



## **LEGAL COMMITTEE – 37th SESSION**

(Montréal, 4 to 7 September 2018)

### **Agenda Item 2: Consideration of the General Work Programme of the Legal Committee**

#### **ACTS OR OFFENCES OF CONCERN TO THE INTERNATIONAL COMMUNITY AND NOT COVERED BY EXISTING AIR LAW INSTRUMENTS**

(Presented by Latin American Air and Space Law Association – ALADA)

#### **1. INTRODUCTION**

1.1 The study concluded by the Task Force on legal aspects of Unruly/disrupted passenger (UPAXTF), during its last meeting in Geneva (Swiss Confederation) between 19 – 21 February 2018, emphasized the importance also the complexity of the revision of Circular 288 LE/1 “Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers”.

1.2 The outcome of the study is reflected in a Draft of Manual LC/37-WP/2-3 Appendix. Some important proposals and recommendations of that study considered this paper.

#### **2. FORMAT**

2.1 Once again, ALADA stresses its views in favour of the Manual option. In the meeting of the Task Force, held in Montreal in March 2017, ALADA expressed, as a more convenient, to choose the Manual format, as a best alternative, in order to have a valuable and dynamic tool, with the possibility to be revised and republished, when the facts indicate the need to do it, in line with ICAO’s rules.

2.2 The nature of the subject, require guidelines with a higher level than a Circular, this is the reason why ALADA supports the proposal presented by the Chairperson of the Task Force in paragraph 3, LC/37-WP/2-3.

#### **3. TERMINOLOGY**

3.1 If the common use of the term “unruly and disruptive passenger” could be accepted, it is convenient to take into account that, in the legal field, the appropriate use of the terminology, is essential to capture the objective of the regulations. Therefore, ALADA prefers the terms, “*indiscipline/disorderly passengers*”, considering that their behaviour is completely different from the personnel who are subject to a legal framework, as the case of the military and other security forces agencies, which in the cases the infringement of the orders, instructions, rules fixed in pyramidal structure, must be considered as “unruly”.

3.2 Besides, the use of the “*indiscipline*” term, embraces the disruptive conduct, (who interfere, disrupt, deviating from correct behaviour).

3.3 The Legal Subcommittee, the Rapporteur Alejandro Piera, in his Report, proposed to replace the term “passengers” [with] [by] “persons”, with the idea to include certain behaviours of crew members, but this suggestion did not progress, perhaps for considering that the members of the crew have their own rules of discipline, proper of the aeronautical personnel.

3.4 ALADA knows that the new regulation must be aligned with existing multilateral agreements, such as the Montreal Protocol of 2014, in the case of offences and *acts committed on board of the aircraft*, and all of the work developed by the Task Force is well done. Nevertheless, it would be worthy considering that this kind of the acts begin before embarking, in the airport premises where the total responsibility lies with the personnel in charge of such premises. As a preventive action, in order to clarify this important subject, the responsibility of the mentioned personnel should be emphasized in the recommendations indicated in 2.4.2 of Draft Manual - Appendix (2.4 The Applicability of the List).

3.5 Also, in the chapter 2.5 Penalties and Sanctions, it would be worthy considering a stronger reference on the level of responsibility of each and all of the competent authorities in land (airports chiefs, airlines, security agents, etc.)

#### 4. ALIGNMENT WITH ANNEXES

4.1 ALADA considers convenient that the definition of unruly and disruptive passenger not only will be aligned with Annex 17 Security, and the Security Manual (Document 8973), but also with Annex 9 FAL, due to the close and specially link there.

#### 5. JURISDICTION

5.1 The Montreal Protocol 2014 admits two new jurisdictions: a) the State of landing and b) the State of the Operator.

5.2 These two new alternatives are established as mandatory jurisdictions for offences, but not for acts (minor offences).

5.3 ALADA considers that, as indicated by the Chairman of the Task Force in the paragraph 3.4.2, (LC/37-WP/2-3), paragraph 2 ter of Article 3 of the Protocol, accuracy is required, in order to facilitate the adequate application in the jurisdictional field. In this order of ideas, it would be worthy considering to write in a clear way, that the acts (minor offences) will be included like the offences, in the mandatory jurisdictions.

#### 6. ADMINISTRATIVE SANCTIONS

The idea to introduce the Administrative Penalty Framework for unruly passenger, as an expedite mechanism for the minor elicits, with a lot of advantages over the criminal procedure, is an excellent option. ALADA supports this proposal with the necessary introduction of certain elements, for instance, the due process and the guarantee of the defence right.

**7. NEW RESOLUTION**

7.1 ALADA agrees with the proposal indicated in the paragraph of 3.38 LC/37-WP/2-3 by the Chairperson of the Task Force, concerning the review of the Resolution A39-11, not only for the importance that States could achieve, but also for a uniform model of the legislation on the subject.

7.2 It is necessary to take into account the long period required in the process of the ratification the multilateral agreements, this is the reason that, until the opportunity to enter in force the Montreal Protocol of 2014, the model of legislation , enable the States, through the uniform rules, apply a good tool, to fight against the unruly behaviour.

**8. ACTION BY THE LEGAL COMMITTEE**

8.1 The Legal Committee is invited to:

- a) Take note of the considerations stressed in the prior paragraphs; and
- b) Support the recommendations indicated by the Chairperson of the Task Force in LC/37-WP/2-3.

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