



## INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 26 March to 4 April 2014)

### COMMENTS AND OBSERVATIONS ON THE DRAFT PROPOSED TEXT OF THE TOKYO PROTOCOL OF 1963

(Presented by Qatar)

#### 1. ISSUE OF “IN-FLIGHT SECURITY OFFICERS”

1.1 For the insertion of the issue of “in-flight security officers” in the draft protocol, we consider that this question should be left to bilateral agreements between ICAO Member States for the following reasons:

1.1.1 **First:** The issue is not merely limited to endorsing the provision concerning in-flight security officers for implementation. The consequences go well beyond that. The implementation of such a provision requires many arrangements and total coordination among States for the training of in-flight security officers, arming them, deciding on the number and the type of these weapons, on the procedures for their entry into the country, whether they should keep their weapons once they leave the plane and their interaction with the State authorities. These issues cannot be imposed on States which object to the text. Hence bilateral agreements would be more feasible and practical in dealing with this issue taking into account the interest of States and the benefit they may draw therefrom.

1.1.2 **Second:** The presence of weapons aboard an aircraft remains an ever greater threat to the safety and security of the aircraft compared to their absence.

1.1.3 **Third:** The text does not define, with precision, the powers of the security officers, the extent to which they are under the orders of the pilot in command who represents the supreme authority and holds the prime responsibility for the safety of the aircraft and the passengers. If it is not the case, this might create confusion and lead to conflicts between the pilot in command and the in-flight security officers.

#### 2. AMENDMENTS PERTAINING TO THE JURISDICTIONS

2.1 Concerning the amendments pertaining to the jurisdictions of the State (the State of landing- the State of the operator- the State of the offender) in the draft protocol, our observation are as follows:

2.1.1 **First:** The proposed text has designated the State of Jurisdiction but did not address or solve the issue of conflict of jurisdictions. In case there is a conflict of Jurisdictions between the State of registration and the State of landing, which one would prevail? Same questions apply to cases of conflict of Jurisdictions among the State of the operator, the State of the offender or the victim.

2.1.2 **Second:** Where there is conflict between two States whose jurisdictions apply, which one should still have the right to prosecute the case? Especially if the jurisdictions stem from the State being the State of the offender or the State of the victim. Would this State ensure due process or should its jurisdictions be discarded altogether considering that recognition of its jurisdiction in such a case might exacerbate the conflict.

2.1.3 **Third:** The proposed amendments provide for States taking the necessary measures to establish their jurisdiction, without determining those measures; which constitutes a serious deficiency. Some States might resort to force to establish their jurisdiction. This use of force will be considered legitimate since the text was silent about the nature of those measures leaving it to the discretion of each State. The measures to be taken by States for the establishment of their jurisdiction must be defined, hence our opinion that this issue warrants further study in order to resolve the question of conflict of jurisdictions and decide on the measures.

### 3. SPECIAL PROVISION

3.1 There is also a need for a special provision that deals with cases of conflict of jurisdictions among States whose jurisdictions are established by the protocol.

### 4. COMMENTS

4.1 **Considering the above, our comments are as follows:**

- a) Concerning in-flight security officers, the issue should be left to bilateral agreements between States and not inserted in the Tokyo Convention Protocol; and
- b) Concerning jurisdictions, this subject should be re-submitted to the Legal Committee for further study. The aim is to deal with cases of positive conflict of jurisdictions, determine the measures to be taken by States for the establishment of their jurisdictions and introduce a new provision for the regulation of jurisdictions where a conflict arises between States whose jurisdictions apply.