to other modes of transportation should not be adversely affected; and
  - (d) in relation to general aviation, the costs of collecting contributions shall not be excessive in relation to the amount of such contributions, taking into account the diversity that exists in this sector.
2. The Conference of Parties shall fix contributions in a manner that does not discriminate between States, operators, passengers and consignors or consignees of cargo.
3. On the basis of the budget drawn up according to Article 11, paragraph 1 (a), the contributions

shall be fixed having regard to:

- (a) the upper limit for compensation set out in Article 18, paragraph 2;
- (b) the need for reserves where Article 18, paragraph 3, is applied;
- (c) claims for compensation, measures to minimize or mitigate damages and financial assistance under this Convention;
- (d) the costs and expenses of administration, including the costs and expenses incurred by meetings of the Conference of Parties;
- (e) the income of the International Fund; and
- (f) the availability of additional funds for compensation pursuant to Article 17, paragraph 4.

#### **Article 14 — Period and rate of contributions**

1. At its first meeting, the Conference of Parties shall decide the period and the rate of contributions in respect of passengers and cargo departing from a State Party to be made from the time of entry into force of the Convention for that State Party. If a State Party makes a declaration under Article 2, paragraph 2, initial contributions shall be paid in respect of passengers and cargo departing on flights covered by such declaration from the time it takes effect. The period and the rate shall be equal for all States Parties.
2. Contributions shall be fixed in accordance with paragraph 1 so that the funds available amount to 100 % of the limit of compensation set out in Article 18, paragraph 2, within four years. If the funds available are deemed sufficient in relation to the likely compensation or financial assistance to be provided in the foreseeable future and amount to 100 % of that limit, the Conference of Parties may decide that no further contributions shall be made until the next meeting of the Conference of Parties, provided that both the period and rate of contributions shall be applied in respect of passengers and cargo departing from a State in respect of which this Convention subsequently enters into force.
3. The total amount of contributions collected by the International Fund within any period of two consecutive calendar years shall not exceed three times the maximum amount of compensation according to Article 18, paragraph 2, of this Convention.
4. Subject to Article 27, the contributions collected by an operator in respect of a State Party may not be used to provide compensation for an event which occurred prior to the entry into force of this Convention for that State Party.

#### **Article 15 — Collection of the Contributions**

1. The Conference of Parties shall establish in the Regulations a transparent, accountable and cost-effective mechanism supporting the collection, remittal and recovery of contributions. When establishing the mechanism, the Conference of Parties shall endeavour not to impose undue burdens on operators and contributors to the funds of the International Fund. Contributions which are in arrears shall bear interest as provided for in the Regulations.
2. Where an operator does not collect or does not remit contributions it has collected to the

International Fund, the International Fund shall take appropriate measures against such operator with a view to the recovery of the amount due. Each State Party shall ensure that an action to recover the amount due may be taken within its jurisdiction, notwithstanding in which State Party the debt actually accrued.

### **Article 16 — Duties of States Parties**

1. Each State Party shall take appropriate measures, including imposing such sanctions as it may deem necessary, to ensure that an operator fulfils its obligations to collect and remit contributions to the International Fund.
2. Each State Party shall ensure that the following information is provided to the International Fund:
  - (a) the number of passengers and quantity of cargo departing on international commercial flights from that State Party;
  - (b) such information on general aviation flights as the Conference of Parties may decide; and
  - (c) the identity of the operators performing such flights.

Where a State Party has made a declaration under Article 2, paragraph 2, it shall ensure that information detailing the number of passengers and quantity of cargo departing on commercial flights between two airports in that State Party, such information on general aviation flights as the Conference of Parties may decide, and the identity of the operators performing such flights, are also provided. In each case, such statistics shall be *prima facie* evidence of the facts stated therein.

3. Where a State Party does not fulfil its obligations under paragraph 2 of this Article and this results in a shortfall in contributions for the International Fund, the State Party shall be liable for such shortfall. The Conference of Parties shall, on recommendation by the Director, decide whether the State Party shall pay for such shortfall.

### **Article 17 — The funds of the International Fund**

1. The funds of the International Fund may only be used for the purposes set out in Article 8, paragraph 2.
2. The International Fund shall exercise the highest degree of prudence in the management and preservation of its funds. The funds shall be preserved in accordance with the Guidelines on Investment determined by the Conference of Parties under Article 9, paragraph (h). Investments may only be made in States Parties.
3. Accounts shall be maintained for the funds of the International Fund. The auditors of the International Fund shall review the accounts and report on them to the Conference of Parties.
4. Where the International Fund 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.

## **Chapter IV**

### **Compensation from the International Fund**

#### **Article 18 — Compensation**

1. The International Fund shall, under the same conditions as are applicable to the liability of the operator, provide compensation to persons suffering damage in the territory of a State Party. Where the damage is caused by an aircraft in flight on a flight other than an international flight, compensation shall only be provided if that State Party has made a declaration according to Article 2, paragraph 2. Compensation shall only be paid to the extent that the total amount of damages exceeds the limits according to Article 4.

2. The maximum amount of compensation available from the International Fund shall be 3 000 000 000 Special Drawing Rights for each event. Payments made according to paragraph 3 of this Article and distribution of amounts recovered according to Article 25, paragraph 2, shall be in addition to the maximum amount for compensation.

3. If and to the extent that the Conference of Parties determines and for the period that it so determines that insurance in respect of the damage covered by this Convention is wholly or partially unavailable with respect to amounts of coverage or the risks covered, or is only available at a cost incompatible with the continued operation of air transport generally, the International Fund may, at its discretion, in respect of future events causing damage compensable under this Convention, pay the damages for which the affected operators are liable under Articles 3 and 4 and such payment shall discharge such liability of the affected operators. The Conference of Parties shall decide on a fee, the payment of which by the affected operators, for the period covered, shall be a condition for the International Fund taking the action specified in this paragraph.

#### **Article 19 — Advance payments and other measures**

1. Subject to the decision of the Conference of Parties and in accordance with the Guidelines for Compensation, the International Fund may make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, in order to meet their immediate economic needs. Such advance payments shall not constitute recognition of a right to compensation and may be offset against any amount subsequently payable by the International Fund.

2. Subject to the decision of the Conference of Parties and in accordance with the Guidelines for Compensation, the International Fund may also take other measures to minimize or mitigate damage caused by an event.

## Chapter V

### Special provisions on compensation and recourse

#### Article 20 — Exoneration

If the operator or the International Fund proves that the damage was caused, or contributed to, by an act or omission of a claimant, or the person from whom he or she derives his or her rights, done with intent or recklessly and with knowledge that damage would probably result, the operator or the International Fund shall be wholly or partly exonerated from its liability to that claimant to the extent that such act or omission caused or contributed to the damage.

#### Article 21 — Court costs and other expenses

1. The limits prescribed in Articles 4 and 18, paragraph 2, shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the claimant, including interest.

2. Paragraph 1 shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the operator has offered in writing to the claimant within a period of six months from the date of the event causing the damage, or before the commencement of the action, whichever is the later.

#### Article 22 — Priority of compensation

##### *Option 1*

If the total amount of the damages to be paid exceeds the amounts available according to Articles 4 and 18, paragraph 2, the total amount shall be awarded preferentially to meet proportionately the claims in respect of: firstly, death; secondly, bodily injury; and thirdly, mental injury, in the first instance. The remainder, if any, of the total amount payable shall be awarded proportionately among the claims in respect of other damage.

##### *Option 2*

If the total amount of the damages to be paid exceeds the amounts available according to Articles 4 and 18, paragraph 2, the total amount shall be awarded preferentially to meet proportionately the claims in respect of death, bodily injury and mental injury in the first instance. The remainder, if any, of the total amount payable shall be awarded proportionately among the claims in respect of other damage.

#### [Article 23 – Additional compensation

1. To the extent the total amount of damages exceeds the combined limits applicable according to Articles 4 and 18, paragraph 2, a person who has suffered damage may, in accordance with this Article, claim additional 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; and
- (b) is, other than the act of unlawful interference, the primary cause of the event.

3. Without prejudice to paragraph 4 of this Article, 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 applicable 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 Depositary, an operator shall conclusively be deemed to not have been reckless in respect of an event causing damage within the territory of that State Party if, as regards the relevant area of security, it proves that a system to ensure compliance with such commonly applied standard as has been specified by that State Party in its declaration has been established and audited. The existence of such a system and completion of such an audit shall not be conclusive if, prior to the event, the competent authority in that State Party has issued a finding that the operator has not met all applicable security requirements established by that State and the finding remains valid at the time of the event.

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 servants and agents has been established by its senior management and that such system [requires/provides for] [with regard to the security aspect and] a prompt response to security information concerning such servants and agents and was applied in relation to the servant or agent [who committed the act].

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

1. The operator liable for damage shall have a right of recourse against any person who has committed the act of unlawful interference. No such claim may be enforced until all claims from persons suffering damage due to an event have been finally settled and satisfied.

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 23, paragraph 1, have been finally settled and satisfied.

#### **Article 25 — Right of recourse of the International Fund for Civil Aviation Compensation**

1. The International Fund for Civil Aviation Compensation shall have a right of recourse against any person who has committed the act of unlawful interference. No such claim may be enforced until all claims from persons suffering damage due to an event have been finally settled and satisfied.

2. Subject to paragraph 1 of this Article, the International Fund for Civil Aviation Compensation shall have a right of recourse against the operator for compensation subject to the conditions set out in Article 23, provided that no such claim may be enforced until all claims made under Article 3, paragraph 1, and Article 23, paragraph 1, have been finally settled and satisfied.

3. 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 18, paragraph 2.

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

1. No right of recourse shall lie under Article 24, paragraph 2, or Article 25, paragraph 2, against an owner, lessor, or financier retaining title of or holding security in an aircraft, or against a manufacturer of an aircraft, its engines or component parts in relation to the approved design of an aircraft, its engines or components.
2. The rights of recourse under Article 24, paragraph 2, and Article 25, paragraph 2, shall not arise to the extent that the damage caused by an event could not reasonably have been covered by insurance.
3. An operator shall have no right of recourse in relation to any additional compensation for which it is liable under Article 23.
4. The International Fund for Civil Aviation Compensation shall not pursue any claim under Article 25, paragraph 2, if to do so could give rise to the application of Article 18, paragraph 3.

## **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 International Fund for Civil Aviation Compensation shall provide financial support to that operator. Such support may only be provided in respect of damage that would have fallen under the Convention if the State non-Party had been a State Party and 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 unless otherwise agreed by the Conference of Parties. The financial support shall not exceed the maximum amount for compensation set out in Article 18, paragraph 2. If the solvency of the operator liable is threatened even if support is given, such support shall only be given if the liable 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 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 of this Article shall not apply to an action against an individual who has intentionally committed an act of unlawful interference.]

### **Article 29 — Conversion of Special Drawing Rights**

The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value in a national currency shall be calculated in accordance with the method of valuation applied by the International Monetary Fund for its operations and transactions. The value in a national currency, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State to express in the national currency of the State Party as far as possible the same real value as the amounts in Article 4.

### **Article 30 — Review of limits**

1. Subject to paragraph 2 of this Article, the sums prescribed in Articles 4 and 18, paragraph 2, shall be reviewed by the Director of the International Fund, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in Article 29.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Director shall inform the Conference of Parties of a revision of the limits of liability. Any such revision shall become effective six months after the meeting of the Conference of Parties, unless a majority of the States Parties register their disapproval. The Director shall immediately notify all States Parties of the coming into force of any revision.

### **Article 31 — Forum**

1. Subject to paragraph 2 of this Article, actions for compensation under the provisions of this Convention may be brought only before the courts of the State Party in whose territory the damage occurred.

2. Where damage occurs in more than one State Party, actions under the provisions of this Convention may be brought only before the courts of the State Party the territory of which the aircraft was in or about to leave when the event occurred.

3. Without prejudice to paragraphs 1 and 2 of this Article, application may be made in any State Party for such provisional measures, including protective measures, as may be available under the law of that State.



### **Article 32 — Intervention by the International Fund**

1. Each State Party shall ensure that the International Fund has the right to intervene in proceedings brought against the operator in its courts.
2. Except as provided in paragraph 3 of this Article, the International Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or has not intervened.
3. If an action is brought against the operator in a State Party, each party to such proceedings shall be entitled to notify the International Fund of the proceedings. Where such notification has been made in accordance with the law of the court seised and in such time that the International Fund had time to intervene in the proceedings, the International Fund shall be bound by a judgement or decision in proceedings even if it has not intervened.

### **Article 33 — Recognition and enforcement of judgements**

1. Subject to the provisions of this Article, judgements entered by a competent court under Article 31 after trial, or by default, shall when they are enforceable in the State Party of that court be enforceable in any other State Party as soon as the formalities required by that State Party have been complied with.
2. The merits of the case shall not be reopened in any application for recognition or enforcement under this Article.
3. Recognition and enforcement of a judgement may be refused if:
  - (a) its recognition or enforcement would be manifestly contrary to public policy in the State Party where recognition or enforcement is sought;
  - (b) the defendant was not served with notice of the proceedings in such time and manner as to allow him or her to prepare and submit a defence;
  - (c) it is in respect of a cause of action which had already, as between the same parties, formed the subject of a judgement or an arbitral award which is recognised as final and conclusive under the law of the State Party where recognition or enforcement is sought;
  - (d) the judgement has been obtained by fraud of any of the parties; or
  - (e) the right to enforce the judgement is not vested in the person by whom the application is made.
4. Recognition and enforcement of a judgement may also be refused to the extent that the judgement awards damages, including exemplary or punitive damages, that do not compensate a third party for actual harm suffered.
5. Where a judgement is enforceable, payment of any court costs and other expenses incurred by the plaintiff, including interest recoverable under the judgement, shall also be enforceable.

**Article 34 — Regional and multilateral agreements  
on the recognition and enforcement of judgements**

1. States Parties may enter into regional and multilateral agreements regarding the recognition and enforcement of judgements consistent with the objectives of this Convention, provided that such agreements do not result in a lower level of protection for any third party or defendant than that provided for in this Convention.
2. States Parties shall inform each other, through the Depositary, of any such regional or multilateral agreements that they have entered into before or after the date of entry into force of this Convention.
3. The provisions of Chapter VII of this Convention shall not affect the recognition or enforcement of any judgement pursuant to such agreements.

**Article 35 — Period of Limitation**

1. The right to compensation under Article 3 shall be extinguished if an action is not brought within two years from the date of the event which caused the damage.
2. The right to compensation under Article 18 shall be extinguished if an action is not brought, or a notification pursuant to Article 32, paragraph 3, is not made, within two years from the date of the event which caused the damage.
3. The method of calculating such two-year period shall be determined in accordance with the law of the court seised of the case.

**Article 36 — Death of person liable**

In the event of the death of the person liable, an action for damages lies against those legally representing his or her estate and is subject to the provisions of this Convention.

*[Final Provisions to be inserted]*

**DRAFT CONVENTION ON COMPENSATION FOR DAMAGE TO  
THIRD PARTIES, RESULTING FROM ACTS OF UNLAWFUL  
INTERFERENCE INVOLVING AIRCRAFT**

**Chapter I**

Principles

**Article 1 — Definitions**

For the purposes of this Convention:

- (k) ~~a~~ —“An ~~act~~ act of unlawful interference” means an act which is defined as an offence in the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at ~~the~~The Hague on 16 December 1970, or the *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971, and any amendment in force at the time of the event.
- (l) ~~b~~ —An “event” occurs when damage ~~is caused by an aircraft in flight as a result of~~results from an act of unlawful interference involving an aircraft in flight.
- (m) ~~e~~ —An aircraft is considered to be “in flight” at any time from the moment when all its external doors are closed following embarkation or loading until the moment when any such door is opened for disembarkation or unloading.
- (n) ~~d~~ —“International flight” means any flight whose place of departure and whose intended destination are situated within the territories of two States, whether or not there ~~be~~is a break in the flight, or within the territory of one State if there is an ~~agreed~~intended stopping place in the territory of another State.
- (o) ~~e~~ —“Maximum mass” means the maximum certificated take-off mass of the aircraft, excluding the effect of lifting gas when used.
- (p) ~~f~~ —“Operator” means the person who ~~was making~~makes use of the aircraft ~~at the time the damage was caused~~, provided that if control of the navigation of the aircraft ~~was~~is retained by the person from whom the right to make use of the aircraft ~~was~~is derived, whether directly or indirectly, that person shall be considered the operator. A person shall be considered to be making use of an aircraft when he or she is using it personally or when his or her servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority. The operator shall not lose its status as operator by virtue of the fact that another person commits an act of unlawful interference.
- (q) ~~g~~ —“Person” means any natural or legal person, including a State.
- (r) ~~h~~ —“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 the authority to make and have significant roles in making binding decisions about how the whole of or a substantial part of the operator’s activities are to be managed or organized.
- (s) ~~i~~ —“State Party” means a State for which this Convention is in force.

- (t) ~~j)~~ “Third ~~Party~~party” means a person other than the operator, passenger or consignor or consignee of cargo; in the case of a collision, “third party” also means the operator, owner and crew of the other aircraft and the passenger or consignor or consignee of cargo on board the other aircraft.

## Article 2 — Scope

1. This Convention applies to damage to third parties which occurs in the territory of a State Party caused by an aircraft in flight on an international flight, as a result of an act of unlawful interference. This Convention shall also apply to such damage that occurs in a State non-~~party~~Party as provided for in Article 27.

2. If a State Party so declares to the Depositary, this Convention shall also apply to damage to third parties that occurs in the territory of that State Party which is caused by an aircraft in flight other than on an international flight, as a result of an act of unlawful interference.

### 4. For the purposes of this Convention:

(c) damage to a ship or aircraft in or above the High Seas and the Exclusive Economic Zone shall be regarded as damage occurring in the territory of the State in which it is registered; however, if the operator of the aircraft has its principal place of business in the territory of a State other than the State of Registry, the aircraft shall be regarded as having occurred in the territory of the State in which it has its principal place of business; and

(d) ~~3. For the purposes of this Convention a ship or aircraft in or above the High Seas including the Exclusive Economic Zone shall be regarded as part of the territory of the State in which it is registered. Drilling platforms and other installations~~ damage to a drilling platform or other installation permanently fixed to the soil in the Exclusive Economic Zone or the Continental Shelf shall be regarded as ~~part of~~ having occurred in the territory of the State Party which has jurisdiction over such platform or installation. ~~in accordance with international law, including the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.~~

### Option 1

4. This Convention shall not apply to damage caused by State aircraft. Aircraft used in military, customs and police services shall be deemed to be State aircraft.

### Option 2

4. This Convention shall not apply to damage caused by an aircraft operated directly by a State for non-commercial purposes in respect of its sovereign functions and duties.

## Chapter II

Liability of the ~~Operator~~operator and ~~Related Issues~~related issues

### Article 3 — Liability of the ~~Operator~~operator

1. The operator shall be liable to compensate for damage within the scope of this Convention upon

condition only that the damage was caused by an aircraft in flight.

2. There shall be no right to compensation under this Convention if the damage is not a direct consequence of the event giving rise thereto.
3. Damages due to death, bodily injury and mental injury shall be compensable. Damages due to mental injury shall be compensable only if caused by a ~~recognisable~~recognizable psychiatric illness resulting either from bodily injury or from direct exposure to the likelihood of imminent death or bodily injury.
4. Damage to property shall be compensable<sup>+</sup>.
5. Environmental damage shall be compensable, ~~insofar as~~in so far as such compensation is provided for under the law of the State in the territory of which the damage occurred.
6. No liability shall arise under this Convention for damage caused by a nuclear incident as defined in the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy or for nuclear damage as defined in the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, and any amendment or supplements to these Conventions in force at the time of the event.
7. Punitive, exemplary or any other non-compensatory damages shall not be recoverable.

#### Article 4 — Limit of ~~Operator~~operator's ~~Liability~~liability

1 The liability of the operator arising under Article 3 shall not exceed for ~~each~~an event the following limit based on the mass of the aircraft ~~and event~~involved:

- (a) ~~f~~a — 750 000 Special Drawing Rights for aircraft having a maximum mass of 500 kilogrammes or less;
- (b) ~~b~~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) ~~c~~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) ~~d~~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) ~~e~~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) ~~f~~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) ~~g~~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;

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<sup>+</sup> ~~The Final Clauses will need to make clear the relationship between this Convention and other international legal instruments with reference to claims for property damage.~~

- (h) ~~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) ~~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) ~~j~~ — 700 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 000 kilogrammes.†

2 If an event involves two or more aircraft operated by the same operator, the limit of liability in respect of the aircraft with the highest maximum mass shall apply.

### **Article 5 — Events involving two or more operators or other persons**

1. Where two or more aircraft have been involved in an event causing damage to which this Convention applies, the operators of those aircraft are jointly and severally liable for any damage suffered by a third party.
2. If two or more operators are so liable, the recourse between them shall depend on their respective limits of liability and their contribution to the damage.
3. No operator shall be liable for a sum in excess of the limit, if any, applicable to its liability.

### **Article 6 — Advance ~~Payments~~ payments**

If required by the law of the State where the damage occurred, the operator shall make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, in order to meet their immediate economic needs. Such advance payments shall not constitute a recognition of liability and may be offset against any amount subsequently ~~paid~~ payable as damages by the operator.

### **Article 7 — Insurance**

1. Having regard to Article 4, States Parties shall require their operators to maintain adequate insurance or guarantee covering their liability under this Convention. If such insurance or guarantee is not available to an operator on a per event basis, the operator may satisfy this obligation by insuring on an aggregate basis. States Parties shall not require their operators to maintain such insurance or guarantee to the extent that they are covered by a decision made pursuant to Article 11, paragraph 1(e) or Article 18, paragraph 3.
2. An operator may be required by the State Party in or into which it operates to furnish evidence that it maintains adequate insurance or guarantee. In doing so, the State Party shall apply the same criteria to operators of other ~~State~~ States Parties as it applies to its own operators. Proof that an operator is covered by a decision made pursuant to Article 11, paragraph 1(e) or Article 18, paragraph 3, shall be sufficient evidence for the purpose of this paragraph.

### Chapter III

The ~~Supplementary~~ International Fund for Civil Aviation Compensation ~~Mechanism~~<sup>2</sup>

#### Article 8 — The constitution and objectives of the ~~Supplementary~~ International Fund for Civil Aviation Compensation ~~Mechanism~~

1. An organization named the ~~Supplementary~~ International Fund for Civil Aviation Compensation ~~Mechanism~~, hereinafter referred to as “the International Fund”, is established by this Convention. The ~~Supplementary Compensation Mechanism~~ International Fund shall be made up of a Conference of Parties, consisting of the States Parties, and a Secretariat, headed by a Director.
2. The ~~Supplementary Compensation Mechanism~~ International Fund shall have the following purposes:
  - (d) ~~a)~~—to provide compensation for damage according to Article 18, paragraph 1, pay damages according to Article 18, paragraph 3, and provide financial support under Article 27;
  - (e) ~~b)~~—to make advance payments under Article 19, paragraph 1, and to take reasonable measures after an event to minimize or mitigate damage caused by an event, according to Article 19, paragraph 2; and
  - (f) ~~e)~~—to perform other functions ~~directly~~ compatible with these purposes.
3. The ~~Supplementary Compensation Mechanism~~ International Fund shall have its seat at the same place as the International Civil Aviation Organization.
4. The ~~Supplementary Compensation Mechanism~~ International Fund shall have international legal personality.
5. In each State Party, the ~~Supplementary Compensation Mechanism~~ International Fund shall be recognized as a legal person capable under the laws of that State of assuming rights and obligations, entering into contracts, acquiring and disposing of movable and immovable property and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director of the ~~Supplementary Compensation Mechanism~~ International Fund as the legal representative of the Mechanism.
6. The ~~Supplementary Compensation Mechanism~~ International Fund shall enjoy tax exemption and such other privileges as are agreed with the host State. ~~The funds of the Supplementary Compensation Mechanism~~ Contributions to the International Fund and its funds [, and any proceeds from them,] shall be exempted from tax in all States Parties.
7. The ~~Supplementary Compensation Mechanism~~ International Fund shall be immune from legal and administrative actions, except in respect of actions relating to credits obtained ~~according to~~ in accordance with Article 17 or to compensation payable ~~according to~~ in accordance with Article 18. The Director of the ~~Supplementary Compensation Mechanism~~ International Fund shall be immune from legal and administrative actions in relation to acts performed by him or her in his or her official capacity. The immunity of the Director may be waived by the Conference of Parties. The other personnel of the

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<sup>2</sup>—~~The name of the Mechanism has not yet been decided.~~

~~Supplementary Compensation Mechanism~~ International Fund shall be immune from legal and administrative actions in relation to acts performed by them in their official capacity. The immunity of the other personnel may be waived by the Director.

8. No State Party [or the International Civil Aviation Organization] shall be liable for acts, omissions or obligations of the International Fund.

## Article 9 — The Conference of Parties

The Conference of Parties shall:

- (l) ~~a)~~ determine its own rules of procedure and, at each meeting, elect its officers;
- (m) ~~b)~~ establish the ~~regulations~~ Regulations of the ~~Supplementary Compensation Mechanism~~ International Fund and the Guidelines for Compensation;
- (n) ~~e)~~ appoint the Director and determine the terms of his or her employment and, to the extent this is not delegated to the Director, the terms of employment of the other employees of the ~~Supplementary Compensation Mechanism~~ International Fund;
- (o) ~~d)~~ delegate to the Director, in addition to powers given in Article 11, such powers and authority as may be necessary or desirable for the discharge of the duties of the ~~Supplementary Compensation Mechanism~~ International Fund and revoke or modify such delegations of powers and authority at any time;
- (p) ~~e)~~ decide the period for, and the amount of, initial contributions and fix the contributions to be made to the ~~Supplementary Compensation Mechanism~~ International Fund for each year until the next meeting of the Conference of Parties;
- (q) ~~f)~~ in the case where the aggregate limit on contributions ~~according to~~ under Article 14, paragraph 3, has been applied, determine the global amount to be disbursed to the victims of all events occurring during the time period with regard to which Article 14, paragraph 3, was applied;
- (r) ~~g)~~ appoint the auditors;
- (s) ~~h)~~ vote budgets and determine the financial arrangements of the ~~Supplementary Compensation Mechanism~~ International Fund including the Guidelines on Investment, review expenditures, approve the accounts of the ~~Supplementary Compensation Mechanism~~ International Fund, and consider the reports of the auditors and the comments of the Director thereon;
- (t) ~~i)~~ examine and take appropriate action on the reports of the Director, including reports on claims for compensation, and decide on any matter referred to it by the Director;
- (u) ~~j)~~ decide whether to apply Article 27 and set the maximum amount of such assistance and the further conditions for it, if necessary;
- (v) ~~k)~~ determine which States ~~non-party~~ Party and which ~~inter-governmental~~ intergovernmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Conference of Parties and subsidiary bodies;



- ~~l)~~ ~~h)~~—establish any body necessary to assist it in its functions, including, if appropriate, an Executive Committee consisting of representatives of States Parties, and define the powers of such body;
- m) decide whether to obtain credits and grant security for credits obtained pursuant to Article 17, paragraph 4;
- n) as appropriate, enter into arrangements on behalf of the ~~Supplementary Compensation Mechanism~~ International Fund with the International Civil Aviation Organisation and other international bodies; and
- o) consider any matter relating to ~~the~~ this Convention that a State Party or the International Civil Aviation ~~Organisation~~ Organization has referred to it.

### Article 10 — The meetings of the Conference of Parties

1. The Conference of Parties shall meet once a year, unless a Conference of Parties decides to hold its next meeting at another interval. The Director shall convene the meeting at a suitable time and place.
2. An extraordinary meeting of the Conference of Parties shall be convened by the Director:
  - ~~(a) a)~~—at the request of no less than one-fifth of the total number of States Parties;
  - ~~(b) b)~~—if an aircraft has caused damage falling within the scope of this Convention, and the damages are likely to exceed the applicable limit of liability according to Article 4 of ~~the~~ this Convention by more than 50 ~~percent~~ per cent of the available funds of the ~~Supplementary Compensation Mechanism~~ International Fund;
  - ~~(c) c)~~—if the aggregate limit on contributions according to Article 14, paragraph 3, has been reached; or
  - ~~(d) d)~~—if the Director has exercised the authority according to Article 11, paragraph 1 ~~(d)~~ or ~~(e)~~.
3. All States Parties shall have an equal right to be represented at the meetings of the Conference of Parties and each State Party shall be entitled to one vote. The International Civil Aviation ~~Organisation~~ Organization shall have the right to be represented, without voting rights, at the meetings of the Conference of Parties.
4. A majority of the States Parties is required to constitute a quorum for the meetings of the Conference of Parties. Decisions of the Conference of Parties shall be taken by a majority vote of the ~~votes cast~~ States Parties present and voting. Decisions under Article 9, subparagraphs ~~(a), (b), (c), (d), (e), (j) and (l)~~ and (m) shall be taken by a two-third majority ~~consisting of two-thirds~~ of the ~~votes~~ States Parties present and voting.

### Article 11 — The Secretariat and the Director

1. The ~~Supplementary Compensation Mechanism~~ International Fund shall have a ~~secretariat~~ Secretariat led by a Director. The Director shall hire personnel, supervise the ~~secretariat~~ Secretariat and direct the day-to-day activities of the ~~Supplementary Compensation~~

~~Mechanism~~ International Fund. In addition, the Director:

- (a) ~~a)~~ shall report to the Conference of Parties on the functioning of the ~~Supplementary Compensation Mechanism~~ International Fund and present its accounts and a budget;
- (b) ~~b)~~ shall collect all contributions payable under this Convention, administer and invest the funds of the ~~Supplementary Compensation Mechanism~~ International Fund in accordance with the Guidelines on Investment, maintain accounts for the funds, and assist in the auditing of the accounts and the funds in accordance with Article 17;
- (c) ~~c)~~ shall handle claims for compensation in accordance with the Guidelines for Compensation, and prepare a report for the Conference of Parties on how each has been handled;
- (d) ~~d)~~ may decide to temporarily take action under Article 19 until the next meeting of the Conference of Parties;
- (e) ~~e)~~ shall decide to temporarily take action under Article 18, paragraph 3, until the next meeting of the Conference of Parties called in accordance with Article 10, paragraph 2 (d); ~~and~~
- (f) shall review the sums prescribed under Articles 4 and 18 and inform the Conference of Parties of any revision to the limits of liability in accordance with Article 30; and
- (g) ~~f)~~ shall discharge any other duties assigned to him or her by or under this Convention and decide any other matter delegated by the Conference of Parties.

2. The Director and the other personnel of the Secretariat shall not seek or receive instructions in regards to the discharge of their responsibilities from any authority external to the ~~Supplementary Compensation Mechanism~~ International Fund. Each State Party undertakes to fully respect the international character of the responsibilities of the personnel and not seek to influence any of its nationals in the discharge of their responsibilities.

## Article 12 — Contributions to the ~~Supplementary Compensation Mechanism~~ International Fund

1. \_\_\_\_\_ The contributions to the ~~Supplementary Compensation Mechanism~~ International Fund shall be:

- (c) ~~(a)~~ the mandatory amounts collected in respect of each passenger and each {tonne} of cargo departing on an international commercial flight from an airport in a State Party. Where a State Party has made a declaration under Article 2, paragraph 2, such amounts shall also be collected in respect of each passenger and each {tonne} of cargo departing on a commercial flight between two airports in that State Party; and
- (d) ~~(b)~~ such amounts as the Conference of Parties may specify in respect of general aviation or any sector thereof.

The operator shall collect these amounts and remit them to the ~~Supplementary Compensation Mechanism~~<sup>3</sup> International Fund.

<sup>3</sup> ~~—It needs to be considered whether, for the purpose of collection and remittance of contributions, the word “operator” sufficiently covers the concept of “carrier”.~~

2. Contributions collected in respect of each passenger and each tonne of cargo shall not be collected more than once in respect of each journey, whether or not that journey includes one or more stops or transfers.

**Article 13 — Basis for fixing the ~~Contributions~~<sup>4</sup> contributions**

1. Contributions shall be fixed having regard to the following principles:
  - (e) ~~a~~—the objectives of the ~~Supplementary Compensation Mechanism~~ International Fund should be efficiently achieved;
  - (f) ~~b~~—competition within the air transport sector should not be distorted;
  - (g) ~~e~~—the competitiveness of the air transport sector in relation to other modes of transportation should not be adversely affected; and
  - (h) ~~d~~—in relation to general aviation, the costs of collecting contributions shall not be excessive in relation to the amount of such contributions, taking into account the diversity that exists in this sector.
2. The Conference of Parties shall fix contributions in a manner that does not discriminate between States, operators, passengers and consignors or consignees of cargo ~~on the basis of nationality~~.
3. On the basis of the budget drawn up according to Article 11, paragraph 1 (a), the contributions shall be fixed having regard to:
  - (g) ~~a~~—the upper limit for compensation set out in Article 18, paragraph 2;
  - (h) ~~b~~—the need for reserves where Article 18, paragraph 33, is applied;
  - (i) ~~e~~—claims for compensation, measures to minimize or mitigate damages and financial assistance under ~~the~~ this Convention;
  - (j) ~~d~~—the costs and expenses of administration, including the costs and expenses incurred by meetings of the Conference of Parties;
  - (k) ~~e~~—the income of the ~~Supplementary Compensation Mechanism~~ International Fund; and
  - (l) ~~f~~—the availability of additional funds for compensation pursuant to Article 17, paragraph 4.

**Article 14 — Period and Rate of ~~Contributions~~ contributions**

1. At its first meeting, the Conference of Parties shall decide the period and the rate of contributions in respect of passengers and cargo departing from a State Party to be made from the time of entry into

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<sup>4</sup> ~~The final clauses are likely to provide a threshold for the entry into force defined in order to ensure that the number of passengers and the amounts of cargo is sufficient for the financial viability of the Supplementary Compensation Mechanism.~~

force of the Convention for that State Party. If a State Party makes a declaration under Article 2, paragraph 2, initial contributions shall be paid in respect of passengers and cargo departing on flights covered by such declaration from the time it takes effect. The period and the rate shall be equal for all States Parties.

2. Contributions shall be fixed in accordance with paragraph 1 so that the funds available amount to ~~at least [25 %]~~ 100 % of the limit of compensation set out in Article 18, paragraph 2, within four years. If the funds available are deemed sufficient in relation to the likely compensation or financial assistance to be provided in the foreseeable future and amount to ~~at least [50 %]~~ 100 % of that limit, the Conference of Parties may decide that no further contributions shall be made until the next meeting of the Conference of Parties, provided that both the period and rate of contributions shall be applied in respect of passengers and cargo departing from a State in respect of which ~~the~~ this Convention subsequently enters into force.

3. The total amount of contributions collected by the ~~Supplementary Compensation Mechanism~~ International Fund within any period of two consecutive calendar years shall not exceed three times the maximum amount of compensation according to Article 18, paragraph 2, of this Convention.

4. ~~The~~ Subject to Article 27, the contributions collected by an operator in respect of a State Party may not be used to provide compensation for an event which occurred prior to the entry into force of ~~the~~ this Convention for that State Party.

#### Article 15 — Collection of the Contributions

1. The Conference of Parties shall establish in the Regulations a transparent, accountable and cost-effective mechanism supporting the collection ~~and~~ remittal and recovery of contributions. When establishing the mechanism, the Conference of Parties shall endeavour not to impose undue burdens on operators and contributors to the funds of the International Fund. Contributions which are in arrears shall bear interest as provided for in the Regulations.

2. Where an operator does not collect or does not remit contributions it has collected to the ~~Supplementary Compensation Mechanism, the Director~~ International Fund, the International Fund shall take appropriate measures against such operator with a view to the recovery of the amount due. Each State Party shall ensure that an action to recover the amount due may be taken within its jurisdiction, notwithstanding in which State Party the debt actually accrued.

#### Article 16 — Duties of States Parties

1. Each State Party shall take appropriate measures, including imposing such sanctions as it may deem necessary, to ensure that an operator fulfils its obligations to collect and remit contributions to the ~~Supplementary Compensation Mechanism~~ International Fund.

2. Each State Party shall ensure that the following information is provided to the ~~Supplementary Compensation Mechanism~~ International Fund:

~~(d)~~ ~~a)~~ — the number of passengers and quantity of cargo departing on international commercial flights from that State Party;

~~(e)~~ ~~b)~~ — such information on general aviation flights as the Conference of Parties may decide; and

(f) ~~—e)~~ the identity of the operators performing such flights.

Where a State Party has made a declaration under Article 2, paragraph 2, it shall ensure that information detailing the number of passengers and quantity of cargo departing on commercial flights between two airports in that State Party, such information on general aviation flights as the Conference of Parties may decide, and the identity of the operators performing such flights, ~~is~~ are also provided. In each case, such statistics shall be *prima facie* evidence of the facts stated therein.

3. Where a State Party does not fulfil its obligations under paragraph 2 of this Article and this results in a ~~loss~~ shortfall in contributions for the ~~Supplementary Compensation Mechanism~~ International Fund, the State Party shall be liable for such ~~loss~~ shortfall. The Conference of Parties shall, on recommendation by the Director, decide whether the State Party shall pay for such ~~loss~~ shortfall.

#### Article 17 — The funds of the ~~Supplementary Compensation Mechanism~~ International Fund

1. The funds of the ~~Supplementary Compensation Mechanism~~ International Fund may only be used for the purposes set out in Article 8, paragraph 2.

2. The ~~Supplementary Compensation Mechanism~~ International Fund shall exercise the highest degree of prudence in the management and preservation of its funds. The funds shall be preserved in accordance with the Guidelines on Investment determined by the Conference of Parties under Article 9, paragraph (h). Investments may only be made in ~~State~~ States Parties.

3. Accounts shall be maintained for the funds of the ~~Supplementary Compensation Mechanism~~ International Fund. The ~~Auditors~~ auditors of the ~~Supplementary Compensation Mechanism~~ International Fund shall review the accounts and report on them to the Conference of Parties.

4. Where the ~~Supplementary Compensation Mechanism~~ International Fund 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.

### Chapter IV

Compensation from the ~~Supplementary Compensation Mechanism~~ International Fund

#### Article 18 — Compensation

1. The ~~Supplementary Compensation Mechanism~~ International Fund shall, under the same conditions as are applicable to the liability of the operator, provide compensation to persons suffering damage in the territory of a State Party. Where the damage is caused by an aircraft in flight on a flight other than an international flight, compensation shall only be provided if that State Party has made a declaration according to Article 2, paragraph 2. Compensation shall only be paid to the extent that the total amount of damages exceeds the limits according to Article 4.

2. The maximum amount of compensation available from the ~~Supplementary Compensation Mechanism~~ International Fund shall be ~~€3 000 000 000~~ Special Drawing Rights for each event. Payments made according to paragraph 3 of this Article and distribution of amounts recovered according to Article

25, paragraph 2, shall be in addition to the maximum amount for compensation.

3. If and to the extent that the Conference of Parties determines and for the period that it so determines that insurance in respect of the damage covered by ~~the~~this Convention is wholly or partially unavailable with respect to amounts of coverage or the risks covered, or is only available at a cost incompatible with the continued operation of air transport, ~~whether generally or in relation to a particular operator following an event affecting that operator, the Supplementary Compensation Mechanism shall generally, the International Fund may, at its discretion,~~ in respect of future events causing damage compensable under this Convention, pay the damages for which the affected ~~operator or~~ operators are liable ~~according to~~under Articles 3 and 4 and such payment shall discharge such liability of the affected ~~operator or~~ operators. The Conference of Parties ~~may~~shall decide on a fee, the payment of which by the affected ~~operator or~~ operators, for the period covered, shall be a condition for the ~~Supplementary Compensation Mechanism~~International Fund taking the action specified in this paragraph.

#### Article 19 — Advance ~~Payments~~payments and other measures

1. Subject to the decision of the Conference of Parties and in accordance with the Guidelines for Compensation, the ~~Supplementary Compensation Mechanism~~International Fund may make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, in order to meet their immediate economic needs. Such advance payments shall not constitute recognition of a right to compensation and may be offset against any amount subsequently ~~paid~~payable by the ~~Supplementary Compensation Mechanism~~International Fund.

2. Subject to the decision of the Conference of Parties and in accordance with the Guidelines for Compensation, the ~~Supplementary Compensation Mechanism~~International Fund may also take other measures to minimize or mitigate damage caused by an event.

### Chapter V

Special ~~Provisions~~provisions on ~~Compensation~~compensation and ~~Recourse~~recourse

#### Article 20 — ~~Acts or omissions of victims~~Exoneration

If the operator or ~~Supplementary Compensation Mechanism~~the International Fund proves that the damage was caused, or contributed to, by an act or omission of a claimant, or the person from whom he or she derives his or her rights, done with intent or recklessly and with knowledge that damage would probably result, the operator or the ~~Supplementary Compensation Mechanism~~International Fund shall be wholly or partly exonerated from its liability to that claimant to the extent that such act or omission caused or contributed to the damage.

#### Article 21 — Court ~~Costs~~costs and other ~~Expenses~~expenses

1. \_\_\_\_\_ The limits prescribed in Articles 4 and 18, paragraph 2, shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the ~~plaintiff~~claimant, including interest. ~~The foregoing provision~~

2. Paragraph 1 shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the operator has offered in writing to the ~~plaintiff~~claimant within a period of six months from the date of the ~~occurrence~~event causing the damage, or before the commencement of the action ~~if that, whichever is the later than the expiry of such period.~~

## Article 22 — ~~Reduced Compensation~~Priority of compensation

### Option 1

If the total amount of the damages to be paid exceeds the amounts available according to Articles 4 and 18, paragraph 2, the total amount shall be awarded preferentially to meet proportionately the claims in respect of: firstly, death; secondly, bodily injury; and thirdly, mental injury, in the first instance. The remainder, if any, of the total amount ~~distributable~~payable shall be awarded proportionately among the claims in respect of other damage.

### Option 2

If the total amount of the damages to be paid exceeds the amounts available according to Articles 4 and 18, paragraph 2, the total amount shall be awarded preferentially to meet proportionately the claims in respect of death, bodily injury and mental injury in the first instance. The remainder, if any, of the total amount payable shall be awarded proportionately among the claims in respect of other damage.

## Article 23 – Additional Compensation

1. To the extent the total amount of damages exceeds the combined limits applicable according to Articles 4 and 18, paragraph 2, a person who has suffered damage may, in accordance with this Article, claim additional 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:

(c) ~~— a) —~~ falls within the regulatory responsibility and actual control of the operator; and

(d) ~~— b) —~~ is, other than the act of unlawful interference, the primary cause of the event.

3. Without prejudice to paragraph ~~4,4 of this Article~~, 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 applicable 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~~Depository, an operator shall conclusively be deemed to not have been reckless in respect of an event causing damage within the territory of that State Party if, as regards the relevant area of security, it proves that a system to ensure compliance with such commonly applied standard as has been specified by that State Party in its declaration has been established and audited. The existence of such a system and completion of such an audit shall not be conclusive if, prior to the event, the competent authority in that State Party has issued a finding that the operator has not met all applicable security requirements established by that State and the finding remains valid at the time of the event.

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 servants and agents has been established by its senior management and that such system [requires/provides for] [with regard to the security aspect and] a prompt response to security information concerning such servants and agents and was applied in relation to the servant or agent [who committed the act].

#### **Article 24 — Right of ~~Recourse~~recourse of the ~~Operator~~operator**

1. The operator liable for damage shall have a right of recourse against any person who has committed the act of unlawful interference. No such claim may be enforced until all claims from persons suffering damage due to an event have been finally settled and satisfied.

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 23, paragraph 1, have been finally settled and satisfied.

#### **Article 25 — Right of ~~Recourse~~recourse of the ~~Supplementary~~International Fund for Civil Aviation Compensation ~~Mechanism~~**

1. The ~~Supplementary~~International Fund for Civil Aviation Compensation ~~Mechanism~~ shall have a right of recourse against any person who has committed the act of unlawful interference. No such claim may be enforced until all claims from persons suffering damage due to an event have been finally settled and satisfied.

2. Subject to paragraph 1 of this Article, the ~~Supplementary~~International Fund for Civil Aviation Compensation ~~Mechanism~~ shall have a right of recourse against the operator for compensation subject to the conditions set out in Article 23, provided that no such claim may be enforced until all claims made under Article 3, paragraph 1, and Article 23, paragraph 1, have been finally settled and satisfied.

3. 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 18, paragraph 2.

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

1. No right of recourse shall lie under Article 24, paragraph ~~22~~22, or Article 25, paragraph ~~22~~22, against an owner, lessor, or financier retaining title of or holding security in an aircraft, or against a manufacturer of an aircraft, its engines or component parts in relation to the approved design of an aircraft, its engines or components.

2. The rights of recourse under Article 24, paragraph ~~22~~22, and Article 25, paragraph ~~22~~22, shall not arise to the extent that the damage caused by an event could not reasonably have been covered by insurance.

3. An operator shall have no right of recourse in relation to any additional compensation for which it is liable under Article 23.

4. The ~~Supplementary~~International Fund for Civil Aviation Compensation ~~Mechanism~~ shall not



pursue any claim under Article 25, paragraph 2 if to do so could give rise to the application of Article 18, paragraph 3.

## Chapter VI

Assistance in case of events in States non-party Party

### Article 27 — Assistance in case of events in States non-party 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 Party, the Conference of Parties may decide, on a case by case basis, that the ~~Supplementary~~ International Fund for Civil Aviation ~~Compensation-Mechanism~~ shall provide financial support to that operator. Such support may only be provided in respect of damage that would have fallen under the Convention if the State non-party Party had been a State Party and 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 unless otherwise agreed by the Conference of ~~the~~ Parties. The financial support shall not exceed the maximum amount for compensation set out in Article 18, paragraph 2. If the solvency of the operator liable is threatened even if support is given, such support shall only be given if the liable operator has sufficient arrangements protecting its solvency.

## Chapter VII

Exercise of ~~Remedies~~ remedies and ~~Related Provisions~~ related provisions

### Article 28 — Exclusive ~~Remedy~~ 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 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 of this Article shall not apply to an action against an individual who has intentionally committed an act of unlawful interference. ¶

### Article 29 — Conversion of Special Drawing Rights

The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value in a national currency shall be calculated in accordance with the method of valuation applied by the International Monetary Fund for its operations and transactions. The value in a national currency, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by

that State to express in the national currency of the State Party as far as possible the same real value as the amounts in Article 4.

### Article 30 — Review of ~~Limits~~limits

1. Subject to paragraph 2 ~~below of this Article~~, the sums prescribed in Articles 4 and ~~48~~18, ~~paragraph 2~~, shall be reviewed by the Director ~~of the International Fund~~, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in Article 29.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Director shall inform the Conference of Parties of a revision of the limits of liability. Any such revision shall become effective six months after the meeting of the Conference of Parties, unless a majority of the States Parties register their disapproval. The Director shall immediately notify all States Parties of the coming into force of any revision.

### Article 31 — Forum

1. Subject to paragraph 2 of this Article, actions for compensation under the provisions of this Convention may be brought only before the courts of the State Party ~~where~~in whose territory the damage occurred.

2. Where damage occurs in more than one State Party, actions under the provisions of this Convention may be brought only before the courts of the State Party the ~~territorial airspace~~territory of which the aircraft was in or about to leave when the event occurred.

3. Without prejudice to paragraphs 1 and 2 of this Article, application may be made in any State Party for such provisional measures, including protective measures, as may be available under the law of that State.

### Article 32 — Intervention by the ~~Supplementary Compensation Mechanism~~International Fund

1. Each State Party shall ensure that the ~~Supplementary Compensation Mechanism~~International Fund has the right to intervene in proceedings brought against the operator in its courts.

2. Except as provided in paragraph ~~3, the Supplementary Compensation Mechanism~~3 of this Article, the International Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or has not intervened.

3. If an action is brought against the operator in a State Party, each party to such proceedings shall be entitled to notify the ~~Supplementary Compensation Mechanism~~International Fund of the proceedings. Where such notification has been made in accordance with the law of the court ~~seized~~seised and in such time that the ~~Supplementary Compensation Mechanism~~International Fund had time to intervene ~~to~~in the proceedings, the ~~Supplementary Compensation Mechanism~~International Fund shall be bound by a judgement or decision in proceedings even if it has not intervened.

**Article 33 — Recognition and ~~Enforcement~~enforcement of ~~Judgements~~judgements**

1. Subject to the provisions of this Article, judgements entered by a competent court under Article 31 after trial, or by default, shall when they are enforceable in the State Party of that court be enforceable in any other State Party as soon as the formalities required by that State Party have been complied with.
2. The merits of the case shall not be reopened in any application for recognition or enforcement under this Article.
3. Recognition and enforcement of a judgement may be refused if:
  - ~~(f) a)~~ — its recognition or enforcement would be manifestly contrary to public policy in the State Party where recognition or enforcement is sought;
  - ~~(g) b)~~ — the defendant was not served with notice of the proceedings in such time and manner as to allow him or her to prepare and submit a defence;
  - ~~(h) e)~~ — it is in respect of a cause of action which had already, as between the same parties, formed the subject of a judgement or an arbitral award which is recognised as final and conclusive under the law of the State Party where recognition or enforcement is sought;
  - ~~(i) d)~~ — the judgement has been obtained by fraud of any of the parties; or
  - ~~(j) e)~~ — the right to enforce the judgement is not vested in the person by whom the application is made; ~~or~~
  - ~~f) — the ground of refusal has been notified, before the occurrence of an event, to the Depository by the State Party where recognition or enforcement is sought.~~
4. Recognition and enforcement of a judgement may also be refused to the extent that the judgement awards damages, including exemplary or punitive damages, that do not compensate a third party for actual harm suffered.
5. Where a judgement is enforceable, payment of any ~~costs~~court costs and other expenses incurred by the plaintiff, including interest recoverable under the judgement, shall also be enforceable.

**Article 34 — Regional and multilateral agreements  
on the recognition and enforcement of judgements**

1. ~~State~~States Parties may enter into regional and multilateral agreements regarding the recognition and enforcement of judgements consistent with the objectives of this Convention, provided that such agreements do not result in a lower level of protection for any third party or defendant than that provided for in this Convention.
2. ~~State~~States Parties shall inform each other, through the Depository, of any such regional or multilateral agreements that they have entered into before or after the date of entry into force of this Convention.
3. The provisions of Chapter VII of this Convention shall not affect the recognition or enforcement of any judgement pursuant to such agreements.

### Article 35 — Period of Limitation

1. The right ~~of~~to compensation ~~according to~~under Article 3 shall be extinguished if an action is not brought within ~~three~~two years from the date of the event which caused the damage.
2. The right ~~of~~to compensation ~~according to~~under Article 18 shall be extinguished if an action is not brought, or a notification pursuant to Article 32, paragraph 3, is not made, within ~~three~~two years from the date of the event which caused the damage.
3. The method of calculating such ~~three~~two-year period shall be determined ~~by~~in accordance with the law of the court ~~seized~~seised of the case.

### Article 36 — Death of ~~Person Liable~~person liable

In the event of the death of the person liable, an action for damages lies against those legally representing his or her estate and is subject to the provisions of this Convention.

## ~~CHAPTER VIII~~

### ~~Application of the Convention~~

#### ~~Article 37 — State Aircraft~~

~~This Convention shall not apply to damage caused by state aircraft. Aircraft used in military, customs and police services shall be deemed to be state aircraft.~~

*[Final Provisions to be inserted]*

— END —