



INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 26 March to 4 April 2014)

AUTHORITY IN HANDLING OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT

(Presented by Indonesia)

1. INTRODUCTION

1.1 The Tokyo Convention of 1963 was adopted in order to deal with acts of unlawful interference with civil aviation as well as “certain other acts” committed on board aircraft, in particular acts against “good order and discipline” on board. These latter acts are now also referred to as acts committed by unruly passengers.

1.2 Acts of unlawful interference against civil aviation were later more specifically dealt with in the Hague Convention of 1970, the Montreal Convention of 1971, the Beijing Convention of 2010 (not yet in force), as well as the measures in Annex 17 to the *Convention of International Civil Aviation*. However, certain matters were not addressed, such as jurisdiction regarding acts committed by unruly passengers, or the status of In-flight Security Officers (IFSOs) in the framework of the Tokyo Convention of 1963.

1.3 On the other hand, acts against good order and discipline on board (acts committed by unruly passengers) have not been the subject of subsequent internationally agreed measures since 1963.

1.4 It is therefore appropriate to modernize the Tokyo Convention of 1963 with regard to both subjects, acts of unlawful interference and acts committed by unruly passengers.

2. ACTS OF UNLAWFUL INTERFERENCE

2.1 These acts are defined in the Hague Convention of 1970, the Montreal Convention of 1971 and in Annex 17 to the *Convention on International Civil Aviation*.

3. ACTS COMMITTED BY UNRULY PASSENGERS

3.1 These acts are the subject of ICAO Circular 288 LE/1: “Guidance material on the Legal Aspects of Unruly/Disruptive Passengers”.

3.2 The Circular provides a list of offences, which include “assault and other acts of interference against a crew member on board a civil aircraft”, “assault and other acts endangering safety or jeopardizing good order and discipline on board”, and “other offences committed on board a civil aircraft”. The offences are set out in section 2.2 and in the Appendix of the Circular.

4. **IN-FLIGHT SECURITY OFFICERS**

4.1 An IFSO is a person who is hired, trained and approved by the Government of the State of the aircraft operator to travel on the aircraft in order to protect the aircraft and its passengers against unlawful acts. The main mandate of the IFSO is to prevent acts of unlawful interference with civil aviation. The Government may also include in the mandate the duty to assist the crew, if necessary, in dealing with act of unruly passengers in particular those which endanger the safety of flight.

4.2 IFSOs therefore have the responsibility to take the necessary measures to handle acts of unlawful interference committed on board aircraft, and if their mandate permits, acts of unruly passengers which endanger the safety of the aircraft.

5. **ACTION TO PROTECT THE SAFETY, GOOD ORDER AND DISCIPLINE ON BOARD AIRCRAFT**

5.1 Action to protect the safety, good order and discipline on board aircraft is the responsibility of the aircraft commander.

5.2 The aircraft commander should be responsible for the aircraft safety and good order on board from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. Article 3 (a) of the Tokyo Convention of 1963 should therefore be amended in that sense.

5.3 The authority and responsibilities of the aircraft commander on board aircraft are not limited to protecting the safety and good order on board, but he is also authorized to apply reasonable measures, including physical restraint, which are necessary to protect the safety of the aircraft, or of persons or property thereon, and to disembark any passenger who has committed, or is about to commit, an act against the safety or good order or discipline on board.

5.4 The aircraft commander also has authority to deliver any person who has committed a serious offence, in particular against aircraft safety, to the competent authorities.

5.5 The aircraft commander may instruct any member of the crew or request any IFSO or passenger to provide assistance to take any necessary measures to handle any acts of unlawful interference on board aircraft.

6. **DRAFT PROTOCOL**

6.1 In the Draft Text set out in DCTC Doc. No.3 regarding the authority to take measures against offences and acts of unlawful interference on board aircraft, the second option would be more effective to and more in line with the distribution of authority as between the aircraft commander and the IFSO.

6.2 The authority of IFSO in Article 6, Option 1:

6.2.1 The provision of Option 1 suggests that the aircraft commander may have to share his authority with the IFSOs to take measures regarding offences and acts of unlawful interference on board aircraft, when taking the following measures:

- a) to protect the safety of the aircraft, passengers, and property on board, including restraint;
- b) to maintain good order and discipline on board, including restraint; and
- c) to deliver any person having committed a serious offence to the competent authorities.

6.2.2 The roles between aircraft commander and IFSO under option 1 are to some extent duplicative, and may create overlap of authority which may trigger serious problems in taking control.

6.3 The authority of IFSO in Article 6, Option 2:

- a) The aircraft commander retains full authority over the safety and good order on board aircraft, and he may command and require the assistance of any crew member, or IFSO, or request it from a passenger; and
- b) The provisions of Option 2 give more legal certainty because the measures against offences and acts of unlawful interference on board aircraft are fully addressed by the aircraft commander.

6.4 The new provision in Article 6, paragraph 2 of the Convention should prevent any overlap of authority between the aircraft commander and any IFSO.

7. **ACTION BY THE CONFERENCE**

7.1 The Conference is invited to approve and adopt Option 2 of Article 6 of the Draft Protocol.