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Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers

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Chapter 1

INTRODUCTION

1.1 The term “unruly” or “disruptive” passengers 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. In recent years, there has been an increase in the reported incidents involving such passengers. According to a survey conducted by the International Air Transport Association (IATA) to which 62 airlines responded, representing approximately 23% of the IATA member airlines worldwide, there were 1 132 reported cases of unruly passengers in 1994, 2 036 cases in 1995, 3 512 cases in 1996 and 5 416 cases in 1997. In 2000, ICAO conducted a survey through a questionnaire, to which 62 Contracting States replied, representing some 80% of the total number of passengers carried worldwide in 1999 on scheduled services by the airlines of ICAO Contracting States. While many States have not yet established a reporting system, approximately 67% of the States replying to the questionnaire indicated that in recent years they had experienced an increase in the number of unruly passengers. Due to the lack of a uniform reporting system, it is not possible to provide complete and comprehensive data.

1.2 The incidents involved various types of offences and reprehensible acts, including assault on crew members or passengers; fights among intoxicated passengers; child molestation, sexual harassment and assault; illegal consumption of drugs on board; refusal to stop smoking or consuming alcohol; ransacking and sometimes vandalizing of airline seats and cabin interior; unauthorized use of 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”. Reports of these incidents are not restricted to a particular airline, country, customer, 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 commander had to make an unscheduled stopover to disembark the unruly passengers for safety reasons. These are the occurrences which particularly cause international concern.

1.3 Although the identity of unruly passengers and the relevant evidence can usually be established, there are many cases in which unruly passengers have to be released without being submitted to judicial proceedings due to the lack of jurisdiction of the State where the aircraft lands. Under most domestic laws, States other than the State of registry of the aircraft normally do not have jurisdiction over offences committed on board the aircraft outside their respective territory, except for certain offences covered by international treaties or international customary law, such as hijacking, sabotage, and hostage taking. Under international law, while international conventions relating to aviation security have proven to be an effective tool in combatting terrorism including hijacking, sabotage and similar forms of unlawful interference against civil aircraft, these conventions are not specifically designed to deal with other, less serious types of offences committed by unruly passengers. Under the *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963, offenders cannot be held in restraint beyond the first stopover; by the time the aircraft has returned to the State of registry, the offenders, as well as the witnesses, will be long gone. Many offenders have taken advantage of this situation to avoid prosecution.

1.4 In view of the increasing number and significance of these offences, the ICAO Council decided in 1996 to include the subject of unruly passengers in the General Work Programme of the Legal Committee and in 1997 to establish a Secretariat Study Group on Unruly Passengers.

1.5 The Study Group considered that more effective measures on the part of governments are necessary to deal with the problem. For this reason, where action has not yet been taken, appropriate measures, including legal measures, should be developed without delay.

1.6 The Study Group identified three major areas for action, namely, the drafting of a list of specific offences for inclusion in national law, the extension of jurisdiction over such offences, and the appropriate mechanisms for addressing these offences.

1.7 The Group noted that certain States, such as Australia, Canada, the United Kingdom and the United States, have decided to extend their domestic jurisdiction to certain offences committed on board foreign aircraft subsequently landing in their respective territories. The relevant legislative provisions of these States have been studied by ICAO. It is considered that in parallel with measures of a practical nature, such as staff training and airline programmes, the amendment of national legislation should at this stage serve as the primary and immediate mechanism for dealing with the unruly passenger problem.

1.8 As a result of the work of the Study Group, the 33rd Session of the ICAO Assembly adopted Resolution A33-4, setting forth model legislation as developed by the Group. The Resolution urges 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 This guidance material is designed to address the issues relating to the three major areas for action (1.6 refers). It is addressed to the Contracting States of ICAO for their information and recommended action. It should be noted that the material principally covers the legal aspects of the unruly passenger problem. 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, are also necessary and are therefore strongly encouraged. In this respect, reference is made to the efforts both within and outside ICAO to develop guidelines and other material containing preventive measures against unruly passengers, in particular, the ICAO training package material developed by the Aviation Security Section (ASTP 123/Airline), as well as relevant airline programmes and other relevant documentation.

Chapter 2

THE LIST OF OFFENCES

2.1 THE PURPOSE OF THE LIST

2.1.1 A uniform list of offences is considered desirable for two reasons: firstly, in order to provide a common denominator for offences as a basis for national prosecution; and, secondly, in order to offer uniform criteria for States to extend their respective jurisdiction.

2.1.2 The movement of aircraft across national borders means that they will be subject to the laws and regulations of different jurisdictions. Due to the diversity of laws and regulations, an act or omission which is regarded as an offence in one jurisdiction may not be so regarded in another jurisdiction. When suspected offenders are to be prosecuted in a State where a foreign aircraft has landed, the question may arise whether their acts or omissions constitute offences not only in the State of landing but also in the State of registry of the aircraft and in the State where the acts or omissions occurred. Accordingly, it was considered useful by the Study Group to establish a list of offences that would be regarded as a common denominator. Such a uniform list will be instrumental for the purpose of incorporating the relevant offences into States' respective national laws or regulations allowing prosecution and application of sanctions.

2.1.3 Since the jurisdiction over unruly passengers will sometimes involve extraterritorial elements, the State of landing may encounter certain difficulties in ascertaining the scope of its jurisdiction. A uniform list of offences will therefore assist the relevant States, particularly the State where an aircraft lands with the suspected offender on board, in determining its basis for jurisdiction.

2.2 THE CONTENT OF THE LIST

2.2.1 The Appendix to this circular contains draft model legislation on certain offences committed on board civil aircraft. The list of offences set out in Sections 1 to 3 was developed by the Study Group for inclusion into national law or regulations. Section 1, **Assault and Other Acts of Interference against a Crew Member on Board a Civil Aircraft**, provides that any person who commits on board a civil aircraft any of the following acts thereby commits an offence:

- “(1) assault, intimidation or threat, whether physical or verbal, against a crew member, if such act interferes with the performance of the duties of the crew member or lessens the ability of the crew member to perform those duties;
- “(2) refusal to follow a lawful instruction given by the aircraft commander, or on behalf of the aircraft commander by a crew member, for the purpose of ensuring the safety of the aircraft or of any person or property on board or for the purpose of maintaining good order and discipline on board.”