



ASSEMBLY — 41ST SESSION

LEGAL COMMISSION

Agenda Item 41: Work Programme of the Organization in the Legal Field

STRENGTHENING THE LEGAL DETERRENT AGAINST UNRULY & DISRUPTIVE PASSENGERS IN THE POST-PANDEMIC ERA

(Presented by the International Air Transport Association (IATA) and the International Federation of Airline Pilots Associations (IFALPA))

EXECUTIVE SUMMARY

Reported non-compliance with face mask requirements during the COVID-19 pandemic has highlighted the longstanding problem of unruly and disruptive behaviour on board civil aircraft. While masks are no longer obligatory on many international flights, States are nonetheless encouraged to consider recent experience and review their approach to the issue considering the ICAO Standards and Recommended Practices (SARPs), related guidance material and the Montreal Protocol 2014.

Action: The Assembly is invited to urge States to review their approach to deterrence and enforcement measures for unruly and disruptive behaviour on flights and specifically to:

- a) implement public awareness campaigns to ensure that travellers are aware of what constitutes prohibited conduct and the legal and other sanctions that could result in line with SARP's in Annex 9 *Facilitation*;
- b) ratify the Montreal Protocol 2014 (MP14) to remove any jurisdictional gaps; and
- c) implement a civil and administrative penalties regime as outlined in ICAO Manual Doc 10117, as appropriate, and to ensure that a range of enforcement mechanisms are available to respond to the different type and severity of unruly and disruptive passenger incidents.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objectives 1 (Safety) and 3 (Security and Facilitation).
<i>Financial implications:</i>	N/A
<i>References:</i>	Annex 9 ('Facilitation') to the Convention on International Civil Aviation ICAO Council Aviation Recovery Task Force (CART) " <i>Take Off: Guidance through the Covid-19 Public Health Crisis</i> " Doc 10117, <i>ICAO Manual on the Legal Aspects of Unruly & Disruptive Passengers</i> Doc 10034, <i>The Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Montréal on 4 April 2014</i> (Montreal Protocol 2014 or MP14) Doc 10140, <i>Assembly Resolutions in Force</i> (as of 4 October 2019) (A40-28: Consolidated statement of continuing ICAO policies in the legal field (Appendix C))

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

1. INTRODUCTION

1.1 Unruly and disruptive passenger incidents on board flights have been a shared concern for ICAO Member States and industry for many years before the COVID-19 pandemic.

1.2 Recognizing the need for mitigations to further reduce the public health risk to passengers and aviation workers on board, and the need to promote confidence, the ICAO Council Aviation Recovery Task Force (CART) published “*Take Off: Guidance through the Covid-19 Public Health Crisis*” in May 2020. A key public health risk mitigation measure was the temporary requirement for face coverings including masks to be worn by passengers and crew in line with public health advice. This recommendation to wear masks on board aircraft during flight was universally adopted, with some States making it a requirement under national law or an offence not to do so.

1.3 Several States reported a significant increase in cases of unruly passenger incidents associated with non-compliance with face mask requirements. For example, the US Federal Aviation Administration (FAA) reported a sharp increase in incidents. Between 1 January to 12 April 2022, over 1,150 incidents were reported to the FAA of which 70% related to refusal to comply with the federal mandate to wear a mask.²

1.4 Many airlines also reported increased rates of unruly and disruptive incident in their operations. In multiple cases, disagreements between compliant and non-compliant passengers escalated to physical altercations and assault. In other incidents, cabin crew were subject to verbal and physical assault simply for asking that passengers follow lawful instructions on face masks. Such behaviour jeopardizes health, safety, and good order on board. Several incidents have resulted in diversions, including a flight from Paris to Delhi on 5 March 2021.³

2. DISCUSSION

2.1 The pandemic has resulted in some governments, regulators, and law enforcement agencies assessing how to better deter unruly and disruptive passenger incidents with their communications and enforcement approach. For example, the US FAA replaced warnings and counselling with a ‘zero-tolerance’ approach, with enforcement action taken against those that threaten, intimidate or assault crew or anyone on board or interfere with crew performing their duties. Backed by a high-profile public awareness campaign, the FAA’s policy appears to have had a strong deterrent effect and is credited with decreasing the rate of incidents by nearly 60 percent.⁴

2.2 IATA has consistently highlighted the importance of deterrence in preventing or reducing the occurrence of unruly and disruptive behaviour. The experience of the COVID-19 pandemic offers States a timely opportunity to review their approach, including measures of deterrence. The following questions may be considered:

2.2.1 Are air travellers sufficiently aware of what constitutes unruly and disruptive behaviour on board aircraft and what legal and other sanctions may result?

² US Federal Aviation Administration (FAA)

³ Reuters, “Air France flight made emergency landing in Bulgaria over disruptive passenger”, 6 March 2021, available at <https://www.reuters.com/article/us-bulgaria-airfrance-passenger-idUSKBN2AY0HS> and accessed 3 June 2022.

⁴ <https://www.faa.gov/newsroom/faq-zero-tolerance-policy-against-unruly-passengers-here-stay>

2.2.2 Do prosecutors and law enforcement agencies have the necessary legal powers to deal with unruly passenger incidents on foreign registered aircraft that subsequently land in national territory?

2.2.3 Are there sufficient enforcement tools to address the different types and gravity of incidents that may occur? Are these appropriate to ensure that unruly passengers face the consequences of their misbehaviour?

2.3 Over the past decade, updated guidance materials and enhanced Standards and Recommended Practices have been developed by ICAO to aid States when they review their general approach, measures of deterrence and enforcement tools.

2.4 In terms of traveller awareness, it is essential that all passengers, especially those who are flying for the first time, understand clearly what constitutes prohibited behaviours on board and what legal or other consequences may result from failure to comply. Standard 6.43 of Annex 9 - *Facilitation* of the Chicago Convention states that “*Each Contracting State shall, to deter and prevent unruly behaviour, promote passenger awareness of the unacceptability and possible legal consequences of unruly or disruptive behaviour in aviation facilities and on board aircraft.*”

2.5 There remains a lack of clarity on State jurisdiction over offences committed on board aircraft, or a lack of capacity to exercise such jurisdiction. A survey of IATA member airline legal departments in 2020 found that in 60% of incidents, jurisdictional issues were cited as the reason that prosecutions did not proceed. This is because in most cases, the Tokyo Convention 1963 confers jurisdiction over offenses committed on board aircraft to the State of aircraft registration. This causes problems upon landing in a foreign country where law enforcement determine that they do not have jurisdiction because the aircraft is registered in another State. In such a scenario, unruly passengers are released to continue their journey without any sanction or any other State response for their misbehaviour.

2.6 The Montreal Protocol 2014, or MP14, specifically addresses this issue by giving mandatory jurisdiction to the State of intended landing, thus giving States powers to deal with unruly passengers that land in their territory, irrespective of where the aircraft is registered. MP14 entered into force on 1 January 2020 and there are currently [38 States Parties](#). IATA strongly supports and promotes the ratification of this important instrument as per ICAO Assembly Resolution A40-28, Appendix C.

2.7 Finally, behaviour that would amount to offences relating to the refusal of passengers to follow a lawful instruction given by or on behalf of the pilot in command for the purpose of protecting the safety of the aircraft or of persons or property therein; or maintaining good order and discipline on board, does not always lead to civil or criminal enforcement action. This is because, in many States, the administrative sanctions regime recommended in ICAO Doc 10117 *Manual on the Legal Aspects of Unruly and Disruptive Passengers*, enabling rapid, cost-effective enforcement actions that can be taken against unruly and disruptive passengers outside the criminal justice system has not been implemented.

2.8 The absence of an appropriate civil or criminal enforcement response to unruly and disruptive passenger behaviour undermines an objective of deterrence. Civil and administrative penalties issued quickly by police or aviation security officials (in some systems “on the spot”) can assist in this respect but are not available in many jurisdictions.

2.9 Expanded guidance on civil and administrative penalties including model legislation is provided in ICAO's *Manual on the Legal Aspects of Unruly and Disruptive Passengers* (Doc 10117). IATA urges more States to consider adopting civil and administrative penalties to aid enforcement and deterrence.

2.10 Finally, to further support and inform States, IATA recently published a new strategy document titled *"Even safer and more enjoyable air travel for all – A Strategy for reducing the problem of unruly and disruptive passenger incidents"*. This high-level document features examples of good practices to highlight the practical steps that governments can take to address and reduce the problem of unruly and disruptive passengers. It also gives some of the latest data from IATA and key regulators, as well as some of the examples of initiatives that the industry itself has implemented to prevent and manage such incidents. IFALPA also published a position paper that can be found at <https://www.ifalpa.org/media/3695/21pos15-unruly-passengers.pdf>.

3. CONCLUSION

3.1 The increase in the reported rate of unruly and disruptive passenger incidents during the COVID-19 pandemic highlights the importance of the issue and the need for States to regularly review the effectiveness of their approach and recalibrate if required.

3.2 ICAO has developed all the tools and materials necessary to support States. If implemented, IATA considers that the tools and measures highlighted in 2.4 to 2.6 above, together with industry initiatives, will contribute to reductions in unruly and disruptive passenger incidents. This will help to create an even safer and more enjoyable air travel experience for all.

— END —