



ECA
Piloting Safety

Prevention & Prosecution of Unruly Passengers

– ECA Position Paper –

1. Introductory remarks

ICAO defines an unruly passenger as¹: *“a passenger who fails to respect the rules of conduct at an airport or on board an aircraft or to follow the instructions of the airport staff or crew members and thereby disturbs the good order and discipline at an airport or on board the aircraft”*.

Unruly behaviour includes assault of other passengers or crew, sexual abuse or harassment, abusive consumption of alcohol and/or narcotics, refusal to comply with safety instructions, making threats that could affect the safety and security of the crew, passengers and aircraft, and other types of disorderly behaviour that impact good order and discipline on board.

In-flight unruly behaviour events can impact the well-being and travel experience of passengers, interfere with crew performance and/or threaten the safety and security of a flight and may result in aircraft delays and/or diversion. Because they require unplanned landings, these diversions create additional safety and security risks as well as costs for the airlines.

ECA notes the ever-increasing number and degree of severity of incidents involving unruly passengers on board aircraft worldwide².

Against this, the reaction of the authorities seems lukewarm. In many cases, although unruly passengers had already shown distinctive or deviant behaviour during the period before boarding an aircraft, no appropriate actions are taken on the ground and the unruly passenger is allowed to board the aircraft.

Furthermore, unruly passengers rarely face prosecution or other legal or economic sanction because of jurisdictional issues³.

¹ ICAO Annex 17 to the Convention on International Civil Aviation (the Chicago Convention)

² IATA Factsheet Unruly Passengers, June 2017

³ Presently, jurisdiction pertains to the State where the aircraft is registered, not to the State where the aircraft lands.

2. ECA Position & Recommendations

Despite the complexity of the issue, there are practical steps that can be taken to prevent and manage unruly passenger incidents, and which can contribute to increased safety and reduction of costs for air carriers:

1. Prevention and deterrence

Safety in the air begins on the ground, and unruly passenger incidents are best managed in a preventive manner by keeping unruly behaviour on the ground and off the aircraft.

All aviation stakeholders, including States, airports, airlines and especially all ground and air personnel should have responsibility for - and be actively involved in - the prevention and recognition of unruly passenger behaviour.

The primary goal should be to prevent potentially unruly passengers to board an aircraft and should consist of a clear 'zero tolerance' policy. Awareness and warning campaigns, and an effective incident management system, including procedures for refusal should be developed swiftly by the authorities at the appropriate level.

Awareness and warning campaigns should emphasise passengers' obligations and make clear that unruly behaviour on board will not be tolerated and will be punished accordingly.

2. Alcohol and drugs policy

Intoxicated persons should not be allowed to enter any aircraft. Excessive consumption of alcohol either before the flight or on board should not be tolerated, and passengers should not be allowed to consume their own alcohol on board. Potentially disruptive passengers should not be served any alcoholic beverages. The only acceptable drugs on-board should be those used for medicinal purposes.

3. Training

All personnel dealing with passengers should receive appropriate information (e.g. legal rights of the Aircraft Commander / crew member / staff member) and adequate training for dealing with unruly passengers (e.g. prevention, negotiation skills, defensive self-defense, reporting etc.).

All employees should understand the importance of preventing passengers who exhibit unruly behaviour from boarding an aircraft, and should be empowered to prevent such passengers from boarding.

Furthermore, judges and police officers working in airports areas should also be trained to provide adequate legal response to unruly behaviour from passengers.

4. Uniform Prosecution and Enforcement Worldwide

Prevention and deterrence relies on uniform international law to ensure that States have the necessary legal tools to be able to enforce criminal or other sanctions as appropriate, so that unruly passengers are held accountable for their misconduct. Lack of jurisdiction is the main reason for failure to prosecute unruly passengers at foreign destinations. In other cases, some countries lack specific provisions in their relevant laws to allow for the arrest and prosecution of unruly passengers even when jurisdiction is not an issue.

- The black holes in the Tokyo Convention 1963 (TC63)

TC63 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 Aircraft Commander delivers or disembarks an unruly passenger to the competent authorities who may 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 of the State of registration may have little connection with an incident taking place in another country. The result is that the unruly passengers are often released and allowed to continue their journey without facing any sanctions for their misconduct.

States have now recognized that TC63 no longer provides a sufficient legal framework for dealing with unruly passenger behaviour due to jurisdictional gaps and the lack of clarity as to what constitutes an offense.

- Montreal Protocol 2014 (MP14)

The MP14, adopted on 4 April 2014, amends the Tokyo Convention to provide States with a clearer jurisdictional framework for dealing with unruly passengers, whilst preserving prosecutorial discretion.

Specifically,

- MP14 gives mandatory jurisdiction to the 'intended State of landing' (the scheduled destination). If the offense is sufficiently serious, the State of landing must consider if it is an offence in the State of operator.
- MP14 clarifies certain behaviors which should be considered, at a minimum, as offenses 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).
- MP14 recognizes that airlines may have a right to seek compensation for costs incurred as a result of unruly passenger behaviour. The presence of this clause should have strong deterrent value.

It is paramount that the new rules agreed in the MP14 are swiftly implemented by all ICAO States.

5. Conclusion

Whatever the reasons for the rising number of unruly passengers are, this kind of behaviour on a commercial flight is intolerable, where safety and order must be maintained at the highest level.

ECA is of the firm view that in-flight unruly behaviour should be – first and foremost – prevented and preferably so on the ground before boarding an aircraft *or* – failing that – appropriately prosecuted and punished.

Therefore ECA calls for the universal adoption of the Montreal Protocol 2014 by all EU Member States. By making the consequences of unruly behaviour clear and enforceable, MP14 will provide a more effective deterrent tool against unruly passengers.

Furthermore, campaigns should be developed at the appropriate level to inform the public and the aviation professionals about the importance of prevention, and prosecution of unruly behaviours onboard of aircraft and to provide adequate training to all persons involved..

ECA believes that both the above mentioned operational/preventive measures and the regulatory provisions of MP14 are necessary to adequately tackle the problem.

Only the combination of both will be able to contribute to decrease the number of unruly passenger incidents on board aircraft, leading to a safer, more efficient and a more pleasant air travel experience for all.

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