



ASSEMBLY — 39TH SESSION

LEGAL COMMISSION

Agenda Item 47: Other issues to be considered by the Legal Commission

**PROMOTION OF THE PROTOCOL TO AMEND THE CONVENTION ON
OFFENSES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT
DONE AT MONTREAL ON 4 APRIL 2014 (MONTREAL PROTOCOL 2014)**

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

EXECUTIVE SUMMARY

Unruly and disruptive passenger incidents have become a significant issue jeopardizing flight safety and security. In April 2014, States recognized the significance of this issue and the need to strengthen international air law when they attended a Diplomatic Conference and approved the Montreal Protocol 2014 (MP14). MP14 amends the Tokyo Convention of 1963, providing a more robust framework and greater legal certainty by giving States the relevant means to be able to take appropriate action against perpetrators for their misconduct. However, MP14 will only enter into force when 22 States have ratified it.

This paper calls on all States to expedite the ratification of MP14, which along with industry initiatives will help to tackle the growing prevalence and severity of unruly passenger incidents.

Action: In light of the recognized benefits that MP14 brings, IATA invites the Assembly to urge Member States to prioritize the ratification of MP14 in order to strengthen the international deterrent against unruly and disruptive behaviour on international flights

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective <i>Economic Development of Air Transport</i>
<i>Financial implications:</i>	N/A
<i>References:</i>	Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Montréal on 4 April 2014 (Doc 10034) Circular 288: <i>Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers</i>

¹ English, Arabic, Chinese, French, Russian and Spanish versions were provided by IATA.

1. INTRODUCTION

1.1 Ensuring the safe, secure and efficient operation of commercial flights is the shared goal of governments, airlines and the wider aviation industry. However, unruly passenger incidents on board aircraft that threaten safety and security have become a significant issue faced by airlines, flight and cabin crew on a daily basis.

1.2 The behaviour of the small minority of unruly passengers also adversely affects the travel experience of other passengers, causes operational disruption and leads to significant costs for airlines.

1.3 Unruly behaviour includes assault of other passengers or crew, sexual abuse or harassment, illegal consumption of narcotics, refusal to comply with safety instructions, making threats that could affect the safety of the crew, passengers and aircraft, and other types of disorderly behaviour that impact good order and discipline on board.

1.4 Since 2007, IATA has collected statistics on unruly passengers from the Safety Trend Evaluation Analysis and Data Exchange System (STEADES), a database owned and managed by IATA to which 190 airlines submit periodic reports on a non-mandatory basis. It is likely that the statistics significantly under-estimate the extent of the problem.

1.5 Statistics from STEADES on unruly passenger incidents in 2014 are shown in Appendix A. In 2014, there was an average of 1 unruly passenger incident per 1,289 flights, an increase when compared to 1 incident for every 1,362 flights in 2013. Together with the statistics from individual civil aviation authorities and feedback from member airlines, this data suggests that unruly passenger incidents have become more prevalent.

1.6 To address this issue, IATA has set out a comprehensive multi-stakeholder approach that should be adopted including:

- a) *Enhanced international deterrent* – by ensuring States have the necessary legal tools to be able to enforce criminal or other sanctions as appropriate so that unruly passengers are held to account for their misconduct; and
- b) *Prevention and management* – by ensuring airlines and other stakeholders take measures to prevent unruly incidents and manage incidents effectively when they do happen through guidance, training and the sharing of best-practice.

1.7 States recognized that the existing Tokyo Convention 1963 (TC63) no longer provides a sufficient legal framework for dealing with unruly passenger behaviour due to jurisdictional gaps and the lack of clarity as to what constitutes an offense. Consequently, the Montreal Protocol 2014 (MP14) was adopted by States at a Diplomatic Conference on 4 April 2014. It significantly improves the ability of States to expand jurisdiction over offenses to the State of the Operator and the State of Landing.

1.8 To bring it into force, at least 22 States must accede, accept or ratify the Montreal Protocol 2014. So far, 30 States have signed the Protocol and six States (Bahrain, Congo, Dominican Republic, Gabon, Guyana and Jordan) have ratified it.

2. **BENEFITS**

2.1 **Extension of Jurisdiction** - a key issue is that currently a significant number of unruly passengers rarely face prosecution or other legal or economic sanction because of jurisdictional issues. In a representative survey of over 50 IATA member airlines in 2013, over 60% indicated lack of jurisdiction as a key reason for failure to prosecute unruly passengers at foreign destinations. In other cases, some countries lack specific provisions in their relevant laws to allow for the arrest and prosecution of unruly passengers even when jurisdiction is not an issue.

2.2 TC63 grants jurisdiction over offenses and other acts committed on board aircraft to the State of registration of the aircraft in question. This causes issues when the Captain of the aircraft delivers or disembarks an unruly passenger to the competent authorities who may determine that they do not have jurisdiction (as the State of landing) when the aircraft is registered in another State. Likewise, the police and authorities in the State of registration may have little connection with an incident taking place in another country. The result is that the unruly passengers are often released and allowed to continue their journey without facing any sanctions for their misconduct.

2.3 MP14 addresses legal gaps by providing States with a clearer jurisdictional framework for dealing with unruly passengers, whilst preserving prosecutorial discretion. Specifically:

- a) MP14 gives mandatory jurisdiction to the intended State of landing (the scheduled destination). However, two safeguards were included to reflect the concerns of some States on legal certainty and proportionality. Firstly, the offense must be sufficiently serious i.e. where the safety of the aircraft or of persons or property therein, or good order and discipline on board is jeopardized. Secondly, the State of landing must consider if the offence is an offence in the State of operator; and
- b) MP14 establishes mandatory jurisdiction for the State of operator. This takes account of the increasing trend toward dry leasing aircraft where the State of aircraft registration is not necessarily the State of operator.

2.4 **Definition of Offenses** – MP14 clarifies certain behaviours which should be considered, at a minimum, as offenses and encourages States to take appropriate criminal or other legal proceedings. These include physical assault or a threat to commit such assault against a crew member and refusal to follow a lawful instruction given by or on behalf of the aircraft Commander (for safety purposes). The elaboration of the types of conduct prohibited will improve legal certainty.

2.5 **Right of Recourse** - airlines usually have to bear the costs incurred as a result of unruly passenger incidents and these can be substantial, in some instances over US\$200,000. MP14 recognizes that airlines may have a right to seek compensation for costs incurred as a result of unruly passenger behaviour. The presence of this clause should have strong deterrent value.

2.6 Taken together with the operational measures already being implemented by airlines and other stakeholders to prevent and manage unruly incidents, when widely ratified, MP14 will provide a more effective deterrent by making the consequences of such behaviour clear and enforceable. This will lead to a safer and a more pleasant air travel experience for all.

3. RELATED WORK

3.1 In addition to MP14, the Diplomatic Conference adopted a Resolution urging the ICAO Council to request the Secretary General to update the ICAO Circular 288: *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*, to include a more detailed list of offenses and other acts, as well as to make consequential changes to the ICAO Circular 288 arising from the adoption of MP14.

3.2 Accordingly, the ICAO Council, at the second meeting of its 202nd Session on 11 June 2014, instructed the Secretary General to update the ICAO Circular 288. For this purpose, the Secretary General subsequently established a Task Force on Legal Aspects of Unruly Passengers comprising of both States and International Organizations.

3.3 IATA considers the work of the Task Force to be important and of critical relevance to the whole spectrum of State efforts on this issue. The Task Force is examining the existing model legislation contained in ICAO Circular 288, as well as other practical and administrative measures that States may take to address unruly behavior on board aircraft. IATA has supported the work of the Task Force, both substantively in its deliberations and in hosting the Task Force's most recent meeting in Geneva, Switzerland from 30 to 31 March 2016.

3.4 IATA is pleased to support the continuing work of the Task Force and looks forward to its recommendations on ICAO Circular 288.

4. ACTIONS

4.1 In developing MP14, States recognized *'the escalation of the severity and frequency of unruly behaviour on board aircraft that may jeopardize the safety of the aircraft or of persons or property therein or jeopardize good order and discipline on board.'*

4.2 While recognizing competing domestic legislative priorities, IATA urges States to prioritize the ratification of MP14 to put in place an international legal instrument which gives the international community the means to deal with unruly passengers more effectively, and to deter future incidents.

4.3 IATA invites the Assembly to urge States to prioritize the ratification of MP14 in order to strengthen the international deterrent against unruly and disruptive behaviour on international flights