



WORKING PAPER

LEGAL COMMITTEE – 35TH SESSION

(Montreal, 6 – 15 May 2013)

Agenda Item 2: Acts or offences of concern to the international aviation community and not covered by existing air law instruments

**VIEWS OF THE UNITED ARAB EMIRATES
ON THE DRAFT PROTOCOL TO AMEND THE TOKYO CONVENTION**

(Presented by the United Arab Emirates)

1. INTRODUCTION

1.1 The international aviation community is experiencing a steady increase in unruly and disruptive incidents. Studies that IATA has conducted reveal a shocking 687% increase in incidents in 2009 as compared to 2007. Similarly, one UAE aircraft operator reports that the ratio of the number of recorded unruly behaviour incidents versus the number of passengers carried has double between 2005 and 2012.

1.2 For a number of years, ICAO has examined the adequacy of the international legal regime to deal with issues involving unruly/disruptive persons. In 2000, Guidance Material was developed. Later, in 2009, the ICAO Council decided to form a Secretariat Study Group (SSG). After meeting twice in 2011, SSG came to the conclusion that the modernization of the Tokyo Convention was warranted. SSG also suggested the convening of the Legal Sub-Committee (LSC). In this respect, LSC met in May and December 2012. It produced a draft Protocol to amend the Tokyo Convention. This is now presented for the consideration of the Legal Committee.

1.3 This paper presents the views of the United Arab Emirates (UAE) on the draft Protocol.

2. DISCUSSION

2.1 Jurisdiction

2.1.1 The UAE legal system does not extend jurisdiction to prosecute offences that foreign nationals commit on board foreign-registered aircraft landing in the country. Therefore, the UAE is very supportive of the idea of expanding mandatory jurisdiction beyond the State of registry to include: i) the State of first landing; and ii) the State of the operator. The UAE also considers appropriate including the jurisdiction of the State of nationality of the offender, and the State of nationality of the victim.

2.1.2 Given that the draft Protocol proposes to expand the temporal scope by aligning the definition of an aircraft “in-flight” with that of the Beijing instruments (e.g. “from the moment when all its external doors are closed”), the Legal Committee may also consider whether to capture the jurisdiction of the State where the offence takes place. This is expressly contemplated in the Beijing instruments.

2.1.3 There may be cases where an offence is committed after the closing of the doors but before the aircraft takes off. For instance, let us consider the following example: Airline Z1 is about to depart from city A to its home capital Z. The aircraft is registered in Z. While taxiing out and a few minutes after all doors are closed, a severe disruptive incident occurs. The gravity of the incident does not allow the flight to continue to its intended destination. The aircraft commander decides to return to the gate and delivers the passenger to law enforcement agents on the ground. Upon an examination of the facts, authorities of State A decide not to prosecute the offence on the following grounds: i) the incident occurred on board an aircraft registered in another State; ii) the victim and the alleged offender were from States other than A; and iii) whilst the alleged offence took place in the territory of State A, the incident occurred after the closing of the doors, thereby triggering the application of the international instrument. Like other legal systems, State A recognizes the supremacy of international treaties over national law. Unlike the Beijing instruments, as it stands, the draft Protocol does not capture this situation.

2.2 Immunity

2.2.1 The UAE is of the view that one of the most important issues when dealing with unruly/disruptive behavior relates to the level of immunities that the aircraft commander, crew, and passengers should enjoy. In light of some conflicting and divergent judicial interpretations of the Tokyo Convention, the UAE advocates that the existing international regime ought to recognize a more deferential standard for aircraft commanders.

2.2.2 As the Court noted in *Gutstadt v. Air Canada* (2002), “it is imperative, indeed vital, that [aircraft commanders] continue to exercise their best judgment in respect to safety matters relating to human behavior aboard the aircraft under their command. Provided that they are acting in good faith and reasonably, [aircraft commanders] should be unhindered by policy considerations or guidelines, and make the safety decisions they consider appropriate without concern over subsequent second-guessing by individuals enjoying the luxury of time, and absent any personal risk.”

2.2.3 In light of this, the UAE is in a position to fully support the language proposed in the IATA working paper, which reads as follows:

“The aircraft commander will be accorded a high degree of deference in any review of actions taken by him or her in accordance with this Convention and any action taken shall be assessed in light of the facts and circumstances actually known to him or her at the time that those actions were taken”

2.3 In-Flight Security Officers (IFSOs)

2.3.1 The UAE favours some recognition of the role of IFSOs in the draft Protocol. However, its definition should not depart from that adopted in Annex 17. In addition, the level of immunity for IFSOs should be carefully examined.

2.4 Termination of the Contract of Carriage

2.4.1 The UAE supports the proposed Article VII, paragraph 2 addressing the issue of the termination of the contract of carriage.

2.5 List of Offences

2.5.1 UAE favours the inclusion of a list of offences. This should not only address those of a more serious nature, but also those which significantly jeopardize the safety of the aircraft. Not doing so would significantly undermine the root of the problem this initiative attempts to solve.

2.6 Penalties and Sanctions

2.6.1 The UAE is of the firm belief that it should be up to each State party to decide the type of penalty or sanction to be imposed on a giving incident involving unruly/disruptive behaviour. However, without imposing any obligation on States, the draft Protocol should recognize the possibility for States to impose “monetary sanctions.” This should be included in the proposed Article VI.

2.6.2 Likewise, it may be advisable to consider whether language is needed to clarify that the unruly person may also be asked to pay compensation to injured parties, as a result of the disruptive incident that he or she might have caused.

2.7 Cooperation amongst States

2.7.1 The UAE supports including language that would encourage States to cooperate amongst themselves when dealing with issues of unruly/disruptive behaviour. In particular, this is important in cases of diverted flights, and / or where exchange of information is required.

2.8 Format of the Instrument

2.8.1 The UAE is happy to work on the basis of a protocol to amend the Tokyo Convention. However, the final format of the instrument will be decided by the Diplomatic Conference.

2.9 Right of Recourse

2.9.1 Where the unruly behaviour causes a diversion of the flight, the aircraft operator bears a significant financial cost. This may range anywhere between US\$ 20,000 to 70,000. The aircraft operator must pay new landing charges, re-fueling, cost of personnel, etc. These figures do not include the costs that other passengers may incur. Amongst other, these may include but are certainly not limited to loss of connecting flights, books, tour reservations, hotel accommodations, opportunity costs, and loss of businesses.

2.9.2 In light of the foregoing, the UAE supports the proposal to include language in the draft Protocol that would expressly grant aircraft operators a right of recourse vis-à-vis the party that caused the unruly incident.

2.10 Preventive Measures

2.10.1 The UAE is of the strong view that the new instrument should incorporate provisions that would encourage States to implement preventive measures to ensure that incidents involving unruly/disruptive behaviour do not occur. In particular, the UAE would like to suggest the following text:

[Article VIII

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

1. *In order to deter and prevent incidents involving unruly and disruptive behavior, States Parties should promote awareness of the unacceptability of such conduct and the legal consequences thereof.*
2. *States parties should take measures to ensure that relevant personnel are provided adequate training to identify and manage situations involving unruly and disruptive behavior.]*

3. **CONCLUSION**

3.1 As a State that has actively participated in the process to modernize the Tokyo Convention, the UAE fully supports this initiative. We are of the firm belief that this could significantly contribute to advancing the development of international air law, while upgrading existing international legal regime to effectively address incidents involving unruly behavior in aviation. This paper offers some suggestions towards achieving these objectives.

4. **ACTION**

4.1 The UAE invites the Legal Committee to take note of this paper and to incorporate its suggestions.

— END —