



**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

**Main Operative Clauses for the Draft Protocol to Amend the Tokyo Convention**

**(Presented by the Chairperson of 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.

**(Note:** This draft article follows the format of Article I of the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971*. In view of the sentiments expressed by a number of delegations at the first meeting of the Sub-Committee that the Tokyo Convention was generally not in need of a complete overhaul except for jurisdictional gaps identified, this draft does not change the terms used in the Tokyo Convention, such as the State of “registration”; nor does it address the issue of extradition which is already dealt with in the existing Article 16.)

**Article II**

1. **Article 3, paragraph 2**, of the Convention shall be replaced by the following:

“2. Each Contracting State:

- a) shall take such measures as may be necessary to establish its jurisdiction over offences committed on board aircraft in the following cases:

- (i) [as the State of Occurrence,] when an offence under its penal laws is committed on board the aircraft in the territory of that State;
  - (ii) [as the State of Registration,] when an offence under its penal laws is committed on board the aircraft which is registered in that State;
  - (iii) [as the State of Landing,] when an offence specified in Article 9, paragraph 1 *bis* is committed on board the aircraft which lands in the territory of that State with the alleged offender still on board;
  - (iv) [as the State of the Operator,] when an offence specified in Article 9, paragraph 1 *bis* is committed on board the aircraft while it is leased without crew to the Operator whose principal place of business or permanent residence is in that State.
- b) may also establish its jurisdiction over offences committed on board aircraft in the following cases:
- (i) [as the State of Nationality,] when an offence specified in Article 9, paragraph 1*bis* is committed on board the aircraft [by or] against a national of that State;
  - (ii) [as the State of Habitual Residence,] when an offence specified in Article 9, paragraph 1*bis* is committed on board the aircraft by a stateless person whose habitual residence is in the territory of that State.

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

“2 *bis*. Where a Contracting State has established any act specified in Article 8, paragraph 1 *bis* as an offence under its penal laws, such Contracting State may also establish its jurisdiction over such an offence when committed on board aircraft in any of the cases set forth in Article 3, paragraph 2)(a)(iii) and (iv) and paragraph 2)(b)(i) and (ii).”

**(Note: Paragraphs 2 a) (ii) to (iv), 2 b) and 2 bis** are the proposed new additions to **Article 3** of the Convention, which address the issue of both mandatory and optional jurisdictions. They partially follow the format of Article 8 of the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (Beijing, 2010), with modifications. The idea is to provide for the establishment of jurisdiction over the acts (when made offences) or the serious offences which subject the unruly person concerned to disembarkation or delivery respectively. If the Legal Sub-Committee wishes to have a wider mandatory jurisdiction, Article 9, paragraph 1 *bis* could be expanded. If the Sub-Committee wishes to have the opposite result, the paragraph could be shortened and some of its content could be moved to Article 8, paragraph 1 *bis*. None of these proposed changes shall preclude each Contracting State from establishing its jurisdiction over any other offence on the basis of the existing Article 3, paragraph 3.)

### Article III

In **Article 8** of the Convention, the following shall be added as paragraph 1 *bis*:

“1 *bis*. For the purpose of paragraph 1 but without limiting its generality, the following acts shall be deemed to be the acts which may subject the person to the disembarkation:

- a) assaulting, intimidating or threatening, whether physically or verbally, another person;
- b) intentionally causing damage to, or destruction of, property;
- c) consuming psychoactive substances, resulting in intoxication and jeopardizing the good order and discipline;
- d) smoking in a lavatory, or smoking elsewhere in a manner likely to endanger the safety of the aircraft;
- e) tampering with a smoke detector or any other safety-related device;
- f) operating a portable electronic device when such act is prohibited.”

**(Note:** The purpose of new **paragraph 1 *bis*** is to list a number of less serious offences or acts, which will 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. The term “acts” here, by virtue of Article 1, paragraph 1 b) includes both “offences” and “non-offences”. As the Sub-Committee has not yet agreed on the list of offences, the list in paragraph 1 *bis* is based on the list in ICAO Circular 288. If the Sub-Committee considers that some of these acts should be considered as serious offences (e.g. the acts specified in paragraph 1 *bis* (d), (e) and (f) as they may adversely affect aircraft safety), it may decide to move these offences to Article 9, paragraph 1 *bis*.)

### Article IV

In **Article 9** of the Convention, the following shall be added as paragraph 1 *bis*:

“1 *bis*. For the purpose of paragraph 1 but without limiting its generality, the following acts shall be deemed to be serious offences:

- a) assault or a threat to commit such assault against a crew member if such act interferes with the performance of the duties of the crew member or lessens the ability of the crew member to perform those duties;
- b) refusal to follow a lawful instruction given by or on behalf of the aircraft commander, if such refusal jeopardizes the safety of the aircraft or of persons or property therein or jeopardizes the good order and discipline on board;
- c) physical violence against another person;

- d) sexual assault;
- e) [*other offences to be inserted by the Legal Sub-Committee*].”

(**Note:** The purpose of the new **Article 9 bis, paragraph 1**, is 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 list is based on some of the offences listed in the Circular 288, which are considered to be more serious offences. The description of the serious offences in Article 9, paragraph 1 *bis* does not entirely follow that in Circular 288.)

### **Article V**

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] [crew member] [aircraft commander].”

**(Notes:**

- (a) This draft does not propose the substance of the immunity of the IFSO but only identifies the place in the treaty, if the Sub-Committee sees a need to insert a provision on the immunity of IFSO.
- (b) Neither does this draft provide for a revision of the standard of the immunity in the existing Article 10 whether it be that the revised standard should be “reasonable”, “not arbitrary and capricious” or “necessary and proportional”.

These issues need to be determined by the Sub-Committee.)

— END —