



INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 26 March to 4 April 2014)

**REPORT OF THE DRAFTING COMMITTEE
ON DRAFT PROTOCOL TO AMEND THE CONVENTION ON OFFENCES AND
CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT**

(Presented by the Chairman of the Drafting Committee)

The Drafting Committee presents for the consideration of the Conference the attached revised text of certain provisions of the draft Protocol to Amend the Convention on Offences and Certain Other Acts Committed Onboard Aircraft.

Texts shown in gray represent the additions or deletions by the Drafting Committee. The texts in black are the original texts in Document No. 3. The texts within square brackets have not yet been decided by the Conference.

Article I

This Protocol ~~supplements-amends~~ 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.~~ (Changes made by the Preambular and Final Clauses Committee).

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] / [person] 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 the operator has no such place of business, the operator’s permanent residence[.] For the purpose of Articles 4, [9], 13 and 16 of the Convention, when the State of the operator is not the same as the State of the registration, the term “the State of registration” shall include the State of the operator / [; 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/~~

~~e) — [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 ~~[may] / [shall]~~, as appropriate, consult those other Contracting States with a view to coordinating their actions.”

Article V

Article 5, paragraph 1 shall be replaced by the following:

Option 1

The provisions of this Chapter shall not apply to offences and acts committed or about to be committed by a person on board an aircraft in flight, in the airspace of the State of registration or the State of operator or over the high seas of any other area outside the territory of any State unless the last point of take-off or the next point of intended landing is situated in another State, or the aircraft subsequently flies in the airspace of another State with such person still on board.

Option 2

The provisions of this Chapter shall not apply to offences and acts committed or about to be committed by a person on board an aircraft in flight unless:

- a) The last point of departure and the next point of intended landing is are not within the same State;
or
- b) The last point of departure and the next point of intended landing is-are within the same State but the aircraft subsequently lands in another State with such person still on board.

Article 5, paragraph 2 of the Convention shall be deleted.

[Article VI

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

Option 1

[“1. The aircraft commander or in-flight security officer may, when he or she has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:

- a) to protect the safety of the aircraft, or of persons or property therein; or
- b) to maintain good order and discipline on board; or
- c) to enable the aircraft commander to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.

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 passengers to restrain any person whom he is entitled to restrain. Any crew member 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.”]

Option 2

[“1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:

- a) to protect the safety of the aircraft, or of persons or property therein; or
- b) to maintain good order and discipline on board; or
- c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.

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 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 9, paragraphs 1 and 3 of the Convention shall be replaced by the following:

Option 1

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence ~~according to the penal law of the State of registration of the aircraft.~~

3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this Article with evidence and information which, ~~under the law of the State of registration of the aircraft,~~ are lawfully in his possession.

Option 2

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal law of the State of registration or the State of the operator of the aircraft.

3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this Article with evidence and information which, under the law of the State of registration or the State of the operator of the aircraft, are lawfully in his possession.

[Article VIII]

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 IX]

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 or any other forms of legal 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 ~~for maintain~~ in its national legislation appropriate measures in order to punish unruly and disruptive acts committed on board.~~”~~

Article ~~X~~

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 2 bis of Article 3~~, and who have established their jurisdiction in accordance with paragraph 2 ter of Article 3].”~~

[Article ~~XI~~

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, neither the operator of the aircraft nor any other person shall ~~not~~ be precluded, in accordance with national law, from seeking to recover from a person who has been delivered or disembarked any damages incurred ~~from recovering from such a person any damages incurred by the operator of the aircraft~~ as a result of such disembarkation or delivery.

— END —