



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

REPORT OF THE DRAFTING COMMITTEE

1. The Chairman of the 25th Session of the Legal Committee formed a Drafting Committee to review and propose the possible text of a Protocol to the *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, done at Tokyo on 14 September 1963. The Drafting Committee comprised twelve States (Brazil, Canada, Congo, France, Jamaica, Japan, Lebanon, Nigeria, Singapore, Republic of Korea, United Arab Emirates, United States of America) as well as representatives from IATA and IUAI. A number of observers also attended its meetings. It was chaired by Australia.

2. The Chairman referred to the Drafting Committee text relating to the following five matters:

- a) Expanding the bases of jurisdiction on which Contracting States may take action under the Tokyo Convention;
- b) The inclusion of reference to in-flight security officers in the text of the Tokyo Convention;
- c) Identification of types of behaviour of particular concern to Contracting States, over which States should be encouraged to introduce appropriate sanctions;
- d) The right of recourse of airlines against unruly passengers who cause flight diversions; and
- e) The consideration of amendments of certain definitions to modernize the Tokyo Convention in line with recent international aviation instruments.

3. The following text is the proposed Protocol formulated by the Drafting Committee, submitted for the Legal Committee's consideration. Proposed new text is identified by underline.

4. In some cases, square brackets remain around entire provisions, reflecting the difference of opinion between States surrounding the concept. In other cases, square brackets remain in the text of the amendments, reflecting policy decisions which, in the view of the Drafting Committee, should be referred to the Legal Committee for further consideration or for consideration by a Diplomatic Conference.

5. The main operative clauses for the draft Protocol to amend the Tokyo Convention are as follows:

Article I

This Protocol supplements the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done 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 at any time 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 flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board[.] / [;]

[(b) “in-flight security officer” means a government employee who is specially selected, trained and authorized by the government of the State of the operator or the government of the State of registration to be deployed on an aircraft, pursuant to a bilateral or multilateral agreement or arrangement [.] / [., with the purpose of protecting that aircraft and its occupants against acts of unlawful interference.] / [., with the purpose of protecting the safety of that aircraft, or of persons or property on board.]]

[(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

Article 3 of the Convention shall be replaced by the following:

“1. The State of registration is competent to exercise jurisdiction over offences and acts committed on board.

1 bis. A State is also competent to exercise jurisdiction over offences and acts committed on board:

- a) as the State of landing, when the aircraft on board which the 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 a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State[.] / [; and]
- c) [when the offence or act is committed by or against a national of that State.]

2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences [and acts] committed on board aircraft registered in such State.

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

- a) as the State of landing, when the aircraft on board which the 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 a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State.

[2 ter. Each Contracting State may also take such measures as may be necessary to establish its jurisdiction over offences [and acts] committed on board aircraft when an offence [or act] is committed on board an aircraft by or against a national of that State.]

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.”

Article IV

The following shall be added as Article 3 *bis* of the Convention:

“If a Contracting State, exercising its jurisdiction under Article 3, has been notified or has otherwise learned that one or more other Contracting States are conducting an investigation, prosecution or judicial proceeding in respect of the same offences or acts, that Contracting State shall, as appropriate, consult those other Contracting States with a view to coordinating their actions.”

Article V

Paragraph 2 of Article 5 is deleted.

[Article VI

Article 6, paragraph 2, of the Convention shall be replaced by the following:

“2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of [an in-flight security officer or] passengers to restrain any person whom he is entitled to restrain. Any crew member, in-flight security officer or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.”]

[Article VII]

Article 10 of the Convention shall be replaced by the following:

“For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, any in-flight security officer, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.”]

[Article VIII]

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

“1. Each Contracting State is encouraged to take such measures as may be necessary to initiate appropriate criminal or administrative proceedings against any person who commits on board an aircraft an offence or act referred to in Article 1, paragraph 1, in particular:

- 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 purpose of protecting the safety of the aircraft or the persons or property therein.

[2. Nothing in this Convention shall affect the right of each Contracting State to introduce [or maintain] in its national legislation appropriate measures in order to punish unruly and disruptive acts committed on board.]”]

Article IX

Article 16, paragraph 1 of the Convention shall be replaced by the following:

“1. Offences committed on board aircraft shall be treated, for the purpose of extradition between the Contracting States, as if they had been committed not only in the place in which they occurred but also in the territories of the Contracting States required to establish their jurisdiction in accordance with paragraphs 2 and 2bis of Article 3, and who have established their jurisdiction in accordance with paragraph 2ter of Article 3.”

[Article X]

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

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

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