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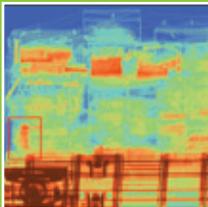
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PENALISING THE UNRULY PASSENGER:

The number of unruly passenger incidents making it into the news headlines is on the increase. Regardless as to whether or not such reporting is indicative of an actual increase in incidents, as opposed to 'reported' incidents, the issue is certainly one of considerable concern to the aviation community and, in particular, to flight crew whose lives are on the line. These incidents impact the safety and security of the aircraft, cause discomfort to fellow passengers and crew, and cause financial loss to airlines when flights have to be diverted as a result. **Diana Stancu** asks what legal measures are in place to deter and deal with perpetrators of unruly behaviour on board international flights, where the issue of jurisdiction can be a problem.

Passengers used to have so much respect for cabin crew and incidents of unruly behaviour were rare and due, primarily, to a fear of flying and the over consumption of alcohol or use of narcotic substances. Times have changed and the range of causal factors has increased.

According to IATA's STEADES (Safety and Trend Evaluation, Analysis and Data Exchange System), unruly passenger behaviour increased by 54% in the period 2007 to 2011. In total, there were 6,156 unruly passenger incidents recorded for 2011, up from 5,544 such incidents recorded for 2010. For the period 2007 to 2011, 22% of all incidents were serious enough to require the intervention of police or security services at the place of landing. The data collected was provided voluntarily and even though it gives a significant sample, it does not constitute an industry-wide view of unruly behaviour on flights worldwide. After all, most airlines around the world are not even IATA members and unruly behaviour does also take place on domestic flights which, in places such as Australia, China, Russia, Canada and the US, can be as long as many international flights.

An unruly passenger is defined as a passenger who fails to respect the rules of conduct on board an aircraft or refuses to follow instructions from flight and cabin crewmembers and therefore disturbs the good order and discipline on board an aircraft. Unruly or disruptive behaviour can include: verbal or physical confrontation with crewmembers or other passengers, intoxicated behaviour, the illegal consumption of narcotics, alcohol or cigarettes, refusal to comply with safety

WHEN TOKYO DOESN'T STAND UP IN COURT

instructions, making threats that could affect the safety of the crew, passengers or aircraft, sexual abuse and harassment and other types of behaviour that could jeopardise the safety or alter the good order and discipline on board the aircraft.

"...there were 6,156 unruly passenger incidents recorded for 2011..."

These incidents are sometimes referred to the local authorities upon landing. However, when doing so, what should be an easy process is rarely as straightforward as it seems. Many crew describe difficulties in dealing with authorities at foreign airports, not to mention the differences in the definition of offences and the subsequent penalties between jurisdictions, with some unlikely to prosecute at all or only impose a lenient penalty. Moreover, authorities at the place of landing may not even have jurisdiction, thus the prosecution of the unruly passenger is not pursued at all.

The Legal Framework

The Tokyo Convention of 1963, on Offences and Certain Other Acts Committed On Board Aircraft, provides the legal framework for dealing with unruly behaviours on board aircraft engaged in international flights. However, this legal regime does not provide an adequate

deterrent for such behaviour, mainly because jurisdiction is given to the State of registration of the aircraft and the jurisdiction for the State of landing does not exist. It is true that the identity of the unruly passenger can be easily established which, in theory, could facilitate the job of the law enforcement authorities, but this does not mean that the passenger can be prosecuted. Depending on the seriousness of the incident, the State where the aircraft lands does not have the jurisdiction to prosecute the offender if the act has been committed on board an aircraft registered in another State; hence, the perpetrator of the incident is left unpunished. The role of the State where the unruly passenger disembarks is not clearly specified in the Convention. In that regard, the Convention fails to directly address a practical reality - the necessity to appropriately deal with an unruly passenger at the point where they are handed over to the authorities on the ground.

In order to address these types of incidents, which are not covered by international conventions, some States have amended their own national legislation to permit national courts to exercise jurisdiction over incidents that occur on board foreign registered aircraft which land in their territory (most of the EU Member States, Australia, New Zealand, Qatar, just to name a few). Such legislation has the potential to be a significant deterrent by making examples of perpetrators through the issuance

of very strong penalties. Nevertheless, many States are reluctant to extend their domestic jurisdiction to incidents which occur outside their territory in the absence of an international agreement on the issue.

The Tokyo Convention also does not provide a definition as to what constitutes a criminal offence, leaving this issue to be determined by the domestic law of the State having jurisdiction. Therefore, unruly behaviour that constitutes an offence in the State of registration of the aircraft may not be regarded as such in the State of landing where the unruly passenger is disembarked. Thus, local authorities may not even pursue the unruly passenger as they are not certain how to fit the alleged unruly behaviour into the scope of their domestic criminal law. In practice, these authorities prefer to release the passenger to continue his/her onward journey.

The Tokyo Convention only applies when aircraft is 'inflight' which means "from the moment when power is applied for the purpose of take-off until the moment when the landing run ends". Consequently, an unruly passenger could commit an offence during embarkation which would not be considered an offence or other unlawful act under the Tokyo Convention.

The acts committed by unruly passengers are acts of unlawful interference and the goal

"...some States have amended their own national legislation to permit national courts to exercise jurisdiction over incidents that occur on board foreign registered aircraft..."

of the States and stakeholders concerned should be to prevent them from happening in the first place. In view of the consistent increase of reported unruly passenger incidents, it is clear that the Convention does not provide an adequate deterrent. So, a few States have signed bilateral agreements so that any unruly behaviour be penalised, or at least that the unruly passenger be extradited to the State of registration of the aircraft where the offence occurred. As far as the industry itself is concerned, airlines are teaching their cabin crew passenger restraint techniques, negotiation techniques and even self-defence and martial arts.

At a global level, the ICAO Circular 288 – Guidance Material on Legal Aspects of Unruly/Disruptive Passengers, containing recommendations and guidance material for States covering this subject and Model Legislation to be incorporated into their

national law, has not been widely implemented by ICAO Member States. In 2011, the ICAO Legal Committee convened the Study Group on Unruly Passengers to consider the revision of the Tokyo Convention in order to prepare and propose tangible and harmonised solutions to the numerous issues that have emerged in its application, particularly with regard to unruly passengers. The 3rd meeting of the Legal Committee Study Group in May 2013 simply concluded that the need to revise the Tokyo Convention is "to be further studied and determined". Thus, no resolution was concluded whatsoever.

In conclusion, until an international legal regime provides an adequate deterrent to such unruly behaviour on board aircraft engaged in international flights (and ideally on domestic flights too), and if the national legislation of the State of landing does not permit national courts to exercise jurisdiction over such incidents, the unruly passenger might still go unpunished for his/her behaviour. A possible interim solution is to rely on airlines to penalise unruly passengers by refusing their carriage and include them on a black list. But, we are talking about criminal acts and it should not be down to industry to issue penalties. ■

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