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Doc 10117

Manual on the Legal Aspects of Unruly and Disruptive Passengers

First Edition, 2019



Approved by and published under the authority of the Secretary General

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AMENDMENTS

Amendments are announced in the supplements to the *Products and Services Catalogue*; the Catalogue and its supplements are available on the ICAO website at www.icao.int. The space below is provided to keep a record of such amendments.

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FOREWORD

Unruly and disruptive conduct on board aircraft undermines good order and discipline and may pose a threat to the safety and security of aircraft and its crew and passengers. It may also bring about costly disruption to air travel when aircraft are diverted to disembark unruly and disruptive passengers.

The *Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Montréal Protocol of 2014) was adopted with the objective of strengthening the capacity of States to curb the escalation of the severity and frequency of incidents of unruly and disruptive behaviour occurring on board aircraft.

This manual updates ICAO Circular 288 — *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*, as a result of the adoption of the Montréal Protocol of 2014.

The manual contains guidance on legislation covering acts and offences, as well as elements of an administrative sanctions regime, which will assist States in implementing the appropriate legal measures to prevent and deal with unruly and disruptive passenger incidents. It also identifies related ICAO publications on other preventive and remedial measures in the areas of aviation security, facilitation and cabin safety.

ICAO would like to thank the States and international organizations that provided experts who assisted in the preparation of this manual. Comments from users of this manual are welcome and will be taken into account in the preparation of subsequent editions. Comments concerning this manual should be addressed to:

The Secretary General
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Chapter 1

INTRODUCTION

1.1 The International Conference on Air Law to Consider Amending the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo, 1963) (Tokyo Convention), held in Montréal from 26 March to 4 April 2014 under the auspices of ICAO, adopted the *Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Montréal Protocol of 2014). The Diplomatic Conference also adopted a *Resolution Relating to Updating Circular 288 – Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers* (Diplomatic Conference Resolution). The Task Force on Legal Aspects of Unruly Passengers (Task Force) was established to update ICAO Circular 288.¹

1.2 The terms “unruly passengers”, “disruptive passengers” and “unruly and disruptive passengers”² are commonly understood as referring to passengers who fail to respect the rules of conduct on board aircraft or to follow the instructions of crew members and thereby create a threat to flight safety and/or disturb the good order and discipline on board aircraft. The incidence of unruly and disruptive passenger events has been increasing over the years. In the statistics collected by the International Air Transport Association (IATA) from its airline members, there were over 58 000 reports concerning unruly and disruptive passengers submitted between 2007 and 2016. During this time, there has been an upward trend in unruly and disruptive passenger reports with an average of one incident for every 1 424 flights in 2016.³

1.3 Due to the lack of a uniform reporting system, it is not possible to provide complete and comprehensive data. It would be useful for States to enhance their safety and security reporting systems to include data concerning unruly and disruptive passenger incidents and to compile information on the numbers, types of offences and actions taken as a result of such incidents.

1.4 The reported incidents involved various types of offences as well as unruly and disruptive acts, including assault on crew members or passengers; fights among intoxicated passengers; child molestation; sexual harassment and assault; disorderly conduct as a result of alcohol intoxication; illegal consumption of drugs on board; refusal to follow a crew member’s lawful instruction; ransacking and sometimes vandalizing of aircraft seats and cabin interior; unauthorized use of portable electronic devices; destruction of safety equipment on board; and other disorderly or riotous conduct. It has been noted that “what happens generally in the street is now happening on board aircraft”.⁴ Reports of these incidents are not restricted to a particular airline, State, customer category, class of service, or length or type of flight. In a number of cases, the acts and offences directly threatened the safety of the aircraft. In some cases, the aircraft commander⁵ had to make an unscheduled stopover to disembark the unruly and disruptive passenger for safety reasons. These are the occurrences which particularly cause international concern.

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1. *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers* (Cir 288).
 2. Article 15 bis, paragraph 2 introduced by the Montréal Protocol of 2014, refers to “unruly and disruptive acts committed on board”. Therefore, references in this manual are to “unruly and disruptive” acts, behaviour and passengers.
 3. Updated statistics from IATA can be found at the following link:
<http://www.iata.org/policy/consumer-pax-rights/Pages/unruly-passengers.aspx>
 4. *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers* (Cir 288), paragraph 1.2.
 5. This manual maintains the use of “aircraft commander” which is the term used in the Tokyo Convention as amended by the Montréal Protocol of 2014. However, the term “pilot-in-command” is used in other ICAO publications, such as Annex 6 — *Operation of Aircraft*.

1.5 Given the movement of aircraft across national borders, unruly and disruptive behaviour can be subject to the laws and jurisdictions of different States. Due to this diversity of laws and jurisdictions, unruly and disruptive behaviour which is regarded as an offence in one jurisdiction may not be regarded as an offence in another. In addition, when a suspected offender is to be prosecuted in a State where a foreign aircraft has landed, the question may arise whether that unruly and disruptive behaviour constitutes an offence, not only in the State of landing, but also in the State of registration of the aircraft or in the State of the operator. Accordingly, it was considered useful to establish, at the international level, a harmonized list of offences that would be regarded as a common framework of reference.

1.6 Although the identity of unruly and disruptive passengers and the relevant evidence can usually be established, there are many cases in which unruly and disruptive passengers have had to be released without being submitted to judicial proceedings due to the lack of jurisdiction of the State where the aircraft lands. Before the adoption of the Montréal Protocol of 2014, under most national legislation, States other than the State of registration of the aircraft normally did not have jurisdiction over offences and acts committed on board the aircraft outside their respective territories, except for certain particularly serious offences covered by international treaties, such as hijacking, sabotage, and hostage taking.⁶ International conventions relating to aviation security were designed to combat terrorism, including hijacking, sabotage and similar forms of unlawful interference against civil aircraft, but were not designed to deal with less serious types of offences or acts committed by unruly and disruptive passengers. Under the Tokyo Convention, an offender cannot be held in restraint beyond the first stopover; by the time the aircraft has returned to the State of registration, the offender, as well as the witnesses, may no longer be available. The State of registration may not have a real connection to the incident in situations where the aircraft is leased and operated in a foreign jurisdiction. Similarly, when the victim or the alleged perpetrator is not its national, the State of registration may choose not to exercise its jurisdiction. The cost involved in bringing the victim and the witnesses back to its court may also influence a State's decision not to prosecute an unruly and disruptive passenger. As a result, many unruly and disruptive passengers have not been subject to enforcement action.

1.7 In 1996, in view of the increasing number and significance of these offences and acts, the ICAO Council decided to include the subject of unruly passengers in the General Work Programme of the Legal Committee. In 1997, a Secretariat Study Group on Unruly Passengers was established. Noting that a number of States had established their jurisdiction as State of landing,⁷ the Study Group proposed model legislation which included a provision relating to such jurisdiction.

1.8 As a result of the work of this Secretariat Study Group, the 33rd Session of the ICAO Assembly adopted Resolution A33-4 "*Adoption of National Legislation on Certain Offences Committed on Board Civil Aircraft (Unruly/disruptive Passengers)*", setting forth model legislation as developed by the Group. The Resolution urged "all Contracting States to enact as soon as possible national law and regulations to deal effectively with the problem of unruly or disruptive passengers, incorporating so far as practical" the model legislation set out in the appendix to the Resolution.

1.9 Pursuant to the Resolution, guidance material was developed on the legal aspects of unruly/disruptive passengers, and was published in June 2002 as Circular 288. The Model Legislation on Certain Offences Committed on Board Civil Aircraft (Model Legislation) was set out in the appendix to the Circular. Other measures, such as the training of relevant airline staff, establishing or updating airline policy, and increasing the awareness of airport police and other law enforcement authorities, were also strongly encouraged. In this respect, reference is made to the efforts both within

6. Aside from the Tokyo Convention and the Montréal Protocol of 2014, these include the *Convention for the Suppression of Unlawful Seizure of Aircraft*, The Hague, 16 December 1970 (The Hague Convention of 1970), the *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, Montreal, 23 September 1971 (Montreal Convention of 1971), the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation*, Beijing, 10 September 2010 (Beijing Convention of 2010) and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft*, Beijing, 10 September 2010 (Beijing Protocol of 2010).

7. For example, Australia, Canada, the United Kingdom and the United States.