



## INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 26 March to 4 April 2014)

### COMMENTS ON THE ISSUE OF STATE OF LANDING 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 landing jurisdiction in the Tokyo Convention 1963 ("the Convention").

#### 2. STATE OF LANDING 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.<sup>1</sup>

2.2 The identity of an unruly passenger can usually be easily ascertained because any unlawful conduct takes place in a confined space which should, in theory, facilitate the job of law enforcement authorities. However, in reality, this does not automatically mean that the passenger can be prosecuted. In many cases, following an incident, the State where the passenger is disembarked does not have jurisdiction (as the State of landing) when the aircraft is registered in another State. Many incidents are simply left unpunished as a result which undermines the deterrent effect that the Convention may otherwise have.

2.3 In a survey conducted by IATA in 2013, for example, more than 60 per cent of airlines consulted reported that prosecutors at the place of landing cite lack of jurisdiction as a primary reason for not pursuing charges against an offender.<sup>2</sup>

2.4 The jurisdictional lacuna for certain types of passenger conduct has also been expressly recognised by the courts. Because State of landing jurisdiction does not exist, the hope has been expressed that:

*"signatories to the Tokyo Convention will be astute in seeking the extradition for prosecution of those who commit offences aboard their registered or controlled aircraft. Failing this, "crime" committed aboard aircraft may go unchecked."*<sup>3</sup>

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<sup>1</sup> See Article 3(1) of the Convention.

<sup>2</sup> IATA survey on unruly passengers conducted in March and April 2013, to which there were 51 airline respondents. See further LC/35-WP/2-3.

<sup>3</sup> *The Queen v Duggan* 1995, No. 96, CACC000096/1995, Hong Kong Court of Appeal, at 5 (per Justice Mortimer).

2.5 However, expanding the scope of the jurisdiction provision would actually obviate the need for a proactive approach to extradition. It must be noted, in this respect, that the State of registry is unlikely to seek extradition for minor property or conduct offences, especially in cases where the high cost of extradition processes outstrips the perceived seriousness of the conduct in question. Merely because particular conduct does not merit extradition, however, does not necessarily mean that the conduct is undeserving of summary penalty or other sanction at the place of landing.

2.6 Some States already exercise State of landing jurisdiction and have amended their domestic laws to permit national courts to exercise jurisdiction over events that occur on board foreign aircraft which land in their territory.<sup>4</sup> Nevertheless, many States are understandably reluctant to unilaterally extend jurisdiction to events occurring outside their territory in the absence of an international agreement. A number of States have indicated, for instance, that their legislatures would not enact such a law without a basis grounded in treaty law.<sup>5</sup> Moreover, in the absence of a mandatory State of landing jurisdiction provision, it may be difficult to convince national legislators of the importance of modifying their applicable domestic law.

2.7 A mandatory State of landing jurisdiction provision, as proposed in Article III of the draft Protocol at DCTC Doc No. 3, would promote certainty in the international community and remove concerns associated with the extraterritorial extension of national law.

2.8 It should be observed that the existence of a basis of jurisdiction under a treaty is distinct from the concept of general prosecutorial discretion. Even if mandatory State of landing jurisdiction is adopted, this would create no positive obligation upon the authorities of any State to commence a prosecution in a particular case.

### 3. CONCLUSION

3.1 The addition of mandatory State of landing jurisdiction, would, in IATA's view, close a critical jurisdictional gap in the existing Convention framework and better deter future instances of unruly passenger behaviour.

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

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<sup>4</sup> While ICAO Circular 288 (*Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*), is a positive step forward in this area, it is IATA's view that treaty-level rules are necessary if meaningful international uniformity is to be achieved.

<sup>5</sup> See ICAO LC/SC-MOT, 2-3 (Report of the Special Sub-Committee of the Legal Committee for the Modernisation of the Tokyo Convention Including the Issue of Unruly Passengers): "*Some delegations mentioned that in the absence of an international treaty offering a solid basis for extended jurisdiction, there was some reluctance to unilaterally extend jurisdiction to extra-territorial offences by non-nationals on board aircraft registered in another State.*"