



INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 26 March to 4 April 2014)

COMMENTS ON THE RIGHT OF RECOURSE

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

1. INTRODUCTION

1.1 This Working Paper sets out IATA's support for the inclusion of a right of recourse provision in the Tokyo Convention 1963 ("the Convention").

2. RIGHT OF RECOURSE

2.1 IATA supports the recognition of the carrier's right of recourse set out in Article X of the draft Protocol.

2.2 Unscheduled landings to disembark or deliver unruly passengers to State authorities have a significant impact on a carrier's operating costs. A single diversion can cost anything from USD 6,000 to 200,000.

2.3 Large aircraft will often be required to dump fuel before landing for safety reasons. Other costs, such as landing fees, accommodation, ground handling charges, passenger compensation and new fuel for the onward journey are also often incurred. In many cases, too, crew will reach their maximum number of hours under applicable flight and duty time rules, meaning that a new crew will have to be flown in to operate the onward journey.

2.4 Carriers may seek to recover these expenses from unruly and disruptive passengers through civil proceedings or some form of judicial restitution order in the context of criminal proceedings. However, the Convention is silent on a right of recourse and carriers are usually left to bear the significant cost of these events themselves. In particular, if the passenger in question leaves the jurisdiction, it will often be difficult or impossible to recover these losses.

2.5 IATA believes that in order to allow carriers the prospect of recovering the operational and post-incident costs arising from an unruly passenger incident, the Convention should expressly recognise a right of recourse against the passenger concerned.

2.6 IATA is therefore supportive of the language proposed in Article X of the draft Protocol at DCTC Doc No. 3 which provides that when "*the aircraft commander disembarks or delivers a person pursuant to the provisions of Articles 8 or 9 respectively, the operator of the aircraft shall not be precluded from recovering from such a person any damages incurred by the operator of the aircraft as a result of such disembarkation or delivery.*"¹

3. CONCLUSION

3.1 IATA therefore requests that the Diplomatic Conference note the concerns with regard to the issue of the right of recourse identified in this Working Paper and take into consideration in its deliberations its support for the wording of Article X of the draft Protocol.

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¹ See Article X (proposed Article 18*bis*), DCTC Doc No. 3.