

**57<sup>th</sup> CONFERENCE OF  
DIRECTORS GENERAL OF CIVIL AVIATION  
ASIA AND PACIFIC REGIONS**

*Incheon, Republic of Korea  
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**AGENDA ITEM 5: AVIATION SECURITY AND  
FACILITATION**

**PROPOSALS FOR REGIONAL COOPERATION IN  
COMBATING CRIMES AND OTHER PROHIBITED ACTS  
COMMITTED ONBOARD OF AIRCRAFT**

Presented by the Republic of Korea

**SUMMARY**

This working paper examines issues relating to international cooperation in combating crimes and other prohibited acts committed onboard aircraft.

## **PROPOSALS FOR REGIONAL COOPERATION IN COMBATING CRIMES AND OTHER PROHIBITED ACTS COMMITTED ONBOARD OF AIRCRAFT**

### **1. INTRODUCTION**

1.1 International Civil Aviation Organization (ICAO) has been encouraging and trying to institutionalize a more effective international suppression regime against unruly and disruptive passengers' crimes and other acts committed on aircraft. It demonstrates that the international community has been understanding the threat to aviation safety posed by disruptive acts onboard aircraft.

1.2 In the Asia-pacific region, short-range and/or mid-range flights have thrived and passenger numbers have risen steadily. As growing the regional market, the number of unruly or disruptive acts onboard aircraft has simultaneously increased. Moreover, number and frequency of disruptive cases would continue increasing after the end of the COVID-19 pandemic.

1.3 The 2014 Montreal Protocol, entering into force in January 2020, has fostered initiatives among nations to set up a new international regime for the effective punishment and sanction of unruly and disruptive passengers on aircraft. ICAO also encourages States to ratify the 2014 Montreal Protocol amending the 1963 Tokyo Convention and to establish national implementing measures. However, regional or block institutionalization of the 2014 Montreal Protocol regime, using cooperation between Asian countries, would be more efficient than sporadic or a general approach to build up a stronger suppressive regime designed to combat disruptive acts on board aircraft.

1.4 Regarding not only the object and purpose of the Tokyo Convention and 2014 Montreal Protocol but also the guidance materials prepared by the ICAO (i.e. Circular 288 and Doc.10117), such cooperative endeavors among Asian countries have to be done. Affirming the common goal of the Asian States' cooperation is to raise the possibility of punishing and preventing disruptive acts onboard aircraft. For this purpose, the delegation of the Republic of Korea would like to suggest the following policy proposals.

### **2. ENCOURAGING RATIFICATION OF MP14**

2.1 Tokyo Convention does not explicitly stipulate the jurisdiction of a state of landing over crimes or other acts committed on board an aircraft in flight, but expressly recognizes the jurisdiction of a state of registration of aircraft. This made for a state of landing difficult, in particular, out-bound flight from the state of registration, to exercise its jurisdiction on the alleged offender delivered by the aircraft commander under the 1963 Tokyo Convention because the jurisdictional linkages in international customary law are necessary for the state of landing to exercise its jurisdiction under its national laws and regulations.

2.2 Under the 2014 Montreal Protocol, jurisdiction extends not only to the state of registration, but also to the state of landing and the state of the operator of the aircraft. The Protocol itself may provide so-called conventional jurisdictional linkage, in particular, to the state of landing. This enables the State of landing to establish and exercise jurisdiction over an alleged offender who committed a crime on board aircraft from the State of registration or the State of the operator (outbound flight). It would be very useful in suppressing impunity practices related to unruly and disruptive acts onboard aircraft.

2.3 Although a number of measures would need to be taken for implementation, our delegation would like to make a proposal encouraging ratification of the 2014 Montreal Protocol because of the reasons referred to above. Meanwhile, the relevant discussion should include legislative issues on implementing the legal system at the domestic level, since it is crucial for the 2014 Montreal Protocol to work effectively by enhancing substantial uniformity and consistency among relevant laws and regulations among the States in Asia so as to minimize jurisdictional gaps between them.

### **3. UTILIZING ENFORCED RENDITION AS AN ALTERNATIVE TO EXTRADITION**

3.1 When a state of registration intends to exercise its jurisdiction in case of outbound flight from it, it is crucial to bring back the alleged offender from the landing State. The principal (or only available) mechanism for the surrender of the alleged offender under the 1963 Tokyo Convention is 'extradition'. However, extradition is the expensive and time-consuming procedure to bring a disruptive passenger to the country of registration from the state of landing because it's governed by bilateral (or sometimes multilateral) agreements and must meet some requirements under international law, such as extraditable crimes, double criminality, and the principle of specialty.

3.2 Therefore, it would be desirable to seek an alternative to the money and time-consuming extradition procedure under the 1963 Tokyo Convention and the 2014 Montreal Protocol. In this regard, our delegation proposes the use of "forced rendition" or "irregular rendition" based on multilateral criminal cooperation among nations as an alternative to extradition.

3.3 The 1963 Tokyo Convention does not prohibit an alternative method of extradition, such as surrendering the alleged offender. Nevertheless, the ratification of the Montreal Protocol is a prerequisite to utilizing the 'forced rendition system' as an alternative to extradition. This is pursuant to Article 14, paragraph 1, and Article 15, paragraph 1 of the Convention.

### **4. ESTABLISHMENT OF THE REGIONAL COOPERATION DESK**

4.1 The Republic of Korea opened the so-called, "Korean Desk" in the Philippines in 2013 and Vietnam in 2015 based on the Memorandum of Understandings. According to the applicable national laws and regulations and the MOUs, the Korean Desk is not authorized to exercise independent investigation, arrest the accused, or seize evidence. Instead, it is authorized to work with local police and gather and share relevant information. Through this system, the Republic of Korea Police Authority could more efficiently and quickly cooperate with the hosting states. This helped in capturing and surrendering the fugitives in the Philippines and Vietnam.

4.2 Reminding the ICAO has also highlighted the necessity of international cooperation to suppress the crimes and other acts committed by unruly and disruptive passengers, our delegation would like to propose establishing a "Regional Cooperation Desk" composed of agents from Asian countries by benchmarking the Korean Desk in those countries. At the same time, it could be considered co-working of the Desk with a consular officer under the Vienna Convention on Consular Relations or a Police attache at the embassy. In addition, a Regional Cooperation Desk can help to expedite communication among states within the region.

### **5. FUNDING THE COST OF MUTUAL CRIMINAL COOPERATION**

5.1 The Montreal Protocol in 2014 requires its contracting parties closer consultations and cooperation. If many countries in Asia-pacific region ratify the Montreal Protocol in 2014, it will cost more than ever for Asian countries to jointly respond to crimes and other acts of unruly and disruptive passengers.

5.2 The Republic of Korea would like to discuss how to raise funds to cover costs associated with forced rendition and so forth. For this purpose, (1) imposing a small "aviation security cost" on the price of a passenger's air ticket, or (2) paying a national contribution to the fund by the air traffic rates, etc. might be considered.

### **6. DRAFTING UNIFORM "INFORMATION ON CRIMINAL MATTERS ON BOARD" DOCUMENT**

6.1 Following Article 9, Paragraph 3 of the Tokyo Convention, the captain of the aircraft is responsible for providing the relevant evidence and information to the authority of the landing State. However, there are some practical limitations, such as that the captain and crew members are non-judicial experts, and the computer and the printer to produce documents are not available onboard. It

would be desirable to seek a solution to overcome such obstacles to ensure a more efficient criminal cooperation between the State of registration and the landing State.

6.2 As a solution, the delegation of the Republic of Korea would like to suggest drafting a uniform document on “Information on Criminal Matters on Board”. This uniformed document has to be made in Carbonless Copy Paper, regarding the circumstance in the aircraft where there is no facility to write and print documents. And regarding the fact that the captain and the other crew members are not legal experts, it would be desirable that such a uniform document requires very necessary information in a simple format.

6.3 To achieve the goal of punishing and suppressing crimes and other prohibited acts onboard aircraft, it is considered reasonable to adopt this drafted reporting format among the State Parties to the Tokyo Convention and to be distributed to (i) the appropriate authorities of the landing State, (ii) the appropriate authority of the State of registration, (iii) the alleged criminal(s), and (iv) the aircraft captain. And it would be desirable that the uniform Reporting document format includes the following information: (1) Investigation Agency, (2) Information on the suspicious, (3) The Charges and the applicable laws, (4) Facts of Crime, (5) Progress of the Investigation, (6) List of Evidence, (7) Assistance Requested, (8) Declaration and Signature.

## **7. ACTION BY THE CONFERENCE**

7.1 The Conference is invited to:

- a) Call upon Member States to adopt and ratify the Montreal Protocol 2014;
- b) Consider establishing of the regional cooperation desk and funding the cost of mutual criminal cooperation and;
- c) Request ICAO to develop a uniform “information on criminal matters onboard” document form.

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