



**SPECIAL SUB-COMMITTEE OF THE LEGAL COMMITTEE
FOR THE MODERNIZATION OF THE TOKYO CONVENTION
INCLUDING THE ISSUE OF UNRULY PASSENGERS**

SECOND MEETING

Montréal, 3 – 7 December 2012

(Presented by Argentina)¹

1. INTRODUCTION

1.1 Instances of violence involving passengers during commercial air travel are an increasing occurrence in international flights over the last two decades.² This problem has become so relevant that Lloyd's of London offers an insurance policy for airlines that covers such incidents,³ including the costs arising from the need to divert flights to nonscheduled airports, compensation for injuries to employees and passengers, and general economic losses associated with those events.⁴

1.2 Almost every country has more than one story to tell about flights performed over their territory or by their airlines in foreign jurisdictions in which an unruly passenger's behavior has unleashed serious concerns about the safety of the aircraft, the persons on board, or has jeopardized the flight itself. The list is vast and varied and, in some cases, bizarre. For example, it was reported the case of a man aboard a small passenger plane who fought to push open the aircraft's door at 23,000 feet over northern Canada and leaped to his death, forcing the pilot to make an emergency landing with the door ajar.⁵ Moreover, some news headlines reported that an airline has asked its flight crews to learn a form of kung-fu, since the carrier hopes it will help its staff deal with drunk and unruly passengers.⁶ As it was properly indicated, "what happens generally in the streets is now happening on board aircraft",⁷ and recent incidents show that passengers are not the exclusive characters in fights on board.⁸

¹ This Working Paper reproduces some of the ideas developed in a previous working paper elaborated by the legal expert designated by the Argentine Republic to take part in the meetings of the "Secretariat Study Group on Unruly Passengers", and incorporates the main trends of the discussions as well as the conclusions of the First Meeting of the Special Sub-Committee of the Legal Committee on this matter (LC/SC-MOT), held in Montreal on May 22-25, 2012. This paper is intended to highlight some important aspects for consideration in the forthcoming discussions, and to provide some materials and information whose assessment is deemed will be useful to the members of the Sub-Committee. The content of this paper must not be considered as an advanced official position of the Government of Argentina on any of the issues to be tackled by the Sub-Committee.

² Margaret P. Fogg, *Air Rage: Is It a Global Problem?*, 7 ILSA J. INT'L & COMP. L. 511, 518 (2001).

³ Swerdlow, Aaron B., *Modern Approaches to the Powers of the Aircraft Commander Under Article 6 of the Tokyo Convention*, Issues in Aviation Law and Policy, de Paul University, Autumn 2010.

⁴ William Mann, *All the (Air) Rage: Legal implications surrounding Airline and Government bans on Unruly Passengers in the Sky*, 65 J. AIR L. & COM. 857, 860 (2000).

⁵ *Unruly flier jumps out of airplane over Arctic*: http://www.usatoday.com/travel/flights/2009-04-17-flier-jumps-over-arctic_N.htm

Chapter 1 ⁶ *Airline turns to kung fu to thwart unruly fliers*:

<http://travel.usatoday.com/flights/post/2011/04/hong-kong-airlines-kung-fu/165519/1>

⁷ ICAO Circular Nr. 288: "Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers", Introduction.

⁸ *Attendants' fight sends United flight back to N.C.*: <http://travel.usatoday.com/flights/post/2012/09/flight-attendant-spat-delays-flight->

1.3 To address this matter, and following the recommendations of the 34th Session of the legal Committee, the ICAO Council decided in 2010 to reactivate the Secretariat Study Group on Unruly Passengers, established in 1998 to consider “*Acts or offences of concern to the international aviation community and not covered by existing air law instruments*” (an item in the General Work Programme of the Legal Committee). As a result, so far two meetings of such group and a First Meeting of the Special Sub-Legal Committee were convened, and a Second Meeting was scheduled for the first week of December, 2012, concluding that it was necessary to re-examine whether the existing international legal framework could adequately address this matter. The analysis mainly centered on the so-called “Tokyo Convention”,⁹ which was signed in Tokyo on 14 September 1963 by the representatives of 49 ICAO Member States,¹⁰ and entered into force on 4 December 1969.

1.4 The problematic issues identified by the Secretariat Study Group¹¹ were intensively discussed and, although enlightening exchanges of ideas were held in the successive meetings, it can be said that none of the problematic issues thereby identified has been definitively resolved.¹² Therefore, moving forward in the examination of such matters becomes of the utmost importance, as well as to consolidate and expand the significant work carried out so far through the previous meetings, in order to facilitate an adequate ICAO’s response to this modern and grave challenges.

1.5 In this respect, this paper would like to praise the work undertaken by the Rapporteur of the Legal Committee.¹³ The profound analysis of the various complex issues therein contained will surely make this report a helpful companion to members of the Sub-Committee in the further discussions, particularly as an important consultation material.

2. SOME PROBLEMATIC ISSUES IN ADDRESSING THE MODERNIZATION OF THE TOKYO CONVENTION.

2.1 A list of offences

2.1.1 As predicted,¹⁴ the elaboration of a list of offenses to be prosecuted in the new document demanded lengthy discussions, rooted on conflicting points of view arising from different cultural backgrounds and diverse domestic legal systems. To this respect, it must be regarded that the purposes of a uniform list of offenses are basically two:

[again/70001208/1](http://travel.usatoday.com/flights/post/2012/09/american-airlines-eagle-flight-attendants-fight/70000766/1); *Flight attendant spat causes four-hour delay on American Eagle*: <http://travel.usatoday.com/flights/post/2012/09/american-airlines-eagle-flight-attendants-fight/70000766/1>

⁹ *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, ICAO Doc. 8364.

¹⁰ Representatives of 61 governments participated in the drafting and enacting of the Convention: Robert P. Boyle & Roy Pulsifer, *The Tokyo Convention on Offences and Certain Other Acts Committed On Board Aircraft*, 30 J. AIR L. & COM. 306, 329 (1964), at 305.

¹¹ The Study Group identified several areas in the Tokyo Convention that demanded particular attention, namely:

- a) Lack of clear definitions or common standards.
- b) Jurisdiction.
- c) Scope of the Convention.
- d) Lack of harmonized enforcement procedures.
- e) The powers conferred to the aircraft commander.

¹² There has been no scarcity of studies on the matter of unruly passengers after the Tokyo Convention was adopted. Although it has become one of the most widely accepted ICAO legal instruments (to present date, 185 States are Parties to this Convention), and it represents a milestone in international air law, the increasing number of incidents registered on board aircraft has triggered a number of studies pointing out the need to modernize the Convention or, at least, to further elaborate some concepts therein contained, to enable them meet the new challenges. In this regard, it must be highlighted the high value of previous works of the ICAO former Study Group, particularly the guidance material elaborated in ICAO Circular 288, “*Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*”, and the Model Legislation developed to assist states in dealing with this matter, included as Appendix to ICAO Assembly Resolution A33-4.

¹³ *Report of the Rapporteur of the Special Sub-Committee on the Preparation of an instrument to Modernize the Convention on Offences and Certain other Acts committed on Board Aircraft of 1963*.

¹⁴ SGG-UNP/2-WP/5, 29/9/11, at 2.1.1.

- a) To provide a common denominator for offenses as a basis for national prosecution.
- b) To offer uniform criteria for States to extend their respective jurisdiction.

2.1.2 It is worth noting that uniformity in ICAO legal instruments is always a desirable goal. However, while the assessment of the need for a new international instrument on the subject matter unruly passengers was labeled as “advisable”,¹⁵ it was also stated that “the paramount advantages of such a [new] convention would be to differentiate between the nature of offences classified as unlawful acts of interference against security and safety of aviation and covered by the above-mentioned conventions [referring to the Tokyo Convention of 1963, the Hague Convention of 1970 and the Montreal Convention of 1971], and the violations committed by unruly passengers. Another advantage is to create a clear legal mechanism on how to deal with both cases within a framework of legal and juridical procedures.”¹⁶

2.1.3 In this vein, turning to the works and results of the ICAO Diplomatic Conference on Aviation Security held in Beijing (30 August-10 September, 2010), which produced two important documents: the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation*, and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft*, becomes a must. Following these examples, any list of offences should be placed at the very beginning of the new document, to serve the purposes of clarification and vesting it with a better methodology.

2.1.4 Some definitions included in Circular Nr. 288¹⁷ may also be a valuable asset to turn to in further discussions. The very term “unruly passenger” as explained in the document has become a classic in this sense,¹⁸ although as the Circular itself points out, this legal definition must be complemented by attaching to it the idea that the unruly conducts to be prosecuted must, in some degree, jeopardize the safety of the aircraft or of the persons or property therein. This clarification is not unfortunate, rather all the contrary, since it is generally agreed that one of the pivotal purposes of the Convention was to provide effective tools to cope with acts jeopardizing safety on board (principally, through vesting the aircraft Commander with ample disciplinary powers).

2.2 Jurisdiction

2.2.1 The Report on the works of the Special Sub-Committee of the Legal Committee for the Modernization of the Tokyo Convention including the issue of unruly passengers noted that: “[t]he general sentiment is that the inclusion and exercise of the State of the Operator and the State of Landing jurisdictions will assist to curb the increasing trend of unruly behavior on board aircraft. Naturally, territorial jurisdiction is to be included.”¹⁹ This assertion should not provoke any surprise, for since the very beginning of the discussions for elaboration of the Tokyo Convention these issues were present.

¹⁵ Council, 169th. Session, *Report on the Implementation of Resolution A33-4 Concerning Unruly/Disruptive Passengers*, presented by the Secretary General.

¹⁶ *Ibidem*.

¹⁷ See *supra*, Note 7.

¹⁸ “The term ‘unruly’ or ‘disruptive’ passenger refers to passengers who fail to respect the rules of conduct on board aircraft or to follow the instructions of crew members and thereby disturb the good order and discipline on board aircraft”. ICAO Circular 288: “Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers”, Introduction.

¹⁹ LC/SC-MOT, at A5-1.

2.2.2 In effect, at the Tokyo Diplomatic Conference it was submitted a proposal to create a system that gives priority to the State of first landing of the aircraft where the offense was committed, regardless of the territorial space where the crime of act has been taken place. Although the proposal was initially endorsed with “considerable support”,²⁰ it was finally rejected.

2.2.3 Also at the Tokyo Diplomatic Conference, the Legal Committee appointed a Sub-Committee to undertake a special study of the problems arising in cases of aircraft chartered to a national of a State other than the State of registry. The Sub-committee was unable to reach a complete agreement on how to deal with the question, and put forward three solutions. Finally, the Conference decided to adopt “the simplest one”, which indicated that no provision in this regard should be included.²¹ However, the factual circumstances have changed in recent years, mainly due to the wide spreading practice of aircraft leasing.

2.2.4 Clearly, it is time to revisit and revive these issues, and incorporation of such jurisdictions into the new document seems definitely to be the right way to go.

2.2.5 In addition, this paper would like to suggest that the provision rejecting exclusion of any criminal jurisdiction exercised in accordance with national law must be retained. As explained by an author, the objectives of this clause are three:

- a) to retain all existing jurisdiction presently asserted by the various States;
- b) to enable them to enact further legislation providing for even more extensive jurisdiction; and, most important
- c) to require the State of registration to extend at least some of its criminal laws to its aircraft and to provide an internationally accepted basis for the application and enforcement of these laws.²²

2.2.6 Finally, to avoid as many conflicts as possible, it should be noted that under international law States’ jurisdiction to prosecute is founded upon two traditional concepts:

- a) There must exist a substantial link between the person or the act and the State claiming sovereign jurisdiction; and
- b) This theoretical basis must be actualized through a sovereign act.

2.2.7 However, in an act of international nature –such as an offense committed by an unruly passenger- it might happen that two or more States claim the right to prosecute and press charges against the offender. Hence, it becomes imperative developing a clear definition of standards that takes into account all the above mentioned elements.

²⁰ Boyle, *The Tokyo Convention....*, *supra*, Note 10, at 329.

²¹ *Ibidem*, at 330.

²² A. I. Mendelsohn, *In Flight crime, The International and Domestic Picture under the Tokyo Convention*, Virginia Law Review, Vol. 53 (1975), at 515.

2.3 Scope of the convention and harmonization of procedures

2.3.1 Two issues are of particular importance under this subject. The first one is the problem resulting from the dual conception of “aircraft in flight” used in the Tokyo Convention,²³ and the second one is the exclusion of application of the Convention to non-commercial aircraft. Needless to say, these topics demand further discussions and a clear response that averts any concerns in the future.

2.3.2 In addition, as noted before,²⁴ some other aspects may need particular attention. For instance, the text of the Tokyo Convention has no provision dealing with the subject of double jeopardy (*non bis in idem*). Although it was included in several drafts, at the Conference “the deletion of the text was proposed and carried by a surprising majority”.²⁵ This decision is explained by the fact that the existing domestic law in many States made the provision unnecessary.²⁶ However, in line with the protective spirit of basic human rights embodied in some other protective clauses,²⁷ maybe it could be concluded that if the absence of the provision is no fatal, “[O]n the whole it is probably better to have such an article in the Convention than not.”²⁸

2.3.3 In this vein, regarding Article 11 of the Tokyo Convention (an act of interference unlawfully committed of the threat thereof), it would be wise to harmonize it with the recent documents adopted by the Diplomatic Conference in Beijing.

2.4 The powers of the commander

2.4.1 Much has been written on the matter of the extent of Article 6 and the powers the Commander is invested with, and particularly the issue of the immunity granted to those people taking action against the offender has spawned ardent debates.²⁹

2.4.2 In the Tokyo Convention negotiations, the intensely reviewed immunity provisions received either nearly unanimous or unanimous approval from the drafters.³⁰ They concluded that immunity was vital to the success of the Convention because “[t]he commander, crew members and others would be reluctant to act against person[s] prejudicing safety, good order and discipline, if, by so acting, they were to expose themselves to legal proceedings brought in respect of their actions.”³¹

2.4.3 As it is of common knowledge, legal actions aimed to challenge this “absolute immunity principle” have produced mixed results, being the most conspicuous examples the cases of *Zikry v. Air Canada*³² and *Eid v. Alaska Airlines*.³³

²³ See Report of the Rapporteur of the Special Sub-Committee on the Preparation of an instrument to Modernize the Convention on Offences and Certain other Acts committed on Board Aircraft of 1963.

²⁴ SGG-UNP/2-WP/5, 29/9/11, at 2.3.2.

²⁵ Boyle, *The Tokyo Convention*...., *supra*, Note 10, at 329.

²⁶ *Ibidem*.

²⁷ See, for instance, Tokyo Convention, Article 4.

²⁸ *Ibidem*.

²⁹ See, generally, *Report of the Rapporteur*...., *supra*, Note 13, at 3.4.

³⁰ Brief for Air Transport Ass’n of Am., Inc. as Amicus Curiae Supporting Defendant-Appellee, *Eid v. Alaska Airlines, Inc.*, No. 06-16457 (9th Cir. Apr. 1, 2008), at 26.

³¹ *Ibidem*, at 27.

³² Civil File Nr. 1716/2005 A, Magis. Court, Haifa, Israel, Nov. 9, 2006.

³³ [Eid v. Alaska Airlines, Inc., 621 F. 3d 858 - 2010](#), cert. denied.

2.4.4 Numerous prestigious authors have expressed their view in the sense that second-guessing the decisions of the commander, crew and passengers in this matter (let alone entirely removing this provision) would entail harmful consequences. Criticizing the Ninth Circuit's decision on *Eid v. Alaska Airlines*,³⁴ Professors Pablo Mendes de Leon and Paul S. Dempsey stated that the holding undercuts the Tokyo Convention's principal purpose: to enhance safety aboard commercial aircraft, since a central aim of the Convention was to provide an aircraft commander with "the necessary authority to deal with persons who have committed, or are about to commit, a crime or an act jeopardizing safety on board his aircraft through use of reasonable force where required, and without fear of subsequent retaliation through civil suit or otherwise."³⁵ Moreover, "[b]ecause even the most sophisticated techniques are not free of flaws, captains, crews, and passengers are a critical last line of defense against hijackings, bombings, and other in-flight dangers." Such an assertion seems to be justified by the decisive actions taken by passengers and crew on recent attempts to conduct terrorist attacks in flight.³⁶

2.4.5 However, at the very beginning of the discussion on this subject held at the First Meeting of the Study Group reservations have been expressed over the feasibility of maintaining such a provision in modern days, for "a blanket exemption of liability may not be readily accepted in today's environment".³⁷ It is worth noting that those fears are not new. The French delegation to the Tokyo Diplomatic Conference believed that the immunity granted to the commander was in conflict with "the principle that no one can be wholly freed from the responsibility for his actions."³⁸ This matter is firmly linked to the issue of "passengers blacklisting", a practice that is highly controversial as well,³⁹ and that have led to dissimilar rulings, even within a same State, usually when decisions were produced by different administrative bodies.

2.4.6 For instance, in Argentina the National Institute against Discrimination, Xenophobia and Racism validated the grievances expressed by a passenger over the detailed security process he routinely had to undergo when travelling by air, due to the fact that his name was identical to that of a dangerous international terrorist.⁴⁰ On the contrary, of much more consistency is the verdict issued in a case decided by an Argentinean Appellate Court,⁴¹ on a claim submitted by a passenger who had been blacklisted as a consequence of his violent reaction (physical aggression included) when the airline personnel refused to reopen the aircraft doors to let him embark. In its holding, the Court expressed that "*the decision of the airline appears then as reasonable and justified, both at rejecting the embarkation of the passenger ... and at including him in the no-fly list... due to his inadmissible and irrational behavior ... [being a decision] that is motivated on the sole goal of preserving the safety of the passengers and crew by means of the implementation of a prudent preventive measure. In the afore mentioned conditions, the decision taken [inclusion of the passenger in the No-fly list] -which at the end entails the right of reservation or "not to enter into contract" - not only appears as non-abusive (in terms of the Civil Code, Art. 1071), but*

³⁴ Brief Amicus Curiae of Professors Paul Dempsey and Pablo Mendes de Leon in support of Petitioner, *Eid v. Alaska*, No. 10-962, February 28, 2011.

³⁵ "In amici's view, the Ninth Circuit adoption of a non-deferential, negligence-based standard for determining whether an aircraft captain had 'reasonable grounds to believe' that this action was appropriate will, if left standing [as it finally occurred] discourage aircraft commanders from acting swiftly and decisively to ensure the safety of their aircraft and passengers in response to reports they receive from the cabin crew." *Ibidem*.

³⁶ For example, the "shoe bomb plot", a failed bombing attempt that occurred on American Airlines Flight 63 flying from Paris to Miami on December 22, 2001. Also, the more recent case of the bombing attempt on December 25, 2009, in which a passenger tried to set off plastic explosives sewn to his underwear in the Northwest Airlines Flight 253 from Amsterdam to Detroit, Michigan.

³⁷ *Report of the Secretariat Study Group on Unruly Passengers, First Meeting* (SSG-UNP/1, 15/6/11) Nr. 2.5.2

³⁸ G.F. Fitzgerald, *Offenses and Certain Other Acts Committed On Board Aircraft: The Tokyo Convention of 1963*, 2 CAN. Y.B. INT'L L. 191, 193 (1964), at 197.

³⁹ For a better understanding of the functioning of the most representative watchlists and blacklists, see Luongo, Norberto E., "Watchlists in the United States and Canada: An Intricate Web", *Air & Space Law*, Vol. XXXV, 2 (April 2010) Kluwer Law, Leiden (Netherlands).

⁴⁰ INADI, Decision Nr.182/1995. However, the ruling seems to be flawed due to the inconsistency of the analysis conducted and the rationale on which it pretends to be grounded, not to mention the fact that probably the correct solution of the problem should have been pursued by accessing to the so-called "redress remedies".

⁴¹ *Rodríguez, Gabriel D. c/Aerolíneas Argentinas S.A.*, Cámara Nacional de Apelaciones en lo Civil y Comercial Federal, Sala II, 27 October, 2006.

*also cannot be regarded as discriminatory, since it comes as a logical consequence of a concrete precedent.*⁴²

2.5 Extradition

2.5.1 As noted in a recent publication,⁴³ the subject matter extradition raises numerous concerns, mainly due to the fact that aircraft are considered the territory of the nation of registration, and therefore the State of disembarkation, if different than the State of registration, would treat any crime committed onboard as having taken place in a foreign nation. As a consequence, in case of minor offenses the State of disembarkation may lack the jurisdiction to investigate and prosecute an offender. Though the Convention obligates party States to establish jurisdiction over offenses onboard aircraft, this is limited to flights on aircraft with the State's registration. Being no obligation under the Convention to establish jurisdiction over offenses committed onboard foreign aircraft, there may be a jurisdictional gap in the ability to investigate and extradite under the Convention.⁴⁴

2.5.2 The author of the above-referred article believes that increased adoption of such jurisdictional provisions would likely adequately address concerns about both a jurisdictional gap and the initiation of criminal proceedings, and that an additional solution would be for States to ensure that their laws regarding extradition facilitate the processes of the State of registration in commencing action against offenders for crimes or "jeopardizing" actions onboard its aircraft.⁴⁵

2.6 Inflight security officers

2.6.1 In recent times, another important actor has joined the team, to play a role whose importance should not be underestimated: the inflight security officers (IFSOs). They were not contemplated in previous ICAO legal instruments dealing with the problem of unruly passengers. However, the number of the former has increased in certain domestic and international flights during the last years, as much as the States' reliance upon their functions as peace-keepers on board aircraft. In consequence, legal concerns around them have proliferated.⁴⁶ Not a lesser one is the question of whether they should be granted the same level of responsibility exoneration that the aircraft commander is endowed with.⁴⁷ In this regard, the delegations present at the First Meeting of the Special Sub-Legal Committee expressed divergent points of view.⁴⁸

2.6.2 It must be noted that at present time, the legal status of inflight security officers holds a varying degree of recognition, mainly via the provisions of bilateral agreements subscribed between concerned States. Hence, this reality cannot be ignored and in this respect, the proposed text contained in the Flimsy Nr. 1 seems to go in the right direction.⁴⁹

⁴² *Ibidem*, translation by the Argentinean Delegation to LC/SC..

⁴³ Swerdlow, *Modern Approaches.... supra*, Note 3.

⁴⁴ This may be a problem should hijackers land a commercial aircraft in a State that is sympathetic to their cause and that State allows the hijackers to go free and does not extradite them. However, it is important to note that this jurisdictional gap does not exist in some countries, due to domestic provisions in his respect. For instance, in the United States in-bound offenders are prosecuted without regard to the nationality of the aircraft under 49 U.S.C. §§ 46501, 46506 (2008). Canada, Australia, and the United Kingdom also have passed domestic legislation that extends jurisdiction to offenses onboard the aircraft registered in foreign nations that subsequently disembark passengers in their respective territories. See Swerdlow, *Modern Approaches.... supra*, Note 3.

⁴⁵ Quoting R.I.R. Abeyratne, *Attempts at Ensuring Peace and Security in International Aviation*, 24 *TRANSP. L.J.* 27, 37 (1996), at 44-46.

⁴⁶ See generally: P. Paul Fitzgerald, *Air Marshals: the need for legal certainty*, 75 *J. AIR L. & COM.*

⁴⁷ See Report....

⁴⁸ See General Summary....

⁴⁹ See LC/SC-MOT/2, Flimsy No. 1 (3/10/12), at page 4, Art. 4.

3. CONCLUSIONS

3.1 From the previous comments, the following can be concluded:

- a) The level of discussions maintained so far in the Special Groups and in the First Meeting of the Special Sub-Legal Committee clearly indicate that the issues thereby addressed are of the utmost importance.
- b) Hence, continuation of such deliberations becomes imperative, in order to go deeper in the development of the analysis of the current difficulties that the increasing problem of unruly passengers presents.
- c) The goal of such discussions must be to come up with concrete and useful normative provisions to adequately tackle this matter.
- d) The Sub-Legal Committee must develop a strong sense of commitment to deliver effective tools to enable the States and the industry to combat this problem on the basis of legal certainty and under the ICAO's expertise guidance.
- e) In this regard, it must be kept in mind that although *prima facie* it may look that some likely "minor" aspects of the conduct of unruly passengers may be put aside from the consideration of the Sub-Legal Committee and reserved to the ambit of action of the commercial operators, succumbing to this temptation may produce grave consequences. As noted,⁵⁰ the main flaw of this approach resides in the fact that the air transport industry is made up of an enormous number of operators, which use diverse and frequently unconnected procedures to deal with unruly passengers, and this circumstance has led in the past to tragic consequences. Therefore, the unifying guidance of ICAO becomes, once more, indispensable.

3.2 However, a realistic approach indicates that such laudable intentions will not materialise easily, given the fact that "some States indicated difficulties with the direct "transplant" of the text of the ICAO model legislation into their respective national law, since this would call into question the coherence of their respective legal system".⁵¹ Hence, it seems very important to bear in mind that the ultimate goal of the works of law-making meetings is to produce an instrument or document that receives the largest possible number of adherents and, more important, be effectively implemented. To achieve such result, any treaty must meet two conditions:⁵²

- a) Its terms must not be objectionable.
- b) In addition, each ratifying nation must either consider that such a treaty is necessary or, at least, a positive contribution to international relationship among States.⁵³

— END —

⁵⁰ See Luongo, Norberto E., "Watchlists in the United States and Canada...", *supra*, Note 39, *passim*.

⁵¹ Council, 169th. Session, *Report...* *supra*, Note 13 (Nr. 3).

⁵² Boyle, *The Tokyo Convention...*, *supra*, Note 11, at 306.

⁵³ "Indeed, if the countries which are the major providers of air transportation, or which generate or attract large amounts of air traffic, or whose geographic location is such that a heavy volume of flights traverse their airspace, do not ratify the Convention, it can have only limited success as an instrument of international legislation, and will join the ranks of the several other aviation treaties which are in force between only a few geographical isolated States." Boyle, *The Tokyo Convention...*, *supra*, Note 11, *Ibidem*.