



## THE ALARMING RISE IN INCIDENTS INVOLVING UNRULY PASSENGERS

Incidents of unruly passengers have long concerned the aviation industry. However, the notable rise in this kind of incident in recent years has prompted the critical need to review and bolster existing legislation. Such actions are essential not only for addressing the issues related to aviation safety and operations but also for safeguarding the reputation of airlines. In our September newsletter, we will delve into this pressing issue, examining the current legal framework, the challenges presented by this situation, and the available resources for managing such incidents.

Before starting, it is essential to clarify that a disruptive or unruly passenger is someone who wilfully ignores the safety regulations of the aircraft, causing significant disruption during a flight or even before boarding. Their actions jeopardize the safety of the flight, as well as the comfort of fellow passengers and the flight crew. These passengers display violent, abusive, and undisciplined behaviour toward ground staff, crew members, and other passengers<sup>1</sup>.

Examples of disruptive behaviour include (i) failure to adhere to aircraft safety rules, such as improperly using seatbelts or life jackets, smoking on board, attempting unauthorized access to the cabin, or tampering with emergency exits; (ii) physical or verbal assaults on a fellow passenger, crew members, ground staff or authorities; (iii) actions that put one's physical safety at risk; or (iv) engaging in obscene, indecent, and/or lewd behaviour.

Official data indicate a significant surge in unruly passenger behaviour. This alarming trend underscores the urgency of exploring and implementing additional measures to prevent unruly behaviour on board.

### REGULATORY FRAMEWORK RELATING TO DISRUPTIVE PASSENGERS

Effectively addressing the behaviour of disruptive passengers presents a multifaceted challenge that involves various levels of

regulation, both on a national and international scale. Currently, there is no uniform regulation that clearly defines what actions are considered disruptive and the associated consequences.

Considering this, it is useful to briefly review the regulatory changes in this field. It's important to highlight that, so far, the Tokyo Convention<sup>2</sup>, together with International Civil Aviation Organisation (ICAO) Circular 288 and IATA Recommended Practice No. 1724, have played a key role in establishing standardized approaches in this area.

In particular, the 1963 Tokyo Convention adopted by ICAO established the legal basis for dealing with disruptive passengers, specifying not only the available measures for the flight crew and the circumstances in which they should be taken but also the appropriate jurisdiction for legal action against such passengers. Initially, it was deemed that jurisdiction should belong to the authorities of the State where the aircraft was registered, leading to jurisdictional challenges when dealing with incidents on board aircraft registered in other states. In most cases, the passengers were released without further legal consequences<sup>3</sup>.

To address this issue and fill the jurisdictional gaps, the ICAO adopted the so-called Montreal Protocol on 4<sup>th</sup> April 2014<sup>4</sup>. This Protocol extended the jurisdictional provisions of the Tokyo Convention, allowing the State of arrival to exercise jurisdiction and take legal action, regardless of the aircraft's registration country or the State operating the flight. Since its entry into force on 1st January 2020, this Protocol has significantly enhanced the management of incidents involving unruly behaviour on board aircraft. In addition, several safety manuals and standardized procedures for dealing with disruptive passengers have been published alongside the Protocol, contributing to the modernization of response in such situations<sup>5</sup>.

Furthermore, through the recent adoption of Resolution A41-4<sup>6</sup>, the

<sup>1</sup> According to data published by IATA, there was one reported incident per 568 flights in 2022, compared to one per 835 flights in 2021, marking a 37% increase over the previous year's rate (Source: IATA). Similarly, at the national level, as per data recorded by AESA, the number of recorded cases has doubled in recent years, rising from 718 cases in 2017 to 1,361 cases in 2022 (Source: El Pais).

<sup>2</sup> Convention on Offences and Certain Other Acts Committed on Board Aircraft, concluded at Tokyo on 14th September 1963 (ratified by Spain in 1969).

<sup>3</sup> According to an IATA survey, jurisdictional issues have been identified as the primary obstacle to global prosecution in cases of such incidents. (Source: IATA).

<sup>4</sup> The Protocol to amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed in Tokyo on 14th September 1963 (ratified by Spain on 9th September 2015).

<sup>5</sup> Key initiatives to address disruptive passenger behaviour include, for example, Annex 17 on Security; Annex 9 Facilitation, aimed at raising awareness among travellers of such disruptive behaviour and informing them of possible legal and other sanctions; and the 2022 Handbook on Legal Aspects of Insubordinate or Disruptive Passenger Behaviour (Doc. 10117), among others.



ICAO has urged States to consider introducing civil and administrative penalties to address unruly behaviour on board aircraft. This includes the development of model legislation that clearly defines punishable conducts related to disruptive behaviour.

Similarly, in the international context, IATA has advocated a unified approach to dealing with unruly passenger behaviour, promoting the adoption of *Recommended Practices*<sup>7</sup>, encouraging the training of crew and ground staff, and effectively communicating the consequences of such behaviour to passengers<sup>8</sup>.

At the European level, there are various guidelines related to air transport safety that provide recommendations on how to deal with such situations. However, there is no legally binding regulation in this regard, something that appears advisable and essential, considering the seriousness of these incidents.

This is particularly significant as the Court of Justice of the European Union (CJEU) has affirmed the need for regulation, stating that the diversion of an aircraft due to a passenger's disruptive behaviour poses a threat to flight safety, given the unpredictability of such behaviour and the limited resources available to the captain and flight crew<sup>9</sup>.

In Spain, there are two key legislative instruments to address disruptive passenger incidents. First, the Aviation Safety Act sets out the parameters for airlines and airport authorities to take measures ranging from imposing fines to arresting passengers, with the assistance of the state security forces<sup>10</sup>. Second, the Protection of Public Safety Act provides sanctions for acts that may endanger the safety of individuals or property, which could apply to situations on commercial flights<sup>11</sup>. Some of these offences may even constitute criminal offences, such as disturbing public order, assaulting authorities, or endangering aircraft safety.

The Spanish Aviation Safety Agency (AESA), responsible for ensuring civil aviation safety, has the authority to impose fines of up to €5,000 for disruptive passengers. However, this may not be the most appropriate coercive mechanism to secure flights passing through our country.

#### WHAT RECOURSE DO AIRLINES HAVE IN SUCH SITUATIONS?

In addition to legal regulations and instruments developed by aviation authorities, airlines have internal resources to manage disruptive passenger behaviour. These resources include, for example, implementing internal policies and procedures that outline the necessary steps; promoting training for cabin crew to deal with such situations (i.e., communication techniques, conflict management, and/or psychological support in extreme circumstances, among others); or coordinating with local law enforcement agencies where they operate.

It is also important to note that in an emergency or when flight safety is at risk, the aircraft captain has the authority to change the flight plan in order to mitigate the threat posed by disruptive passengers.

However, as we pointed out at the beginning of this newsletter, current resources have proved insufficient, leading to a concerning increase in disruptive incidents that undoubtedly compromise flight safety.

For instance, incidents such as the passenger's aggression at Palma de Mallorca airport on 20<sup>th</sup> September this year, where objects were



thrown and airline staff were assaulted, or the assault by a British passenger on a female crew member on a commercial flight from Manchester to Ibiza on 25th August 2023 at Ibiza airport, underline the urgency of reviewing the legislation. Other examples include the harassment of passengers on a London-Sidney flight, which resulted in an emergency landing in Dubai in June this year; the release of cabin air and injuries to 12 passengers when a passenger opened the emergency door during landing manoeuvres in June this year; the diversion of a Los Angeles-New York flight to Denver in July 2022 due to a passenger assaulting a flight attendant; or altercations resulting from passengers refusing to wear face masks during the Covid-19 pandemic.

These incidents highlight a situation that requires immediate legislative attention and a re-evaluation of existing measures, one of which could be the creation of lists that include these disruptive passengers in order to protect against them. This is a measure that has been discussed for years. However, according to a report published by IATA, only a few countries have implemented such restrictive lists<sup>12</sup>.

The legal complexities involved in drawing up such lists have led IATA to advocate primarily for the widespread ratification of the Montreal Protocol by all countries. This approach aims to address the jurisdictional limitations mentioned earlier and enable states to implement effective enforcement measures.

From our perspective, while the creation of "restrictive passenger lists" may be challenging, it is worth considering that in other contexts, entities exercise a right of admission. Consequently, one might ask why airlines should be deprived of such an important

<sup>6</sup> Resolution A41-4 was adopted during the 41st ICAO Assembly in October 2022. For further details, please refer to the [document published by ICAO](#)

<sup>7</sup> For additional references, consult Recommended Practices No. 1724 (mentioned earlier) and No. 1798; or refer to the *Guide to the Prevention and Handling of Disruptive Passengers*, which was unanimously approved by IATA.

<sup>8</sup> In collaboration with EASA, various passenger awareness campaigns have been launched in this field, including well-known initiatives like #notonmyflight, #notoomeany, and #flsafelydrinkresponsibly.

<sup>9</sup> For more detailed information, please be referred to the [CJEU of 11 June 2020, case C-74/19](#).

<sup>10</sup> Act 21/2003 of 7<sup>th</sup> July 2003 on Aviation Security establishes the legal framework governing civil aviation's security aspects.

<sup>11</sup> Organic Act 4/2015, of 30<sup>th</sup> March, on the protection of citizen security.

<sup>12</sup> Source: IATA.



right, especially when it directly impacts operational safety and the risk faced by other passengers.

Currently, some airlines have decided to incorporate this type of mechanism in their general conditions of carriage, which are only applicable within their respective jurisdictions. However, as suggested by some operators, it might also be interesting to explore the possibility of airlines sharing these lists among themselves or even establishing lists at a national or supranational level<sup>13</sup>.

Consider, for example, the case of the passenger mentioned earlier, who opened the emergency door during landing, endangering the lives of everyone on board. Under current regulations, this passenger could repeat such behaviour multiple times, and airlines would lack an effective defence mechanism as essential as identifying them to banning them from flying again with the same airline or even another one. Should the rights of an individual passenger prevail over the safety of all others? In our view –and without overlooking the significant legal implications in terms of civil liberties that this would entail–, the answer must be no, especially considering the strong safeguards and obligations in place to protect passengers' personal data, which could also be applied to so-called "no-fly" bans for disruptive passengers.

In summary, the disruptive behaviour of passengers not only inconveniences crew and fellow travellers and increases costs for airlines but, most importantly, it can compromise flight safety. Therefore, in addition to the urgent need for comprehensive national and international enforcement measures to address such behaviour, it is essential to raise public awareness about the potential consequences of passenger misconduct and to adopt a zero-tolerance policy.

Azahara Garcia Durán  
Silvia Frade Sosa

<sup>13</sup> Source: The Washington Post [\(1\)](#) [\(2\)](#) and CNN travel [\(3\)](#).