



ASSEMBLY — 40TH SESSION

LEGAL COMMISSION

Agenda Item 39: Consolidated Statement of Continuing ICAO Policies in the Legal Field

PROGRESS WITH REGARD TO PROMOTION OF THE PROTOCOL TO AMEND THE CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT (MONTRÉAL PROTOCOL OF 2014)

(Presented by the International Air Transport Association (IATA), the
International Federation of Air Line Pilots' Associations (IFALPA) and the
International Transport Workers' Federation (ITF))

EXECUTIVE SUMMARY

Over 4.7 billion passengers will travel safely by air in 2019. The outstanding safety record of commercial aviation is achieved by the constant efforts of governments, airlines, manufacturers, airports and other industry stakeholders. However, a small minority of passengers become unruly and disruptive during flights, having a disproportionate impact on safety and adversely affecting other passengers and crew. Statistics from IATA and individual civil aviation authorities point to an increasing frequency and severity of such incidents. Robust action is required to ensure that safety is not compromised.

This paper outlines the importance of ratification of the Montréal Protocol of 2014 in addressing unruly and disruptive passenger incidents and highlights the opportunity for wider use of civil and administrative penalties to encourage enforcement action. IATA, IFALPA and ITF are supporting ICAO to promote ratification of the Montréal Protocol of 2014. Together, with industry initiatives, these two important actions will ensure a more effective deterrent, making flying even safer and enjoyable for all.

Action: Considering the need to address the growing frequency and severity of unruly and disruptive passenger behaviour, IATA, IFALPA and ITF invite the Assembly to:

- a) urge States to ratify the Montréal Protocol of 2014 as per ICAO Assembly Resolution A39-11, Appendix C; and
- b) urge States to refer to updated guidance set out in the *Manual on the Legal Aspects of Unruly and Disruptive Passengers* (Doc 10117) and to consider the potential for wider use of civil and administrative penalties.

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

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objectives Safety, and Security and Facilitation.
<i>Financial implications:</i>	None
<i>References:</i>	Doc 10034, <i>Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft</i> , Done at Montréal on 4 April 2014 Doc 8364, <i>Convention on Offences and Certain Other Acts Committed on Board Aircraft</i> , Signed at Tokyo on 14 September 1963 Doc 10117, <i>Manual on the Legal Aspects of Unruly and Disruptive Passengers</i> Doc 10075, <i>Assembly Resolutions in Force</i> (as of 6 October 2016)

1. INTRODUCTION

1.1 Unruly and disruptive behaviour committed by a small minority of passengers has become a significant issue facing airlines and their crew around the world. Such behaviour includes physical assault of other passengers or cabin crew, harassment, refusal to comply with safety instructions, making threats that could jeopardize the safety of the flight, and other acts that impact good order and discipline on board.

1.2 IATA has been collecting global data on unruly and disruptive passenger incidents since 2007. In 2017, there was one incident for every 1,053 flights (2016: one incident for every 1,424 flights). The proportion of very serious Level 3 (life threatening) and Level 4 (attempted breach of the flight deck door) incidents increased sharply in 2017, which is a matter of concern. Further data can be found at <https://www.iata.org/policy/consumer-pax-rights/Pages/unruly-passengers.aspx>.

1.3 Together with data from individual civil aviation authorities, these statistics are cause for growing concern on the prevalence and severity of unruly and disruptive passenger incidents. The severity of some unruly and disruptive passenger incidents, along with their operational consequences in flight and on the ground (in the airport before and after the flight), are alarming.

1.4 Recognizing the need for a more effective deterrent, States adopted the *Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* at a Diplomatic Conference in Montréal on 4 April 2014 (“MP14”). MP14 significantly improves the ability for States to prosecute unruly and disruptive passengers for acts or offences committed on board flights that land in their territory, even in cases where the aircraft is registered in another State.

1.5 Ratification by 22 States is required to bring MP14 into force. There are currently 20 Contracting States (as at 24 June 2019) and Kazakhstan, Malaysia, Turkey and Uruguay have already become Contracting States to MP14 this year. Many other States are in the process of ratification and IATA, IFALPA and ITF expect MP14 to enter into force during 2019. However, to ensure uniformity and certainty, widespread ratification is needed. IATA, IFALPA and ITF continue their efforts to support ICAO in promoting the ratification of MP14 at the local, regional and global levels.

2. **RESOLVING JURISDICTIONAL GAPS THAT ENABLE UNRULY AND DISRUPTIVE PASSENGERS TO AVOID PROSECUTION AND ENCOURAGING ENFORCEMENT ACTION**

2.1 A key issue today is that unruly and disruptive passengers rarely face prosecution for their misbehaviour because of jurisdictional issues. Indeed, in two thirds of cases, legal representatives of IATA member airlines cited lack of jurisdiction as a reason that prosecutions did not proceed.

2.2 The *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963 (Tokyo Convention of 1963) confers jurisdiction over offences committed on board aircraft to the State of aircraft registration. This causes problems when the aircraft commander delivers the unruly and disruptive passenger to the police authorities upon landing in a foreign country who determine that they do not have jurisdiction when the aircraft is registered in another State. Figure 1 explains the jurisdictional gap using four scenarios. Frequently, unruly and disruptive passengers are released to continue their journey without any sanction for their misbehaviour. This ability to act with impunity has little deterrent effect.

2.3 MP14 addresses this issue by conferring mandatory jurisdiction on the State of intended landing. Where the severity of the incident is such that the commander decides to divert the aircraft to an airport in a country that is not the scheduled destination, that State has competence to assert and exercise jurisdiction. Once widely ratified, MP14 will close the jurisdictional gaps described and will ensure that States have the tools they need to deal with unruly and disruptive passengers that land in their territory irrespective of where the aircraft is registered.

2.4 Even in cases where jurisdiction is not an issue, there is often a reluctance to pursue criminal prosecutions against unruly and disruptive passengers, especially for offences and acts that are considered less serious. It may not be deemed to be in the public interest due to lack of court time, evidentiary issues or cost. As a result, unruly and disruptive passengers may avoid prosecution.

2.5 This lack of a response from authorities after an incident impairs deterrence. This can be addressed if police or aviation security officers have the power to issue administrative infringement notices “on the spot”, under (for example) a specifically legislated civil penalty regime. The deterrence element is reintroduced if a person receives a fine for misconduct (specific deterrence) and these fines can be generally publicized (general deterrence) by governments, airports and airlines. States, including Australia, Finland, New Zealand and Singapore, have a civil penalty system in place.

2.6 IATA and IFALPA have worked as part of an ICAO Task Force to prepare guidance material and examples in respect of such systems for the reference of the international community. The *Manual on the Legal Aspects of Unruly and Disruptive Passengers* (Doc 10117) (which updates ICAO Circular 288 - *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*) on these aspects has been published by ICAO. These systems are known to save considerable time for police authorities and the courts. When an infringement notice is issued, the person receiving the notice can either pay the fine or contest it if they wish. The payment of the fine would usually be determinative and a criminal record would not be entered. While not appropriate for all cases, IATA, IFALPA and ITF commend consideration of such a system as one tool for police to have when responding to unruly and disruptive behaviour upon landing. Criminal prosecutions can be sought for more serious incidents.

2.7 Finally, IATA, IFALPA and ITF recognize that the industry itself must do more to try to prevent incidents from happening to the extent possible. In addition to providing airlines and their personnel with comprehensive guidance materials covering issues such as conflict de-escalation, responsible service of alcohol and restraint, IATA and IFALPA are participating in several public-facing campaigns aimed at raising awareness among passengers of the types of prohibited conduct on board, and the consequences of irresponsible and criminal behaviour. This includes the #Notonmyflight campaign launched in conjunction with the European Union Aviation Safety Agency (EASA) in April 2019. This targets the three most prevalent behaviours involved in unruly and disruptive passenger incidents, namely violent behaviour, intoxication and smoking. More information can be found at <https://www.easa.europa.eu/notonmyflight>.

3. CONCLUSION

3.1 In developing MP14, States accepted that unruly and disruptive passenger incidents are a significant threat to flight safety and security. MP14 gives States the ability to deal with unruly and disruptive passengers that are delivered to authorities upon landing at airports in their territory. In addition, civil and administrative penalties provide for a wider range of enforcement measures to be available. Together, these measures will have a powerful deterrent effect.

3.2 To ensure a more effective deterrent, MP14 needs to be widely ratified by States. Furthermore, States should assess the potential for wider use of civil and administrative penalties in the case of unruly and disruptive passenger incidents.

Figure 1 – Scenarios to illustrate the jurisdictional gaps in the Tokyo Convention of 1963

