



## INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 26 March to 4 April 2014)

### COMMENTS ON THE ISSUE OF TEMPORAL SCOPE

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

#### 1. INTRODUCTION

1.1 This Working Paper sets out IATA's support for the definition of in-flight set out in Article II of the draft Protocol at DCTC Doc No.3 in order to clarify the issue of the temporal scope of the Tokyo Convention 1963 ("the Convention").

#### 2. TEMPORAL SCOPE

2.1 The Convention only applies when the aircraft is "in flight", which is considered to be "from the moment when power is applied for the purpose of take-off until the moment when the landing run ends."<sup>1</sup>

2.2 This is at odds with the Warsaw Convention 1929 and Montreal Convention 1999 regimes on air carrier liability. Under those Conventions, the carrier is potentially liable to its passengers for an accident which occurs from the point of initial embarkation up until the point of disembarkation.<sup>2</sup> Thus, an unruly passenger could cause injury to another passenger during embarkation and for which the airline would be liable under the Warsaw/Montreal regime. However, that same unruly passenger would not be capable of committing an offence or other unlawful act under the Convention.

2.3 The recent Beijing Convention adopts a broader scope to that of the Tokyo Convention.<sup>3</sup> Under the Beijing Convention, "*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*".<sup>4</sup>

2.4 In IATA's view, the temporal scope of the Convention should reflect the period during which the aircraft commander's powers apply.

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<sup>1</sup> See Article 1(3).

<sup>2</sup> See Convention for the Unification of Certain Rules to International Carriage by Air, signed at Warsaw on 12 October 1929, Article 17; Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Montreal on 28 May 1999, Article 17.

<sup>3</sup> Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, signed at Beijing on 10 September 2010.

<sup>4</sup> See Article 2(a) of the Beijing Convention.

2.5 This problem is effectively addressed by the language of Article II of the draft Protocol at DCTC Doc No. 3, which incidentally adopts the formulation of the Beijing Convention.<sup>5</sup> IATA supports the adoption of that proposed text.

### 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 definition of in-flight set out in Article II of the draft Protocol at DCTC Doc No.3.

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<sup>5</sup> See Article II(1) (proposed Article 1(3)(a)), DCTC Doc No. 3. It provides that “*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*”.