



LC/SC-MOT/2

International Civil Aviation Organization

SPECIAL SUB-COMMITTEE OF THE LEGAL COMMITTEE FOR THE MODERNIZATION OF THE TOKYO CONVENTION INCLUDING THE ISSUE OF UNRULY PASSENGERS

SECOND MEETING

Montréal, 3–7 December 2012

REPORT

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PART I

INTRODUCTION

1. PLACE AND DURATION

1.1 The second meeting of the Sub-Committee was held in Montréal from 3 to 7 December 2012.

2. OPENING ADDRESS

2.1 The Secretary General of the International Civil Aviation Organization (ICAO), Mr. Raymond Benjamin, opened the meeting and, on his behalf and on behalf of the President of the Council, welcomed all participants. He thanked the Chairperson, Ms. Siew Huay Tan, for ably steering the work of the Sub-Committee, and the Rapporteur, Mr. Alejandro Piera, for his report that has assisted the Sub-Committee in its work. The Secretary General noted that while a number of measures that could assist in curbing the growing trend of unruly behaviour aboard aircraft were identified during the last meeting of the Sub-Committee, a second meeting was considered necessary to allow many delegations more time to collect information and data, and to undertake consultation within their own States and with outside parties, with a view to making such information and guidance available at this meeting. He stressed the importance of the Sub-Committee's task, namely, to consider whether it is necessary or not to amend the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* signed in Tokyo in 1963, with specific attention to the acts of unruly passengers on board aircraft and, if found necessary, to recommend the text for the amendments accordingly.

3. ATTENDANCE

3.1 The meeting was attended by 20 members of the Sub-Committee and observers from 3 States and 3 international organizations. The Chairperson informed the meeting that Kuwait had been included as a member by the Acting Chairperson of the Legal Committee for the purpose of ensuring adequate geographical representation in the Sub-Committee. Colombia and Indonesia as well as the International Union of Aviation Insurers, were, at their request, invited by the Sub-Committee to attend the meeting. The list of participants of the Sub-Committee is shown in **Appendix 1** hereto.

4. OFFICERS

4.1 The Chairperson of the meeting was Ms. S. H. Tan (Singapore). The Secretary was Mr. J. Augustin, Acting Director of the Legal Affairs and External Relations Bureau. Dr. J. Huang, Senior Legal Officer, acted as his Deputy. The Assistant Secretaries were Mr. A. Opolot and Ms. M. Weinstein, Legal Officers. Other officials of the Organization also provided services to the Sub-Committee.

5. DOCUMENTATION

5.1 The Order of Business for the first meeting is set out in **Appendix 2**, and a list of documents presented to the Sub-Committee is set out in **Appendix 3**.

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PART II

DISCUSSIONS OF THE SUB-COMMITTEE

6. EXTENT OF MODERNIZATION OF THE TOKYO CONVENTION

6.1 The Sub-Committee discussed the need for and extent of the modernization of the Tokyo Convention taking into consideration LC/SC-MOT/2-WP/1, WP/2, WP/3, WP/4, WP/5 (which were presented at the commencement of the meeting) and Flimsy No. 1 (which was presented later and dealt with in detail at Section 7 of this report). With respect to the form of the amendment, it was generally agreed that the Convention did not require a complete overhaul and that the modernization efforts be restricted to addressing the unruly passenger problem in the form of an amending protocol. To that end, some member delegations expressed the view that the draft protocol presented in Flimsy No. 1 was a useful starting point.

6.2 One member delegation, supported by several others, proposed that the modernization efforts extend to updating the definitions in the Tokyo Convention citing, for example, International Air Transport Association's (IATA) proposal in LC/SC-MOT/2-WP/5 with regard to expanding the temporal scope of "in-flight" to reflect the current situation in air transport and to be consistent with the definition in the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (Beijing Convention).

6.3 One member delegation, while recognizing the need for a protocol to target the deficiencies of the Tokyo Convention, sought clarification from IATA as to what percentage of its statistics on unruly incidents pertain specifically to international flights. IATA agreed to revert to the Sub-Committee with clarification on this matter. Two member delegations questioned the usefulness of statistics given that many airlines do not report unruly incidents. One member delegation, supported by two others, queried whether the draft protocol could address the issue of restitution to airlines which have to make forced landings in order to deliver or disembark unruly passengers.

6.4 Another member delegation stated that it was not yet convinced of the necessity for amending the Convention, averring that more information was required on what obstacles States have encountered in establishing jurisdiction over conduct aboard transnational flights, in defining and punishing within their jurisdictions criminal or administrative offences constituting unruly or disruptive behavior, or on other practical issues they face in prosecuting such activity. Another member delegation agreed that it would be helpful for more States to elaborate on the obstacles they are trying to overcome through amending the Convention.

7. CONSIDERATION OF FLIMSY NO. 1

7.1 The Chairperson summarized the draft protocol presented in Flimsy No. 1 as generally reflecting the views of the Sub-Committee emanating from the first meeting. The draft protocol maintained the terms used in the Tokyo Convention such as the State of "registration", addressed the jurisdictional gaps identified, and provided for the establishment of jurisdiction over the acts or over the serious offences, which subject the unruly person concerned to disembarkation or delivery respectively. As noted in the Flimsy, the purpose of the proposed new Article 8 (1 *bis*) was to list a number of less serious offences or acts, which would be subject to the optional jurisdiction of the State of landing, the

State of the operator, the State of nationality, and the State of habitual residence, while the purpose of the proposed new Article 9 (1 *bis*) was to list the serious offences over which the mandatory jurisdiction of the State of landing and the State of the operator should be established. The draft protocol did not provide for a revision of the standard of the immunity in the existing Article 10 of the Tokyo Convention; however should the Sub-Committee see fit to do so, the Chairperson suggested that this would have to be done in conjunction with possible revisions to Article 6. The draft protocol did not propose the substance of in-flight security officer (IFSO) immunity, but only identified its possible placement in the Protocol, if the Sub-Committee saw a need to insert such a provision.

7.2 Expanded bases of jurisdiction (Article II of Flimsy No. 1)

7.2.1 A large number of member delegations supported expanding the bases of jurisdiction under the Tokyo Convention in order to make unruly passengers accountable for their actions; however, there was disagreement as to whether the proposed bases of jurisdiction should be linked to a list of offences. One member delegation averred that expanding the bases of jurisdiction could not be separated from a list of offences and, given the inevitable link between them, expressed the concern that this would have the effect of transforming the Tokyo Convention from an instrument of a general nature as exemplified by its Article 3 (1), to one of criminalization. This member delegation suggested instead that the competence granted to the State of registration under Article 3 (1) be extended to the State of landing, which could suffice as a solution to those States requiring an international instrument as a basis for such extension of jurisdiction.

7.2.2 While a majority of the delegations supported expanding the bases of jurisdiction to both the State of landing and the State of the operator, there was no consensus as to whether they should be mandatory or optional. Some member delegations preferred to limit jurisdictional expansion to the State of landing only, while others preferred the State of the operator in view of IATA's arguments thereon in LC/SC-MOT/2-WP/5. One member delegation, which supported the addition of the State of the operator, reserved its position as to the State of landing given that an aircraft commander who was likely to be unfamiliar with legal concepts would not be in a position to determine if it was a serious offence under the laws of the state of landing for the purpose of delivery. One observer delegation suggested that the list of offences under Article 9 (1 *bis*) should be more clearly drafted to assist the aircraft commander in this regard. Another member delegation agreed with the policy objective of expanding the bases of jurisdiction, but preferred to retain the State of registration as the primary jurisdiction, to be supplemented by the jurisdictions of the State of landing and the State of the operator. One member delegation proposed extending the bases of jurisdiction to the State of nationality of the offender.

7.2.3 One member delegation, supported by another member delegation, advocated the inclusion of the State of landing and the State of the operator as mandatory jurisdictions over the Article 9 (1 *bis*) offences in that this would dispel the notion that the extension of jurisdiction would be potentially considered an infringement of other States' sovereignty. In addition, this would not preclude any State from asserting jurisdiction over the less serious offences in Article 8 (1 *bis*).

7.2.4 In considering the State of landing jurisdiction, one member delegation sought clarification from the Sub-Committee as to whether "delivery" under Article 9 of the Tokyo Convention constituted "extradition", as this would be of some concern for States which are legally prohibited from extraditing their nationals. The Chairperson explained that the Convention did not provide for mandatory extradition, which had to be dealt with on a bilateral basis given the wording of Article 16 (2), and given that Article 13, which follows from Article 9, deals with what happens with an alleged unruly passenger after delivery.

7.2.5 Several member delegations expressed concern that incorporation of new bases of jurisdiction in the Tokyo Convention might result in inconsistencies with existing provisions therein, citing for example Article 4 (a) which permits a State to interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board where “the offence has effect on the territory of such State”, and Article 16 which sets out treatment of the offence for extradition purposes. The Chairperson noted that a thorough assessment of the impact of expanded bases of jurisdiction in the Convention would have to be undertaken.

7.2.6 In summarizing the discussion, the Chairperson noted that a majority of the Sub-Committee members supported expanding the bases of jurisdiction to the State of landing and the State of the operator; however, it was felt pre-mature to decide whether these bases of jurisdiction should be mandatory or optional. Extension to the State of nationality of the offender had some support, while the State of nationality of the victim and the State of habitual residence remained to be considered. In response to a question from a member delegation, the Chairperson clarified that States would need to declare their positions with regard to adopting optional jurisdiction bases, either at the time of ratification of the protocol, or at a later time.

7.3 **List of Offences (Article III and Article IV of Flimsy No. 1)**

7.3.1 The Sub-Committee considered the need for a list of offences and the proposed content of such a list as set out in Article III (minor acts and offences) and Article IV (serious offences) of Flimsy No. 1.

7.3.2 Member delegations which saw the need for a list of offences, particularly for serious offences, cited the promotion of a harmonised approach to achieve specificity and standardisation of actions by States in dealing with unruly behaviour on board aircraft, the provision of uniform criteria by which States will extend their jurisdiction over such acts and agree on appropriate provisions on extradition, and the provision of clarity to crew members and law enforcement officers in dealing with unruly conduct, as major considerations in favour of having such a list. One observer delegation stated that the lack of a list is a key aspect of the constraints in dealing with the problem of unruly passengers from the point of view of the airline industry as it leaves the onus of enforcement on individual States that may not wish to take jurisdiction or whose law enforcement authorities may not be certain about how such acts fit into their domestic legislation, and therefore the proposed list contained in Flimsy No.1 was an excellent starting point toward the goal of standardisation of the international response to this problem.

7.3.3 Member delegations which did not support the establishment of a list of offences preferred to preserve the ability of States to provide for offences under their own national laws and cited the risk that a list if established may not be exhaustive and could create a potential overlap with behaviour that is already criminalised under other existing Conventions as many of the offences proposed for inclusion in the list involve acts of violence and assault that could endanger the safety of aircraft which acts are already covered by the other existing international penal air law instruments. One member delegation proposed that the objectives of specificity and harmonisation could be achieved by alternative means other than a list of offences such as through guidance material including a review of ICAO Circular 288. Some member delegations indicated that some of the offences listed in Article IV do not constitute “serious” offences in their respective jurisdictions.

7.3.4 One member delegation noted that if the list included offences similar to those already contained in other counter terrorism conventions, a military exclusion clause would have to be included in the draft protocol as well.

7.3.5 The Chairperson identified two possible approaches for further discussion, the first one being to have a list with offences that might be extraditable depending on the outcome of the discussion on the extradition regime and the second being the “no list” approach which would involve only expanding the bases of jurisdiction in order to enable the State of landing, and perhaps others, to apply its penal laws just like the State of registration under the Tokyo Convention.

7.3.6 The Chairperson proposed, and the Sub-Committee **agreed**, to establish a working group on offences, chaired by Canada with Brazil, China, Egypt, France, Japan, Singapore, South Africa, United States and the Rapporteur as members. The working group was tasked to examine the issue of whether Articles 8 and 9 of the Tokyo Convention should be amended to include lists of offences.

7.4 **Extradition**

7.4.1 The Sub-Committee considered the question of whether to include provisions for an extradition regime to apply to offences in a new instrument amending the Tokyo Convention. Many member delegations expressed difficulty to take a position on this matter before the issue of the list of offences was finalised. However, there was a general consensus that it would not be appropriate for an extradition regime to apply to minor offences and that it should be reserved for the most serious offences only thereby leaving the option open for administrative sanctions to be applied to minor offences.

7.4.2 The Sub-Committee agreed to defer discussion on the subject of extradition until after the working group on a list of offences had completed its work.

7.5 **Immunity**

7.5.1 The Chairperson recalled the two proposals made at the first meeting of the Sub-Committee to deal with the issue of clarifying the scope of immunity provided under Article 10 of the Tokyo Convention, namely, to include the words “arbitrary and capricious” or the words “necessary and proportional” to qualify the actions of the aircraft commander in the provisions on immunity

7.5.2 Two observer delegations highlighted the need to clarify the scope of immunity extended to the aircraft commander in view of the changes in operational procedures where the cockpit door is kept locked and access to the flight deck during a flight is prohibited. One court decision on this matter indicated that it was not adequate for the aircraft commander to rely only on the report of the cabin crew. In light of this court decision and the changed operational environment, these delegations proposed that the addition of a more precise standard whereby the aircraft commander’s action would be deemed to be reasonable if he or she has not acted “arbitrarily or capriciously” would be useful to remove any doubts.

7.5.3 In discussing these proposals, the Sub-Committee reached the consensus that the reasonableness standard in Article 6 (1) as applied to Article 10 of the Tokyo Convention was well understood in most jurisdictions and that States did not see any difficulty in applying it. One member delegation explained that all that was required was the aircraft commander to have reasonable grounds to act and that it was not specified what constituted such grounds such as whether they would be derived from the aircraft commander’s own observations or from reports made to the aircraft commander by cabin crew.

7.5.4 The Sub-Committee **concluded** that there was no need to change the wording in Article 6 or 10 of the Tokyo Convention with regard to the immunity of the aircraft commander.

7.6 **Inflight Security Officers (Article V of Flimsy No. 1)**

7.6.1 Some member delegations did not support the inclusion of provisions on IFSOs on the basis that they are already covered under Article 6 (2) of the Tokyo Convention as passengers and that their activities including their respective authorities and immunities are already provided for under bilateral arrangements between States and further that they are primarily concerned with acts of unlawful interference with civil aviation, particularly in the context of counter-terrorism.

7.6.2 Member delegations which supported the inclusion in the Tokyo Convention of a provision specifically mentioning IFSOs highlighted the fact that IFSOs have a special status different from that of passengers by virtue of their training and rules of engagement and that they are increasingly being used on international flights. One member delegation noted that the aircraft commander has to remain secured on the flight deck with the cockpit doors locked, particularly during an emergency, and this thereby increases the importance of an IFSO in the aircraft cabin. This member delegation proposed that IFSOs should not only get a special mention in the new instrument but be given the powers and authorities similar to those of the aircraft commander, including restraint.

7.6.3 The Sub-Committee noted that IFSOs did not exist when the Tokyo Convention was adopted, but today they are being increasingly deployed on international flights. Many member delegations underlined that the existence of IFSOs is a fact of life, and therefore their status should be properly recognized. Some member delegations, while recognizing this fact, continued to believe that their status should be dealt with only under bilateral agreements. The Chairperson invited member delegations to submit draft texts for the purpose of further discussion, keeping the options open whether IFSOs should be considered as passengers or as a separate special category other than passengers and crew members.

7.7 **Restitution and Recourse**

7.7.1 Several member delegations and one observer delegation suggested that provisions dealing with the economic consequences of unruly passengers should be included in the draft Protocol to the Tokyo Convention. It was stated that airlines are exposed to very high costs when diversions of flights are caused by unruly behaviour. Therefore, some member delegations believed that it is necessary to establish a mechanism of restitution or recovery to make passengers economically accountable for their unruly behaviour. In this connection, one member delegation recalled its early suggestion that the contract of carriage should be terminated when a passenger was disembarked in a place other than the intended destination. In that event, the passenger should have no recourse against the airline.

7.7.2 Other member delegations recognized the diversion costs as a serious issue but they believed that this issue should be addressed in the general conditions of the contract of carriage rather than in the proposed Protocol. Some member delegations were opposed to the inclusion of a recourse mechanism by airlines as they would depart from the original orientation of the Tokyo Convention. As an instrument of public international law, the Convention does not give rise to the rights of individuals. Other member delegations however noted that in the past ICAO had dealt with private law issues such as in the Montreal Convention of 1999.

7.7.3 Concerns were also expressed that such a recourse mechanism would lead to additional costs in national enforcement systems that are already overloaded. Moreover, it would be difficult to implement this new mechanism due to the practical difficulty in obtaining evidence and conducting a trial.

7.7.4 Some member delegations referred to the possibility of creating a list of unruly passengers, while others were of the opinion that such list would violate the protection of privacy.

7.7.5 The Chairperson summarized the discussion by stating that a large number of member delegations and observer delegations expressed the wish to address the economic impact caused by diversion of aircraft. There was a clear interest in such issues as the recovery of cost and termination of the contract of carriage. A question remained whether the new instrument would be a suitable place to address these issues. She therefore invited member and observer delegations to present relevant text, which may be placed in square brackets, for the purpose of further discussion.

7.8 **Article 4**

7.8.1 The Sub-Committee then reviewed the text of Article 4 of the Tokyo Convention to see if the provisions therein would present any implications for the expansion of the bases for jurisdiction. In this context, some member delegations observed that Article 4 is just one example to demonstrate that any proposed amendment must be put in the perspective of the entire Tokyo Convention to see whether it may have impact upon other provisions in the Convention. Other member delegations were of the view that the provisions of Article 4 do not preclude other bases of jurisdiction proposed in the draft amendments. The Sub-Committee came to the conclusion that future drafting of the amendments should endeavour to maintain consistency among the existing and new provisions.

7.9 **Definitions of certain terms in the Tokyo Convention**

7.9.1 The Sub-Committee discussed whether there is a need to develop or amend definitions for “in flight”, “IFSO”, “State of the Operator” and others. Some member delegations suggested to take into account the definitions in other aviation security conventions and the Annexes to the *Convention on International Civil Aviation* (Chicago Convention). The Chairperson invited member delegations and observer delegations to present the texts of proposed definitions.

8. **CONSIDERATION OF FLIMSY NO. 2 AND OTHER DRAFT TEXTS**

8.1 Based on the previous discussion, the Chairperson presented Flimsy No. 2 and some member delegations presented other texts for further discussion on several key issues.

8.2 **Jurisdiction**

8.2.1 On the basis of the proposal by one member delegation, the Chairperson presented the following text on jurisdiction:

“1. **Article 3, paragraph 1**, of the Convention shall be replaced by the following:

1. The State of registration and the State of landing [and the State of the operator] of the aircraft are competent to exercise jurisdiction over offences and acts committed on board.

2. In **Article 3** of the Convention, the following shall be added as paragraph 2 *bis*:

2 *bis*. Each Contracting State may also establish its jurisdiction in cases when the aircraft on board which an offence is committed lands in its territory with the alleged offender still on board.”

8.2.2 This member delegation sought to establish additional jurisdictions without a list of offences, and to address several concerns expressed by other member delegations of the Sub-Committee: first, to maintain the structure of Article 3 (1) of the Tokyo Convention with regard to a State’s competence to exercise jurisdiction, and second, to accommodate those States which require an international legal instrument for the establishment of additional jurisdictions, primarily, the State of landing jurisdiction. Article 3 (2 *bis*) was intended to provide a permissive establishment of jurisdiction.

8.2.3 In expressing support for the proposed text, one member delegation considered that Article 3 (1) could also extend to the State of nationality and the State of habitual residence. In response to a query by this same member delegation, the proposing member delegation clarified that it had not intended to distinguish between the actual or intended State of landing under Article 3 (1) and Article 3 (2 *bis*), the point being to ensure there is jurisdiction no matter where the aircraft lands. The Chairperson of the Sub-Committee suggested that paragraphs (1) and/or (2 *bis*) of Article 3 be amended to clarify that intention. Another member delegation which supported the proposed text, viewed it as consistent with draft Article 15 *bis* (discussed at paragraph 8.3.2 of this report), and stressed the importance of definitive inclusion of the State of the operator in Article 3 (1) in light of LC/SC-MOT/2-WP/5 and IATA’s comments during the meeting, and proposed removing the square brackets. One member delegation queried as to the necessity of paragraph 2 (*bis*) given that paragraph (1) is already permissive with respect to the establishment of jurisdiction.

8.2.4 Several member delegations wished to maintain the primacy of jurisdiction of the State of registration and were therefore concerned with allocating equal status to the additional bases of jurisdiction in draft Article 3 (1). The Chairperson clarified that Article 3 (1) addresses the general competency of States to establish jurisdiction, while Article 3 (2) imposes a mandatory obligation only on the State of registration to establish jurisdiction.

8.2.5 Taking into account the comments on the draft text, another member delegation suggested an alternative text for Article 3 (1) in order to further expand the bases of jurisdiction while maintaining the integrity of the current structure of Article 3, as follows:

“1. **Article 3, paragraph 1**, of the Convention shall be replaced by the following:

The following States are competent to exercise jurisdiction over offences and acts committed on board:

- (a) the State of registration;
- (b) the State of landing;
- (c) the State of the operator;
- (d) the State of nationality; and
- (e) the State of habitual residence.”

8.2.6 Several member delegations supported the proposed text. The proposing member delegation explained that Article 3 (2) would remain unchanged to reflect the primacy of the State of registration, while Article 3 (2 *bis*) would pick up the permissive secondary heads of jurisdiction. One member delegation, supported by two others, believed that in order to maintain the integrity of Article 3 and the primacy of the State of registration jurisdiction, Article 3 (1) should be kept as it is, and the provisions relating to the State of landing and State of the operator should be moved to Article 3 (2 *bis*).

8.2.7 Based on this discussion, the following text was tabled for discussion:

“Establishment of Additional Jurisdiction Bases without List of Offences

In **Article 3** of the Convention, the following shall be added **as paragraph 2 *bis***:

The following States are competent to and [shall]/[may] [on, becoming a Contracting State] take such steps as may be necessary to establish jurisdiction in the following cases:

- (a) State of landing, when the aircraft on board which an offence is committed [next] lands in its territory with the alleged offender still on board;
- (b) State of the operator, when the aircraft on board which an offence committed is an aircraft leased without crew to the operator whose principal place of business or permanent residence is in that State;
- (c) State of nationality, when an offence is committed on board an aircraft [by] / [against] / [by or against] a national of that State;
- (d) State of habitual residence, when an offence is committed on board an aircraft by a stateless person whose habitual residence is in the territory of that State.]”

8.2.8 The Sub-Committee **agreed** to delete the words “on becoming a Contracting State” in paragraph 2 *bis* of Article 3 in the draft text.

8.2.9 The Chairperson explained in response to a question raised by one member delegation that the provision is inserted as paragraph 2 *bis* rather than as 1 *bis* in order to take into account both the “competence” and “take measures” language found in Article 3, paragraphs 1 and 2 respectively of the Tokyo Convention.

8.2.10 One member delegation expressed preference for drafting new language within Article 3, paragraph 1, itself in order to preserve as much as possible and not disturb the structure of the Tokyo Convention and to use the language similar to that in Article 8 of the Beijing Convention in order to avoid the need to have definitions for the various jurisdictional bases.

8.2.11 The Chairperson noted that the option of combining the text in a single Article would create some difficulty as some of the jurisdictional bases may be optional rather than mandatory and that it would therefore be necessary to split paragraph 2 *bis* if it is decided that some of the bases would be mandatory.

8.2.12 The Sub-Committee agreed, following a proposal by one member delegation, to defer the discussion on drafting points and proceed first with recording the position of each member delegation on whether the jurisdiction of the State of landing and the State of the operator would be mandatory. The majority of the member delegations supported the position that the jurisdiction of the State of landing and the State of the operator should be mandatory. Some member delegations preferred optional jurisdiction for the State of landing and mandatory jurisdiction for the State of operator. However, some member delegations stated that they did not support the majority view and expressed preference instead for the position that the State of landing and the State of operator jurisdiction be optional. Noting that there was no consensus on this issue, these member delegations requested that the minority position be reflected in square brackets in the text of the draft protocol so that the matter remains open for further discussions. One member delegation while supporting optional jurisdiction for the state of landing wished to conduct further study on the jurisdiction of the State of operator.

8.2.13 One member delegation noted that it could not support the inclusion of the minority view in square brackets in the draft protocol because the past practice of the Sub-Committee was to follow the view of the majority. Another member delegation felt that in order to advance the work of the Sub-Committee it could support the proposal whereby the texts supported by the majority and the minority respectively would be drafted in square brackets and left to the Legal Committee to select an option while highlighting in the report of the Sub-Committee the position that was supported by the majority.

8.2.14 The Chairperson noted that the manner in which the minority view would be reflected would have to be reconsidered in light of the views expressed by the member delegations and presented two formats for selection by the Sub-Committee, the first format being to advance to the Legal Committee only the text supported by the majority and reflect in the report that there was a minority view and the second format being to advance to the Legal Committee the two alternative texts in square brackets and reflect in the report that one was supported by the majority and the other by a minority.

8.2.15 Most member delegations expressed support for the second format and the Chairperson **concluded** that all alternative texts should be presented in square brackets. With respect to the provisions on the bases of jurisdiction, the view of the majority is reflected as Option 1 as follows:

[Option 1

In **Article 3** of the Convention, the following shall be added as **paragraphs 2 bis** and **2 ter**:

“2 *bis* Each Contracting State is competent to and shall also take such measures as are needed to establish its jurisdiction over offences or acts committed on board aircraft in the following cases:

- (a) as the State of landing, when the aircraft on board which an offence or act is committed lands in its territory with the alleged offender still on board;
- (b) as the State of the operator, when the aircraft on board which an offence or act is committed is an aircraft leased without crew to the operator whose principal place of business or permanent residence is in that State.

2 *ter* Each Contracting State is competent to and may also take such measures as are needed to establish its jurisdiction over offences or acts committed on board aircraft in the following cases:

- (a) as the State of nationality, when an offence or act is committed on board an aircraft [by] / [against] / [by or against] a national of that State;
- (b) as the State of habitual residence, when an offence or act is committed on board an aircraft by a stateless person whose habitual residence is in the territory of that State.”]

8.2.16 The view of the minority is reflected as Option 2 as follows:

[Option 2

1. **Article 3, paragraph 1**, of the Convention shall be replaced by the following:

“1. The State of registration [, the State of landing, the State of the operator and the State of nationality and the State of habitual residence] are competent to exercise jurisdiction over offences and acts committed on board.”

2. In **Article 3** of the Convention, the following shall be added as **paragraph 2 bis**:

“2 *bis*. Each Contracting State [may]/[shall] also take such measures as may be necessary to establish its jurisdiction over offences [or acts] committed on board aircraft in the following cases:

- (a) as the State of landing, when the aircraft on board which an offence [or act] is committed lands in its territory with the alleged offender still on board; [and]
- (b) as the State of the operator, when the offence [or act] is committed on board an aircraft leased without crew to the [lessee]/[operator] whose principal place of business or, if the [lessee]/[operator] has no such place of business, whose permanent residence is in that State; [and]
- (c) as the State of nationality, when an offence [or act] is committed on board an aircraft [by] / [against] / [by or against] a national of that State; [and]
- (d) as the State of habitual residence, when an offence [or act] is committed on board an aircraft by a stateless person whose habitual residence is in the territory of that State.”]

8.3 List of Offences

8.3.1 **Report of the Working Group on Offences.** The Chair of the Working Group on Offences presented the Group's report (**Appendix 4** hereto), which recommended against including a list of offences in the draft protocol. As an alternative, the Group proposed the amendment of Article 3 of the Tokyo Convention to permit the State of landing, and perhaps the State of the operator, to establish their competence to exercise jurisdiction over the conduct described in Article 1 (1) on board an aircraft in flight. The Group stressed the importance of States reviewing their domestic legislation to ensure that they have the necessary legal framework to deal with unruly conduct. Given that the members of a flight crew may not have expertise in the domestic legislation of all jurisdictions, the aircraft commander could refer an unruly incident to the law enforcement authorities in the State of landing, allowing that State to determine if it has jurisdiction over the matter and how to deal with it appropriately. The Sub-Committee **agreed** with the report.

8.3.2 One member delegation presented the following text to be added as a new Article 15 *bis* in the Tokyo Convention:

“The following shall be added as Article 15 *bis* of the Convention:

1. Each Contracting State undertakes to make the following [acts] [conducts] punishable by appropriate [criminal or administrative] penalties when committed by a passenger on board an aircraft in flight:

- (a) physical assault or a threat to commit such assault against a crew member;
- (b) refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the purposes listed under Article 6, paragraph 1 a) and b).

2. Nothing in this Convention shall affect the right of each Contracting State to introduce, according to its national legislation, appropriate penalties in order to punish other unruly and disruptive [acts] [conducts] committed by passengers.”

8.3.3 The member delegation explained that Chapter V of the Tokyo Convention was the most appropriate place to introduce this new text as it dealt with the powers and obligations of States. That member delegation explained further that the objective of the new text was not to establish a list of offences but to identify key acts that constitute misconduct, namely all assaults against crew and refusal to follow instructions lawfully given with the intention to ensure the safety of the flight and to maintain good order and discipline on board the aircraft, in order to ensure that all States take steps to punish anyone who engages in such acts. This approach would allow States the flexibility to apply such sanctions, whether criminal or administrative, as they deem appropriate. Regarding assaults on passengers, the member delegation felt that these would not be included as it is often difficult to tell who starts an altercation between passengers while in the case of such an altercation between a passenger and a crew member on the other hand it is easier to determine when a passenger is at fault because crew members are providing a service in the interest of passengers. The member delegation proposed further that it would be important to include the provision in paragraph 2 of the proposed text, to the effect that nothing prevents States from introducing in their national legislation appropriate measures to deal with such other unruly acts committed by passengers, as this would allow States the flexibility to introduce offences such as those in ICAO Circular 288. Finally the member delegation observed that as a list of offences and provisions on extradition had not been included in the proposed text, it provides a balanced approach in ensuring that all States take measures to punish offences of the worst kind while leaving all other acts to be dealt with by States according their national laws.

8.3.4 One member delegation, supported by another member delegation, noted that there was a clear decision by the Sub-Committee in the prior discussions not to have a list of offences and therefore the proposed text contradicted this decision and furthermore that it was not clear as to why only two forms of unruly acts were included in this text and not others such as assaults between passengers.

8.3.5 The member delegation who introduced the text explained that there was a difference between violence involving a passenger and crew and between two passengers and that the scenario involving a passenger and a crew member had been selected in order to meet the objective of protecting crew members. However this did not mean that acts involving passengers only could go unpunished. It could be left up to States to introduce relevant provisions on their national legislation to punish acts as assaults between passengers.

8.3.6 Another member delegation reiterated their opposition to including a list of offences in the Tokyo Convention and noted that new text Article 15 *bis* while not drafted as offences had the same effect as a list of offences.

8.3.7 Several member delegations which were not in favour of Article 15 *bis* proposed that it should be presented in square brackets to the Legal Committee.

8.3.8 Many member delegations supported the proposed text in Article 15 *bis* noting that it was a description of conduct rather than a list of offences and could therefore be supported for the reasons articulated by the member delegation which introduced it and also because it strikes a balance between the different positions previously mentioned by States regarding the list of offences and allows flexibility for States to introduce appropriate measures to deal with the subject of unruly passengers in their national legislation.

8.3.9 Several member delegations spoke in favour of including the text in Article 15 *bis* in square brackets but with a note that a substantial majority of member delegations were in favour of its inclusion in the draft protocol. The Sub-Committee **agreed** with this approach and the text is included as Article VI in Flimsy No. 3.

8.4 **Extradition**

8.4.1 The Chairperson noted that the consideration of whether to have a provision on extradition was superseded by the decision of the Sub-Committee not to have a list of offences and there was therefore no need to include additional provisions in the Tokyo Convention on that matter.

8.5 **Inflight Security Officers**

8.5.1 One member delegation presented the following draft text for inclusion of provisions on IFSOs in a new Article on definitions and in Articles 6 and 10 of the Tokyo Convention:

“Article II

Article 1, paragraph 3, of the Convention shall be replaced by the following:

3. For the purposes of this Convention:

(b) “in-flight security officer” means a government employee who is specially selected and trained and authorized by the government of the State of the operator [and]/[or] the government of the State of registration to be deployed on an aircraft with the purpose of protecting that aircraft and its occupants against acts of unlawful interference;

Article IV

In **Article 6** of the Convention, the following shall be added as **paragraph 3**:

3. An in-flight security officer acting pursuant to a bilateral or multilateral arrangement may, when he or she has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1 paragraph 1, impose upon such person reasonable measures including restraint which are necessary to protect the safety of the aircraft, or of persons or property on board or to maintain good order and discipline on board.

Article VII

In **Article 10** of the Convention, the words “any in-flight security officer,” shall be inserted after the words “any passenger,” and before the words “the owner or operator of the aircraft”.”

8.5.2 The member delegation presenting the text stated that the definition of IFSOs was largely taken from Annex 17 to the Chicago Convention while Article IV was based on the language in Article 6 (1) of the Tokyo Convention and sought by and large to provide to IFSOs the same authorities as are available to the aircraft commander in the Tokyo Convention. The member delegation explained further that the inclusion of wording to the effect that IFSO would be acting pursuant to a bilateral or multilateral arrangement would allay concerns previously expressed that those specific provisions for IFSOs could oblige States to establish an IFSO regime. Finally the member delegation explained that IFSOs are inserted in Article VII as a distinct category of person or actor aboard an aircraft as distinguished from crew members or passengers.

8.5.3 One member delegation observed that the provision in Article IV had the effect of changing the definition of the IFSOs as set out in Annex 17 in that it expanded the scope of the IFSOs’ duties beyond dealing with acts of unlawful interference. In its view, it would be difficult to support any change in the Annex 17 definition before consulting the ICAO Aviation Security Panel and the Unlawful Interference Committee given the lengthy discussions in those bodies that preceded the adoption of the current definition in Annex 17. Several member delegations concurred with the position that the duties of IFSOs should not extend to preserving good order and discipline on aircraft. Another member delegation noted, with respect to the proposed definition of an IFSO, that the use of the words “means a government employee” implies that the IFSO has to be a government employee whereas Annex 17 provides that the IFSO is a person authorised by the government and therefore is not necessarily a government employee. Most member delegations expressed support for a definition of an IFSO that is consistent with that in Annex 17.

8.5.4 One member delegation noted that the inclusion of IFSOs goes beyond the remit of the Tokyo Convention and that it was against the inclusion of IFSOs in whatever format but could support the text going forward to the Legal Committee in square brackets. Another member delegation noted that even if the definition of an IFSO were aligned to that in Annex 17 it would still present some problems as it refers to acts of unlawful interference, yet the Tokyo Convention is not a convention dealing purely with acts of unlawful interference.

8.5.5 Several member delegations in noting that the use of IFSOs is increasingly widespread, expressed support for the inclusion of a reference to IFSOs in the new instrument under the condition that they should deal purely with acts of unlawful interference.

8.5.6 The Chairperson in summing up the discussion on this issue noted that while a consensus appeared to have emerged about the inclusion of IFSOs in square brackets, there was a desire to review the draft text proposed and in particular to align it with Annex 17. Accordingly, the Sub-Committee **decided** to include two sets of optional texts respectively in **draft Article IV and V of Flimsy No. 3**.

8.6 **Restitution and Recourse**

8.6.1 Based on the previous discussion, one member delegation presented the following text for the consideration of the Sub-Committee:

Article VII

The following shall be added as Article 18 *bis* of the Convention:

1. When the aircraft commander disembarks or delivers a person pursuant to the provisions of Article 8 or 9 respectively, the Operator shall not be precluded from recovering from such person any damages incurred by the Operator as a result of such disembarkation or delivery.
2. The disembarkation or delivery of a person pursuant to the provisions of Article 8 or 9 respectively [shall], in accordance with national law, terminate the contract of carriage between the Operator and that person. The Operator shall not be liable for any damages sustained by that person as a result of the termination of the contract of carriage following such disembarkation or delivery.

8.6.2 Member delegations supporting this text believed that the provisions may serve as deterrence against unruly behaviour. The costs for diversion of aircraft caused by unruly incidents should not be borne by the carriers. To deal with this issue only in the contract of carriage would not be sufficient, and the recognition of the right of recourse in an international convention would be desirable.

8.6.3 Other member delegations reiterated the concern they previously expressed that the Tokyo Convention was not the appropriate place to deal with this issue. The text presented was not a balanced one and it may violate passengers' rights, such as the right to continue their journey under Article 15 of the Tokyo Convention.

8.6.4 While the Sub-Committee could not reach consensus on the content of the text, it nevertheless **agreed** to submit the text to the Legal Committee in square brackets for further consideration. It was also decided to replace “[shall]” in subparagraph 2 of the text with “[shall]/[may]”.

8.7 Definitions of certain terms in the Tokyo Convention

8.7.1 With respect to the period in which an aircraft is considered to be “in flight”, one observer delegation stated that there should only be one definition but the Tokyo Convention contains two definitions. Accordingly, further research should be conducted regarding this matter prior to the adoption of a proper definition. The Chairperson recalled that the drafters of the Tokyo Convention deliberately put two definitions of the same term in two different chapters of the Convention. It must therefore be examined carefully whether one definition, if adopted, should apply to the entire Convention. Based on this consideration, the Sub-Committee **decided** to include in Article II in Flimsy No. 3 the “in flight” definition from Article 5, paragraph 2 of the Tokyo Convention in square brackets for future analysis of its pros and cons.

8.7.2 Concerning the definition of an IFSO, one member delegation believed that the definition in the Annex 17 should be followed. Another member delegation believed that it would be premature at this stage to draft a definition. It was then **decided** to place the definition in square brackets.

8.7.3 The Sub-Committee also **decided** to place the definitions of “State of the Operator” and “State of registration” as proposed in Flimsy No. 2 in square brackets pending further discussion.

9. Consideration of future work

9.1 The Sub-Committee noted that it had made a significant progress at its second meeting. Based on the discussion at the meeting, it **authorized** its Chairperson to finalize the draft text to be presented in Flimsy No. 3. This text, set out in **Appendix 5** to this report as Main Operative Clauses for the Draft Protocol to Amend the Tokyo Convention, should be submitted to the Legal Committee for further consideration. Although the basic framework of the text of the draft protocol had been prepared by the Sub-Committee, it was evident that not all of the issues could be resolved at this level. Consequently the draft protocol contains options and square brackets. It is the view of the Sub-Committee that certain policy matters could only be decided at the level of the Legal Committee or even that of a diplomatic conference. Accordingly, the Sub-Committee **unanimously recommended** to the Council to convene the 35th Session of the Legal Committee to further review the Tokyo Convention, with particular reference to the issue of unruly passengers.

9.2 The Sub-Committee further decided to authorize its Chairperson to approve the report of this meeting and expressed a vote of thanks to her.

APPENDIX 1
LIST OF PARTICIPANTS

DELEGATES

Argentina	Luongo, N.
Australia	Reid, J.
Canada	Schultz, H. Tachet, J. Zigayer, M. Lalonde, S.
Chile	Lisboa, A. Mena, A. Espinoza-Burgos, C. Binder, J.
China	Yang, Y. Zhang, Y. Hu, D. Zhao, J. Chean, K.
Egypt	Mahmoud, A. Aly Ahmed, M. M. Khalil, A. I.
France	Olson, T. Risse, E. Baflast, C. Mezi, E. Gihhr, M. F.
Italy	Bardaro, A.
Japan	Sugiyama, H. Asahi, T. Sakamoto, K. Iwasaki, K. Koda, T. Furuhata, M. Fukushiro, T.

Kuwait	Gassem, K. R. K. Al Mubarak, B. F. M. Al Ewady, I. O. Al Mansouri, Y. A.
Lebanon	Eid, S.
Mexico	Mayora, D. M.
Republic of Korea	Bae, J Lee, J.-S. Maeng, S. Kim, J.-B. Lee, J. W. Kim, S.-K.
Russian Federation	Druzhinin, A. Khakimova, I. Mnishko, V. Pasko, A. Shadrin, V. Mokin, D. Shiyan, D. Malikova, N.
Saudi Arabia	Almoghraby, A.
Singapore	Tan, S. H. Kaur, R. Voon, D.
South Africa	Mdlalose, B. Ndandini, B.
Switzerland	Candrian, A. Noël, L.
United Arab Emirates	Piera Valdés, A. J. Al Mutawa, A.
United States	McDonald, S. W. Jennison, M. Burrows, T. Giovanniello, A. Tourtellot, C. Cors, D. Mishulovich, E.

OBSERVERS (States)

Colombia	Munoz Gomez, A. Bejarano, C.
Indonesia	Nila Sari, M. Mayrianti, C.
Venezuela	Acosta Rodriguez, J.M.

OBSERVERS (International Organizations)

African Civil Aviation Commission (AFCAC)	Gaiya, S.
International Air Transport Association (IATA)	Gill, M. Herbelles, N. Hocking, A.
International Federation of Air Line Pilots' Associations (IFALPA)	MacCarthy, P.

APPENDIX 2**SPECIAL SUB-COMMITTEE OF THE LEGAL COMMITTEE
FOR THE MODERNIZATION OF THE TOKYO CONVENTION
INCLUDING THE ISSUE OF UNRULY PASSENGERS****SECOND MEETING**

Montréal, 3 – 7 December 2012

ORDER OF BUSINESS FOR THE FIRST DAY OF THE MEETING

(Conference Room 5, 3rd Floor, Monday, 3 December 2012 at 1000 hours)

Title	Documents for reference
1. Opening Speech by the Secretary General	
2. Organization of the meeting	
3. General Discussions	LC/SC-MOT/2- WP/1 LC/SC-MOT/2- WP/2 LC/SC-MOT/2- WP/3 LC/SC-MOT/2- WP/4 LC/SC-MOT/2- WP/5
4. Consideration of Flimsy	LC/SC-MOT/2-Flimsy No. 1

APPENDIX 3**SPECIAL SUB-COMMITTEE OF THE LEGAL COMMITTEE
FOR THE MODERNIZATION OF THE TOKYO CONVENTION
INCLUDING THE ISSUE OF UNRULY PASSENGERS****SECOND MEETING**

Montréal, 3 – 7 December 2012

LIST OF DOCUMENTS

LC/SC-MOT/2-WP/1	The Republic of Korea's Legal Responses to Unruly Passengers and the Issue of Extended Jurisdiction (Presented by the Republic of Korea)
LC/SC-MOT/2-WP/2	Background Paper - The Implementation of the Tokyo Convention in Australian Law (Presented by Australia)
LC/SC-MOT/2-WP/3	(Presented by Argentina)
LC/SC-MOT/2-WP/4	Municipal Legal Framework for Treatment of Unruly Passengers (Presented by the United States)
LC/SC-MOT/2-WP/5	The Views of the International Air Transport Association (IATA) on the Modernisation of the Tokyo Convention 1963 and the Problem of Unruly and Disruptive Passengers (Presented by IATA)
LC/SC-MOT/2-Flimsy No. 1	Main Operative Clauses for the Draft Protocol to Amend the Tokyo Convention (Presented by the Chairperson of the Legal Sub-Committee)
LC/SC-MOT/2-Flimsy No. 2	Main Operative Clauses for the Draft Protocol to Amend the Tokyo Convention (Presented by the Chairperson of the Legal Sub-Committee)
LC/SC-MOT/2-Flimsy No. 3	Main Operative Clauses for the Draft Protocol to Amend the Tokyo Convention (Presented by the Chairperson of the Legal Sub-Committee)

APPENDIX 4**MODERNIZATION OF THE TOKYO CONVENTION
(UNRULY PASSENGERS)
REPORT OF THE WORKING GROUP ON A LIST OF OFFENCES**

At the request of the Chairperson of the Special Sub-Committee of the Legal Committee for the Modernization of the Tokyo Convention meeting at ICAO Headquarters in Montreal, 3-7 December 2012, a Working Group was struck to examine the issue of whether Article 8 and Article 9 of the Tokyo Convention should be amended to include lists of offences. In the case of Article 8 the list would specifically identify “less serious” offences or acts that may subject a passenger to disembarkation. In the case of Article 9 the list would specifically identify serious offences over which it would be mandatory for the state of landing to assert its jurisdiction.

Background:

Officials of the International Air Transport Association (IATA) presented a paper to the Working Group outlining the nature of the unruly and disruptive passenger problem its members face on a daily basis. In particular, IATA identified eight forms of behavior that are cause for concern and, in its submission, deserving of deterrent measures¹.

Discussion:

The Working Group met on the afternoon of December 4th and again on the afternoon of December 5th. While there is a consensus in the Working Group that the occurrence of acts of unruly and disruptive behavior on board aircraft in flight is a serious problem, the Working Group is unable to support the proposal for amendments to Articles 8 and Article 9 of the Tokyo Convention to include lists of offences. In part this consensus was based on the common view that, in contrast to other ICAO anti-terrorism instruments such as the Beijing Convention, there was no desire to have the Tokyo Convention criminalize certain behaviour on board aircraft nor serve as a basis of extradition with regard to the acts of unruly passengers.² As well, and just as importantly, it was acknowledged that there could be serious difficulties in arriving at common definitions of certain offences.

¹ ICAO document LC/SC-MOT/2-WP5, page 2

² In appropriate cases States with concurrent jurisdiction could address extradition in the usual manner bi-laterally.

As an alternative, the Working Group supports the amendment of Article 3 of the Tokyo Convention to permit a “State of landing” and perhaps also a “State of the operator” to establish their competence to exercise jurisdiction over the conduct described in paragraph 1 of Article 1 of the Tokyo Convention on board an aircraft in flight.³ This measure should make it more likely that persons who engage in unruly behavior will be held accountable for their conduct⁴.

To ensure that the expansion of the range of States that would be able to exercise jurisdiction over an incident of unruly passenger behaviour is an effective deterrent to such conduct, States are to be encouraged to review their domestic legislation to ensure that they have the necessary legislative framework to deal with unruly conduct (identified by IATA) that would fall within paragraph 1 of Article 1 of the Tokyo Convention⁵.

Conclusion:

Operationally, appreciating that members of the flight crew are not trained as law enforcement officers or lawyers, it was accepted that should a passenger on board an aircraft in flight engage in unruly and disruptive acts, the aircraft commander could refer the matter to appropriate law enforcement authorities on landing. Those authorities would confirm whether the State of landing could exercise its jurisdiction over the matter and, if so, what the appropriate criminal or administrative sanctions could be pursued. With the expansion of jurisdiction to include State of landing and perhaps also State of operator there is a greater likelihood of some form of sanction being imposed on unruly passengers. With this and other measures that could be taken to inform passengers of the possible penalties that they could face if they engage in such behaviour it could be possible to diminish the incidence of in unruly and disruptive acts which is the ultimate objective.

³ Further discussions are to take place regarding whether to further amend the Tokyo Convention to allow “States of nationality” and States of habitual residence” to establish their competence to exercise jurisdiction over such conduct.

⁴ At present under the Tokyo Convention requires a “State of registration” to establish their jurisdiction over such conduct.

⁵ In the case of more serious offences such as acts of violence committed against members of the flight crew criminal sanctions could be appropriate while administrative or other measures might be appropriate for other conduct such as smoking in the lavatory.

APPENDIX 5**FLIMSY NO. 3****MAIN OPERATIVE CLAUSES FOR THE
DRAFT PROTOCOL TO AMEND THE TOKYO CONVENTION****(Presented by the Legal Sub-Committee)****Article I**

This Protocol supplements the Convention on Offences and Certain Other Acts Committed on Board Aircraft, Signed at Tokyo on 14 September 1963 (hereinafter referred to as “the Convention”), and, as between the Parties to this Protocol, the Convention and this Protocol shall be read and interpreted together as one single instrument.

[Article II

1. **Article 1, paragraph 3**, of the Convention shall be replaced by the following:

“3. For the purposes of this Convention:

- (a) an aircraft is considered to be in flight from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the provisions of this Chapter shall continue to apply with respect to offences and acts committed on board until the competent authorities of a State take over the responsibility for the aircraft and for the persons and property on board; [and]
- (b) “in-flight security officer” means a [government employee]/[person] who is specially selected, trained and authorized by the government of the State of the operator [and]/[or] the government of the State of registration to be deployed on an aircraft with the purpose of protecting that aircraft and its occupants against acts of unlawful interference;[and]
- (c) “State of the Operator” means the State in which the operator’s principal place of business is located or, if there is no such place of business, the operator’s permanent residence[.]/[; and]
- (d) “State of registration” means the State on whose register the aircraft is entered.”]

[Article III]**Option 1**

In **Article 3** of the Convention, the following shall be added as **paragraphs 2 bis** and **2 ter**:

“2 *bis* Each Contracting State is competent to and shall also take such measures as are needed to establish its jurisdiction over offences or acts committed on board aircraft in the following cases:

- (a) as the State of landing, when the aircraft on board which an offence or act is committed lands in its territory with the alleged offender still on board;
- (b) as the State of the operator, when the aircraft on board which an offence or act is committed is an aircraft leased without crew to the operator whose principal place of business or permanent residence is in that State.

2 *ter* Each Contracting State is competent to and may also take such measures as are needed to establish its jurisdiction over offences or acts committed on board aircraft in the following cases:

- (a) as the State of nationality, when an offence or act is committed on board an aircraft [by] / [against] / [by or against] a national of that State;
- (b) as the State of habitual residence, when an offence or act is committed on board an aircraft by a stateless person whose habitual residence is in the territory of that State.”]

Option 2

1. **Article 3, paragraph 1**, of the Convention shall be replaced by the following:

“1. The State of registration[, the State of landing, the State of the operator, the State of nationality and the State of habitual residence] are competent to exercise jurisdiction over offences and acts committed on board.”

2. In **Article 3** of the Convention, the following shall be added as **paragraph 2 bis**:

“2 *bis* Each Contracting State [may]/[shall] also take such measures as may be necessary to establish its jurisdiction over offences [or acts] committed on board aircraft in the following cases:

- (a) as the State of landing, when the aircraft on board which an offence [or act] is committed lands in its territory with the alleged offender still on board; [and]
- (b) as the State of the operator, when the offence [or act] is committed on board an aircraft leased without crew to the [lessee]/[operator] whose principal place of business or, if the [lessee]/[operator] has no such place of business, whose permanent residence is in that State; [and]

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- (c) as the State of nationality, when an offence [or act] is committed on board an aircraft [by] / [against] / [by or against] a national of that State; [and]
- (d) as the State of habitual residence, when an offence [or act] is committed on board an aircraft by a stateless person whose habitual residence is in the territory of that State.”]

[Article IV]

In **Article 6** of the Convention, the following shall be added as paragraph 3:

Option 1

“3. An in-flight security officer acting pursuant to a bilateral or multilateral arrangement may, when he or she has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1 paragraph 1, impose upon such person reasonable measures including restraint which are necessary to protect the safety of the aircraft, or of persons or property on board or to maintain good order and discipline on board.”

Option 2

“3. An in-flight security officer on the aircraft pursuant to a bilateral or multilateral arrangement may, when he or she has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an act of unlawful interference, impose upon such person reasonable measures including restraint which are necessary for the purpose of protecting that aircraft and its occupants against acts of unlawful interference.”]

[Article V]

Option 1

In **Article 10** of the Convention, the existing paragraph shall be numbered as “1” and the following shall be added as paragraph 2:

“2. For the purpose of the application of paragraph 1, an inflight security officer shall be deemed to be a passenger.”]

Option 2

In **Article 10** of the Convention, the words “any in-flight security officer,” shall be inserted after the words “any passenger,” and before the words “the owner or operator of the aircraft”,]

[Article VI

The following shall be added as Article 15 *bis* of the Convention:

“1. Each Contracting State shall ensure that the following acts are made punishable by appropriate criminal or administrative penalties when committed by a passenger on board an aircraft in flight:

- (a) physical assault or a threat to commit such assault against a crew member;
- (b) refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the purposes set out in Article 6, paragraph 1(a) or (b).

2. Nothing in this Convention shall affect the right of each Contracting State to introduce, according to its national legislation, appropriate penalties in order to punish other unruly or disruptive acts committed on board by passengers.”]

[Article VII

The following shall be added as Article 18 *bis* of the Convention:

1. When the aircraft commander disembarks or delivers a person pursuant to the provisions of Article 8 or 9 respectively, the Operator shall not be precluded from recovering from such person any damages incurred by the Operator as a result of such disembarkation or delivery.

2. The disembarkation or delivery of a person pursuant to the provisions of Article 8 or 9 respectively [shall]/[may], in accordance with national law, terminate the contract of carriage between the Operator and that person. The Operator shall not be liable for any damages sustained by that person as a result of the termination of the contract of carriage following such disembarkation or delivery.]

— END —