



INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 26 March to 4 April 2014)

DRAFT TEXT OF THE PROTOCOL TO THE TOKYO CONVENTION OF 1963 PROPOSED BY THE LEGAL COMMITTEE

PROPOSALS FOR AMENDMENTS TO THE DRAFT TEXT — DEFINITION OF “IN FLIGHT”

(Presented by Singapore)

1. Singapore’s proposals on the proposed amended definition of “in flight” in the Draft Protocol and our explanations are as follows:

Option 1

Delete the amended definition of “in flight” in draft paragraph 3(a) of Draft Article II and delete Draft Article V;

or

Option 2

Make no change to the amended definition of “in-flight” in draft paragraph 3(a) of Draft Article II and Draft Article V but add Draft Article IV *bis* as follows:

Article IV bis

Article 4 of the Convention shall be replaced by the following:

A Contracting State which is not the State of registration may not interfere with an aircraft ~~in-flight~~ *during the period when power is applied for the purpose of take off until the moment when the landing run ends* in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases:

- (a) the offence has effect on the territory of such State;
- (b) the offence has been committed by or against a national or permanent resident of such State;
- (c) the offence is against the security of such State;
- (d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State; and
- (e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.

Explanation Note – Option 1

The Tokyo Convention has 2 definitions of “in flight”.

- (i) The definition of “in flight” in Article 5 paragraph 2 (from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation) applies to Chapter III ie to the powers of the aircraft commander.
- (ii) The definition of “in flight” in Article 1 paragraph 3 (when power is applied for the purpose of take off until the moment when the landing run ends) applies to the rest of the Tokyo Convention.

2. This two-tiered definition of “in flight” was a conscious decision taken after much deliberation and by majority vote at the Diplomatic Conference in Tokyo. Amending the two-tiered definition of “in flight” in the Tokyo Convention should only be done with utmost care and knowledge of the effect the amendment will have on all relevant provisions of the Tokyo Convention.

3. The proposed amended definition of “in flight” in the draft Protocol will apply to all provisions of the Tokyo Convention. Of particular concern is the effect on Article 4 of the Tokyo Convention. Article 4 states:

“A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases: ...”

4. The effect is that, except as specified in Article 4, the State of the territory that the aircraft is in will lose the ability to interfere with an aircraft in order to exercise its criminal jurisdiction between the aircraft having closed its external doors until it is on the runway prior to take off, and where it is still on the runway after landing till its external doors are open, even though the aircraft is in the territory of that State.

5. For the above reason, the recommendation in Option 1 is to make no change to the definition of “in flight” in the Tokyo Convention.

Explanation Note – Option 2

If the general view is for the amended definition of “in flight” in draft paragraph 3(a) of Draft Article II to be adopted, the effect on Article 4 of the Tokyo Convention may be mitigated with an amendment to Article 4 itself. The recommendation is to replace in Article 4 “in flight” with “during the period when power is applied for the purpose of take off until the moment when the landing run ends”. This is to prevent the inadvertent application of the new definition of “in flight” to Article 4 of the Tokyo Convention and thereby the inadvertent restriction on the exercise by the State of the territory that the aircraft is in of its criminal jurisdiction .