

# PROTOCOL

## TO AMEND THE CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT

THE CONTRACTING STATES TO THIS PROTOCOL,

NOTING that States have expressed their concern about the escalation of the severity and frequency of unruly behaviour on board aircraft that may jeopardize the safety of the aircraft or of persons or property therein or jeopardize good order and discipline on board;

RECOGNIZING the desire of many States to assist each other in curbing unruly behaviour and restoring good order and discipline on board aircraft;

BELIEVING that in order to address these concerns, it is necessary to adopt provisions to amend those of the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* signed at Tokyo on 14 September 1963;

HAVE AGREED AS FOLLOWS:

### Article I

This Protocol amends the *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963 (hereinafter referred to as "the Convention").

### Article II

Article I, paragraph 3, of the Convention shall be replaced by the following:

#### "Article I

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; and
  - b) when the State of the operator is not the same as the State of registration, the term "the State of registration", as used in Articles 4, 5 and 13 of the Convention shall be deemed to be the State of the operator."

### **Article III**

Article 2 of the Convention shall be replaced by the following:

#### **"Article 2**

Without prejudice to the provisions of Article 4 and except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on discrimination on any ground such as race, religion, nationality, ethnic origin, political opinion or gender."

### **Article IV**

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

#### **"Article 3**

1. The State of registration of the aircraft 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.
2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences 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 committed on board aircraft in the following cases:
  - a) as the State of landing, when:
    - i) the aircraft on board which the offence is committed has its last point of take-off or next point of intended landing within its territory, and the aircraft subsequently lands in its territory with the alleged offender still on board; and

- ii) the safety of the aircraft or of persons or property therein, or good order and discipline on board, is jeopardized;
  - b) as the State of the operator, when the offence 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.* In exercising its jurisdiction as the State of landing, a State shall consider whether the offence in question is an offence in the State of the operator.
- 3. This Convention does not exclude any criminal jurisdiction exercised in **accordance with national law.**"

#### **Article V**

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

#### **"Article 3 *bis***

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. The obligations in this Article are without prejudice to the obligations of a Contracting State under Article 13."

#### **Article VI**

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

#### **Article VII**

Article 6 of the Convention shall be replaced by the following:

#### **"Article 6**

- 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 I, 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 in-flight security officers or 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.
3. An in-flight security officer deployed pursuant to a bilateral or multilateral agreement or arrangement between the relevant Contracting States may 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 persons therein from an act of unlawful interference, **and, if the agreement or arrangement so allows, from the commission of serious offences.**
4. Nothing in this Convention shall be deemed to create an obligation for a Contracting State to establish an in-flight security officer programme or to agree to a bilateral or multilateral agreement or arrangement authorizing foreign in-flight security officers to operate in its territory."

#### **Article VIII**

Article 9 of the Convention shall be replaced by the following:

#### **"Article 9**

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.**
2. The aircraft commander shall as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefore.
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 are lawfully in his possession."

**Article IX**

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

**"Article 10**

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 X**

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

**"Article 15 *bis***

1. Each Contracting State is encouraged to take such measures as may be necessary to initiate appropriate criminal, 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 I, paragraph I, in particular:
  - a) physical assault or a threat to commit such assault against a crew member;  
or
  - 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 of 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 XI**

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

**"Article 16**

- I. 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."

## **Article XII**

Article 17 of the Convention shall be replaced by the following:

### **"Article 17**

- I. In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft, the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, **passengers, crew or cargo.**
2. Each Contracting State, when fulfilling its obligations, or exercising a permitted discretion under this Convention, shall act in accordance with the obligations and responsibilities of States under international law. In this respect, each Contracting State shall have regard for the principles of due process and fair treatment."

## **Article XIII**

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

### **"Article 18 *bis***

Nothing in this Convention shall preclude any right to seek the recovery, under national law, of damages incurred, from a person disembarked or delivered pursuant to Article 8 or 9 respectively."

## **Article XIV**

The texts of the Convention in the Arabic, Chinese and Russian languages annexed to this Protocol shall, together with the texts of the Convention in the English, French, and Spanish languages, constitute texts equally authentic in the six languages.

## **Article XV**

As between the Contracting States to this Protocol, the Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as the Tokyo Convention as amended by the Montreal Protocol, 2014.

#### **Article XVI**

This Protocol shall be open for signature in Montreal on 4 April 2014 by States participating in the International Air Law Conference held at Montreal from 26 March to 4 April 2014. After 4 April 2014, this Protocol shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with Article XVIII.

#### **Article XVII**

1. This Protocol is subject to ratification, acceptance or approval by the signatory States. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated as the Depositary.
2. Any State which does not ratify, accept or approve this Protocol in accordance with paragraph 1 of this Article may accede to it at any time. The instruments of accession shall be deposited with the Depositary.
3. Ratification, acceptance, approval or accession to this Protocol by any State which is not a Contracting State to the Convention shall have the effect of ratification, acceptance, approval or accession to the Tokyo Convention as amended by the Montreal Protocol, 2014.

#### **Article XVIII**

- I. This Protocol shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Depositary.
2. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Protocol shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.
3. As soon as this Protocol enters into force, it shall be registered with the United Nations by the Depositary.

#### **Article XIX**

1. Any Contracting State may denounce this Protocol by written notification to the Depositary.
2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

**Article XX**

The Depositary shall promptly notify all signatory and Contracting States to this Protocol of the date of each signature, the date of deposit of each instrument of ratification, acceptance, approval or accession, the date of coming into force of this Protocol, and other relevant information,

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE at Montreal on the fourth day of April of the year Two Thousand and Fourteen in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Protocol shall be deposited with the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Protocol.