



INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 26 March to 4 April 2014)

COMMENTS ON THE ISSUE OF STATE OF OPERATOR JURISDICTION

(Presented by the International Air Transport Association (IATA))

1. INTRODUCTION

1.1 This Working Paper sets out IATA's support for the inclusion of mandatory State of operator jurisdiction in the Tokyo Convention 1963 ("the Convention").

2. STATE OF OPERATOR JURISDICTION

2.1 The Convention grants jurisdiction over offences and other acts committed on board aircraft to the State of registration of the aircraft in question.¹ IATA supports the extension of mandatory jurisdiction to the State of the operator, in addition to the mandatory State of registration provision, for the following reasons.

2.2 Modern leasing practices mean that it is quite common for an aircraft to be registered in one State but for the operator to have its legal presence in another State. This is facilitated by Article 83*bis* of the Chicago Convention.²

2.3 In 1980, airlines leased 3 per cent of all aircraft and owned 97 per cent. Yet in 2014, airlines leased approximately 40 per cent of all aircraft (by operating lease) and owned approximately 60 per cent of their fleets (by clean title or other finance mechanism). This number is projected to increase to 50 per cent leased and 50 per cent owned in the next few years.³ Thus, it is reasonable to predict that it will become less and less likely over time that the State of registration will be the same as the State of the operator.

2.4 When the Convention was adopted in 1963, aircraft leasing was not common and Article 83*bis* had not been adopted. A new State of operator jurisdiction, like that proposed in Article III of the draft Protocol at DCTC Doc No. 3, would prevent the erosion of the State of registration principle over time by sensibly conferring jurisdiction upon the State most closely connected to the airline in question. It is possible, for example, that a leased aircraft may seldom or never visit the State of registration.

¹ See Article 3(1) of the Convention.

² See Protocol relating to an Amendment to the Convention on International Civil Aviation, signed at Montreal on 6 October 1980.

³ See further, ASCEND Online Fleets (2014), available at: <http://www.ascendworldwide.com/what-we-do/ascend-data/aircraft-airline-data/ascend-online-fleets.html>

2.5 The addition of State of operator jurisdiction is also consistent with the broader purpose of Article 83*bis* itself, under which regulatory and oversight functions are transferred from the State of registry to that of the operator by specific agreement. It is appropriate then, in IATA's view, for the State of the operator to have the necessary tools in respect of unruly passenger behaviour occurring on airlines under its regulatory purview.

2.6 It should be observed that State of operator jurisdiction is not a new concept in air law, nor within those air law instruments that deal with criminal liability. The same or similar concept is employed in the Hague Convention 1970,⁴ the Montreal Convention 1971,⁵ the General Risks Convention 2009,⁶ the Unlawful Interference Compensation Convention 2009,⁷ the Beijing Convention 2010⁸ and the Beijing Protocol 2010.⁹

2.7 At the Diplomatic Conference to adopt the Hague Convention 1970, for example, it was expressly recognised that mandatory State of operator jurisdiction was necessary in order to take account of the increasing use of leasing arrangements within the airline industry.¹⁰ These considerations, in IATA's submission, apply with even greater force today given the statistics cited at paragraph 2.3 above.

2.8 IATA therefore supports mandatory jurisdiction for the State of the operator, as provided for in Article III of the draft Protocol at DCTC Doc No. 3.¹¹

3. CONCLUSION

3.1. IATA therefore requests that the Diplomatic Conference note the concerns identified in this Working Paper and take into consideration in its deliberations IATA's support for the provisions of Article III of the draft Protocol.

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⁴ Convention for the Suppression of Unlawful Seizure of Aircraft adopted at The Hague on 16 December 1970, Article 4(1)(c).

⁵ Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation adopted at Montreal on 23 September 1971, Article 5(1)(d).

⁶ Convention on Compensation for Damage Caused by Aircraft to Third Parties adopted at Montreal on 2 May 2009, Article 2(3)(a).

⁷ Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft adopted at Montreal on 2 May 2009, Article 2(3)(a).

⁸ Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation adopted at Beijing on 10 September 2010, Article 8(1)(d).

⁹ Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft adopted at Beijing on 10 September 2010, Article VII.

¹⁰ See ICAO Doc 8979-LC/165-1, 82-87. State of operator provisions were also adopted without objection at the Diplomatic Conference on the Montreal Convention 1971. See ICAO Doc 9081-LC/170-1, 58.

¹¹ See Article III (proposed Article 3), DCTC Doc No. 3.