

UNRULY PASSENGERS ICAO CIR. 288 UPDATE

Malgorzata POLKOWSKA

Abstract: This article shortly updates the current work on International Civil Aviation Organization on unruly passengers. This very important issue was introduced by many interested parties to ICAO, including airlines during last diplomatic conferences. ICAO was active in this area from 17 years. This Guidance Material as soft law serves to the states in incorporation into their national law the mechanisms of dealing with unruly passengers. Definition of acts of such behaviours on board the aircraft and jurisdiction are often not recognized by many national legal regimes worldwide. Due to the lack of broad participation of states in the latest ICAO achievements referring to this subject – Montreal Protocol 2014, update of existing circular seems to be very productive way and significant tool for states in exercising their jurisdiction in air transport on daily basis.

Key words: Air Law, Tokyo Convention, ICAO, Civil Aircraft, Passengers.

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)² adopted a Resolution which urges the Council of ICAO to request the Secretary General to update ICAO Circular 288, Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers³. According to art. 1.1 of this Circular 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.

The purpose of this Circular which was set out a model law on certain offences committed on board civil aircraft, in order for ICAO Member States to transpose them into their national legislation.

The request about creating a special study group to examine emerging legal issues referring to Tokyo Conventions lacunae was presented by International Air Transport Association (IATA) during 34th Session of Legal Committee in 2009⁴. They underlined that under Tokyo Convention, unruly/disruptive passengers have benefited from avoiding criminal and civil prosecutions. That is why the common definition of unruly/disruptive behaviour was needed. According to the presented statistics by IATA, there was a clear upward trend in unruly passenger incidents since 2007. Long term analysis indicates that for the period

2007 to 2013, over 28,400 incidents were reported. Types of incident with such passengers are referring to illegal consumption of narcotics or cigarettes, refusal to comply with safety instructions, verbal or physical confrontation, threats, etc. It may have implications such as jeopardizing the safety and security of aircraft, passengers and crew. It will cause number of additional costs for airlines connected to unscheduled landings or disembarking of unruly passengers up to 200 thousands USD⁵. 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. This equates to an average of one incident per 1,600 flights. Of these incidents, almost 20% were serious enough to require the intervention of police or security services. 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.

In ICAO as a result of the work of the Secretariat Study Group (created in 1997) exercising the issue of unruly passengers, the 33rd Session of the ICAO Assembly adopted Resolution A33-4, setting forth model legislation as developed by the Group⁶. 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.

A33-4 Resolution also calls on all contracting states to submit to their competent authorities for consideration of persecution all persons whom they have a reasonable ground to consider as having committed any of the offences set out in the national laws and regulations so enacted, and for which they have jurisdiction in accordance with these laws and regulations.

The Secretariat Study Group was responsible for preparing the Guidance Material including the mechanisms governing international law in the form of circular which can be regarded as an important first steps in establishing a national regime for dealing with unruly passengers. The task was completed in 2002. It suggests that adopting an international instrument is the best route for achieving uniformity in states approaches to dealing with these incidents. This is the preferred option given the international nature of civil aviation. On the other hand, this international dimension also raises the issue of jurisdiction of states and their sovereignty. Therefore, implementing measures through national regimes would be preferable so as not to infringe upon that sovereignty. An international instrument serving as a supplement to these regimes as well as a legal basis for the coordination between states when their jurisdictions may overlap is a reasonable solution for addressing this.

Chapter Two of the ICAO Cir. 288 contains the list of offences. Section 1 refers to 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 duties⁷; (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.⁸”

Section 2 refers to Assault and Other Acts Endangering Safety or Jeopardizing Good Order and Discipline on Board a Civil Aircraft, addresses offences other than those specifically against a crew member. These offences include those against passengers. The first paragraph of Section 2 provides that any person who commits on board a civil aircraft an act of physical violence against a person, sexual assault or child molestation commits an offence. The second paragraph provides that any person who commits on board a civil aircraft any of the following acts commits an offence, if such act is likely to endanger the safety of the aircraft or of any person on board or if such act jeopardizes the good order and discipline on board the aircraft: (a) assault, intimidation or threat, whether physical or verbal, against another person⁹; (b) intentionally causing damage to, or destruction of, property; (c) consuming alcoholic beverages or drugs resulting in intoxication¹⁰”.

Section 3 of the Cir. 288 (Other Offences Committed on Board a Civil Aircraft) covers other offences that do not fall into the first two categories. It provides that any person who commits on board a civil aircraft any of the following acts commits an offence: (1) smoking in a lavatory, or smoking elsewhere in a manner likely to endanger the safety of the aircraft; (2) tampering with a smoke detector or any other safety-related device on board the aircraft; (3) operating a portable electronic device when such act is prohibited.”

Article 1, paragraph 1 (a), of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (signed at Montreal on 23 September 1971¹¹) declares it an offence for any person to perform “an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft”. Therefore, if an assault has reached such gravity as to endanger the safety of the aircraft, the Montreal Convention will normally apply. On the other hand, the Montreal Convention does not cover other acts that only jeopardize good order on board. In most cases involving unruly passengers, it is this latter aspect that has caused public concern regarding the efficiency and regularity of air transportation and, indirectly, the safety of civil aviation.

Accordingly, the list should be used to supplement the Montreal Convention. It should be noted, however, that Section 2 is intended to deal with unruly behavior that undermines the safety or good order and discipline on board a civil aircraft, but not to cover every minor breach of such good order and discipline. Section 3 of the Cir. 288 deals with the third category of offences, which covers acts not specifically mentioned which have a direct, negative impact upon the safety of aircraft. For instance, tampering with a smoke detector

could potentially increase the fire hazard on board the aircraft, and operating electronic devices may interfere with the electronic systems on board. It is therefore considered necessary to include these offences in the list.

The list of offences in Sections 1 to 3, along with the jurisdiction clause in Section 4, is recommended for incorporation into national law or regulations. Notwithstanding individual legislative drafting styles and techniques of different States, for the sake of international uniformity, States are encouraged to incorporate the list into their criminal code, or their aviation regulations, or both. The list, as reflected above, is intended to apply to certain offences committed on board a civil aircraft. Although it has been suggested that incidents relating to unruly passengers should refer to those which take place not only on board aircraft but also on the ground, offences committed on the ground, e.g. on the premises of an airport, have not been included. It should be recalled that airports are normally within the exclusive jurisdiction of the State where they are located and are subject to the domestic laws of that State.

Chapter 3 of Cir 288 refers to jurisdiction. Unruly passengers often have to be released without being submitted to judicial proceedings due to lack of jurisdiction of the State where the aircraft has landed. There is a jurisdictional gap in this respect. Generally, a State will have jurisdiction over an offence when the offence is committed in its territory (territorial jurisdiction) or on board an aircraft on its registry (flag jurisdiction). A State may also exercise criminal jurisdiction over its nationals for certain offences committed by them, or committed against them, wherever the offence may have been committed (personal jurisdiction). The jurisdiction of a State may also extend to certain offences committed outside its territory but having effects on the governmental functions of such State (protective principle).

In a number of cases involving unruly passengers, the State of landing, which has custody of the alleged offender delivered by an aircraft commander, does not have jurisdiction under any of the aforementioned principles. For instance, an offence may take place on board a foreign aircraft when such aircraft is outside the territorial airspace of the State where it subsequently lands. When the State of landing is requested to prosecute the offender who is not its national, it often finds itself having no jurisdiction, since the offence has taken place neither in its territory nor on board its aircraft and it is neither directed against it or its nationals, nor involving a crime of sufficient gravity to establish universal jurisdiction. For this reason, some States have, in their respective domestic legislation, extended their jurisdiction to cover offences committed on board foreign aircraft that next land in their respective territories. Section 4 consists of the legal mechanism available for combatting the problem of unruly passengers.

Clause 1 in Section 4 is intended to fill the jurisdictional gap referred to above, while leaving the above-mentioned principles of jurisdiction unaffected. In addition to the restatement of the territorial jurisdiction and flag jurisdiction, the jurisdictional clause introduces two new elements. The first new element relates to the jurisdiction of the State of landing. The second new element introduced in the jurisdictional clause relates to the State of the operator of the aircraft in long-term lease situations. In today's environment where many

aircraft are leased, it might not be adequate to include only the State of registry, since the State of the operator may also have to be involved for purposes of jurisdiction. The proposed model legislation is recommended for incorporation into national law (4.2). It is the objective that a sufficiently large number of States accept and implement this recommendation, so that a desirable degree of uniformity will be achieved internationally. Bilateral and multilateral agreements or arrangements have not been commonly used for dealing with the issue of unruly passengers.

However, if such issues become serious on particular routes or between particular countries, bilateral/multilateral agreements or arrangements could be considered as a means to deal with certain issues relating to unruly passengers (4.3). The existing international conventions applicable to offences committed on board civil aircraft are regulated in 4.4. The Tokyo Convention of 1963 applies in respect of offences against penal law and acts that may or do jeopardize the safety of the aircraft or of persons or property therein or that jeopardize good order and discipline on board. This term is broad enough to include most, if perhaps not all, offences or acts relating to unruly passengers. However, under Articles 912 and 13 of the Tokyo Convention, the authorities of the State where the aircraft makes a landing are obliged to accept only the delivery of persons who, in the opinion of the aircraft commander, have committed a serious offence under the penal law of the State of registry of the aircraft. For persons who have committed less serious offences or other reprehensible acts, the commander may disembark them under Article 813, but the State where the aircraft has landed is under no obligation to take custody or other measures against them (Article 13, para. 214).

In order to assist aircraft commanders in exercising their powers under Article 9 of the Tokyo Convention, it may be desirable to arrive at a common understanding as to what constitutes a serious offence. The Secretariat Study Group was of the view that due to the need to offer enhanced legal protection for the crew and the type of the risks involved as well as their potential consequences, the offences covered by Section 1 of the model legislation, namely, assault and other acts of interference against a crew member on board a civil aircraft, should be considered as serious offences within the meaning of Article 9 of Tokyo Convention of 1963. Article 9 distinguishes “delivery” from “disembarkation” of persons in Article 8 and specifies that such delivery must be accompanied by “evidence and information” lawfully in the possession of the aircraft commander.

These provisions appear to permit the conclusion that the State of landing has an obligation to do more than just accept the delivery of the person, namely, to investigate and, if sufficient evidence is furnished, to consider prosecution. So according to 4.4.1 is recommended to States that the offences against crew members as set out in Section 1 of the model legislation be considered as serious offences within the meaning of Article 9 of the Convention and that when a State accepts the delivery of a person pursuant to Article 9 of the Convention, it will bring the person to appropriate legal process, including prosecution if the situation so warrants. If this recommendation is uniformly accepted by States, the existing mechanism under the Tokyo Convention may be used to resolve important issues relating to unruly passengers. In addition, it has been mentioned that Article 1, paragraph 1 (a), of the Montreal Convention of 1971¹⁵ is applicable to «an act of

violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft». This provision may also be applied in cases involving unruly passengers where such passengers commit acts of violence on board which are likely to endanger the safety of the aircraft. However, the Montreal Convention of 1971 will not apply if acts committed by unruly passengers jeopardize the good order and discipline on board, without being likely to endanger the safety of the aircraft. This shows the limitation of the application of the Montreal Convention of 1971 in unruly passenger cases.

Bearing all the mentioned factors in mind, it is important for such guidance materials to be part of a soft law approach. If the nature of them were legally binding, it could potentially threaten a states' sovereignty or cause conflict between different applicable regimes. The benefit of this soft law approach is that it allows for the flexibility and adaptability of the law. It is practical and compatible with the whole range on national implementation procedures. The same goals can be achieved through different methods by its signatories, or simply through enacting national provisions with the same scope. The guidance provided through this soft law approach can serve as a reference for states to establish their own hard law regimes, maintaining international uniformity without compromising their sovereignty. Furthermore, the public interest objective in maintaining safety, good order, and discipline on board an aircraft, provisions addressing unruly passengers are worth instating despite these complexities.

This is in many ways reminiscent of the way in which European Union Law is implemented without or with a minimal infringement upon its member states sovereignty. Concurrently, this can be an impediment to EU member states when amending their national legislation. For example, there is also guidance material on these aspects provided by European Civil Aviation Conference (ECAC) Policy Statement in the Field of Civil Aviation Security provide Guidance Material on the Handling of Unruly Passengers aiming to assist member states in having a system to address the problem of unruly passengers¹⁶.

In the global context of unruly passengers, IATA suggested to further study this issue in ICAO and to consider convening the Diplomatic Conference in relation to the issue of "New and Emerging Threats". In 2011 the ICAO Secretariat Study Group was reactivated. It was a need to review jurisdictional clauses, status of in-flight Security Officers with recommendation to review of Tokyo Convention. In 6-15th of May 2013 the 35th ICAO Legal Committee considered the text of Special Sub Committee¹⁷.

The draft text prepared by the Sub-Committee for consideration by the Legal Committee contained options and brackets as issues remained to be resolved, principally: the State of the Operator and State of landing jurisdictions although it remained undetermined if such jurisdictions should be optional or mandatory; the text did not include a list of offences although proposals were made in this respect. They decided that if the draft supplementary protocol prepared by the Committee would be deemed sufficiently mature, the next step would be for the Council to convene a Diplomatic Conference to finalize and adopt the text. A majority of States opined that the addition of new jurisdictions, in particular those of the State of the operator and of the State of landing, would strengthen the regime set up by the Tokyo Convention.

A significant number of those States were in favor of mandatory jurisdictions so as to avoid the possibility of unpunished acts, while others would prefer such jurisdictions to be optional, one of them mentioning that its own statistics in fact demonstrated a decrease of unruly behaviors in recent years. A handful of States expressed their doubts about incorporating such jurisdictions, as other possible non-penal avenues to deter disruptive acts had not been sufficiently explored. One State also raised the issue of addressing the matter of concurrent jurisdictions if additional jurisdictions were to be established. The temporal issue was also mentioned by several delegations, raising the need to ascertain whether the power principle determining the applicability of the Tokyo Convention when the aircraft is in flight, had to be reconciled with the principle of closed doors when the aircraft commander is in authority. As regards the incorporation of a list of offences, it was felt by several delegations that this would enhance the universality of the Tokyo regime. Some of them supported the idea of a generic list or a list limited to most serious offences, while others sought a more specific list. Other delegations were opposed to the idea of a list of offences. The text of the protocol MP14 was prepared and in form of report was presented to the 38th Session of the ICAO Assembly for information purposes. The Commission unanimously recommended that the Plenary call upon Member States to participate in the Diplomatic Conference to amend the Tokyo Convention¹⁸.

The Diplomatic Conference was held next year in ICAO (26 March- 4 April 2014)¹⁹. One hundred ICAO Member States and nine international organizations and institutions as participants, have officially adopted a Protocol to amend the 1963 Tokyo Convention on offenses committed on aircraft²⁰.

The new Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montréal Protocol of 2014 – MP14)²¹ contains three main categories of provisions concerning legal aspects: jurisdiction on the alleged offenders, list of offences, and the role of in-flight security officers (IFSOs). The new Protocol gives mandatory jurisdiction to the intended State of landing (the scheduled destination). Two safeguards were included to reflect the concerns of some states on legal certainty and proportionality. Firstly, the offense must be sufficiently serious i.e. where the safety of the aircraft or of persons or property therein, or good order and discipline on board is jeopardized. Secondly, the State of landing must consider if the offence is an offence in the State of operator.

If the aircraft diverts to a third State, the Protocol gives that State the competence to exercise jurisdiction at its discretion. The Protocol establishes mandatory jurisdiction for the State of operator. This takes account of the increasing trend toward dry leasing aircraft where the State of aircraft registration is not necessarily the State of operator. The Protocol represents a clear opportunity for governments to put in place an international legal instrument which gives them the means to deal with unruly passengers more effectively, and to deter future incidents²².

Many states did not ratify MP14 yet. However, it already has a regime which covers the broad list of offences contained in it. The goal is to deal with unruly passengers in a proportionate and effective manner, reflecting the relative seriousness of the wrong and the severity of the

penalty while also maintaining as uniform an approach as possible. This can be achieved both through national regimes, the ratification of international instruments, or a combination of both, as highlighted in the circular. What is important is that international cooperation is continued when achieving these goals through different national regimes. One of the main legal aspects in the issue of unruly passengers is the jurisdiction which they are subject to.

The new Protocol improves the ability of states to expand their jurisdiction over related offenses to the State of Operator and the State of Landing. Certain states (such as Australia, Canada, United Kingdom, United States) have extended their jurisdiction to cover offences committed on board foreign aircraft that land in their respective territories, however in the effort to achieve uniformity it is important to address this in international instruments. Situations which particularly cause international concern are when unruly passenger behavior causes the aircraft commander to make an unscheduled stopover – this may or may not be in the same jurisdiction as the aircraft, however there is public interest objective in maintaining safety, good order, and discipline on board and in turn to take action when such incidents occur. With regards to the list of offences, it is intended to serve as a “guide for the purpose of facilitating States to deal with offences and other acts constituting unruly or disruptive behaviour on board civil aircraft”. Article X of the Montréal Protocol, 201423 which incorporates a new Article 15bis to the Tokyo Convention to encourage States to take measures to initiate appropriate criminal or administrative proceedings against any person who commits on board an aircraft any offence or punishable act covered by the Tokyo Convention, in particular the act of assault against a crew member and the act of refusal to follow a lawful instruction given by or on behalf of the aircraft commander.

The guidance material is significant to States in a preliminary phase regarding legislation on this issue. Having such guidance material as a point of reference is also valuable when addressing the resulting legal aspects of unruly passengers. The work in the Task Force is crucial in this regard. ICAO is attempting to accomplish now, in the future further updates may be necessary and this material will be critical to maintaining international uniformity. With respect to the list of offences, the Task Force concluded that the list in the Circular is still relevant. The list is sufficiently comprehensive to cover the unruly behaviour that takes place on a daily basis. If any unruly behaviour is not specifically listed, it is likely to fall within the scope of the provision concerning the refusal to obey the instruction of the aircraft commander. It is further observed that the list of offences mentioned above does not restrict the power of a State to introduce into its domestic legislation any other offence or prohibited act relating to unruly behaviour on board civil aircraft. The Task Force therefore decided to maintain the list as it is.

Since the Protocol itself does not include a list of offences, the Resolution requested a more detailed list of offences and other acts in the updated circular, as well as to make consequential changes to the Circular arising from the adoption of the MP14. The ICAO Secretary General subsequently established the Task Force on Legal Aspects of Unruly Passengers (UNPAXTF) with the mandate to amend the circular. Cir. 288 contains model legislation that is recommended for incorporation into national law or regulations. The aim is to achieve international uniformity in this way. It is also significant to note that the issue of penalties for the offences is not addressed in this model legislation. This leaves room for national provisions to be implemented by states.

The Resolution (footnote) invites all Member States to include in their national laws and regulations, so far as practical, the elements of the updated Circular. The objective of Cir 288 is to deal with the wrongdoing identified in the Model Legislation in a proportionate and effective manner, reflecting the relative seriousness of the wrong and the severity of the penalty. It does not in any way intend to prescribe penalties - a state remains entitled to prosecute or sanction offenders in accordance with its national laws.

The Task Force met from 15 to 17 September 2015 in Montréal, Quebec, Canada. The Task Force elected Mrs. M. Polkowska from Poland (author of this Article) as the Chairperson, and Mr. J. Thachet from Canada as the Vice-Chairperson²⁴. Accordingly, three drafting groups were established to address the relevant chapters of Cir 288 which require consequential revisions with the adoption of the Montreal Protocol 2014. They have been established to evaluate the current state and propose changes to the text of the circular regarding legal mechanisms through which states can implement measures against unruly passengers, to update the list of offences in accordance with MP14, and consequential changes regarding the expanded scope of a states' jurisdiction as well as other necessary changes.

Drafting Group 1 members are Singapore as the leader, Cuba, Finland, Korea, United States, and IATA. This group was assigned Chapters 1 and 4 to focus on the legal mechanisms through which states can implement measures against unruly passengers, to update the list of offences in accordance with MP14, and consequential changes regarding the expanded scope of a states' jurisdiction.

Drafting Group 2 members are Kenya as the leader, Finland, France, Jamaica, Singapore, and IATA. This group will propose changes to the text of Chapter 2 on the List of Offences in the guidance material in order to include consequential changes to the offences listed as a result of MP14. It will also consider the drafting suggestions made by the Task Force's Sub-Group on Administrative Sanctions.

Drafting group 3 members are Finland as the leader, Argentina, Singapore, Switzerland, United States, and IATA. It will focus on incorporating consequential changes to Chapter 3 on Jurisdiction in Cir. 288 in order to incorporate the improved ability of ICAO Member States to expand their jurisdiction over related offenses to the State of the Operator and the State of Landing with MP14.

At the first meeting of the Task Force in September 2015 in Montreal it was decided that the current list contained in Cir. 288 is sufficient. The list is comprehensive in that it contains specific behaviors which fall within the scope of the provision which are narrow provisions, while also presenting a broader provision encompassing the "refusal to follow lawful instruction given by the aircraft commander". This can serve as a catch-all for behaviors which are not explicitly listed otherwise. The Task Force decided to keep the list as it is.

The Task Force noted that certain States have the system of imposing civil, administrative or other penalties as an alternative for punishing unruly behaviour which amount to criminal

offences as well as for those which do not amount to criminal offences. Accordingly, it was decided to add a short text to Chapter 2 of the amended Circular to refer to the possibility that a State may, if it deems necessary, establish such a system of penalties. A small group was established to draft this text. The outcome of the group is in the attachment, which will be referred to the drafting group on Chapter 2, with the comments of the Task Force. The sub group has been tasked to draft a paragraph of guidance on the alternative of sanctioning the offences listed in Chapter 2 of Circular 288 through using civil, administrative or other non-criminal penalties. The sub group notes that the Montreal Protocol 2014 (“the Protocol”) provides for States to exercise jurisdiction as State of landing and State of the operator in respect of both offences and acts. The task force has already suggested amending the heading of Chapter 2 of Circular 288 to reflect this. Other consequential amendments will be needed to ensure that Chapter 2 is consistent both with the Protocol and the Chapter heading in this respect. The task force confined its work to preparing discrete stand-alone paragraphs for task force members to consider.

The ICAO Task Force on Unruly Passengers (UPAXTF) held their second meeting in Geneva on 30-31 March, 2016 followed by the ICAO/IATA Unruly Passenger Seminar on first of April, 2016. On the first day of the meeting, the Task Force finalized the legislative structure of the introductory chapter. The following day changes to the chapters on legal mechanisms, the list of offences, and jurisdiction were drafted. Creating a more detailed list of offences proved to be a complex task when taking into account the differences in national laws and jurisdictions. The final version of Cir. 288 will especially benefit countries which do not have any regulations regarding unruly passengers. The Task Force meeting finished with a summary of the progress made and it was sent for verification by drafting group leaders. The next meeting of the Task Force will be in the first half of 2017 in order for the final results to be presented at the next Session of the Legal Committee at the end of 2017. At the next meeting the Task Force will also consider the need for a draft Assembly resolution (to deliver in 2019) relating to the updated guidance material.

During the ICAO/IATA Unruly Passenger Seminar in GVA, the leader of the Task Force gave a presentation on the developments of ICAO Cir. 288 and its potential application as soft law. Participants included members of the Task Force as well as representatives of airlines and governments. Panel topics included practical problems and legal aspects of dealing with unruly passengers, a potential multi-stakeholder solution, and changes which the Montreal Protocol 2014 will bring. Other topics discussed concerned prevention of unruly passenger incidents and the issue of providing alcoholic beverages on board aircrafts and in airports prior to boarding, which are often tied to unruly passenger incidents.

Further more the need for close cooperation between all airport services providers and the enforcement applicable law was highlighted. It was also observed that the Task Force needs to cooperate with industry players in order to ensure the practical application of ICAO Cir. 288. Both events were a good opportunity for the exchange of views on how governments and airlines can approach unruly passenger incidents taking into account differences in national laws and jurisdictions as well as their interplay with international law.

Due to the issue of unruly passengers being so crucial in current airline practice, it is advised by participants to continue discussions in future joint ICAO/IATA initiatives in order to prevent unruly behavior and produce a good manual for states taking into account the needs of aviation industry. It seems to be necessary to promote worldwide ICAO MP14 instrument as well as consider the adoption and support some further work on ICAO Cir. 288. Moreover, it's critical to encourage states to implement those tools into their domestic law. A model legislation included in ICAO updated Cir. 288 might be very helpful to achieve this goal.

References

1. *Ph., D., Professor of International Law (Aviation & Space), from 2013 Representative of the Republic of Poland on the Council of the International Civil Aviation Organization, from 2015 Chairperson of ICAO Unruly Passengers Task Force UNPAXTF.*

2. *Convention on Offences and Certain Other Acts Committed on Board Aircraft Tokyo Convention, ICAO Doc. 8364.*

3. *Guidance Material on Legal Aspects of Unruly/Disruptive Passengers (June 2002), ICAO Cir. 288, LE/1.*

4. *LC/34-WP/2-4, 14/09/09*

5. *ICAO/IATA seminar on unruly passengers, How big is the issue, what are some of the triggers and who is affected by unruly passenger incidents? presented by M. Gill, IATA, 1 April 2016, Geneva [unpublished]*

6. *ICAO Resolution A-33-4, Adoption of National Legislation on Certain Offences Committed on Board Civil Aircraft (Unruly/Disruptive passengers),*

7. *In fact, certain States have designated aircraft commanders as peace officers for the period when the aircraft under their control are in flight. In many national criminal codes, offences against an on-duty police officer or peace officer are subject to heavier penalty than offences against a member of the general public. In line with this general practice, Section 1 is designed to offer protection to crew members who enforce rules of conduct and maintain good order on board aircraft in the public interest. The term "lessens the ability of the crew member to perform those duties" in paragraph (1) of Section 1 is intended to cover certain situations that might not be covered by the term "interferes with the performance of the duties", thereby offering better and wider protection to the crew. The term is not intended to cover minor side effects on a crew member, such as psychological side effects, if the act is directed against another crew member and does not actually lessen the ability of the crew member.*

8. *The term "refusal" includes intentional and express conduct of non-compliance but does not include inadvertent conduct.*

9. *The term "physical violence against a person" is a close approximation to the term, which requires physical contact but does not necessarily give rise to injury. The physical contact does not need to create bodily injury but must interfere with the health or comfort of the victim.*

10. *If a State where an aircraft lands is expected to exercise jurisdiction over any simple assault on board a foreign aircraft even if such act neither occurs in its territory nor affects its interest, it may be considered that the net is cast too wide from a jurisdictional point of view. Adding the above-mentioned element to the offence will have the effect of limiting the jurisdiction of the State of landing to fewer but more serious cases. For cases which fall squarely within territorial or flag jurisdiction, States remain free to treat a simple assault as a punishable offence whether or not such assault has the consequence of endangering safety or disturbing the good order and discipline on board aircraft.*

11. *ICAO Doc. 8966, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal 1971*

12. *Art. 9 1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is serious offence according to the penal law of the State of registration of the aircraft. 2. The aircraft commander shall as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefor. 3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this Article with evidence and information which, under the law of the State of registration of the aircraft, are lawfully in his possession.*

13. *Art. 8 1. The aircraft commander may, in so far as it is necessary for the purpose of subparagraph a or b of par. 1 of Article 6, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph 1(b). 2. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to this Article, the fact of, and the reasons for, such disembarkation.*

14. *Art. 13.2 Any Contracting State, to which a person is delivered pursuant to Article 9, par. 1, or in whose territory an aircraft lands following the commission of an act contemplated in Article 11, par. 1, shall immediately make a preliminary enquiry into the facts.*

15. *ICAO Doc. 8966, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal 1971; Art 1.1. Any person commits an offence if he unlawfully and intentionally: a) Performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or b) Destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or c) Places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it, which renders it incapable of flight, or to cause damage to it, which is likely to endanger its safety in flight; or d) Destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or Communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight. 2. Any person also commits an offence if he: a) attempts to commit any of the offences mentioned in par. 1 of this Article; or b) is an accomplice of a person who commits or attempts to commit any such offence.*

16. *Thirty-Fifth meeting of the guidance material task force (Winterthur, 13-14 May 2015), Update of ECAC Guidance Material on Handling of Unruly Passengers, presented by IATA, GMTF/35-WP/311/03/2015*

17. *ICAO Regional FAL Seminar Lima, Peru, 9-12 September 2014, Unruly Passengers, 12 September 2014*

18. *A38-WP/380 LE/11item 46-1 Acts or offences of concern to the international aviation community and not covered by existing air law instruments*

19. *Doc 10014-LC/35 report 2013*

20. *DCTC O/B-1(Doc. 1-3); 10/3/14, International Conference on Air Law (Montréal, 26 March to 4 April 2014); DCTC Doc No.36 3/4/14 Final Act of the International Conference on Air Law Diplomatic Conference to Consider Amending the Tokyo Convention of 1963 held under the auspices of the International Civil Aviation Organization at Montréal, 26 March to 4 April 201*

21. *Montréal Protocol of 2014, MP14. Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board. Aircraft, done at Montréal on 4 April 2014 (Doc 10034).*

22. *Join position calling for states to ratify the Montreal protocol 2014 to deter unruly passenger incidents and promote a safer air travel experience for all- common position on IATA, ALTA (Latin American and Caribbean Air Transport Association), ERA (European Regions Airline Association), Association of European Airlines, Association of Asia Pacific Airlines, AACO (Arab Air Carriers Organization, A4A (Airlines for America) and AFRAA (African Airlines Association).*

23. *Art. X, The following shall be added as Article 15bis of the Convention: "Article 15 bis. 1. each Contracting State is encouraged to take such measures as may be necessary to initiate appropriate criminal, administrative or any other forms of legal proceedings against any person who commits on board an aircraft an offence or act referred to in Article 1, pa.1, in particular: a) physical assault or threat to commit such assault against a crew member; or b) refusal to allow a lawful instruction given by or on behalf of the aircraft commander for the purpose of protecting the safety of the aircraft or of persons or property therein. 2. Nothing in this Convention shall affect the right of each Contracting State to introduce or maintain in its national legislation appropriate measures in order to punish unruly and disruptive acts committed on board."*

24. *ICAO UPAXTF Task Force on Legal Aspects of Unruly Passengers, Montreal, 15-17 September 2015 – Report. [Recibido el 25 de noviembre de 2016].*