



International Civil Aviation Organization
South American Regional Office

Fift Virtual Meeting of Civil Aviation General Directors of the South American Region on the Response to COVID-19

(Lima, Peru, 1 August 2021)

RV5/DGCA - IP/06

03/08/2021

Agenda Item 3: Innovation in Aviation Facilitation and Security aspects in the recovery framework

UNRULY & DISRUPTIVE PASSENGER INCIDENTS IN THE CONTEXT OF THE COVID-19 PANDEMIC

(Prepared by the International Air Transport Association)

SUMMARY

The growing frequency and severity of unruly and disruptive passenger incidents has been a concern for ICAO member States and air operators for many years prior to the COVID-19 pandemic. However, the pandemic has brought the issue in to greater even focus. Despite international air traffic declining by 90% over pre-pandemic levels, some States and IATA member airlines are reporting a significantly higher rate of unruly and disruptive passenger incidents. This is mainly driven by non-compliance with face mask requirements, an important COVID-19 risk mitigation measure. This has serious potential consequences on public health and flight safety. Some of these incidents have escalated to involve physical assault and led to flight diversions.

Considering these developments and to deter incidents in future, IATA urges States to review whether their existing legal approach and enforcement measures relating to unruly and disruptive passengers are effective and fit for purpose.

1. INTRODUCTION

1.1 The COVID-19 pandemic has had a devastating effect on global air transport. Recognizing the need for mitigations to reduce the public health risk to passengers and aviation workers, and the need to promote confidence among passengers and governments, 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 has been the need for face coverings including masks to be worn by passengers and crew in line with public health requirements. This recommendation to wear masks onboard aircraft was universally adopted with some States making it a requirement under national law or an offence not to do so.

1.2 While most passengers comply with these requirements, some regulators such as the US Federal Aviation Authority (FAA) have reported a sharp increase in reported incidents. Between 1 January to June 2021, over 3,100 incidents were reported to the FAA of which 76% related to refusal to comply with the federal mandate to wear a mask¹. 487 of these have been investigated versus a yearly average of 142 over the last decade.

1.3 Some airlines have also reported an increase in unruly and disruptive incident reports. An informal survey of IATA's Cabin Operations Safety Technical Group a member airline reported over 1,000 incidents of non-compliance in a one-week period. Another calculated an increase of 55% in unruly passenger incidents based on the numbers carried, with a 200% increase in offloaded passengers. In several cases, disagreements between compliant and non-compliant passengers have escalated to physical altercations and assault. Such behavior jeopardizes health, safety, and good order onboard. Several incidents resulted in diversions, including a flight from [Paris to Delhi](#).

1.4 While failure to comply with face mask requirements may be deemed as low-level incidents (Classified as threat level 1 "Disruptive Behaviour – Verbal" according to ICAO's the four tier level of threat classification for disruptive passenger events²), mandating the wearing face masks is key to addressing public health concerns. The consequences of non-compliance are significant as it can disrupt the maintenance of good order in the aircraft and undermine the authority of the pilot in command. Recognizing this, several countries, including the US, have taken a 'zero-tolerance' approach to failure to follow crew instructions during the pandemic. While supporting this approach for masks, IATA's long standing position is that a greater emphasis on enforcement action as a deterrence is also merited for other offenses and acts such as failure to comply with lawful crew requests not to smoke onboard (including in lavatories), to remain seated and to fasten seatbelts, etc.

2. SUPPORT REQUESTED FROM STATES

2.1 The ICAO CART Report recognized the potential for increased disputes between passengers or with crew under Recommendation 5 of the Flight plan for Restart and Recovery, providing the following guidance:

- It urges States to refer to the ICAO *Manual on the Legal Aspects of Unruly and Disruptive Passengers* (Doc. 10117) and to review national legislation to ensure that unruly and disruptive behaviour relative to COVID-19 measures is properly covered.
- It reminds States of their responsibilities to raise public awareness of the consequences of disobeying crew instructions to wear masks or disturbing good order onboard as set out as Standards as 6.44 and 6.45 of Annex 9 – *Facilitation*.
- It calls on States to ensure airlines' staff are appropriately trained to recognize the signs of potential unruly behaviour and de-escalation skills.

2.2 The CART recommendations set out in 2.1 above set out a comprehensive and collaborative approach to tackling the issue both during and post pandemic. IATA strongly supports these recommendations.

2.3 Behaviour that would amount to offences relating to the refusal of passengers to follow a lawful instructions given by or on behalf of the pilot in command for the purpose of protecting the safety

¹ US Federal Aviation Authority (FAA)

² ICAO Manual on Implementation of Security Provisions of Annex 6

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:

2.3.1 the administrative sanctions regime recommended in ICAO Doc 10117 *Manual on the Legal Aspects of Unruly and Disruptive Passengers* has not been implemented enabling rapid, cost-effective enforcement action can be taken against unruly and disruptive passengers outside the criminal justice system; and

2.3.2 there is a lack of clarity on the State's jurisdiction over the offence, or a lack of capacity to exercise such jurisdiction.

2.4 The absence of an appropriate civil or criminal enforcement response to unruly and disruptive passenger behaviour undermines the objective to deter such action through effective enforcement. Civil and administrative penalties issued quickly by police or aviation security officials (in some systems "on the spot") are not available in many jurisdictions.

2.5 Expanded guidance on civil and administrative penalties including model legislation is provided ICAO *Manual on the Legal Aspects of Unruly and Disruptive Passengers* (Doc. 10117). IATA urges more States to consider adopting a civil and administrative penalties to aid enforcement and deter future offences.

2.6 In addition, 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 for their misbehaviour.

2.7 The Montreal Protocol 2014 or MP14 addresses this issue by giving mandatory jurisdiction to the State of intended landing, thus giving States the necessary powers they need to be able 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 [31 States Parties](#). IATA strongly supports and promotes the ratification of this important instrument as per ICAO Assembly Resolution A40-28 Appendix C.

3. CONCLUSION

3.1 The COVID19 pandemic has highlighted the material health and safety risks posed by unruly and disruptive passenger behavior. While crew are trained to deescalate and defuse situations, it is essential that States have the necessary jurisdiction to be able to respond to such incidents upon landing in their territory. There should also be robust civil and administrative enforcement options available to supplement prosecutions in the criminal justice system. Operators want everyone to have a safe and pleasant journey and ensuring that everyone knows that there will be an effective and prompt State enforcement response to the failure to follow instruction or acting in a way which compromises health and safety will be an important deterrent.

3.2 IATA will continue to support ICAO by engaging with governments to highlight the need to help the industry to ensure safety and public health by ratifying MP14 and to review their existing enforcement mechanisms for dealing with unruly and disruptive passenger incidents considering the recommendations in ICAO Manual Doc. 10117. Considered and responsive enforcement will help to prevent incidents by acting as a deterrent to unruly and disruptive passenger behaviour both during and after this pandemic.

4. **SUGGESTED ACTION**

The Fifth Virtual Meeting of Civil Aviation Directors of the South American Region is invited to take note of the information presented in this working paper.

- END -