



**NOTA DE ESTUDIO**

**COMITÉ JURÍDICO — 37º PERÍODO DE SESIONES**

(Montreal, 4 – 7 de septiembre de 2018)

**Cuestión 2 del  
orden del día:**

**Consideración del Programa general de trabajo del Comité Jurídico**

**ACTOS O INFRACCIONES QUE ATAÑEN A LA COMUNIDAD DE LA AVIACIÓN  
CIVIL INTERNACIONAL Y QUE NO ESTÁN PREVISTOS EN LOS ACTUALES  
INSTRUMENTOS DE DERECHO AERONÁUTICO**

(Nota presentada por el presidente del Equipo especial  
sobre los aspectos jurídicos de los pasajeros insubordinados y la Secretaría)

**1. INTRODUCCIÓN**

1.1 La Conferencia diplomática celebrada bajo los auspicios de la OACI del 26 de marzo al 4 de abril de 2014 adoptó el *Protocolo que modifica el Convenio sobre las infracciones y ciertos otros actos cometidos a bordo de las aeronaves* (Protocolo de Montreal de 2014).

1.2 El Protocolo de Montreal de 2014 moderniza el *Convenio sobre las infracciones y ciertos otros actos cometidos a bordo de las aeronaves* (Tokio, 1963) (el Convenio de Tokio). En el preámbulo del Protocolo se expresa preocupación por la creciente gravedad y frecuencia de los comportamientos insubordinados a bordo de las aeronaves y se reconoce el deseo de muchos Estados de ayudarse mutuamente para refrenar el comportamiento insubordinado y restablecer el buen orden y la disciplina a bordo. En la parte dispositiva del Protocolo se reconoce, bajo determinadas condiciones, la competencia del Estado de aterrizaje y del Estado del explotador para ejercer jurisdicción sobre las infracciones y actos cometidos a bordo de las aeronaves. El establecimiento de dicha jurisdicción es obligatorio si se cumplen los criterios previstos en el Protocolo. El Protocolo extiende el reconocimiento jurídico y ciertas protecciones a los oficiales de seguridad de a bordo. Asimismo, contiene disposiciones que tratan cuestiones tales como la coordinación entre Estados, el debido proceso y el trato equitativo, y el derecho de perseguir el cobro de indemnización con arreglo a las leyes nacionales.

1.3 Al 15 de junio de 2018, el Protocolo de Montreal de 2014 tenía 30 firmas, 4 ratificaciones y 9 adhesiones<sup>1</sup>. Ha de recordarse que el Protocolo necesita 22 ratificaciones, aceptaciones, aprobaciones o adhesiones para entrar en vigor.

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<sup>1</sup> Al 15 de junio de 2018, los Estados contratantes del Protocolo de Montreal de 2014 son: Bahrein, Congo, Côte d'Ivoire, Egipto, Gabón, Ghana, Guyana, Jordania, Malta, Mozambique, Portugal, República Dominicana y Uganda.

## 2. EL EQUIPO ESPECIAL SOBRE ASPECTOS JURÍDICOS DE LOS PASAJEROS INSUBORDINADOS

2.1 La Conferencia diplomática también adoptó una resolución en la que se insta al Consejo de la OACI a pedir al Secretario General que actualice la Circular 288 de la OACI, *Texto de orientación sobre los aspectos jurídicos de los pasajeros insubordinados o perturbadores*, publicada en junio de 2002, para que incluya una lista más detallada de las infracciones y otros actos y para introducir en dicha Circular los cambios consiguientes que correspondan como resultado de la adopción del Protocolo de Montreal de 2014. En cumplimiento de la Resolución, el Consejo reunido en la segunda sesión de su 202º período de sesiones, celebrada el 11 de junio de 2014, encomendó al Secretario General la actualización de la Circular. El Secretario General procedió el 15 de julio de 2015 a constituir el Equipo especial sobre los aspectos jurídicos de los pasajeros insubordinados (UPAXTF).

2.2 Expertos provenientes de 19 Estados miembros (Argentina, Canadá, China, Cuba, Egipto, Estados Unidos, Finlandia, Francia, Jamaica, Japón, Kenya, México, Polonia, Portugal, Reino Unido, República de Corea, Singapur, Sudáfrica y Suiza) y tres organizaciones internacionales [la Asociación del Transporte Aéreo Internacional (IATA), la Federación Internacional de Asociaciones de Pilotos de Línea Aérea (IFALPA), la Asociación Latino Americana de Derecho Aeronáutico y Espacial (ALADA) y la Oficina de las Naciones Unidas contra la Droga y el Delito (UNODC)] participaron en una o más de las reuniones del UPAXTF. El equipo especial se reunió bajo la presidencia de la Sra. Malgorzata Polkowska (Polonia) y el Sr. John Thachet (Canadá), respectivamente, en cuatro ocasiones: en Montreal del 15 al 17 de septiembre de 2015 y del 13 al 15 de marzo de 2017, y en Ginebra del 30 al 31 de marzo de 2016 y del 19 al 21 de febrero de 2018. El equipo especial basó su examen de la Circular 288 en el trabajo realizado por tres grupos de redacción bajo la dirección de Finlandia, Kenya y Singapur.

2.3 Esta nota de estudio se presenta a fin de informar al Comité del estado del trabajo del equipo especial como lo ha solicitado la Asamblea [A39-11, Apéndice E: *Adopción de legislación interna sobre ciertas infracciones cometidas a bordo de aeronaves civiles (pasajeros insubordinados o perturbadores)*].

## 3. TEXTOS DE ORIENTACIÓN ACTUALIZADOS

### 3.1 Publicación de textos de orientación y tipo de publicación

3.1.1 Tras reconocer que la Circular 288 es ampliamente conocida en la industria, el equipo especial señaló que en la práctica las circulares suelen ser obras que se publican una única vez y no tienen ediciones posteriores, mientras que un manual puede revisarse y volver a publicarse conservando el mismo número. Por tal motivo, acordó que la orientación se publique en forma de manual en lugar de una nueva circular, de modo de permitir que en el futuro se actualice manteniendo el mismo número de documento y se evite la publicación de nuevas circulares numeradas. Esto dará estabilidad y continuidad, favoreciendo las referencias de las versiones futuras de la orientación sobre este tema.

3.1.2 Una vez finalizado, el proyecto de manual elaborado con la asistencia del equipo especial deberá ser aprobado por la Secretaria General y se publicará bajo su autorización tras el presente informe al Comité Jurídico. Para información del Comité Jurídico, en los párrafos 3.2 a 3.7 a continuación se repasan las características principales del proyecto de manual, el cual se reproduce en el **Apéndice** de esta nota de estudio.

### 3.2 Cambios clave

3.2.1 Tras la adopción del Protocolo de Montreal de 2014, los principales cambios consiguientes a la Circular 288 que se introdujeron en el proyecto de manual se refieren a las disposiciones que tratan de la lista de infracciones y la jurisdicción. Además, se ha elaborado orientación nueva sobre la introducción de un régimen de sanciones administrativas.

3.2.2 Se destaca que la Circular 288 no se retirará de circulación, ya que mantendrá su relevancia para los Estados que no sean partes del Protocolo de Montreal de 2014.

### 3.3 **Listado de infracciones**

3.3.1 El equipo especial determinó que la lista actual de infracciones que figura en la Circular 288 tiene suficiente amplitud para abarcar la mayoría de las conductas insubordinadas y perturbadoras a bordo de una aeronave. Cualquier comportamiento insubordinado o perturbador que no está específicamente incluido en la lista probablemente quede comprendido en la disposición sobre desobediencia de las instrucciones del comandante de la aeronave. Además, la lista actual de infracciones no limita la potestad de un Estado de tipificar en su legislación interna cualquier otra infracción o acto prohibido relacionado con los actos de insubordinación y perturbación a bordo de aeronaves civiles, como es el caso de las conductas insubordinadas y perturbadoras contemporáneas tales como el consumo a bordo de alcohol que trae consigo el pasajero, embarcar en estado de ebriedad, y las “sentadas” a bordo de la aeronave por parte de pasajeros que se rehúsan a desembarcar. Se suman a esto las ventajas de mantener la descripción genérica actual de las infracciones y permitir que los Estados dispongan sobre la variedad de incidentes que pueden caer en cada categoría general.

3.3.2 Por lo tanto, aun cuando la intención original había sido actualizar la lista de infracciones de la Circular 288, el equipo especial decidió que no era necesario confeccionar una nueva lista ya que la actual es suficiente y no se han detectado omisiones considerables. La labor sobre esta cuestión, entonces, se centró en actualizar la lista de infracciones de la legislación modelo para alinearla con las disposiciones que introduce el Protocolo de Montreal de 2014, en particular el Artículo 15 *bis*.

### 3.4 **Jurisdicción**

3.4.1 Se actualizará el capítulo 3 para reflejar los nuevos fundamentos jurisdiccionales que introduce el Artículo 3 del Protocolo de Montreal de 2014, en particular, las circunstancias en las que el Estado de aterrizaje y el Estado del explotador ejercerían su jurisdicción. Se ha elaborado una ilustración gráfica de los elementos clave del Convenio de Tokio y el Protocolo de Montreal de 2014 como referencia rápida.

3.4.2 El equipo especial analizó largamente las dificultades que plantea el párrafo 2 *ter* del Artículo 3 que el Protocolo de Montreal de 2014 introduce en el Convenio de Tokio, a saber, cómo pueden las autoridades del Estado de aterrizaje a) saber si una conducta tipificada como infracción en su Estado lo es también en el Estado del explotador; y b) asegurarse de que se cumpla la obligación del Estado de aterrizaje de “considerar” la infracción. Algunos Estados estimaron que esto podría en algunos casos plantear un obstáculo adicional a la hora de entablar proceso judicial. El equipo especial recomienda que la Organización arme un repositorio de legislación penal de los Estados, centrándose inicialmente en las infracciones de insubordinación y perturbación a bordo de aeronaves, y que se envíe a los Estados un cuestionario para indagar sobre sus textos legislativos al respecto. Este repositorio podría ser útil a las autoridades para demostrar que se ha tenido debidamente en cuenta la infracción en otro Estado.

### 3.5 **Sanciones administrativas**

3.5.1 La realidad indica que no siempre se llega a entablar proceso judicial o a tomar otras medidas ante los incidentes de insubordinación o desobediencia a bordo que denuncian las líneas aéreas, en especial cuando son menores, debido a los costos y las dificultades inherentes al carácter transitorio del transporte por aire. Algunos Estados han formulado procedimientos menos onerosos o más ágiles que se acompañan de sanciones más leves o rápidas para resolver con rapidez los incidentes menores.

3.5.2 Por este motivo, el equipo especial consideró que la introducción de un régimen de sanciones administrativas en remplazo de las sanciones penales podría facilitar el trámite de las conductas insubordinadas y perturbadoras y a la vez enviar un mensaje disuasivo más contundente contra estos comportamientos. Se observa en este sentido que el Artículo 15 *bis* alienta a los Estados a iniciar “procedimientos penales, administrativos o cualquier otro tipo de procedimiento judicial”.

3.5.3 El equipo especial recomienda asimismo que la Secretaría haga una encuesta donde se pregunte a los Estados qué régimen de sanciones administrativas o régimen comparable han instituido para aplicar a los pasajeros insubordinados y perturbadores, a fin de poner esta información a disposición de los Estados que estén contemplando introducir un régimen de esta naturaleza.

### 3.6 **Alineación terminológica**

3.6.1 Distintas publicaciones de la OACI contienen disposiciones sobre los pasajeros insubordinados y perturbadores, y en algunas se incluyen diferentes definiciones de “insubordinado” y “perturbador”; por ej., el Anexo 17 — *Seguridad — Protección de la aviación civil internacional contra los actos de interferencia ilícita* y el *Manual de seguridad de la aviación* (Doc 8973 de distribución limitada)<sup>2</sup>. Resulta útil considerar si es necesario conservar las definiciones de “insubordinado” y “perturbador” que aparecen en las publicaciones de la OACI, puesto que ni el Convenio de Tokio ni el Protocolo de Montreal de 2014 definen estos términos, sin perder de vista el propósito de incluir estas definiciones en las publicaciones.

3.6.2 El equipo especial recomienda entonces que la Organización examine la forma en que se utilizan los términos “insubordinado” y “perturbador” con miras a uniformizarlos entre sus distintas publicaciones.

### 3.7 **Datos sobre incidentes de insubordinación y perturbación a bordo**

3.7.1 Con arreglo al párrafo 1.1 de la Circular 288, la IATA seguirá proporcionando estadísticas actualizadas periódicamente sobre pasajeros insubordinados y perturbadores a partir de información proveniente de sus líneas aéreas miembros, y podrá accederse a esta información por un enlace en el Capítulo 1 del proyecto de manual. Esto permitirá ir observando las tendencias en la frecuencia y gravedad de los incidentes de insubordinación y perturbación a bordo.

3.7.2 El equipo especial observó que un sistema uniforme de notificación por parte de los Estados permitiría obtener datos completos e integrales, incluyendo datos sobre las medidas que toman los Estados ante los incidentes de insubordinación y perturbación a bordo que se denuncian a las autoridades y que, de hecho, la recopilación de estadísticas es una exigencia legal en algunos Estados. Sin embargo, la imposición a todos los Estados de un sistema obligatorio de notificación plantea algunas dificultades. Por este motivo, en el proyecto de manual se destaca que sería útil que los Estados ampliaran sus sistemas de notificación en materia de seguridad operacional y seguridad de la aviación con la inclusión de datos sobre incidentes de insubordinación y perturbación a bordo.

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<sup>2</sup> También aparecen disposiciones sobre pasajeros insubordinados y perturbadores en el *Manual sobre la aplicación de las disposiciones del Anexo 6 relativas a la seguridad* (Doc 9811, AN/766, de distribución limitada), el *Manual de vigilancia de la seguridad de la aviación* (Doc 10047), el *Manual sobre información e instrucciones para la seguridad de los pasajeros* (Doc 10086), el Anexo 9 — *Facilitación*, y el *Manual de facilitación* (Doc 9957).

3.8 **Resolución de la Asamblea**

3.8.1 El Apéndice E de la Resolución A39-11 de la Asamblea actualiza la Resolución A33-4, reproducida en la Circular 288, con la incorporación de novedades tales como la adopción del Protocolo de Montreal de 2014 y la tarea que el equipo especial está realizando en ese sentido. Será necesario volver a actualizar la Resolución A39-11 una vez que esté publicado el proyecto de manual con la legislación modelo actualizada.

4. **MEDIDAS PROPUESTAS AL COMITÉ**

4.1 Se invita al Comité Jurídico a:

- a) tomar nota de los avances del Equipo especial sobre los aspectos jurídicos de los pasajeros insubordinados en la elaboración de nueva orientación para actualizar la Circular 288; y
- b) respaldar las recomendaciones del equipo especial que figuran en los párrafos 3.4.2, 3.5.3 y 3.6.2.

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APPENDIX

**DRAFT**

**MANUAL ON THE LEGAL ASPECTS  
OF UNRULY AND DISRUPTIVE PASSENGERS**

## Chapter 1

### INTRODUCTION

1.1 The International Conference on Air Law to Consider Amending the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo, 1963) (Tokyo Convention) held in Montréal from 26 March to 4 April 2014 under the auspices of ICAO, adopted the *Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Montréal Protocol of 2014). The Conference also adopted a *Resolution Relating to Updating Circular 288 – Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers* (Diplomatic Conference Resolution). The Task Force on Legal Aspects of Unruly Passengers (Task Force) was established to update ICAO Circular 288<sup>1</sup>.

1.2 The terms “unruly passengers”, “disruptive passengers” and “unruly and disruptive passengers”<sup>2</sup> are commonly understood as referring to passengers who fail to respect the rules of conduct on board aircraft or to follow the instructions of crew members and thereby create a threat to flight safety and/or disturb the good order and discipline on board aircraft. The incidence of unruly and disruptive passenger events has been increasing over the years. In the statistics collected by the International Air Transport Association (IATA) from its airline members, there were over 58,000 reports concerning unruly and disruptive passengers submitted between 2007 and 2016. During this time, there has been an upward trend in unruly and disruptive passenger reports with an average of one incident for every 1,424 flights in 2016.<sup>3</sup>

1.3 Due to the lack of a uniform reporting system, it is not possible to provide complete and comprehensive data. It would be useful for States to enhance their safety and security reporting systems to include data concerning unruly and disruptive passenger incidents and to compile information on the numbers, types of offences and actions taken as a result of such incidents.

1.4 The reported incidents involved various types of offences as well as unruly and disruptive acts, including assault on crew members or passengers; fights among intoxicated passengers; child molestation; sexual harassment and assault; disorderly conduct as a result of alcohol intoxication; illegal consumption of drugs on board; refusal to follow a crew member’s lawful instruction; ransacking and sometimes vandalizing of aircraft seats and cabin interior; unauthorized use of portable electronic devices; destruction of safety equipment on board; and other disorderly or riotous conduct. It has been noted that “what happens generally in the street is now happening on board aircraft”.<sup>4</sup> Reports of these incidents are not restricted to a particular airline, State, customer category, class of service, or length or type of flight. In a number of cases, the acts and offences directly threatened the safety of the aircraft. In some cases, the aircraft commander<sup>5</sup> had to make an unscheduled stopover to disembark the unruly and disruptive passenger for safety reasons. These are the occurrences which particularly cause international concern.

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<sup>1</sup> ICAO Circular 288: *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*, June 2002 (Circular 288).

<sup>2</sup> Article 15 *bis*, paragraph 2 introduced by the Montréal Protocol of 2014, refers to “unruly and disruptive acts committed on board”. Therefore, references in this Manual are to “unruly and disruptive” acts, behaviour, and passengers.

<sup>3</sup> Updated statistics from IATA can be found at the following link: <http://www.iata.org/policy/consumer-pax-rights/Pages/unruly-passengers.aspx>.

<sup>4</sup> Circular 288, at paragraph 1.2.

<sup>5</sup> This Manual maintains the use of “aircraft commander” which is the term used in the Tokyo Convention as amended by the Montréal Protocol of 2014. However, the term “pilot-in-command” is used in other ICAO publications, such as Annex 6 – *Operation of Aircraft*.

1.5 Given the movement of aircraft across national borders, unruly and disruptive behaviour can be subject to the laws and jurisdictions of different States. Due to this diversity of laws and jurisdictions, unruly and disruptive behaviour which is regarded as an offence in one jurisdiction may not be regarded as an offence in another. In addition, when a suspected offender is to be prosecuted in a State where a foreign aircraft has landed, the question may arise whether that unruly and disruptive behaviour constitutes an offence not only in the State of landing but also in the State of registration of the aircraft or in the State of the operator. Accordingly, it was considered useful to establish, at the international level, a harmonized list of offences that would be regarded as a common framework of reference.

1.6 Although the identity of unruly and disruptive passengers and the relevant evidence can usually be established, there are many cases in which unruly and disruptive passengers have had to be released without being submitted to judicial proceedings due to the lack of jurisdiction of the State where the aircraft lands. Before the adoption of the Montréal Protocol of 2014, under most national legislation, States other than the State of registration of the aircraft normally did not have jurisdiction over offences and acts committed on board the aircraft outside their respective territories, except for certain particularly serious offences covered by international treaties, such as hijacking, sabotage, and hostage taking.<sup>6</sup> International conventions relating to aviation security were designed to combat terrorism including hijacking, sabotage and similar forms of unlawful interference against civil aircraft but were not designed to deal with less serious types of offences or acts committed by unruly and disruptive passengers. Under the Tokyo Convention, an offender cannot be held in restraint beyond the first stopover; by the time the aircraft has returned to the State of registration, the offender, as well as the witnesses, will be long gone. The State of registration may not have a real connection to the incident in situations where the aircraft is leased and operated in a foreign jurisdiction. Similarly, when the victim or the alleged perpetrator is not its national, the State of registration may choose not to exercise its jurisdiction. The cost involved in bringing the victim and the witnesses back to its court may also influence a State's decision not to prosecute an unruly and disruptive passenger. As a result, many unruly and disruptive passengers have not been subject to enforcement action.

1.7 In 1996, in view of the increasing number and significance of these offences and acts, the ICAO Council decided to include the subject of unruly passengers in the General Work Programme of the Legal Committee. In 1997, a Secretariat Study Group on Unruly Passengers was established. Noting that a number of States had established their jurisdiction as State of landing,<sup>7</sup> the Study Group proposed model legislation which included a provision relating to such jurisdiction.

1.8 As a result of the work of this Secretariat Study Group, the 33rd Session of the ICAO Assembly adopted Resolution A33-4 "*Adoption of National Legislation on Certain Offences Committed on Board Civil Aircraft (Unruly/disruptive Passengers)*", setting forth model legislation as developed by the Group. The Resolution urged "all Contracting States to enact as soon as possible national law and regulations to deal effectively with the problem of unruly or disruptive passengers incorporating so far as practical" the model legislation set out in the Appendix to the Resolution.

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<sup>6</sup> Aside from the Tokyo Convention and the Montréal Protocol of 2014, these include the *Convention for the Suppression of Unlawful Seizure of Aircraft*, The Hague, 16 December 1970 (The Hague Convention of 1970), the *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, Montreal, 23 September 1971 (Montreal Convention of 1971), the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation*, Beijing, 10 September 2010 (Beijing Convention of 2010) and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft*, Beijing, 10 September 2010 (Beijing Protocol of 2010).

<sup>7</sup> For example, Australia, Canada, United Kingdom, United States.

1.9 Pursuant to the Resolution, guidance material was developed on the legal aspects of unruly/disruptive passengers, and published in June 2002 as Circular 288. The Model Legislation on Certain Offences Committed on Board Civil Aircraft (Model Legislation) is set out in the Appendix to the Circular. Other measures, such as the training of relevant airline staff, establishing or updating airline policy, and increasing the awareness of airport police and other law enforcement authorities, were also strongly encouraged. In this respect, reference is made to the efforts both within and outside ICAO to develop guidelines and other material containing preventive measures against unruly and disruptive passengers, in particular, the ICAO training package material developed by the Aviation Security Section<sup>8</sup> (ASTP 123/Airline), as well as relevant airline programmes and other relevant documentation.

1.10 In September 2009, the ICAO Legal Committee, during its 34th Session, noted the information from IATA that, despite the actions referred to above, unruly and disruptive passenger incidents continued to rise steadily and supported its request to form a working group to address this issue. The Secretariat Study Group on Unruly Passengers was reactivated in early 2011 based on a decision of the ICAO Council at the sixth meeting of its 188th Session in October 2009. The reactivated Secretariat Study Group identified a number of legal issues which needed to be addressed, and recommended that a Sub-Committee of the Legal Committee be established to prepare a draft text to modernize the Tokyo Convention. A report was produced by the Rapporteur and considered by the Special Sub-Committee, which recommended that the Tokyo Convention be amended through a supplementary protocol on the basis of a draft text. At the second meeting of its 198th Session on 20 February 2013, the ICAO Council considered a report on the Second Meeting of the Sub-Committee and decided to convene the 35th Session of the Legal Committee in May 2013. The 35th Session of the Legal Committee held from 6 to 15 May 2013 focused its discussion on jurisdiction, offences and in-flight security officers (IFSOs) and recommended its revised text of the Draft Protocol for consideration by a Diplomatic Conference to amend the Tokyo Convention. The ICAO Council considered the report of the 35th Session of the Legal Committee on 14 June 2013 at the eleventh meeting of its 199th Session and agreed to convene the Diplomatic Conference from 26 March to 4 April 2014. As a result of the Diplomatic Conference, the Montréal Protocol of 2014 was adopted on 4 April 2014<sup>9</sup>, the full text of which can be found on the ICAO website at <http://www.icao.int/Meetings/AirLaw/Pages/default.aspx>, or in the Treaty Collection at <http://www.icao.int/secretariat/legal/Pages/TreatyCollection.aspx>.

1.11 The Montréal Protocol of 2014 modernizes the Tokyo Convention. Its preamble expresses “concern about the escalation of the severity and frequency of unruly behaviour on board aircraft” and recognizes “the desire of many States to assist each other in curbing unruly behaviour and restoring good order and discipline on board aircraft”. The operative part of the Montréal Protocol of 2014 recognizes, under certain conditions, the competence of the State of landing and the State of the operator to exercise jurisdiction over offences and acts on board aircraft. The establishment of such jurisdiction over offences based on the criteria set out in the Montréal Protocol of 2014 is mandatory. The Protocol also contains provisions addressing such issues as coordination among States, due process and fair treatment.

1.12 The Montréal Protocol of 2014 extends legal recognition and certain protections to IFSOs. The Protocol also amends the Tokyo Convention to provide that an IFSO deployed pursuant to a bilateral or multilateral agreement or arrangement between the Contracting States may take reasonable preventive measures without the authorization of an aircraft commander when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft or persons therein from an act of

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<sup>8</sup> Currently Implementation Support and Development – Security Section (ISD-SEC).

<sup>9</sup> Not yet in force, at the date of publication of this Manual.

unlawful interference, and, if the agreement or arrangement so allows, from the commission of serious offences.

1.13 The Diplomatic Conference Resolution urges the ICAO Council to request the Secretary General to update Circular 288, “to include a more detailed list of offences and other acts,<sup>10</sup> as well as to make consequential changes to ICAO Circular 288 arising from the adoption of” the Montréal Protocol of 2014.<sup>11</sup> Accordingly, the ICAO Council, at the second meeting of its 202nd Session on 11 June 2014, instructed the Secretary General to update Circular 288. For this purpose, the Secretary General established a Task Force comprising of both States and international organizations to undertake the updating. The ICAO Assembly subsequently adopted Resolution A39-11 in October 2016 requesting in its Appendix E that the Council encourage the Task Force to continue its work, including the review of the contents of the Model Legislation and to report to the 37th Session of the Legal Committee.

1.14 It should also be noted that apart from this Manual, other ICAO publications such as Annex 17 – *Security - Safeguarding International Civil Aviation Against Acts of Unlawful Interference* (Annex 17), the *Aviation Security Manual*<sup>12</sup>, the *Manual on the Implementation of the Security Provisions of Annex 6*<sup>13</sup>, Annex 9 - *Facilitation* (Annex 9), and *The Facilitation Manual*<sup>14</sup> also contain provisions relating to unruly and disruptive passengers.

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<sup>10</sup> Although the Tokyo Convention refers to “offences and certain other acts” in its title, the provisions of the Convention and of the Montréal Protocol of 2014 refer to “offences” and “acts”.

<sup>11</sup> The Resolution can be found in the Final Act of the Diplomatic Conference at <http://www.icao.int/Meetings/AirLaw/Pages/default.aspx>.

<sup>12</sup> ICAO Doc 8973 - Restricted.

<sup>13</sup> ICAO Doc 9811, AN/766 – Restricted.

<sup>14</sup> ICAO Doc 9957.

## Chapter 2

### LIST OF OFFENCES AND OTHER ACTS

#### 2.1 PURPOSE OF THE LIST

2.1.1 The 2014 Diplomatic Conference, in its Resolution, considered that an updated list would “serve as a guide for the purpose of facilitating States to deal with offences and other acts constituting unruly or disruptive behaviour on board civil aircraft”.

2.1.2 The Task Force reviewed the list of offences in Circular 288<sup>15</sup> and considered that the current list is sufficiently comprehensive to cover most unruly and disruptive behaviour. If any unruly and disruptive behaviour is not specifically listed, it is likely to fall within the scope of the provision concerning the refusal to follow a lawful instruction of the aircraft commander, or of a crew member on behalf of the aircraft commander<sup>16</sup>.

2.1.3 The Task Force updated the list to align it with the Montréal Protocol of 2014, in particular with Article 15 *bis*, paragraph 1, as introduced by the Protocol.<sup>17</sup> The list, as discussed in Section 2.2 below and as it appears in Appendix A to this Manual, is not intended to exhaustively cover every conceivable offence or act that unruly and disruptive passengers might commit. States are not precluded by the Tokyo Convention and the Montréal Protocol of 2014 from establishing other offences or acts. However, States are encouraged to incorporate the contents of this list into their national legislation as offences or acts which are subject to appropriate criminal, administrative or other forms of legal proceedings. Widespread incorporation by States would promote a common understanding that irrespective of where in the world passengers are, there should be no doubt that unruly and disruptive behaviour on board aircraft, and in particular, the forms of behaviour referred to in the list, are unacceptable.

#### 2.2 LIST OF OFFENCES

2.2.1 The Model Legislation contains a list of offences most likely to be committed on board aircraft by unruly and disruptive passengers, which States may incorporate into their national legislation. The Tokyo Convention and the Montréal Protocol of 2014 both refer to offences and acts. However, the Model Legislation proposes “offences” only. This is for reasons of simplicity and does not preclude States from establishing certain acts as subject to appropriate administrative or other forms of legal proceedings.

2.2.2 Section 1, **Assault and Other Acts of Interference against a Crew Member on Board an Aircraft**,<sup>18</sup> relates to offences that have an impact on, and affect the normal course of duties assigned to, the crew members. It provides that “[a]ny person who commits on board an aircraft any of the following acts thereby commits an offence:

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<sup>15</sup> The list of offences is in the Appendix to Circular 288 entitled “Model Legislation on Certain Offences Committed on Board Civil Aircraft”.

<sup>16</sup> Section 1, paragraph (2) of the Appendix to Circular 288.

<sup>17</sup> References in this Manual shall be to the Articles of the Tokyo Convention as introduced or amended by the Montréal Protocol of 2014.

<sup>18</sup> The Model Legislation in Appendix A and as discussed in this Chapter, refers to “aircraft” instead of “civil aircraft” in order to align with Article 15 *bis* of the Tokyo Convention as introduced by the Montréal Protocol of 2014.

- (1) physical assault or threat to commit such assault against a crew member;
- (2) verbal intimidation or threat against a crew member if such act interferes with the performance of the duties of the crew member or lessens the ability of the crew member to perform those duties;
- (3) refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the purpose of:
  - (a) protecting the safety of the aircraft or of persons or property therein; or
  - (b) maintaining good order and discipline on board.”

2.2.3 Section 2, **Assault and Other Acts Endangering Safety or Jeopardizing Good Order and Discipline on Board an Aircraft**, addresses offences other than those specifically against a crew member. These offences include those against passengers. Paragraph (1) of Section 2 provides that any person who commits on board an aircraft an act of physical violence against a person, or of sexual assault or child molestation thereby commits an offence. Paragraph (2) provides that any person who commits on board an aircraft any of the following acts commits an offence if such act is likely to endanger the safety of the aircraft or of any person on board or if such act jeopardizes the good order and discipline on board the aircraft, that is:

- “(2) Any person who commits on board an aircraft any of the following acts thereby commits an offence if such act is likely to endanger the safety of the aircraft or of any person on board or if such act jeopardizes the good order and discipline on board the aircraft:
- (a) assault, intimidation or threat, whether physical or verbal, against another person;
  - (b) intentionally causing damage to, or destruction of, property;
  - (c) consuming alcoholic beverages or drugs resulting in intoxication.”

2.2.4 Section 3, **Other Offences Committed on Board an Aircraft**, covers offences that do not fall into the first two categories. It provides that “[a]ny person who commits on board an aircraft any of the following acts thereby commits an offence:

- (1) smoking in a lavatory, or smoking elsewhere when such act is prohibited;
- (2) tampering with a smoke detector or any other safety-related device on board the aircraft;
- (3) operating a portable electronic device when such act is prohibited.”

## 2.3 COMMENTS ON THE OFFENCES SET OUT IN SECTIONS 1 TO 3 OF APPENDIX A

### 2.3.1 Assault and Other Acts of Interference against a Crew Member on Board an Aircraft

2.3.1.1 The first category of offences included in the list in Appendix A accounts for the fact that crew members need special protection, since harming them physically or intimidating them, or threats against them, would have consequences on their ability to carry out their safety and security responsibilities. Offences against them have an aggravating element since they are responsible not only for maintaining good order and discipline on board but also for the safety and security of the aircraft. It is generally accepted in many jurisdictions that offences against persons in authority are treated more severely.

In line with this practice, Section 1 is designed to offer protection to crew members who enforce rules of conduct and maintain good order on board aircraft in the public interest.

2.3.1.2 As stipulated in Article 15 *bis* of the Tokyo Convention as introduced by the Montréal Protocol of 2014, Contracting States are encouraged to take such measures as may be necessary to initiate appropriate criminal, administrative or any other forms of legal proceedings against any person who commits on board an aircraft an offence or act referred to in Article 1, paragraph 1 of the Tokyo Convention, in particular, physical assault or a threat to commit such assault against a crew member, or refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the purpose of protecting the safety of the aircraft or of persons or property therein.

2.3.1.3 The term “lessens the ability of the crew member to perform those duties” in paragraph (2) of Section 1 is intended to cover certain situations that might not be covered by the term “interferes with the performance of the duties”, thereby offering better and wider protection to the crew. The term is not intended to cover minor side effects on a crew member if the act does not actually lessen the ability of the crew member.

2.3.1.4 With respect to paragraph (3) of Section 1, it should be understood that the authority to give instructions ultimately rests with the aircraft commander. However, unless there is contrary evidence, instructions from a crew member are deemed to be given on behalf of the aircraft commander. Instructions are not limited to verbal instructions but may also include those given in writing and those given through illuminated signs on the aircraft, such as seat belt signs and non-smoking signs, when they are activated. The term “refusal” includes intentional and express conduct of non-compliance but does not include inadvertent conduct.

### **2.3.2 Assault and Other Acts Endangering Safety or Jeopardizing Good Order and Discipline on Board an Aircraft**

2.3.2.1 The second category of offences included in the list in Appendix A covers offences involving acts which endanger safety or disturb good order and discipline on board an aircraft. In paragraph (1) of Section 2, an act of physical violence against a person, sexual assault or child molestation is recognized to be, due to its gravity, an act endangering safety or jeopardizing good order and discipline on board an aircraft. In these cases, the public prosecutor does not have to prove the endangering or jeopardizing nature of the relevant act of the alleged offender. The term “physical violence against a person” is a close approximation to the term “battery” known in common law jurisdictions which requires physical contact but does not necessarily give rise to injury. The physical contact does not need to create bodily injury but must interfere with the health or comfort of the victim and must be more than merely transient or insignificant in nature. The offence of “child molestation” is intended to offer specific protection to children on board an aircraft who could be subject to these acts.

2.3.2.2 However, an act listed in paragraph (2) of Section 2 will constitute an offence only if such an act has the consequence of endangering safety or disturbing good order and discipline on board the aircraft.

2.3.2.3 In addition, it should be noted that Section 2 is intended to deal with unruly and disruptive behaviour that undermines the safety or good order and discipline on board an aircraft, but not to cover every minor breach of such good order and discipline.

### 2.3.3 Other Offences Committed on Board an Aircraft

2.3.3.1 The third category of offences included in the list in Appendix A deals with offences, which cover acts not specifically mentioned in Sections 1 or 2. These acts pose a risk to the safety of the aircraft. For instance, tampering with a smoke detector affects the fire risk mitigation measures on board, and operating a portable electronic device may interfere with the aircraft electronic systems. It is therefore considered necessary to include these offences in the list.

## 2.4 THE APPLICABILITY OF THE LIST

2.4.1 The offences in Sections 1 to 3 of the list in Appendix A are recommended for incorporation into national legislation, so far as practicable. Notwithstanding individual legislative drafting styles and techniques of different States, for the sake of international uniformity, States are encouraged to incorporate the offences into their criminal code or their aviation regulations, or both. It is up to each State to classify within its national legislation, whether the unruly and disruptive behaviour described in the list should be criminalized or dealt with by administrative or other appropriate legal proceedings.

2.4.2 The offences in Appendix A would be committed on board an aircraft which is in flight. The Montréal Protocol of 2014 extends the scope of what constitutes an aircraft “in flight” for the purpose of the Tokyo Convention “from the moment when power is applied for the purpose of take-off until the moment when the landing run ends” to “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.” This was done to align with the definition of “in flight” in other aviation security conventions.

## 2.5 PENALTIES AND SANCTIONS

2.5.1 The list in Appendix A does not address the issue of penalties and sanctions for the offences in Sections 1 to 3. It is believed that this matter should be left to the discretion of each State. As a general guideline, it should be borne in mind that such offences when committed on board an aircraft may be more serious than when committed elsewhere, due to the confined space within which they take place and the potential negative impact on the safety of the aircraft.

2.5.2 It is recommended that the applicable penalties and sanctions be proportionate to the relative gravity of the offence.

2.5.3 In this regard, the approach taken must be consistent with the principles of due process and fair treatment under Article 17, paragraph 2 of the Tokyo Convention as introduced by the Montréal Protocol of 2014. The full text of the amended Article 17 is as follows:

- “1. In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft, the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.
2. Each Contracting State, when fulfilling its obligations, or exercising a permitted discretion under this Convention, shall act in accordance with the obligations and responsibilities of

States under international law. In this respect, each Contracting State shall have regard for the principles of due process and fair treatment.”

2.5.4 Chapter 4 of this Manual deals with civil or administrative sanctions as an alternative to criminal penalties.

## **2.6 OTHER INTERNATIONAL TREATIES**

2.6.1 The Hague Convention of 1970, the Montreal Convention of 1971 and the Beijing Convention and Protocol of 2010 contain provisions on offences committed on board aircraft. Article 1, paragraph 1, subparagraph (a) of the Montreal Convention of 1971 and Article 1, paragraph 1, subparagraph (a) of the Beijing Convention of 2010 provide that it is an offence for any person to perform “an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft”. These provisions may also be applied in cases involving unruly and disruptive passengers where such passengers commit acts of violence on board which are likely to endanger the safety of the aircraft.

## Chapter 3

### JURISDICTION

#### Tokyo Convention

3.1 The Tokyo Convention applies in respect of:

- “a) offences against penal law;
- b) acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.”<sup>19</sup>

3.2 Under the Tokyo Convention, the obligation is to establish jurisdiction as the State of registration over offences against penal law committed on board the aircraft registered in such State. Regarding acts which may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board, the State of registration is competent to exercise jurisdiction, but not obliged to take measures to do so.

#### Montréal Protocol of 2014

3.3 The Tokyo Convention was amended by the Montréal Protocol of 2014 to include the obligation to establish jurisdiction as the State of landing and the State of the operator over offences committed on board aircraft in the cases set out in Article 3, paragraph 2 *bis*.

3.4 The full text of Article 3 of the Tokyo Convention as amended by the Montréal Protocol of 2014 is as follows:

#### “Article 3

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.
- 1 *bis*. A State is also competent to exercise jurisdiction over offences and acts committed on board:
  - a) as the State of landing, when the aircraft on board which the offence or act is committed lands in its territory with the alleged offender still on board; and
  - b) as the State of the operator, when the offence or act is committed on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence, is in that State.
2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.

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<sup>19</sup> Article 1, paragraph 1 of the Tokyo Convention.

2 *bis*. Each Contracting State shall also take such measures as may be necessary to establish its jurisdiction over offences committed on board aircraft in the following cases:

- a) as the State of landing, when:
  - i) the aircraft on board which the offence is committed has its last point of take-off or next point of intended landing within its territory, and the aircraft subsequently lands in its territory with the alleged offender still on board; and
  - ii) the safety of the aircraft or of persons or property therein, or good order and discipline on board, is jeopardized;
- b) as the State of the operator, when the offence is committed on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence, is in that State.

2 *ter*. In exercising its jurisdiction as the State of landing, a State shall consider whether the offence in question is an offence in the State of the operator.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.”

3.5 In Article 3, a distinction is made between a State’s competence to exercise jurisdiction and its obligation to take measures to establish jurisdiction. A State’s competence to exercise jurisdiction is wider than the jurisdiction that it is obliged to establish.

3.6 A State that is obliged to take measures to establish the State of landing jurisdiction and the State of the operator jurisdiction when the Montréal Protocol of 2014 enters into force, need do so only in respect of offences (as specified in Article 3, paragraph 2 *bis*). The obligation to do so does not apply to “acts”, in respect of which the State may still take measures.

3.7 In fulfilling the obligation to take measures to establish the State of landing jurisdiction, a State must, at a minimum, do so based on the conditions set out in Article 3, paragraph 2 *bis*, subparagraph (a):

- a) the aircraft has its last point of take-off or next point of intended landing within its territory; and
- b) the aircraft subsequently lands in its territory with the alleged offender still on board; and
- c) the safety of the aircraft or of persons or property therein, or good order and discipline on board, is jeopardized.

3.8 This obligation does not prevent a State from establishing State of landing jurisdiction without the conditions specified in Article 3, paragraph 2 *bis*, subparagraph (a).

3.9 Nothing in the Tokyo Convention nor the Montréal Protocol of 2014 precludes a State from exercising any criminal jurisdiction in accordance with national law.

### 3.10 KEY JURISDICTIONAL ELEMENTS OF THE TOKYO CONVENTION AND THE MONTRÉAL PROTOCOL OF 2014

3.10.1 The following table is a summary of the key elements relating primarily to jurisdiction under the Tokyo Convention and the Montréal Protocol of 2014, as discussed in this Chapter 3.

Tokyo Convention		
<i>State of registration</i>	<i>is <u>competent</u></i>	<i>must <u>establish</u></i>
	to exercise jurisdiction over <b>offences and acts</b> committed on board	jurisdiction over <b>offences</b> committed on board aircraft registered in the State
<i>Every State</i>	<i>The Tokyo Convention does not exclude any criminal jurisdiction exercised in accordance with national law</i>	
Montréal Protocol of 2014		
<i>State of registration</i>	<i>is <u>competent</u></i>	<i>must <u>establish</u></i>
	to exercise jurisdiction over <b>offences and acts</b> committed on board	jurisdiction over <b>offences</b> committed on board aircraft registered in the State
<b>landing</b>	to exercise jurisdiction over <b>offences and acts</b> committed on board when the aircraft lands in its territory with the alleged offender still on board	jurisdiction over <b>offences</b> <ul style="list-style-type: none"> <li>• when the aircraft has its last point of take-off or next point of intended landing within its territory, and subsequently lands in its territory with the alleged offender still on board; <u>and</u></li> <li>• the safety of the aircraft or of persons or property therein, or good order and discipline on board, is jeopardized</li> </ul>
<b>the operator</b>	to exercise jurisdiction over <b>offences and acts</b> committed on board when the aircraft is leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence, is in the State	jurisdiction over <b>offences</b> committed on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence, is in the State
<i>Every State</i>	<i>The Montréal Protocol of 2014 does not exclude any criminal jurisdiction exercised in accordance with national law</i>	

<b>Other Points to Note on Contracting States' Actions Under the Tokyo Convention and the Montréal Protocol of 2014</b>	
<b>When exercising jurisdiction</b>	<p>The State must:</p> <ul style="list-style-type: none"> <li>• if notified or if it has otherwise learned that one or more other Contracting States are conducting an investigation, prosecution or judicial proceeding in respect of the same offence or act, as appropriate, consult those other Contracting States with a view to coordinating their actions</li> <li>• pay due regard to the safety and other interests of air navigation and avoid unnecessary delay of the aircraft, passengers, crew or cargo</li> <li>• act in accordance with the obligations and responsibilities of States under international law and have regard for the principles of due process and fair treatment</li> </ul>
<b>Enforcement action</b>	<p>States are encouraged to initiate <b><u>appropriate criminal, administrative or any other forms of legal proceedings</u></b> against any person who commits on board an aircraft</p> <ul style="list-style-type: none"> <li>• an <b>offence</b> against penal law, or</li> <li>• an <b>act</b> which may or does jeopardize the safety of the aircraft or of persons or property therein or which jeopardizes good order and discipline on board, in particular:             <ul style="list-style-type: none"> <li>• physical assault or a threat to commit such assault against a crew member; or</li> <li>• refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the purpose of protecting the safety of the aircraft or of persons or property therein</li> </ul> </li> </ul>
<b>National legislation</b>	<p>Nothing in the Tokyo Convention as amended by the Montréal Protocol of 2014 shall affect the State's right to introduce or maintain in its national legislation appropriate measures in order to punish unruly and disruptive acts committed on board</p>

## Chapter 4

### LEGAL AND OTHER MEASURES TO ADDRESS THE PROBLEM OF UNRULY AND DISRUPTIVE PASSENGERS

#### 4.1 INTRODUCTION

4.1.1 The purpose of this Chapter is to provide States with guidance on possible measures that may be taken by States to prevent, deter and address the occurrence of unruly and disruptive passenger incidents under their national legislation consistent with international obligations.

4.1.2 Evidence suggests that even where States have jurisdiction and laws to prosecute unruly and disruptive behaviour on board aircraft, prosecution or other enforcement actions are pursued in only a small number of cases. Achieving more effective enforcement is desirable to act as a deterrent. Moreover, administrative sanctions may be applied expeditiously to avoid the problems associated with the transient nature of international air travel such as those described in paragraph 1.6 above.

#### 4.2 SANCTIONS – GENERAL COMMENTS

4.2.1 The options provided in Sections 4.2, 4.3, 4.4 and 4.5 of this Chapter are aimed at encouraging efficient and effective action to sanction unruly and disruptive passenger behaviour. Such action should be taken in a manner that is consistent with States' obligations under international law and having regard for the principles of due process and fair treatment set out in Article 17, paragraph 2 as introduced by the Montréal Protocol of 2014. States may also wish to note the provisions of Article 2 relating to non-discrimination.<sup>20</sup>

4.2.2 Article 15 *bis* of the Tokyo Convention as introduced by the Montréal Protocol of 2014 expressly encourages States to initiate “appropriate criminal, administrative or any other forms of legal proceedings” against any person who commits an offence or an act which jeopardizes the safety of an aircraft or of a person or property on board or which jeopardizes the good order or discipline on board. The full text of Article 15 *bis* is as follows:

- “1. Each Contracting State is encouraged to take such measures as may be necessary to initiate appropriate criminal, administrative or any other forms of legal proceedings against any person who commits on board an aircraft an offence or act referred to in Article 1, paragraph 1, in particular:
- a) physical assault or a threat to commit such assault against a crew member; or
  - b) refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the purpose of protecting the safety of the aircraft or of persons or property therein.

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<sup>20</sup> Article 2 of the Tokyo Convention as amended by the Montréal Protocol of 2014 states as follows: “Without prejudice to the provisions of Article 4 and except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on discrimination on any ground such as race, religion, nationality, ethnic origin, political opinion or gender.”

2. Nothing in this Convention shall affect the right of each Contracting State to introduce or maintain in its national legislation appropriate measures in order to punish unruly and disruptive acts committed on board.”

### 4.3 ADMINISTRATIVE SANCTIONS

4.3.1 The Montréal Protocol of 2014 does not prescribe any types of penalties or sanctions that should be administered. Offences and acts may be penalized through a range of options from criminal prosecution to administration of civil and administrative sanctions depending on the seriousness of the offence or act<sup>21</sup> as well as whether the matter needs to be dealt with expeditiously. While criminal prosecution is usually used for serious offences, States may choose to address cases which are less serious in nature or degree by way of civil or administrative proceedings.<sup>22</sup> An example of a less serious case might be an unjustified refusal to obey a crew member’s instruction to fasten the seat belt. A number of States have developed less onerous or fast track procedures accompanied by lower penalties, to allow speedy resolution of minor incidents. There are States with expedited procedures who offer accused persons the option of accepting to pay a monetary sum in lieu of, or as an alternative to, prosecution (which may involve a higher penalty in the event of being found guilty). Penalties of imprisonment, the creation of a criminal record, large financial penalties or other severe consequences, are thus generally not imposed in such cases.<sup>23</sup>

4.3.2 Appendix B to this Manual contains guidance on the elements of an administrative sanctions regime and legislative provisions to support the introduction of such a regime. This material is not intended to be prescriptive as a State may prosecute or sanction offenders according to its national laws. As mentioned in Section 2.5, it is recommended that the unruly and disruptive passenger behaviour identified is dealt with in a proportionate and effective manner, taking into account the relative seriousness of the wrongdoing and the consequences of a sanction or penalty.

### 4.4 PROSECUTION AND SANCTIONS

4.4.1 When prosecution of a suspected offender is under consideration in a State where a foreign aircraft has landed, that State shall consider whether that offence is an offence in the State of the operator. This is as required by Article 3, paragraph 2 *ter* of the Tokyo Convention as introduced by the Montréal Protocol of 2014, the full text of which is as follows:

“3 (2 *ter*). In exercising its jurisdiction as State of landing, a State shall consider whether the offence in question is an offence in the State of the operator.”

4.4.2 A State of landing should exercise caution in sanctioning a passenger for behaviour which is unlawful in its jurisdiction, but is not unlawful in the State of the operator, and which does not jeopardize the safety and good order on the aircraft.

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<sup>21</sup> See Section 4.2 of this Manual and Article 15 *bis* of the Tokyo Convention as introduced by the Montréal Protocol of 2014.

<sup>22</sup> A number of States have administrative sanctions or comparable regimes which may be applied to sanctioning or penalizing unruly and disruptive passengers, for example, Australia, Canada, New Zealand, Portugal, Singapore, United States.

<sup>23</sup> It is recognized that serious allegations, for instance, those involving terrorism, may also have fast track procedures, which can include detention to prevent the commission of further suspected offences. This paragraph is not referring to such cases.

4.4.3 In considering the foregoing, it is important to recall that Article 3, paragraph 2 *ter* does not fetter the discretion of the State of landing to prosecute, as appropriate.

#### 4.5 DISTINGUISHING BETWEEN CRIMINAL AND ADMINISTRATIVE PROCEEDINGS

4.5.1 The following table is a guide to some of the procedural, evidentiary and substantive differences between administrative and criminal proceedings that may be used to deal with unruly and disruptive passengers. The information in this table primarily relates to common law systems and may not account for all the differences in civil law systems.

Feature	Administrative	Criminal
Commencement and brief description of action	Passenger is issued with an enforcement or equivalent notice, specifying an administrative fine or monetary penalty. Passenger may opt to pay the fine and the matter is considered resolved, or opt to have the matter reviewed by a court (which may be in criminal proceedings) or by an administrative authority.	Passenger is arrested and/or formally charged by police/enforcement authority under a relevant criminal law. Passenger may be detained pending a bail determination or released. Passenger must await determination by a court. Passenger may plead guilty and forgo trial under summary procedures.
Standard of proof and onus of proof	May be different – “Balance of probabilities standard”, for example.	Generally a higher threshold – “Beyond reasonable doubt”.
Evidence	Generally, more flexible evidentiary requirements.  For example, informal evidence statements may be made by witnesses with no requirement for oath or affirmation.	Strict evidentiary requirements.  Formal presentation in court requiring sworn or affirmed evidence according to criminal procedures.
Procedural safeguards	Process for raising a defence and assessment of the defence by another official. Passenger may opt to challenge the issue of an enforcement or equivalent notice in administrative review proceedings. Passenger may opt for the matter to be referred to a court for determination of the facts.	Passenger has formal rights to a trial under the criminal justice system relating to procedure, evidence and right of appeal. Passenger may have to be present in jurisdiction for trial or finding of guilt to occur.

Feature	Administrative	Criminal
Cost	Generally less given less formal procedure and absence of trial. Procedure can be handled administratively. The matter can be dealt with entirely outside the court system.	Varies, but generally significant preparation of evidence and use of court time for preliminary court processes and trial.
Appeal rights	Passenger can generally opt to have matter dealt with by a court and may have a right of appeal.	Passenger generally has right to appeal against a conviction (for example, on an error of law) or on quantum of sentence/penalty.
Consequences	Will not result in a criminal record. An unpaid fine may be enforced under the rules applicable to civil judgments or statutory debts.	Will generally result in a criminal record and a sentence (fine, prison term) upon conviction.

#### **4.6 OTHER MEASURES WITHIN THE CIVIL AVIATION REGULATORY SYSTEM TO ADDRESS UNRULY AND DISRUPTIVE PASSENGER BEHAVIOUR**

4.6.1 The *Aviation Security Manual* provides guidance on how States may comply with the Standards and Recommended Practices (SARPs) contained in Annex 17. It also contains specific measures to deal with unruly and disruptive passengers, covering matters such as threat levels and crew response, training of crew members, information provided to passengers, and reporting of incidents. In addition, it states that aircraft operators should maintain accurate and regularly updated statistics on unruly and disruptive passenger incidents and forward them annually to the appropriate authority.

4.6.2 It is recognized that an act of unlawful interference could begin as unruly and disruptive behaviour. Preventing the escalation of such behaviour could therefore be an important factor in avoiding more serious threats to safety and security. In this regard, it is emphasized in the *Manual on the Implementation of the Security Provisions of Annex 6*<sup>24</sup> that airlines should implement strategies which include raising awareness, application of a zero tolerance policy and enforcement of measures against unruly and disruptive passengers.

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<sup>24</sup> See footnote 13.

4.6.3 Annex 9 contains the following provisions with regard to measures that States are required to take to deter and prevent unruly and disruptive behaviour:

“6.44 Each Contracting State shall, to deter and prevent unruly behaviour, promote passenger awareness of the unacceptability and possible legal consequences of unruly or disruptive behavior in aviation facilities and on board aircraft.

6.45 Each Contracting State shall take measures to ensure that relevant personnel are provided training to identify and manage unruly passenger situations.”<sup>25</sup>

4.6.4 Such measures could include requiring airlines and other industry participants, such as airports and merchants selling alcohol in the airport, to undertake the following:

- a) Dissemination of information to the general public and passengers of the risks linked to unruly and disruptive acts for the security or safety of the flights by way of posters in airport boarding lounges and by means of an explanatory notice distributed with boarding documents and inserted into the pocket of the aircraft seat;
- b) Dissemination of information to passengers regarding the offences and administrative sanctions that may result from unruly and disruptive behaviour on board an aircraft;
- c) Harmonized actions of prevention and handling of the incidents related to disturbing behaviour in order to reduce the circumstances or factors (such as flight delays, alcohol consumption, deprivation of tobacco, etc.) that contribute to the development of unruly and disruptive acts or, when they do occur, tend to aggravate their effects;
- d) Establishment of training programs for airport and airline staff to enable more effective management and handling of the unruly and disruptive incidents in question, and also aim at improving their knowledge of procedures for documenting and providing information and evidence as complainants and witnesses.

4.6.5 It is recommended that States have regard to the ICAO publications discussed in this Section 4.6 when considering preventive measures, and appropriate enforcement and sanctions to address the problem of unruly and disruptive passenger incidents.

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<sup>25</sup> See also *The Facilitation Manual*.

## APPENDIX A

### Model Legislation on Certain Offences Committed on Board Aircraft

#### Section 1: Assault and Other Acts of Interference against a Crew Member on Board an Aircraft

Any person who commits on board an aircraft any of the following acts thereby commits an offence:

- 1) physical assault or threat to commit such assault against a crew member;
- 2) verbal intimidation or threat against a crew member if such act interferes with the performance of the duties of the crew member or lessens the ability of the crew member to perform those duties;
- 3) refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the purpose of:
  - a) protecting the safety of the aircraft or of persons or property therein; or
  - b) maintaining good order and discipline on board.

#### Section 2: Assault and Other Acts Endangering Safety or Jeopardizing Good Order and Discipline on Board an Aircraft

- 1) Any person who commits on board an aircraft an act of physical violence against a person or of sexual assault or child molestation thereby commits an offence.
- 2) Any person who commits on board an aircraft any of the following acts thereby commits an offence if such act is likely to endanger the safety of the aircraft or of any person on board or if such act jeopardizes the good order and discipline on board the aircraft:
  - a) assault, intimidation or threat, whether physical or verbal, against another person;
  - b) intentionally causing damage to, or destruction of, property;
  - c) consuming alcoholic beverages or drugs resulting in intoxication.

#### Section 3: Other Offences Committed on Board an Aircraft

Any person who commits on board an aircraft any of the following acts thereby commits an offence:

- 1) smoking in a lavatory, or smoking elsewhere when such act is prohibited;
- 2) tampering with a smoke detector or any other safety-related device on board the aircraft;
- 3) operating a portable electronic device when such act is prohibited.

## APPENDIX B

### GUIDANCE FOR INTRODUCING AN ADMINISTRATIVE SANCTIONS REGIME ON CERTAIN OFFENCES COMMITTED ON BOARD AIRCRAFT

Note: This is guidance material only, is not model legislation, and is derived from the legislation in place in some States. The information in this Appendix primarily relates to common law systems and may not account for all the differences in civil law systems.

#### **Part A: Elements of Administrative Enforcement System**

1. Reporting of offence by airline, passenger, crew member, to appropriate decision maker in accordance with local framework – for example Director of Civil Aviation, Minister of Transport.
2. Power to issue notice by appropriate decision maker:
  - a. in accordance with local framework;
  - b. for specified offences; and,
  - c. on the basis of evidential sufficiency defined by statute or local practice.
3. Delegation of issuing notices - Procedure and mechanism for delegation of authority to issue enforcement notices.
4. Requesting information - Power to ask for information and sanctions for failing to comply.
5. Obligation to provide information - Positive obligation on aviation participants, such as air operators, to provide information on any data protection compliance issues.
6. Options for the passenger on receipt of notice:
  - a. Elect to pay the fine;
  - b. Elect to dispute the notice.
7. Procedures following election:
  - a. Paying the fine on the spot or later;
  - b. Review of dispute and withdrawal of notice;
  - c. Referral to the judicial system.

## **Part B: Guidance on Legislative Provisions**

### **1. Power to Issue Administrative Enforcement Notices**

The [NAME OF OFFICIAL] has the power to issue an administrative enforcement notice to a person regarding the commission of an offence described in Section XX.

### **2. Power to Authorize Issue of Administrative Enforcement Notices**

The [NAME OF OFFICIAL] has the power to authorize:

- a. Aviation security officers;
- b. Police officers; or
- c. [Any other person] considered appropriate by [NAME OF OFFICIAL] to act in accordance with national legislation and international obligations relating to the transportation of passengers by air,

to issue an administrative enforcement notice to a person regarding the commission of an offence described in Section XX.

### **3. Authorized Person**

A person authorized to exercise a power or function under these provisions must carry evidence of that authority that specifies:

- a. the name of, and the office or offices held by, that person; and
- b. the powers and functions that the person is authorized to exercise under these provisions.

NOTE: An authorized person may be delegated responsibilities by the relevant aviation regulatory authority. An aviation security officer, a police officer, or any other person who has authority to enforce the law in the relevant jurisdiction may also be authorized by legislation to issue administrative enforcement notices relating to offences.

### **4. Procedure**

- a. If any person is alleged to have committed an offence (in this section, the defendant), the aircraft commander of the aircraft at the time of the alleged offence may, by any available means, notify, or cause to be notified, the appropriate regulatory authority or an authorized person.
- b. If the appropriate regulatory authority or authorized person has reason to believe that a defendant has committed any offence, the appropriate regulatory authority or the authorized person may issue an administrative enforcement notice in respect of the alleged offence.
- c. The appropriate regulatory authority or authorized person may require the person to give his or her full name, address, nationality and date of birth.

NOTE: It may be appropriate to make it an offence to fail to comply with the requirement to provide information without reasonable excuse or to provide false or misleading information, or, alternatively, such failure may be an offence under another existing criminal enforcement provision.

- d. The air operator certificate holder shall provide information in its possession regarding the defendant to the appropriate regulatory authority or authorized person.

NOTE: This is to enable the air operator certificate holder to release personal information that may be subject to privacy regulations.

- e. Evidence produced by the defendant must be inspected without delay and returned to the defendant as soon as practicable after the inspection has concluded.
- f. The appropriate regulatory authority or authorized person may:
  - (i) deliver an administrative enforcement notice (or a copy of it) to the defendant personally; or
  - (ii) send it (or a copy of it) to the defendant by post addressed to the defendant's last known place of residence or business.

#### **5. Form of Administrative Enforcement Notice**

A notice under these provisions must be in the prescribed form, and must specify:

- a. sufficient details to inform the defendant fairly of the time, place, and nature of the offence alleged;
- b. the amount of the fine specified in respect of that offence;
- c. how the fine may be paid;
- d. the time within which the fine may be paid;
- e. a summary of the process that would apply should the defendant wish to dispute the enforcement notice; and
- f. a statement of the consequences if the defendant neither pays the fine nor requests a hearing.

#### **6. Provision for Regulation to prescribe Administrative Enforcement Fines**

NOTE: Fines should be prescribed for each offence and the amount of the fine should be determined in accordance with local practice and reflect the serious nature of the offence and the need to deter such behaviour.

## 7. Payment of fines

If a notice is served by delivering it to the defendant on arrival at an international airport for an offence on an international flight, the defendant may choose to pay immediately the fine in the manner specified in the notice.

— END —