JOINT POSITION CALLING FOR STATES TO RATIFY THE MONTREAL PROTOCOL 2014 TO DETER UNRULY PASSENGER INCIDENTS AND PROMOTE A SAFER AIR TRAVEL EXPERIENCE FOR ALL

1. Introduction

Ensuring the safe, secure and efficient operation of commercial flights is the shared goal of governments, airlines and the wider aviation industry. However, unruly passenger incidents on board aircraft which threaten safety and security have become a significant issue faced by airlines, flight and cabin crew on a daily basis. In addition, the behavior of this small minority of unruly passengers also adversely affects the travel experience of other passengers, causes operational disruption and leads to significant costs for airlines.

Unruly behavior includes assault of other passengers or crew, sexual abuse or harassment, illegal consumption of narcotics, refusal to comply with safety instructions, making threats that could affect the safety of the crew, passengers and aircraft, and other types of disorderly behavior.

The International Air Transport Association (IATA) has conducted a detailed analysis of unruly passenger incidents and their root causes, based on non-mandatory reports received from 170 airlines. These statistics (see Appendix A) show 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. 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.

A key issue is that a significant number of unruly passengers that are involved in these events, rarely face prosecution or other legal or economic sanction. This is because of jurisdictional and other gaps in the *Tokyo Convention 1963* ("the Convention"), the international aviation law instrument that covers offenses and certain other acts committed on board aircraft. These gaps (explained overleaf) undermine the deterrent effect of the Convention.

In 2009, the increase in unruly passenger incidents led IATA to make a formal request to the International Civil Aviation Organization (ICAO) to review and enhance the Convention to allow law enforcement authorities adequate means to pursue offenders. A detailed and lengthy review process culminated in a Diplomatic Conference held between 26 March and 4 April 2014. Attended by 88 delegations from Member States, the Conference adopted the *'Protocol to amend the Convention on Offences and Certain other Acts Committed on board Aircraft'* ("the Protocol").

Taken together with the operational measures already being implemented by airlines to prevent and manage unruly incidents, the Protocol will provide a more effective deterrent by making the consequences of such behavior clear and enforceable. This will lead to a safer and a more pleasant air travel experience for all.

We therefore strongly urge States to prioritize the ratification, acceptance or accession of the Montreal Protocol 2014.

2. Key benefits of the Montreal Protocol 2014

a. Extension of Jurisdiction

In a representative survey of over 50 airlines in 2013, over 60% indicated that lack of jurisdiction was the key reason for failure to prosecute unruly passengers at foreign destinations. In other cases countries lack specific language within their penal codes to allow for the arrest and prosecution of unruly passengers even when jurisdiction is not an issue.

The Tokyo Convention grants jurisdiction over offenses and other acts committed on board aircraft to the State of registration of the aircraft in question. This causes issues when the Captain of the aircraft delivers or disembarks an unruly passenger to the competent authorities who often determine that they do not have jurisdiction (as the State of landing) when the aircraft is registered in another State. Likewise, the police and authorities in the State of registration may have little connection with an incident taking place in another country. The result is that the unruly passenger may be released to continue their journey without facing punishment for their misconduct.

The new Protocol will give States the tools they require to deal with unruly passengers, whilst preserving prosecutional discretion. Specifically:

a) The Protocol gives mandatory jurisdiction to the intended State of landing (the scheduled destination). However, 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.

b) If the aircraft diverts to a third State, the Protocol gives that State the competence to exercise jurisdiction at its discretion.

c) 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.

b. Definition of Offenses

The Protocol clarifies certain behaviours which should be considered, at a minimum, as an offense and encourages States to take appropriate criminal or other legal proceedings. These include physical assault or a threat to commit such assault against a crew member and refusal to follow a lawful instruction given by or on behalf of the aircraft Commander (for safety purposes). The elaboration of the types of conduct prohibited will improve certainty for passengers, law enforcement authorities and airlines.

c. Right of Recourse

Airlines usually have to bear the costs incurred as a result of unruly passenger incidents. Where this involves diversions to disembark an unruly passenger, the cost can be substantial, in some instances over US$200,000. The Protocol recognizes that airlines may have a right to seek compensation for costs incurred as a result of unruly passenger behavior. The presence of this clause should have strong deterrent value.

3.0 Actions

In developing the new Protocol, States recognized *'the escalation of the severity and frequency of unruly behaviour on board aircraft that may jeopardize the safety of the aircraft or of persons or property therein or jeopardize good order and discipline on board.'* 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 incidents.

Therefore, the signatories to this joint position paper urge States to:

a) Prioritize the ratification of the *'Protocol to amend the Convention on Offences and Certain other Acts Committed on board Aircraft'* (Montreal Protocol 2014).

b) Consider the adoption or amendment of supporting domestic legislation to secure the proper activation of jurisdictional and prosecution powers using *ICAO Circular 288* as a guide.

c) Raise public awareness of the consequences of failing to follow crew instructions or commit unruly behavior.

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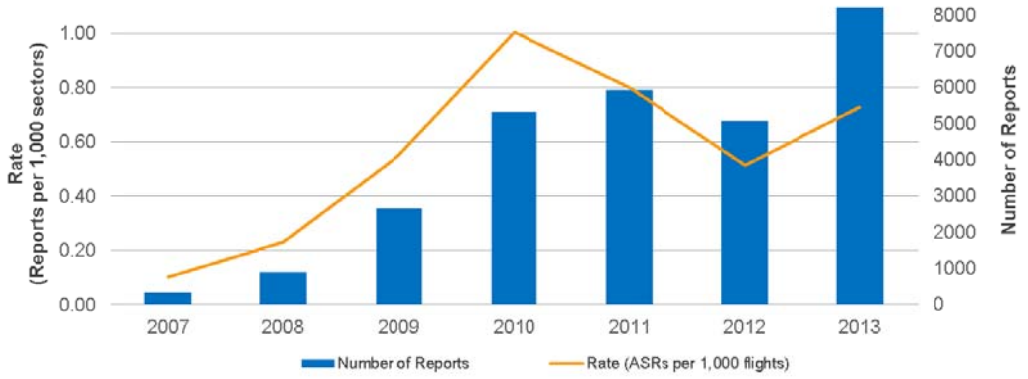
Appendix A - Statistics on unruly passenger behavior

Graph 1 - Unruly Passenger Reports 2007 to 2013



Graph 2 - Unruly Passenger incidents requiring police/security service intervention 2007 to 2013