



TACKLING UNRULY PASSENGERS: CHANGE ON THE HORIZON

Changes to the international legal framework on the handling of unruly passengers are likely to come into force later this year. Against the backdrop of current legislation, we outline the scope of the Montreal Protocol 2014 (MP14) and highlight some measures that carriers may wish to take to safeguard their businesses.

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The extent of unruly passenger behaviour

Hardly a week goes by without another news story relating to the sometimes bizarre and frequently dangerous actions of passengers on board flights. From passengers storming the cockpit¹ to a drunk passenger attempting to open the emergency exit door mid-flight², incidents involving unruly passengers are a frequent cause for concern.

Recent International Air Transportation Association (IATA) figures suggest that the rate of occurrence is as high as one incident for every 1,053 flights³. For context, there were more than 45 million flights in 2018 meaning that there were an estimated 40,000 to 50,000 incidents of unruly passenger behaviour which impacted the industry.

In light of the frequency of such behaviour, industry and legal bodies have conducted significant work at an international level to enhance the existing legislative framework. The aim is to enable carriers and law enforcement agencies to better handle badly behaving passengers.

Existing framework: Tokyo Convention 1963 (TC63)

The current applicable international convention is the *Convention on Offences and Certain Other Acts Committed On Board Aircraft (signed at Tokyo on September 1963)*, more commonly known as the *Tokyo Convention 1963* (TC63).

TC63 makes it unlawful for passengers to commit “acts which, whether or not they are offences [against the penal law of a State], may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board”, and also contains express provisions for the prosecution and offloading of unruly/disruptive passengers, subject to the discretion of the Pilot in Command (PIC).

Under TC63, if the PIC wishes the unruly passenger to be arrested, (s) he must land in a state that is a party to TC63 and formally deliver the passenger to local law enforcement.

Problems with TC63: The jurisdictional gap

Local law enforcement at the flight’s destination often struggles to assert jurisdiction over offences that have occurred in flight.

This is because, when an inbound aircraft is foreign-registered, TC63 does not automatically allow states to prosecute a disruptive passenger under their own law.

Therefore, for prosecution to be successful, the passenger must be proven to have committed a serious offence under the law of the state in which the aircraft is registered – not the state in which the aircraft landed.

This makes prosecution often fraught with difficulty and, in many cases, unlikely to proceed, unless the state of landing has enacted enabling legislation to prosecute unruly passengers.

Carriers will, therefore, frequently turn over unruly passengers to local law enforcement only to subsequently discover that the authorities release the passenger without charge.

Closing the gap: Montreal Protocol 2014

In order to address the jurisdictional gap, the International Civil Aviation Organisation (ICAO) has considered amendments to TC63. These were adopted in the form of the Montreal Protocol 2014 (MP14) at the International Air Law Conference held in Montreal in 2014.

1. <https://www.nytimes.com/2019/07/18/world/europe/jet2-passenger-stansted.html>

2. <https://www.ibtimes.com/airline-staff-were-disinterested-drunk-passenger-grabbed-emergency-exit-door-mid-air-2814198>

3. <https://www.iata.org/policy/consumer-pax-rights/Pages/unruly-passengers.aspx>

MP14 amends TC63 by extending jurisdiction over offences to the state of intended landing (destination) as well as the state of aircraft registration. It also provides jurisdiction for third-party countries in the event a flight is re-routed.

In addition, MP14 contains other significant amendments, which now provide greater clarity as to what, as a minimum, constitutes unruly behaviour.

The Protocol makes it clear that this includes the physical assault of, or threat to assault a crew member or another passenger, as well as the refusal to follow lawful instruction given by or on behalf of the PIC for safety purposes⁴.

MP14 also eliminates the need for an aircraft commander to have reasonable grounds to believe that an unruly passenger is committing “a serious offence according to the penal law of the state of registration of the aircraft”. Instead it states that if, in the PIC’s opinion, the incident constitutes a “serious offence” (i.e. the PIC no longer has to consider whether it is an offence under “the State of registration of the aircraft”) this will be enough to justify delivery of the passenger to law enforcement.

The final significant amendment is that MP14 reinforces the right of carriers to seek recovery of the costs from unruly passengers⁵.

MP14’s entry into force

In order for MP14 to come fully into force, 22 states are required to ratify the Protocol.

In August 2019, Paraguay became the 21st ratifying state and a number of other states are in the process of preparing to ratify.

Both IATA and ICAO have made recent calls for states to take the necessary steps to implement MP14, so it seems that entry into force is likely by the end of 2019 or, at the latest, early 2020.

What steps should carriers consider in relation to protecting themselves against the actions of unruly passengers?

- Familiarise themselves with the changes to TC63 in advance of the imminent full ratification and entry into force of MP14.
- Amend their Conditions of Carriage to specifically deal with unruly passengers, offloading of passengers and a reservation of rights relating to prosecution and recovery of damages.
- Ensure that company policy for dealing with unruly passengers is clear, robust and fully endorsed by senior management.
- Establish clear internal policies and Standard Operating Procedures for cabin and flight crew to follow in the event they are required to handle an incident involving an unruly passenger.
- Lobby government and aviation authorities in states that have not yet ratified MP14.

For further information on how MP14 may impact your business or any connected issues, please contact the authors of this briefing:



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4. See Protocol Article VIII

5. See Protocol Article XIII

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