

AviAsian Conference 2021

Session 4

Aviation Security & Disruptive Passengers

The Montreal Protocol of 2014 dealing with disruptive passengers

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1. Tokyo Convention 1963

- The Convention on Offences and Certain Other Acts Committed on Board Aircraft signed at Tokyo on 14 September 1963 (the “Tokyo Convention 1963”)
- 187 Parties
- International airlines fly over high seas and multiple states
 - > Criminal jurisdiction issues have arisen
- *United States v. Diego Cordova (E.D.N.Y. 1950)*
- Which state should exercise the criminal jurisdiction over acts committed on board the aircraft?

1. Tokyo Convention 1963

- Chapter 1: Scope of the Convention (Articles 1-2) 
- Chapter 2: Jurisdiction (Articles 3-4) 
- Chapter 3: Powers of the Aircraft Commander (Articles 5-10) 
- Chapter 4: Unlawful Seizure of Aircraft (Article 11)
- Chapter 5: Powers and Duties of States (Articles 12-15)
- Chapter 6: Other Provisions (Articles 16-18)
- Chapter 7: Final Clauses (Articles 19-26)

1. Tokyo Convention 1963

- Major Shortcoming
- Jurisdictional gap
- Calls for Review
- Increasing number of incidents involving unruly passengers
- The need for enhancing the international legal framework

2. Unruly Passengers

- Types

- Abusive Language
- Intoxication
- Smoking
- Physical Assault
- Sexual Harassment
- Property Damage



2. Unruly Passengers

- As the number of flights increases, the number of unruly passenger incidents increases.

- Loophole

The State of Landing has no jurisdiction if an offence is committed on board a foreign aircraft , and neither the offender nor victim are their citizens of that State.

2. Unruly Passengers

ICAO's work for the Modernization of Tokyo Convention

- 2002 Circular 288 – model legislation (guidance material only)
- 2009.9. 34th ICAO Legal Committee
Proposal to form a Secretariat Study Group to study on unruly and disruptive behavior on board aircraft
- 2009.10. ICAO Council approved the formation of Study Group
- 2011.5. Study Group 1st meeting (Montreal)
- 2011.10. Study Group 2nd meeting (Paris)
- 2012.5. 1st Special Sub-Committee of Legal Committee
- 2012.12. 2nd Special Sub-Committee of Legal Committee
- 2013.5. 35th ICAO Legal Committee
- **2014.3.26 – 4.4 Diplomatic Conference**

2. Unruly Passengers



3. Montreal Protocol 2014 : Major Changes

- Jurisdiction

Article 3.1 *bis*

“1 *bis*. A State is also competent to exercise jurisdiction over offences and acts committed on board:

a) as the State of landing, when the aircraft on board which the offence or act is committed lands in its territory with the alleged offender still on board; and

b) as the State of the operator, when the offence or act is committed on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence, is in that State.”

3. Montreal Protocol 2014 : Major Changes

- List of Offences

Article 15 *bis*

“1. Each Contracting State is encouraged to take such measures as may be necessary to initiate appropriate criminal, administrative or any other forms of legal proceedings against any person who commits on board an aircraft an offence or act referred to in Article 1, paragraph 1, in particular:

a) physical assault or a threat to commit such assault against a crew member; or

b) refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the purpose of protecting the safety of the aircraft or of persons or property therein.”

3. Montreal Protocol 2014 : Major Changes

- Right of recourse

Article 18 *bis*

“Nothing in this Convention shall preclude any right to seek the recovery, under national law, of damages incurred, from a person disembarked or delivered pursuant to Article 8 or 9 respectively.”

4. Montreal Protocol 2014 in COVID-19 pandemic

- Fasten your seatbelt and ensure your face mask is on.
- If a passenger repeatedly doesn't follow the crew instruction it could be categorized as unruly behavior under the Article 15 of the Montreal Protocol 2014.



Deterrence, Deterrence, Deterrence....



5. Conclusion and Comments

- Any disturbance on the plane could create a safety risk for the entire flight.
- Incidents involving unruly passengers fall within the scope of the Tokyo Convention.
- The Tokyo Convention is a successful convention but has shortcomings, especially the jurisdictional gap.
- The Montreal Protocol 2014 extended jurisdiction to the State of the Operator and the State of Landing.
- Will the number of unruly passenger cases drop because of the Montreal Protocol 2014?
- The Montreal Protocol 2014 has become more relevant to air travel during the COVID-19 pandemic.

Thank you.

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