



LEGAL COMMITTEE – 35TH SESSION

(Montréal, 6 – 15 May 2013)

Agenda Item 7: Report on work done at the Session

DRAFT REPORT ON THE WORK OF THE LEGAL COMMITTEE DURING ITS 35TH SESSION

1. The attached paragraphs 2:23 to 2:71 of the draft Report of the Legal Committee relate to Agenda Item 2.

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2:23 The Chairman **summarized** the discussion, noting the overwhelming consensus for the State of landing jurisdiction, and that most of those delegations who supported a State of landing jurisdiction would prefer it to be on a mandatory basis. A few delegations who opposed changes to Article 3 of the Tokyo Convention stated that they could live with an optional State of landing jurisdiction under Option 2. The Chairman noted that there was some support for, and no opposition against, the proposal expressed at paragraph 2:15 with regard to an exception to the State of landing jurisdiction in cases where the State of nationality requests extradition of one of its nationals accused of unruly behaviour, and that this proposal warrants further study. The State of landing jurisdiction would therefore be included in the draft Protocol as a mandatory jurisdiction without square brackets. The Chairman noted that there was little comment on the Option 1 and Option 2 drafting approaches under Article III of the draft Protocol. However, the view had been expressed that either approach should respect the current structure of, and remain in harmony with Article 3, and he would therefore direct the drafting group to take that into consideration when further examining this issue.

2:24 The Committee thereafter considered the **State of the operator jurisdiction**. A large number of delegations supported the State of the operator as a mandatory jurisdiction given the increasing number of leased aircraft in today's world, a situation which did not exist in 1963, and which is underscored by the data provided in LC/35-WP/2-2. One delegation noted the example of aircraft being registered in EU countries for legal and economic reasons, with the State of the operator being virtually unknown to especially, passengers, which would vitiate in favour of a State of operator jurisdiction for legal certainty and to reflect modern reality. One delegation stressed that should the State of the operator jurisdiction be accepted, that either Article 16 of the Tokyo Convention would need to be consequentially adjusted, or a provision could be added whereby the State of registration would transfer some powers to the State of the operator consistent with Article 83 *bis* of the Chicago Convention. An observer delegation, in supporting a mandatory State of the operator jurisdiction, reiterated the points cited in its paragraphs 2.7 to 2.11 of LC/35-WP/2-2.

2:25 Several delegations could opt for either a mandatory or optional State of the operator jurisdiction. Of those delegations cautioning against the State of the operator jurisdiction, one deferred to its comments with regard to the State of landing jurisdiction, citing the problems associated with the State of the operator being included in an international legal instrument, its effect upon a relationship determined by civil law, and the consequent problems which could arise in civil law States with large leasing companies. Another delegation averred that imposing a mandatory obligation upon States to take on the State of operator jurisdiction is an intrusive measure and should only be resorted to when other avenues have been exhausted. That being said, this delegation could live with either the optional State of operator jurisdiction under Option 2, or alternatively could entertain the possibility of the Tokyo Convention reflecting operation of aircraft by ownership or by lease which would not necessarily entail an expansion of jurisdiction.

2:26 Upon further discussion of the jurisdiction of the State of the operator, many delegations held the view that the legal framework should reflect the development of industry practice. Accordingly, the Tokyo Convention should be amended to establish such a jurisdiction mandatorily. Other delegations believed that the establishment of such a jurisdiction should be on an optional basis. Some delegations were of the view that the issue of the jurisdiction of the State of the operator was not as obvious as that of the State of landing. Nothing was said to demonstrate that the establishment of such a jurisdiction was necessary to address the issue of unruly passengers. It was not considered proportional to introduce changes in the legal system to deal with matters which have not been proven to be caused by a lack of jurisdiction. Moreover, the expansion of jurisdiction does not necessarily result in an increase of the prosecution of unruly passengers. One delegation cautioned that Article 3, paragraph 3 of the Convention does not prohibit the establishment of other jurisdictions in accordance with national law. Any new provision establishing jurisdiction on an optional basis may be mistakenly interpreted as narrowing down the effect of that paragraph.

2:27 The Chairman **summarized** the discussion by stating that there had been general support for the inclusion in the draft Protocol of a provision concerning the jurisdiction of the State of the operator. The majority considered that such a jurisdiction should be established on a mandatory basis. Accordingly, the provisions relating to such a jurisdiction should be presented without square brackets. At the same time, it would be mentioned in the report of the Committee that some delegations had expressed reservation on this issue.

2:28 The Committee then considered **other grounds on jurisdiction**, including territorial jurisdiction, the jurisdiction of the State of the nationality of the victims or alleged offenders, as well as the State of habitual residence of the alleged offenders.

2:29 With respect to territorial jurisdiction, one delegation stated that it should be explicitly mentioned in the draft Protocol. Others believed that in the context of unruly passengers, emphasis should be placed on the State of registration, State of landing and State of the operator. As for territorial jurisdiction in general, there was no indication of any problem in actual practice.

2:30 A number of delegations supported the optional jurisdiction of the State of the nationality of the victims or alleged offenders. One delegation reiterated that Article 3, paragraph 3 had encompassed all optional jurisdictions. As a result, no further reference to optional jurisdiction was warranted.

2:31 In view of the small number of delegations which intervened on these issues, the Chairman proposed and the Committee **agreed** that the provision concerning the jurisdiction of the State of nationality be put in square brackets and referred to the Drafting Committee for further formulation. With respect to territorial jurisdiction and the jurisdiction of the State of habitual residence, it was agreed that no reference was necessary as support was not indicated.

2:32 In this connection, the Chairman announced that the **Drafting Committee** was composed of the following States: Australia, Brazil, Canada, Congo, France, Jamaica, Japan, Lebanon, Nigeria, Republic of Korea, Singapore, the United Arab Emirates, and the United States. The International Air Transport Association (IATA) and the International Union of Aerospace Insurers (IUAI) were invited as observers. The delegate of Australia should chair the Committee.

2:33 One delegation mentioned that Article 4 of the Tokyo Convention only refers to criminal jurisdiction, whereas the draft Protocol refers to administrative penalties.

2:34 In the case of multiple possible jurisdictions, and in order to ensure appropriate coordination among different legal systems, it was suggested to add the following Article 3 *bis* to the draft Protocol:

“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 conduct, those Contracting States shall, as appropriate, consult one another with a view to coordinating their actions.”

2:35 Several delegations supported this addition, stating that this could alleviate certain concerns relating to overlapping jurisdictions. One delegation proposed to replace “as appropriate” with “be encouraged to” in order to provide certain flexibility to States. It was pointed out that most of the offences covered were less serious in nature and would not involve the cumbersome procedure of extradition.

2:36 As there was no opposition to this draft provision, the Committee decided to refer it to the Drafting Committee with a view to producing more refined text, if necessary.

2:37 The Committee then discussed the **possible offences** to be covered by the draft Protocol. The Chairperson of the Sub-Committee explained that a list of offences was initially considered by the Sub-Committee for the purpose of providing common denominators for the extension of the jurisdiction of the State of landing and the State of the operator. Upon further consideration, the Sub-Committee found it very difficult to agree on the contents of such a list. Eventually, the Sub-Committee decided not to include the list of offences but proposed by majority to add Article 15 *bis* to the Tokyo Convention as follows:

“1. Each Contracting State shall ensure that the following acts are made punishable by appropriate criminal or administrative penalties when committed by a passenger on board an aircraft in flight:

- (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 purposes set out in Article 6, paragraph 1(a) or (b).

2. Nothing in this Convention shall affect the right of each Contracting State to introduce, according to its national legislation, appropriate penalties in order to punish other unruly or disruptive acts committed on board by passengers.”

The majority in the Sub-Committee believed that subparagraphs (a) and (b) above were a description of conduct rather than a list of offences.

2:38 Supporting the above statement of the Chairperson of the Sub-Committee, one delegation stated that Article 15 *bis* was designed as a compromise between those who preferred and those who did not prefer to have a list of offences. It was noted that due to different cultural overtones, standards of behaviour varied from one State to another. Article 15 *bis* could serve to demonstrate that certain disrespectful acts against crew members are not internationally tolerable. The text of Article 15 *bis* was drafted in such a way as to avoid duplication with the provisions of other conventions. This view was endorsed by a number of delegations, which mentioned that acts having negative impacts upon the safety of aircraft or persons on board ought to be punishable.

2:39 Another delegation was opposed to any effort to turn the Tokyo Convention into another criminalization instrument; it was stated that Article 15 *bis*, in substance, is a list of offences. The Tokyo Convention had stood the test for 50 years and had been integrated into various national laws. It should not be changed without caution because of the concern over unruly behaviour. The description of unacceptable acts on board aircraft could be provided through guidance material, such as an updated ICAO Circular 288. This delegation further noted that the contents of Article 15 *bis* would at least partially overlap with the provisions of the existing conventions adopted under the auspices of ICAO. For instance, physical assault in paragraph (a) may overlap with Article 1, paragraph 1 (a) of the Montreal Convention of 1971, and that of the Beijing Convention of 2010. If the list of offences was to be included in the Protocol to amend the Tokyo Convention, then a number of safeguard provisions would also need to be incorporated, such as a clause excluding the application of the Convention to military activities. This delegation was supported by a number of other delegations.

2:40 One delegation expressed its reservations about the need for the proposed Article 15 *bis* to the draft Protocol to the Tokyo Convention. The delegation indicated that it shared the same concern raised earlier: that is, that the offences described in Article 15 *bis* overlap with those already covered by the *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation* (1971 Montreal Convention), the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (2010 Beijing Convention), and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft* (2010 Beijing Protocol). Noting that many of the delegations that took the floor

earlier had indicated that the conduct described in Article 15 *bis* was already criminalized under the provisions of their national legislation, the delegation further opined that the issue of unruly passengers, which the Article 15 *bis* was ostensibly intended to address, is one of a failure by States to exercise jurisdiction when an offence occurs, not one of a failure by States to criminalize particular offences.

2:41 Another delegation singled-out three shortcomings with the proposed Article 15 *bis*. First, the delegation stated that the Tokyo Convention was a part of a system of instruments, including the 1971 Montreal Convention, the 2010 Beijing Convention, and the 2010 Beijing Protocol, which already addresses the conducts described in Article 15 *bis*. Second, it was noted that because the elements of criminal offences vary according to national law, Article 15 *bis* would not achieve international uniformity. Third, the delegation averred that since no list will be exhaustive, there will inevitably be offences left off; it would therefore be better not to include such a list.

2:42 One delegation observed that insofar as the proposed revised Tokyo Convention would extend jurisdiction over offences and certain other acts committed on board aircraft to the State of landing and the State of the operator, the issue of whether this expanded jurisdiction would apply to the offences described in Article 1 or the offences described in Article 15 *bis* or both, needed to be addressed. Second, the delegation emphasized that although Article 15 *bis* mandates certain acts be made punishable by either appropriate criminal or administrative penalties, not all States employ so-called “administrative penalties” in this manner; therefore, clarification was needed on the types of administrative penalties that were to be expected. Third, the delegation observed that “physical assault or a threat to commit such assault against a crew member” was already encompassed within the offences covered by the 2010 Beijing Convention and, thus, the adoption of Article 15 *bis* would create overlap between a revised Tokyo Convention and the Beijing Convention with respect to these offences. Finally, the delegation referred to the formulation of paragraph 1(b) of the proposed Article 15 *bis* and suggested that in order to justify inclusion of this text the requirement of risk to the safety of the aircraft should be made clear. The delegation proposed the following revised text:

- a) refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the purposes set out in Article 6, paragraph 1 (a) or (b), *and likely to endanger the safety of the aircraft.* (emphasis added)

2:43 The Chairman highlighted the regime of civil (administrative) penalties in place in the United States of America. He further noted what he believed was an “underutilization” of administrative penalties in ICAO guidance materials, but at the same time questioned whether a revised Tokyo Convention was the appropriate vehicle for promoting the use of civil penalties.

2:44 One delegation noted that while the States which supported a list of offences in the draft Protocol generally sought harmonization and reciprocity of treatment with respect to those offences, the comments made suggested that criminalization of the acts listed in the proposed Article 15 *bis* was to a great extent already harmonized due to the recognition of these offences in States’ national laws. This delegation expressed understanding with the position of those States that did not want to turn a revised Tokyo Convention into a “criminalization Convention.” In light of this, the delegation tabled a new compromise proposal with the following elements:

- a) Redraft Art 15 *bis* to read along the following lines:

“Each Contracting State is encouraged to ensure that any person who commits an offence or act referred to in Article 1 paragraph [1]/ [1(b)], in particular, that which jeopardizes the safety of the aircraft or persons or property therein, is appropriately punished by criminal or administrative sanctions.”

- b) that the Legal Committee recommends that the Diplomatic Conference, if/when convened, adopts a resolution calling upon ICAO to update Circular 288 with, if necessary, the support of, for example, an *ad hoc* group created from among the States participating in the Diplomatic Conference, to include a list of unruly acts commonly occurring on board aircraft and which States' Parties should consider criminalizing under their national laws.

2:45 In response, one delegation expressed misgivings about the discussion of specific draft text in the Plenary session and proposed the formation of a Small "Friends of the Chairman" Group to work on the matter. The delegation further suggested that reference to administrative penalties in the proposed Article 15 *bis* address the diversity of legal systems among States. The delegation further opined that the purpose of the proposed Protocol is to deal with unruly passengers and not all conduct of unruly passengers rises to the level of threatening the safety of the aircraft, so the purpose of the Protocol will not be achieved with the revised text previously put forth.

2:46 The Chairman suggested that going forward further discussion should center on the overarching question of whether or not the character of the draft instrument should be changed to address the criminalization of certain acts or behaviours.

2:47 Other delegations offered varying opinions, with some generally favouring the inclusion of Article 15 *bis* (or something like it), a few opposing inclusion, and still others favouring revising the text along the lines that had proposed in paragraph 2.44 above, or even removing it from the draft Protocol and instead including it in a revision to ICAO Circular 288. Notably, more than one delegation took the floor to suggest that the text of Article 15 *bis* be changed so that it applied to "persons" onboard the aircraft, as opposed to just "passengers".

2:48 In **summarizing**, the Chairman submitted that on the fundamental question of whether or not the character of the draft instrument should be changed to address the criminalization of certain acts or behaviours (i.e., through the inclusion of Article 15 *bis* or something like it), there was no consensus among the delegates either way. He averred that this was perhaps an appropriate outcome since the question of the fundamental character of the instrument was not *per se* a legal question but a policy one; he further advised that, as such, the text of Article 15 *bis* would be submitted to any eventual diplomatic conference for a decision.

2:49 The Committee **agreed** to create a small group to consider improvements to draft Article 15 *bis* but not the fundamental question of whether or not Article 15 *bis* should be included in the text of the draft Protocol, composed of the following delegations: Argentina, China, Columbia, Ecuador, France, Jamaica, Japan, Singapore and IATA, to be chaired by Jamaica.

2:50 Having concluded discussions on Article 15 *bis*, the Chairman then called for a round of general statements on the topic of **IFSOs**. The statements offered by delegations in this regard were varied. One delegation suggested that including the issue of IFSOs demanded a new, separate instrument. Three other delegations advanced the notion that IFSOs were a modern reality and that if the Committee were to produce a revised Tokyo Convention that failed to mention IFSOs, it could not reasonably be considered a "modernization" of the instrument.

2:51 Some delegations took this opportunity to present views on specific topics related to IFSOs; for example, two delegations urged that IFSOs should only act pursuant to the request and authority of the pilot-in-command (PIC). Another delegation took the opposite view, suggesting that the IFSO's authority was complementary to, not subservient to or in conflict with PIC authority. With this in mind, this delegation

averred that an IFSO, charged by his government with overseeing the law enforcement response to incidents on board the aircraft and needing a degree of autonomy to respond as necessary to mere disturbances to good order and discipline with the potential to escalate into unlawful interference, needed the authority to take unilateral action (i.e., without a request or authorization from the PIC).

2:52 Some delegations did not see the need for the inclusion of provisions on IFSOs in the Tokyo Convention on the basis that their activities, including their respective authorities and immunities, are already provided for under bilateral or multilateral arrangements between States. One delegation proposed that it would be more appropriate for matters regarding IFSOs to be regulated in a separate international instrument other than in the Tokyo Convention. Another delegation, supported by another, proposed that the issue of IFSOs be included on the work programme of the Legal Committee so that it could be considered distinctly and independently of the Tokyo Convention.

2:53 Several delegations stated that they had established bilateral arrangements with other States or enacted domestic legislation in relation to IFSOs. Some delegations stated that they had not encountered any difficulties in the implementation of their IFSO programme that could require the formulation of further provisions in an international instrument such as the Tokyo Convention.

2:54 Several delegations could support the inclusion of provisions on IFSOs in the draft protocol provided that they are consistent with Annex 17 and restricted to cover only acts of unlawful interference and did not include a duty to maintain good order and discipline aboard aircraft. A number of delegations saw the need to consider further the role of IFSOs with some noting that this role was limited in their States only to intervening in the most serious cases such as hijacking and terrorism. Concern was expressed that an expanded role for IFSOs to deal with minor cases could expose their presence on board thereby compromising the secret or covert nature of their deployment. Several delegations that could accept the inclusion of provisions on IFSOs, if the majority of delegations so desired or if they had to make a choice, favoured the text contained in Option 2 of Article IV as set out in the Appendix to LC/35-WP/2-1. While some delegations saw the need to define acts of unlawful interference, other delegations felt that they are adequately defined in the Annex 17.

2:55 Delegations that supported the inclusion in the Tokyo Convention of provisions relating to IFSOs expressed the view that IFSOs could not be properly classified as passengers or crew. Those delegations argued that IFSOs have a special status different from that of a passenger or crew member by virtue of their training and rules of engagement and being government employees who are not subject to the chain of command applicable to crew members. Another delegation clarified that the inclusion of IFSOs in the Tokyo Convention would not mean that they had absolute immunity as they would be required to act reasonably.

2:56 The Chairman proposed that, following the conclusion of general statements, the consideration of the item would continue with delegations addressing the **status and scope of functions of the IFSOs, their immunities, and definitions**, in that order. The Chairman while noting that there was no consensus yet on whether IFSOs should be recognised in the Tokyo Convention indicated that several delegations were opposed to it while others could accept it depending on how the provision is formulated. At the same time, a substantial majority could support the inclusion of a provision on IFSOs on the basis that this would be a recognition of the status quo that is relevant as part of updating the Tokyo Convention. Furthermore, a clear majority expressed a preference to consider the text in Option 2. The Chairman noted further that from the information that had been provided to the Committee by several delegations, many States specify the duties of IFSOs and their operations subject to bilateral and sometimes multilateral arrangements. He proposed that therefore the way to address the question of the scope of functions could be

to determine whether IFSOs should be prevented by the amended convention from assisting in maintaining good order and discipline on board aircraft.

2:57 One delegation, citing the difficulty it had with agreeing with what the Chairman had expressed as the preponderance of opinion on the recognition of IFSOs in the Tokyo Convention, proposed to call for a vote in order to conclusively determine the majority view on whether to include IFSOs or not.

2:58 The Chairman while recalling that the Committee usually proceeded by consensus noted that, in terms of Rule 31 of the Committee's Rules of Procedure, a motion to proceed by majority vote would have to be moved by a delegation and seconded by another delegation. The Chairman concluded that as this had not happened and a substantial number of delegations had expressed support for further consideration of the matter, the appropriate way to determine the status of opinion was to continue with the discussion of the issues.

2:59 One delegation reiterated its request for clarification on what duties and responsibilities would be assigned to the IFSOs and the framework in which they would perform them. In responding, one delegation explained that each State had the discretion to decide the scope of duties and responsibilities it wanted, whether it would be a broad scope mandating a response to any crimes committed on board aircraft or a narrow scope restricted only to certain acts or offences. This delegation explained further that the framework for the execution of these responsibilities could be set up in three different layers, namely, in domestic legislation, bilateral or multilateral arrangements, and an international instrument such as the Tokyo Convention. This delegation expressed its preference for the broadest scope of responsibilities to be provided in an international instrument thereby allowing different States the flexibility to opt for the most ideal scope that would apply to IFSOs entering into that State.

2:60 At the request of one delegation, the Chairperson of Sub-Committee informed the Committee that the Sub-Committee, at its last meeting, while noting that the use of IFSOs had increased over the years, concluded that consideration should be given to including them in the Tokyo Convention. However, as opinion in the Sub-Committee was divided on whether or not it was adequate for purposes of entitlement to immunities to classify IFSOs as passengers, there was a consensus that this issue be referred to the Legal Committee in the form of two optional texts in square brackets as elaborated in paragraph 8.5.6 of the Report of the meeting.

2:61 One delegation noted that IFSOs were not foreseen when the Tokyo Convention was adopted. IFSOs were therefore being treated as passengers and thus not adequately protected for action taken without the authorization of the PIC. Accordingly, the delegation stated that it favoured giving IFSOs much needed recognition and protection. The Chairman noted that it is for each State to decide for itself whether to have an IFSO program and the scope of the IFSO's duties; the first question for the Committee was whether and/or to what extent a revised Tokyo Convention should address IFSO duties and responsibilities.

2:62 In the discussion that followed, most of the delegations that took the floor supported the notion that IFSO duties and responsibilities should be addressed in the draft protocol; however, there was disagreement as to what the IFSO's role should be. For example, one delegation proposed that an IFSO's duties and responsibilities should include maintaining good order and discipline on the aircraft in flight; a second delegation suggested that the IFSO's duties and responsibilities should be viewed more narrowly so as to allow IFSO intervention only to stop conduct that would jeopardize the safety of the flight; while a third delegation would narrow the role of the IFSO even further, such that the IFSO's purpose was to prevent "unlawful interference" as defined in Annex 17 to the Chicago Convention. Upon seeing no further requests. The Chairman offered a **preliminary summary** of the discussion, wherein he suggested that the prevailing view was that Tokyo modernization required acknowledgement of the existence of the IFSO as a particular

category of actor onboard the aircraft and that most States favoured a restrictive use of IFSOs in accordance with Annex 17.

2:63 As regards “immunities” of the IFSO, one delegation urged the Committee to focus not on “immunities” *per se*, but on “protections”; the delegation argued that IFSOs should have the same protections afforded to the pilot, crew, and passengers when they act within the scope of their duties; i.e., to deal with serious threats to aircraft safety. The delegation further emphasized that a revised Tokyo Convention must recognize the existence of the IFSO as a separate category of actor on board the aircraft. This position was generally echoed by the handful of remaining delegations that took the floor on this issue.

2:64 The Committee noted a suggestion that the word “protection” may be preferable to “immunities” as the latter may convey a wrong impression.

2:65 Various views were presented on whether the primary role of IFSOs was to take reasonable measures against an act contemplated in Article 1, paragraph 1, of the Tokyo Convention (Option 1) or to protect aircraft against acts of unlawful interference with civil aviation (Option 2) as reflected in draft Article IV of LC/35-WP/2-1 which suggests a possible revision of Article 6 of the Tokyo Convention, by adding a new paragraph 3 to the provision. Several delegations supported Option 2, which admitted of an IFSO taking reasonable measures in the case of an act of unlawful interference. They were also of the view that this option should also apply to Article 10 of the Convention and that Articles 6 and 10 should be read in parallel and both provisions should be considered together for amendment. One delegation suggested that the scope of the IFSO’s duties should be extended to cover, in a generic sense, the safety of aircraft endangered by wilful unlawful conduct. Other delegations were of the view that an IFSO’s responsibility should be restricted to responding to acts of unlawful interference.

2:66 It was noted that definitions of an IFSO and an act of unlawful interference already existed in Annex 17 to the Chicago Convention, linking the responsibilities of the IFSO to acts of unlawful interference. The Committee also noted that mention of unlawful interference is made in other ICAO documents as well (Docs 9713 and 8973). However, some delegations were of the view that the term “unlawful interference” would have to be defined, as the definition contained in Annex 17 does not mesh with the concept of an IFSO on board an aircraft in flight.

2:67 With regard to protection to be offered to the IFSO, opinion was divided, where some delegations supported protection while others were of the view that IFSOs were to be treated like any other person who would be required to take responsibility for their acts and that the rule of law should prevail. It was noted that, if the former view were to prevail, it might be necessary to address the issue whether, in the absence of responsibility of the IFSO, the carrier concerned could be held responsible. One delegation was of the view that since aviation crosses many cultures and boundaries, the conduct of IFSOs may have to be viewed accordingly.

2:68 In the context of the discussions, one delegation raised the issue of the “go around” phase of the flight and invited the Committee to address the issue, along with possible definitions related to the legal status of IFSOs, their duties and responsibilities. In this regard, the Chairman was requested to establish a special working group to work toward bringing clarity to these undefined areas. Another delegation suggested that the Committee consider the manner in which Articles 6 and 10 of the Convention work together and that since the term “in flight” was redefined in the Beijing Convention taking the original definition appearing in the Hague Convention, it may now be necessary to introduce the notion of “in flight” in the work of the Committee. This delegation also pointed to paragraph 2 of Article 6 of the Tokyo Convention which provided that any crew member or passenger may also take reasonable preventive measures without authorization of the aircraft commander 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, and suggested that the word “reasonable” may have to be clarified in the context of its applicability under the Convention with regard to civil and criminal law.

2:69 The Chairman stated that the inter-relation between the IFSO and the term “in flight” could be considered when the Committee addressed all definitions. With regard to the request for a special working group to be established to provide clarity on definitions and “in flight”, the Chairman was concerned that there would not be adequate time for such a group to complete its work and submit its report for consideration of the Committee.

2:70 Upon the request of several delegations, that a special working group be established to work toward bringing clarity to undefined areas, it was decided that such a group would be established.

2:71 In his **summary** the Chairman stated that as there was no consensus on the issues discussed and he had to rely on a preponderance of opinion on the following issues:

- a) IFSOs are to be included in a separate and special group which reflected the status quo;
- b) the definition of IFSO should be as close as possible to the definition in Annex 17;
- c) the scope of functions of IFSOs with respect to unlawful interference should be narrowed;
- d) IFSOs should be involved in the safety of aircraft and passengers on board;
- e) States should be able to authorize their IFSOs to respond to threats to good order and discipline on board; and
- f) IFSOs should have at least the protection given to passengers on board.