



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

**THE INTERNATIONAL LEGAL FRAMEWORK GOVERNING THE TREATMENT OF
UNRULY PASSENGERS: TOKYO CONVENTION FLAWS**

by

Boipelo Immaculate Seokotsa
13370970

Submitted in partial fulfilment of the requirements for the degree Magister Legum
in International Air, Space and Telecommunications Law

in the

Faculty of Law

at the

University of Pretoria

Supervisor:

Prof. (Dr). Stephan Hobe

Date of submission

October 2019

TABLE OF CONTENTS

1.	Proposed Title	3
2.	Abstract	3
3.	Research Questions	3
4.	Research Problem	4
5.	Research Objectives	6
6.	Motivation and Contribution of study	6
7.	The rationale for the modification of the Tokyo Convention	8
8.	Enlargement of the Scope of Jurisdiction	9
9.	Research Methodology	11
10	Chapter Outline	
	10.1 Chapter 2: Legal Framework for unruly passenger	11
	10.2 Chapter 3: Causes of unruly behaviour	12
	10.3 Chapter 4: Means to close jurisdictional gaps	12
	10.4 Chapter 5: Conclusion	12
11.	Chapter 2: Legal Framework for unruly passengers and its jurisdictional gaps	
	11.1 History of the Tokyo Convention	13
	11.2 Scope of the Convention	15
	11.3 Jurisdictional gaps of the Tokyo Convention	16
	11.4 Conclusion	16
12.	Chapter 3: Definition of unruly behaviour and causes	
	12.1 Introduction	30
	12.2 Definition of unruly behaviour	30
	12.3 Categories of unruly behaviour	30
	12.4 Impact of unruly behaviour	30
	12.5 Reasons for unruly behaviour	32

	2
12.6 Examples of unruly behaviour	32
12.7 Role of airline unions	34
12.8. Role of culture and society in unruly behaviour	35
12.9 Passenger and Pilots	35
12.10. Measures taken by airlines to combat or minimise unruly behaviour	36
12.11 Conclusion	37
13. Chapter 4: Means to close jurisdictional gaps in the legal framework for unruly passengers	
13.1 Introduction	38
13.2 Background to the protocol to amend the Tokyo Convention,1963	38
13.3 Amendments to the Tokyo Convention	41
• Scope	42
• Jurisdiction	42
• Powers of the aircraft commander	44
• Extradition	45
13.4 Other effective legal remedies	49
• Catalogue of punishable offences	50
• Powers of the crew	51
• Prosecution and punishment	52
• Implementation	52
13.5 Conclusion	
14. Chapter 5: Conclusion	52
15. Bibliography	54

1. PROPOSED TITLE

The International legal framework on the treatment and prosecution of unruly passengers: Tokyo Convention flaws.

2. ABSTRACT

The law has yet to catch up adequately with conventional aviation. This lag is nowhere more noticeable than in the field of criminal law and criminal jurisdiction as applied to civil aircraft¹. Crimes that are committed on board the aircraft will include crimes like assault, theft and unruly behaviour². A common dominator amongst these crimes is that the rules dealing with jurisdiction pose a significant source of controversy. Early expressions of the criminal conduct in international flights exposed lacunae in air law, which international lawyers are struggling to fill³. Because of this lacuna, as familiar problems present themselves in changing ways, therefore there is a need for a regime governing crimes in the air to be continuously reassessed and developed. In the last years, it became apparent that no rules exist for misbehaviour on board the aircraft in flight⁴, rules governing the exercise of jurisdiction over common crimes in airspace and onboard the aircraft are sophisticated and unsettled⁵

3. RESEARCH QUESTIONS

- 3.1. What is the governing legal framework for unruly passengers and its jurisdictional gaps?
- 3.3 What are the problems inherent in prosecuting international acts of air rage?
- 3.4 What are the efforts to close the jurisdictional gaps left by previous conventions?

¹ Bin Cheng. Crimes on Board the Aircraft", Current Legal Problems,(1959) 177.

²Oduan. Sovereignty and Jurisdiction in the Airspace and Outer Space: Legal Criteria for Spatial Delimitation 83. 2012.

³ See fn 2 86.

⁴ See Heere op.cit: 82.

⁵ See fn 2 93.

4. RESEARCH PROBLEM

The International Civil Aviation Organisation has made great efforts to control illegal acts against security and to decrease the possibility of terrorist offences that threaten aviation safety⁶. International Air Transport has revealed an increase in unruly disruptive incidents⁷. An examination has shown that there is no specific regulation relating to unruly behaviour; instead, there are international instruments about offences designed primarily to prevent hijacking, sabotage and terrorist attacks on aircraft⁸. These International Instruments include the Tokyo Convention ⁹(Convention on Offences and Certain Other Acts Committed on Board Aircraft of 1963) and the Montreal Protocol.

The Tokyo Convention makes it unlawful to commit “acts which, whether or not they are offences against the penal law of a State, which may or do jeopardise the safety of the aircraft or persons or property therein or which jeopardise good order and discipline on board.”¹⁰The Convention gives the State of aircraft registration jurisdiction over offences and other acts that occur while the aircraft is in flight. It also vests authority in the Pilot-in-Command (PIC) to disembark or deliver a person to law enforcement¹¹. Furthermore, article 10 of the Convention is of specific interest to the flight crew and cabin crewmembers because it grants them immunity from subsequent legal proceedings for actions taken against a perpetrator.¹²

“For actions taken by this Convention, neither the aircraft commander, any other member of the crew, any passenger, the owner or the operator of the aircraft nor the the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the *actions were* taken¹³. “However, the Tokyo Convention, it being the first of the aviation unlawful interference convention has flaws in that it does not criminalise any specific

⁶ Hao. On the punishment of Unruly/Disruptive Passengers and the Modernisation of the Tokyo Convention 109.

⁷ See fn 6 109.

⁸ Giesecke Unruly Passenger: The existing Legal System and proposed Improvements, 26 *Annals Air& Space Law*. 45 .2001.

⁹ Convention on Offences and Certain other Acts committed on Board Aircraft: Tokyo Convention 1963.

¹⁰ <https://www.iata.org> >policy >Documents

¹¹ See fn 10.

¹² See fn 10.

¹³ See fn 10.

conduct, but rather it establishes the rules of jurisdiction for offences and acts¹⁴. The Convention does not clearly define what constitutes an offence or act; rather, it leaves it to the discretion of each state¹⁵. The Tokyo Convention's inability to define what constitutes an offence has the potential to jeopardise the safety of an aircraft or persons or property. There is a lack of unification of rules on jurisdictional issues. The Tokyo Convention has double standards and narrow definition of the word "in-flight", as such definition has a significant role in aviation law. Such a narrow definition of "in-flight" is not in alignment with other conventions in terms of regulating offences and any other act on board the aircraft.¹⁶ The Tokyo Convention is unable to provide for the practical punishment of unruly acts due to jurisdictional gaps, in that the convention mentions that contracting states are competent to exercise jurisdiction over offences and acts committed on board their aircraft¹⁷ and gives acknowledgement to court based on territory, protection, nationality and universal jurisdiction.

According to article 3, paragraph 2, a state is only obliged to take measures as may be necessary to establish its jurisdiction over offences committed on board the aircraft, but not to exercise mandatory jurisdiction over unruly acts that do not constitute criminal offences.¹⁸ Another problem identified in the Tokyo Convention is the ineffectiveness to provide for provisions relating to the delivery and extradition of offenders and unruly ones. It would also appear that the Tokyo Convention excludes from the scope of its application offences against penal laws of political nature or those based on racial or religious discrimination¹⁹. The Tokyo Convention's objective was to assert its jurisdiction over aircraft of their registration and not for other contracting states.²⁰

Another problem with the Convention is that it is silent on the applicable provisions relating to the delivery and extradition of offenders and unruly passengers²¹. The Convention is not clear which state should exercise jurisdiction over criminal acts committed on board the aircraft in particular when such aircraft is over the high seas²². It turned out that States were reluctant to extend their mandatory, jurisdiction without having some foundation in an

¹⁴ Jennison. ICAO adopts flawed Protocol to amend the Tokyo Convention of 1963.

¹⁵ See fn 6 111.

¹⁶ See fn 6 119.

¹⁷ See fn 6 113.

¹⁸ See fn 6 114.

¹⁹ Hailbronner 59.

²⁰ See fn 6 114.

²¹ See fn 6 114.

²² Milde. International Air Law and ICAO, 3rd edition 228.

international instrument hence there was pressure to revisit and relook the Tokyo Convention and to make it more effective in suppressing unruly conduct.²³ After the post 9-11, airlines through IATA expressed concerns that such behaviour on board the aircraft endangers the safety and security of international aviation²⁴. The troubling growth of IATA's statistics forced ICAO to address the issue with speed. During the 34th and the 35th session of the Legal Committee in 2009, a working paper was being presented where it was being resolved that not only will the unification of law address the extension of criminal jurisdiction but also will establish the legal status and the powers of the in-flight Security Officer(IFSO)²⁵. The States agreed that there was no need for a new convention, but a protocol for the amendment of the Convention was preferred. The Diplomatic conference convened by ICAO adopted the Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board the Aircraft²⁶

5. RESEARCH OBJECTIVES

The basis for the study is to determine the legal framework governing the treatment of unruly passengers. There is a need for control of unruly passengers in the civil aviation world. The legal framework concerning unruly passenger is a central feature of international legislation concerning air law. States have developed international legislation relating to crimes committed on board the aircraft with a conventional approach, no coordination whatsoever, and as a result of this uncoordinated approach, there has been a dangerous gap in the law²⁷. The research will look into the gap and inherent problems to that.

6. MOTIVATION AND CONTRIBUTION OF THE STUDY

An "unruly passenger is a passenger who fails to respects the rules of conduct at an airport or onboard the 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 onboard the aircraft"²⁸.

The research paper will discuss the legal system applicable in dealing with unruly passengers, as there are several loopholes in that regard as the states provide

²³ See fn 21.270.

²⁴ See fn 21 270.

²⁵ See fn 21 270.

²⁶ See fn 21 271.

²⁷ See fn 21 147.

²⁸ [https://www.skybrary.aero/index.php/Unruly Passengers](https://www.skybrary.aero/index.php/Unruly_Passengers).

insufficient law enforcement. This dilemma emanates as a result of inadequate jurisdiction since powers of jurisdiction and prosecution can be allocated to several states²⁹. The research paper will start first by defining what an unruly passenger is. The definition of an unruly passenger is in consideration in the definition of ICAO Annex 17 to the Convention on International Civil Aviation 1994 (Chicago Convention). The International Aviation Transport Association (IATA) in 2015 produced a list /examples of unruly passenger or unruly behaviour. The data collected by IATA indicated growth in the number of incidents; in 2011, 6, 156 incidents of unruly passengers are in consideration and from 2007 to 2011 some 22% of the incidents were severe to require the intervention of police or security service at the place of landing.³⁰

The term unruly passenger has become part of the agenda of the International Civil Aviation Organisation, the International Air Transport and Airlines. The problem of unruly passengers has become a problem onboard the aircraft. The incidents will include general disobedience, cabin crews trying to enforce key regulations affecting onboard safety³¹ and offensive behaviours such as threats, sexual harassment and violent aggression towards crewmembers and even pilots. The number and gravity of incidents involving unruly or disruptive passengers onboard have been growing alarmingly³². Internationally, disruptive and unruly passengers is a growing concern, and when it does occur, the impact can be significant³³. The results of the behaviour can become a nuisance to other passengers³⁴.

The research will analyse and scrutinise the existing legal system for its effectiveness. This analysis will be in conjunction with ICAO, on how best to solve the problem, and what are the recent developments, thus in trying to circumvent the problem. The cases outlined below are some of the many examples of unruly behaviour: In *O Carrol v. American Airlines Inc*, a passenger became loud, drunk and boisterous during a flight and the passenger warned the pilot that he would help him fly the plane³⁵. In *Harris v. American Airlines Inc*, a female passenger of African- American descent was subject to rude, obnoxious and racist remarks by an intoxicated white passenger in the first-class cabin

²⁹ Giesecke."A Legal perspective on handling unruly behaviour taking into account the rights of passengers"

³⁰ See fn 21 270 .

³¹ Balfour & Highley, "Disruptive Passengers": The Civil Aviation Amendment Act 1996 Strikes Back (1997) XXII Air & Space.Law.194.

³² www.faa.gov/data-statistics/passengers-cargo/unruly-passengers >(accessed on 20 May 2019).

³³ See fn 32.

³⁴ <https://assets.publishing.service.gov.uk>.

³⁵ *O Carrol .v. American Airline Inc*, 863 F 2d 11,12(5th Circular. 1989) Angry People in the Sky: Air Rage and the Tokyo Convention.

and despite the white passenger's obvious state of intoxication, flight attendants continued to serve him alcohol³⁶. In *Tsevas v. Delta Airlines Inc*, a passenger sued the airline after she was physically assaulted by an intoxicated male passenger who was seated next to her.³⁷

6.1 RATIONALE FOR THE MODIFICATION OF THE TOKYO CONVENTION

Although there is no unified and precise definition of unruly acts, the rising trend of such actions has been agreed upon by the aviation community. Based on the analysis of the history and shortcomings of the provisions on punishing unruly passengers as set out by the Tokyo Convention in 1963, it was necessary to modernise the Convention to curb unruly acts to ensure good order and safety of civil aviation³⁸. The International Conference on Air Law in April 2014 adopted the Protocol to amend the Convention on Offences and Certain Other Acts Committed on Board the Aircraft (Montreal Protocol), not in effect.³⁹ The ICAO Council decided to include the issue of "Acts or Offences of concern to the International Aviation Community and not covered by existing Air Law⁴⁰ Instrument" into the General Work Program of the Legal Committee.

The ICAO circular 288 was developed to set out a model law on certain offences committed on board the civil aircraft for transporting it into the national legislation by ICAO member states.⁴¹ The 33rd session of the ICAO held on September 25, unanimously adopted a Resolution A33-4 "Adoption of national legislation on certain offences committed on board civil aircraft" which calls upon member states to enact as soon as possible national law and regulations to deal effectively with the problem of an unruly passenger⁴². ICAO attempted to encourage member states to develop such national laws incorporating provisions put forward by ICAO Circular 288 to fill jurisdictional gaps in respect of unruly passengers in civil aircraft.⁴³ However, ICAO Circular 288 serves as a guidance material without binding power; many Member states of ICAO showed little interest in developing and implementing domestic legislation to regulate unruly

³⁶ Harris .v. American Airline Inc 55 F. 3d 1472, 1473(9th Circular 1995).

³⁷ *Tsevas v. Delta Airlines Inc* No 97C320,1997 WL 767278, at *1.

³⁸ See fn 6 109.

³⁹ See fn 6 109.

⁴⁰ <https://www.icao.int/Meetings/LC-SC-MOT/Working%20Papers/WP-1%20Rapporteur's%20Report.En.pdf>

⁴¹ See fn 6 117.

⁴² See fn 6 117.

⁴³ See fn 6 117.

passengers⁴⁴. The following reasons suggest why the Tokyo Convention was modified, and the Montreal Protocol Adopted:

- Enlargement of the scope of Jurisdiction. During the Tokyo Diplomatic Conference, the jurisdiction of the State of landing was in the discussion⁴⁵. The Montreal Protocol introduced the jurisdiction based on the State of landing and the State of registration⁴⁶. According to the Protocol, almost all the State Party related to the offences and unruly acts committed on board the civil aircraft could exercise jurisdiction based on elements of State of registration, State of landing, State of operation, the State where a lessee's principle of business or permanent residence exist, the State of occurrence, the State where the victim is from, the state where the unruly passenger is from and the state which should fulfil its obligations.⁴⁷
- In-Flight Security Officers (IFSO Art 9): authority comparable to the aircraft commander. Another modification that is addressed by the Protocol is the comparison of the authority of the aircraft commander and the IFSO over acts committed on board the aircraft. The Tokyo Convention gives the aircraft commander certain rights while the aircraft is in flight. Article 6 as a whole provides the commander with the right to take reasonable measures, including restraint if upon reasonable grounds he believes that an offence or jeopardising act in the sense of Art 1(1) has been committed or is about to be committed⁴⁸. Article 9 of the Tokyo Convention authorises the commander to deliver any passenger to the competent authorities of any Contracting State if he believes that the passenger has committed a serious offence under the penal laws of the State of registration⁴⁹. However this provision suffered from severe problems as it created uncertainty, and that uncertainty is being caused by the fact that the commander must base his actions on uncertain terms, i.e. lack of definition of an offence in the Tokyo Convention and citing examples thereof.⁵⁰ As vague and as unsure as these Articles are, The Protocol's Article 7 replaces the old Article 6, which reiterates the powers of the commander. Article 6 now includes paragraph 2, 3 and 4, which

⁴⁴ See fn 6 117.

⁴⁵ See fn 6 119.

⁴⁶ See fn 6 119.

⁴⁷ See fn 6 120.

⁴⁸ See fn 8 55.

⁴⁹ See fn 8 56.

⁵⁰ See fn 8 56.

extend to the aircraft commander the powers to “request or authorise, but not to require, the assistance of in-flight security officers or passengers to restrain any person who is entitled to restrain. However, if under Article 6(3) there is a bilateral or multilateral agreement that authorises the deployment of the IFSO, he or she may exercise the powers similar to that of the commander based on his reasonable belief that such action is immediately necessary to protect the safety of the aircraft or persons from an act of unlawful interference.⁵¹

- Protection from Legal Proceedings. The Tokyo Convention’s Article 10 immunity clause does not include the immunity of the IFSO. However, the new Article 10 of the Protocol contains protection of the commander, crew, or IFSO concerning the treatment of restraint individual. The modern Art 10 of the Protocol provides that “for actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, any in-flight officer, the owner of the operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.
- Carrier right of recourse. The Tokyo Convention had limitations on the right of recourse for airlines. Unscheduled landings and diversions led to airlines incurring high costs. The Convention does not give carriers a legal mechanism to recover incurred costs⁵². The Protocol recognises the express right of airlines to seek compensation from unruly passengers at their discretion under national law.⁵³
- Definition of offences. The Protocol clarifies behaviours, which should be as a minimum be established as offences and subject to prosecution: i.e. Physical assault or threat to commit such assault against a crewmember or other passenger, refusal to follow the instruction given by or on behalf of the aircraft Commander for safety purpose⁵⁴

⁵¹ ICAO Protocol to amend the Tokyo Convention 1963.

⁵² Dr A Timmis, Professor S Ison and Dr L Budd International comparison of disruptive passenger prevalence.

⁵³ <https://www.iata.org/policy>

⁵⁴ See fn 54.

- Definition of in-flight. Another important modification of the Protocol to the Tokyo Convention was the definition of “inflight”. According to the Tokyo Convention Art 1.3, “the aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.” However according to the Protocol “An aircraft is considered to be in flight from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of forced landing, the flight shall be deemed to continue until the competent authorities take over responsibility for the aircraft and for the person and property on board.

7. RESEARCH METHODOLOGY

The research methodology, which is employed, will consist of a literature review as well as desktop. The research will be analytical, as the International Conventions will be given due regard. The paper will produce a dissertation of five chapters, which will try to answer the problem statement. The paper will also rely on secondary sources in the form of views expressed on journal articles by authoritative writers in aviation law. Textbooks will also be relied on as well as recent reports on the subject matter. The use of the internet will be another source in the research build-up.

8. CHAPTER OUTLINE

Chapter 1: Introduction

This chapter has the foundation of the study, and it provides a base for the research.

Chapter 2: Legal framework for unruly passengers and its jurisdictional gaps

The chapter will discuss the Tokyo Convention of 1963, it being the first of the aviation unlawful interference conventions⁵⁵. This legal framework governs the offences on board the aircraft as well as any other activity that may jeopardise the safety of either the aircraft or persons or property. The jurisdictional gaps found in this convention are that convention only applies to an aircraft registered in a contracting state if the aircraft is in flight, on the

⁵⁵ See fn 14.

surface of the high seas or outside the territory of any state⁵⁶. Article 3, paragraph 2 of the Convention provides that, a state is only obliged to take measures as may be necessary to establish its jurisdiction over offences committed on board the aircraft, but not to exercise mandatory jurisdiction over unruly acts that do not constitute an offence⁵⁷. The gaps identified in the Convention will be dealt with and discussed further.

The chapter will further discuss the Montreal Convention, which tried to arrive at a method of dealing with alleged perpetrators of acts of unlawful interference with aircraft.⁵⁸

Chapter 3: Causes of unruly behaviour

To put the Tokyo Convention into perspective, it is essential to discuss and outline the possible causes of unruly behaviour. Practical examples will also be provided for in this chapter.

Chapter 4: Means to close the jurisdictional gaps in the legal framework

The chapter will briefly discuss the laws in other states, which protect their passengers in their airlines. The ICAO Legal Commission on its 39th session, which urged the member, states to ratify the Montreal Protocol of 2014.

Chapter 5: Conclusion.

⁵⁶ Article 1(2) of the Tokyo Convention, 1963.

⁵⁷ See fn 6 109.

⁵⁸ See fn 8 57.

CHAPTER 2: LEGAL FRAMEWORK FOR UNRULY PASSENGERS AND ITS JURISDICTIONAL GAPS

MONTREAL, 07 APRIL 2014 – The International Civil Aviation Organisation (ICAO) announced today that a Diplomatic Conference, featuring the participation of 100 ICAO Member States and nine international organisations and institutions, has officially adopted a Protocol to amend the 1963 Tokyo Convention on offences committed on board the aircraft. The culmination of a four -year effort to modernise the Tokyo Convention, the new Protocol will address what had become recognised I recent years as a troubling escalation in the frequency of incidents involving disruptive and unruly passengers on scheduled commercial flights.

“This new Protocol to the Tokyo Convention significantly improves the ability of ICAO Member States to expand jurisdiction over related offences to the State of the Operator and the State of Landing”

“It will also serve to enhance global aviation security provisions by expressly extending legal recognition and protection to in-flight security officers (IFSO)”⁵⁹ ICAO President, Dr *Olumuyiwa Benard Aliu*.

History of the Tokyo Convention of 1963.

The Tokyo Convention began as a project to clarify certain jurisdictional issues arising from criminal acts occurring onboard the aeroplanes. However through years of committees and draft conventions, the primary objectives ultimately became flight safety, and with which clarifications of the rights and powers the commander of the aircraft, and to a lesser extent, the crew. This change took place because of the evolving nature of air travel and the increasing number of incidents arising onboard the aircraft⁶⁰. The most pressing issue related to these problems was under whose jurisdiction an offender would fall if he committed a crime during an international flight⁶¹ A complete lack of jurisdiction is shown in the case of the *United States .v. Cordova*⁶². In *Cordova* shortly after takeoff from

⁵⁹International Civil Aviation Organisation (ICAO). Press Release dated 07 April 2014.https://www.icao.int/Documents/President/Aliu_20140602.

⁶⁰ Campbell. “Get off my plane” The need for extreme deference to Captains and crews on international flights under the Tokyo Convention of 1963.

⁶¹ Mendelson. In *Flight crime: The International and Domestic Picture Under the Tokyo Convention*. Virginia Law Review. April 1967 Volume 3. 509.

⁶² *United States .v .Diego Cordova* 89 (E.D.N.Y. 1950).

San Juan, Puerto Rico in August of 1948, Cordova, having consumed too much rum before taking off, assaulted the pilot, a stewardess and another passenger while in flight, operated by an American Corporate airline, was over the Atlantic Ocean. Upon arrival, they were arrested; however, the offences were committed over the high seas, therefore Cordova was not convicted despite the judge finding him guilty of committing of those offences, because there was no federal jurisdiction to punish those acts.

The International Civil Aviation Organisation created under the auspice of ICAO was to meet the needs of the peoples of the world for safe air transport. At the sixth session of the Legal Committee of ICAO at Montreal in 1950, that's where the committee was implored to consider the legal status of an aircraft. The legal status of the aircraft and the legal status of the aircraft commander were to be considered. At the seventh session of the ICAO Legal Committee, the subcommittee delineated certain jurisdictional needs to be addressed and admonished the organisation that the rights and obligations of the aircraft commander to be recognised uniformly by all contracting states.⁶³

Abeyratne⁶⁴ mentions that global efforts at ensuring aviation security go back at the time when a series of unlawful acts against civil aviation were committed in the 1960s and 1970s. The first draft convention of the Legal Status of the aircraft was produced in Montreal in 1958. Despite significant resistance from some who thought a convention was unnecessary, the subcommittee ultimately moved forward with the draft convention citing the need to clarify jurisdictional issue and the need to define the powers of the aircraft commander to take necessary measures in respect of acts onboard endangering the safety of flight and for the preservation of order over passengers on board the aircraft.⁶⁵

In the development and codification of international air law at the Paris conference in 1919 or Chicago Conference in 1944, no mention was made of "security" to protect international aviation against criminal acts by an individual. In the first place, there was no recorded incident at that time; moreover, it would have been believed that such acts are to be dealt with under domestic laws and not by international regulations⁶⁶. The experience of later

⁶³ See fn 60 374.

⁶⁴ Abeyratne. *Safety in the Air: Air Carriers' Rights and Responsibilities at National and International Law*, 2003 293.

⁶⁵ See fn 64 293.

⁶⁶ See fn 22 268.

years proved the vulnerability of civil aviation to different types of unlawful acts in particular.

- Unlawful seizure of an aircraft in flight (hijacking)
- Sabotage of an aircraft in flight or of the air navigation facilities and services
- An attack against the aircraft on the ground or against persons at an airport.
- An unruly passenger on board.

As a result of these acts, there were efforts to ensure aviation security. The International community saw the need to establish international norms to address these type of incidents. The international community addressed these security issues by way of conventions. The *Tokyo Convention of 1963*, it being the first Convention to deal with offences and certain other acts committed on board aircraft. The Convention gave the aircraft commander authority to restrain persons and made provision for the aircraft crew, passengers and cargo to be allowed to proceed as soon as the hijacking end⁶⁷. The second convention was the *Hague Convention of 1970*, it came into being as an attempt to suppress unlawful seizures of aircraft and it agrees on what should happen after capture to a person or accomplice who onboard an aircraft in flight, unlawfully by force or threat of force, or by any other form of intimidation, seizes or exercises control of the aircraft or even attempts to do so.⁶⁸ The last one is the *Convention for the Suppression of Unlawful Acts against the Civil Aviation*; it deals with acts performed from outside the aircraft. It contains similar provisions for the punishment or extradition as the Hague Convention but deals with terrorist actions other than hijackings such as bombings and sabotage.⁶⁹

Scope of the Tokyo Convention

Article 1 of the Convention gives the basic formula for the Convention. The requisite is that an aircraft registered in a contracting state be in flight or on the surface of the high seas or any area outside the territory of any state

The second prerequisite is that an offence or act must be done by a person onboard the aircraft. One would say that offences must be against penal laws and the acts must be

⁶⁷Alexander. *Aerial Piracy and Aviation Security* 1999. 34.

⁶⁸ See fn 67 34.

⁶⁹ See fn 67 35.

one, which may or does jeopardise the safety of the aircraft or of persons or property on board the aircraft. The offence must be one against penal law, and the act must be the one that jeopardises the safety of the aircraft or persons or property on board the aircraft.

The meaning of Article 1 is that the aircraft must be considered to be in flight according to the Tokyo Convention definition. In simple terms, the aircraft is considered to be in flight the moment when power is applied for takeoff, until the moment when landing run ends. Again it is noteworthy to mention that the Tokyo Convention is not only applicable when the aeroplane is in flight, but it also applies in the situation of a forced landing on the high seas. The Convention is again applicable to domestic flights to those countries that believe in the territoriality principle.

Article 2 grants exemption to certain offences against penal laws from the application of the Convention. If the offence committed on board is of a political nature or based upon racial discrimination, the Convention will not apply. But one must bear in mind that the State has not given up its right to prosecute a crime of such nature for it has not given up any jurisdictional rights. If the offence is of a political nature or based on religious or racial discrimination and some form of action is necessary for the safety of the aircraft or of persons or property on board, then Article 2 will authorise such actions. According to authors like Boyle and Pulsifer,⁷⁰ this section has problems of interpretation especially with regard to interpreting “political nature.”

Jurisdictional Gaps of the Tokyo Convention, 1963.

The Convention on Offences and Certain other Acts committed on Board the Aircraft of 1963 was the first international treaty to address issues of crime onboard the aircraft. The Conventions objective was to develop a system of rules to unify jurisdiction, maintain law and order onboard an aircraft, and to protect passengers. The Tokyo Convention focuses on ensuring that when an offence has been committed on board the aircraft, at least one state, the state of registration of the aircraft, will be able to take jurisdiction over suspected air rage offender⁷¹. The Convention recognises certain powers and immunities of the aircraft commander, aircrew and passengers, who on international flights may restrain any

⁷⁰ Boyle & Pulsifer. The Tokyo Convention on offences and Certain Other Acts Committed on Board Aircraft 1963.

⁷¹ Schwab. Air Rage: Screaming for International Uniformity 2001. 410.

persons if he or she has reasonable cause to believe a passenger is committing or is about to commit an offence likely to interfere with the safety of persons or property on board, or who is jeopardising good order and discipline⁷².

The Tokyo Convention came into effect in 1969, but still, there were a growing number of incidents. All these incidents were serious enough to require the intervention of police or security service at a place of landing. ICAO addressed the issue with speed. The 34th Session of the Legal Committee in 2009 agreed on the establishment of the Secretariat Group on Unruly Passengers; that group met twice in 2011 and was followed by a Special Subcommittee of the Legal Committee that met at Montreal from 22 to 25 May 2012⁷³ and from 3 to 7 December 2012. Only one State (UAE), ITA and IUAL presented a working paper. However, the States attention was attracted by the possibility that a new unification of law could not only address the extension of criminal jurisdiction but also establish legal status and the powers of the in-flight Security Officer (IFSO).⁷⁴

At the behest of the ICAO Council and its Legal Committee, a secretariat study group drafted a "Model legislation on Certain Offences Committed on Board Civil Aircraft" Under this Model Legislation States would extend their jurisdiction and actually exercise it in cases when the offence took place on board the Civil aircraft registered in that State, or on an aircraft leased without crew to operator having place of business in that State, on or over any aircraft over territory of that State, on any aircraft in flight outside its territory if the next landing is in that State and case the aircraft commander has delivered the suspected offender to that state with assurance that similar request will not be made to another State⁷⁵. This model legislation would considerably extend the scope of application of the Tokyo Convention and would make the assumption of jurisdiction mandatory⁷⁶. That would ensure that no offender escapes jurisdiction. The ICAO Assembly urged member states to adopt the legislation and to enhance enforcement by unanimous resolution in 2001⁷⁷. The study group also prepared Circular 288, Guidance Material on the Legal

⁷² Special Sub Committee of the Legal Committee for the Modernisation of the Tokyo Convention Including the issue of unruly passenger. Report Montreal, 22 to 25 May 2012. 2-1. A4-4 to A4-5.

⁷³ See fn 66, 270.

⁷⁴ See fn 72 271.

⁷⁵ Milde. ICAO Legal Committee and Progress in the Development of International Air Law: The 35th Session of the ICAO Legal Committee Drafts a Protocol on Unruly Passenger 666.

⁷⁶ See fn 75 666.

⁷⁷ Adoption of National Legislation on Certain Offences Committed on Board Civil Aircraft (Unruly/ Disruptive Passengers), ICAO Assembly Res A33-4(2001), compiled in Assembly Resolutions in Force at V-3, ICAO Doc.10022(Oct 4,2013).

Aspects of Unruly/ Disruptive Passengers issued in 2002⁷⁸. The Circular defines unruly/disruptive passengers as passengers who fail to respect the rules of conduct on board aircraft or to follow the instructions of crewmembers to disturb the good order and discipline on board the aircraft.⁷⁹ The Circular suggested member states implement three categories of offences:

- Assault and other Acts of Interference against a Crew Member on Board a Civil Aircraft(threat and intimidation of crew)⁸⁰
- Assault and Other Acts Endangering Safety or Jeopardising good order and discipline on Board a Civil Aircraft⁸¹
- Other Offences Committed on Board a Civil Aircraft(smoking in the lavatory, tampering with a smoke detector, operating portable electronic devices)⁸²

At the 33rd Session of the ICAO Assembly, they unanimously adopted Resolution A 33-4 which called upon the Member States to enact as soon as possible national law and regulation to deal effectively with the problem of unruly or disruptive passengers. The Circular did not have a binding status, and it was left to the discretion of the Member States whether to incorporate it or not. The ICAO Secretariat confirmed that only 18 States had incorporated the Circular, in whole or in part into their domestic legislation.⁸³ The legislators were reluctant to accept such extension of jurisdiction without some basis in an international convention. It thus became apparent that an effective solution had to be found in an updating of the 1963 Tokyo Convention.⁸⁴

The Tokyo Convention 1963 applied to offences in respect of penal laws and in respect of acts which whether or not, they are offences may or do jeopardise the safety of the aircraft or of persons or property therein or which jeopardise good order and discipline on board⁸⁵. The Convention entered into force in 1969 and was widely ratified international instrument

⁷⁸ International Civil Aviation Organisation, Circular 288 LE-1, Guidance Material on the Legal Aspects of Unruly/ Disruptive Passengers (2002).

⁷⁹ See fn 75 666.

⁸⁰ See fn 72.

⁸¹ See fn 80.

⁸² See fn 80.

⁸³ See fn 80.

⁸⁴ See fn 75 666.

⁸⁵ Art 1 of the Tokyo Convention 1963.

ever developed under the auspices of ICAO.⁸⁶ At the 34th Session of the ICAO Legal Committee in 2009, the IATA tabled a report proposing to form a Secretariat Study Group due to noticeable. However, the Convention contains significant limitations that call for the modifications and adjustment. The following shortcomings have been identified in the Tokyo Convention, 1963 and discussed:

- *Jurisdiction.* Jurisdiction is an important issue in cases of criminal offences committed on board an aircraft while in flight because the nature of international air travel allows for passage through the airspace of sovereign states as the aircraft flies over different countries⁸⁷. The *Cordova*⁸⁸ case bears reference where it was mentioned that Cordova could not be prosecuted under a statute dealing with crimes committed on a “vessel of the high seas”. Articles three and four of the Tokyo Convention⁸⁹ mentions that jurisdiction over the acts and offences committed on board the aircraft lies with the state of registration of the aircraft⁹⁰. It was and still is universally accepted that every State has complete and exclusive sovereignty over the airspace above its territory.⁹¹ According to Milde,⁹² the Tokyo Convention determines the jurisdiction but does not impose any obligations actually to assume the jurisdiction in a given case and that can leave many incidents unattended. The Tokyo Convention does not provide for mandatory jurisdiction⁹³, in fact, the State of the registry is only obliged to “take measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such state⁹⁴. According to Kane⁹⁵ this only speaks about “offences”, given this language it is even questionable whether there is any legal basis for the State of the registry to exercise jurisdiction over acts that are not criminal offences but which may nonetheless jeopardise the safety of the aircraft or the good order and discipline on board. Although the Tokyo Convention does not define specific

⁸⁶ Report of the Rapporteur of the Special Sub Committee on the Preparation of an Instrument to Modernise the Convention on Offences and Certain Other Acts Committed on Board the Aircraft of 1963(International Civil Aviation Org, Working Paper No LC/SC-MOT-WP/1,2012).

⁸⁷Verschuur .An Introduction to Law 151(1983)(discussing the Tokyo, Hague and Montreal Convention ‘where the introduction of new rules and sanctions had become so very urgent in the past few decades’)

⁸⁸ United States v Diego Cordova 89 (E.D.N.Y.1950).

⁸⁹ Convention on Offences and Certain Other Acts Committed on Board Aircraft, 14 September 1963

⁹⁰ See fn 71 412.

⁹¹ Kane. Time to Put Teeth into the Tokyo? 1994 187-188.

⁹² See fn 75 665.

⁹³ Douglas Joyner, Aerial Hijacking as an International Crime 134. 1974.

⁹⁴ Tokyo Convention 1963, Article 3, Paragraph 2.

⁹⁵ See fn 91 189.

offences, the jurisdiction provisions apply generally to offences, which would violate laws of the registrations of the country.⁹⁶

However, in some cases, states other than the state of registration have jurisdiction over offences⁹⁷. Article 4 of the Convention allows a state that is not the state of registration to exercise criminal jurisdiction if:

- the offence has an effect on the territory of the state
- the offence is committed by or against a national or permanent resident of the state
- the offence is against the security of the state
- the offence breaches flight rules or regulations of the state
- the exercise of jurisdiction is necessary to ensure multilateral international agreements obligations.

Over the years, commentators have disagreed on which law had to be applied concerning the aircraft during international flights. On the one hand, there was a view that the territorial principle of international law needs to be applied, which means that only offences committed on board aircraft that were at the time within the territory of the State could be prosecuted.⁹⁸ The other view was criminal law, in general, could have an effect⁹⁹. It became clear that there was a problem in prosecuting offences which occurred over the high seas.

The lack of a mandatory jurisdiction created a problem for the States in that do not feel the need to impose jurisdiction, in that they are flexible. Due to this problem, most of the offences remain unpunished and offenders walk away freely.

⁹⁶ Fitzgerald. Towards Legal Suppression of Acts Against Civil Aviation in Air Hijacking: An International Perspective, 585 International Conciliation 7,19. 1971.

⁹⁷ See fn 87 155.

⁹⁸ See fn 66 9.

⁹⁹ See fn 98 9.

- Lack of definition of Offence: Article 3 of the Tokyo Convention¹⁰⁰ mentions that the instrument applies to penal law offences and to all acts that may or do jeopardise the safety of the aircraft or persons or property therein or which jeopardises good order and discipline on board. The problem lies however, in that; the Tokyo Convention does not define the term “offence”. According to Balfour & Higley¹⁰¹ the reluctance of the Tokyo Convention to clearly define what an offence is, leads to the disunified law onboard aircraft, some States might decide to extend their criminal law with regard to crimes governing unruly behaviour and others might not, thus creating uncertainty over what acts are within the scope of the Convention. As a result, certain aspects of unruly behaviour could constitute an offence on board an aircraft for another State A but not on board an aircraft for State B.

Article 9 of the Tokyo Convention¹⁰² authorises the commander to deliver any passenger to the competent authorities of any Contracting State if he believes that this passenger has committed an offence under the penal of the State of registration. Fitzgerald¹⁰³ criticises that the provision suffers from some serious problem. Because of too many proposed definition, the Legal Committee had to abandon its attempt to define the expression “serious”. Already the missing definition of the term “offence” had created uncertainty, but this uncertainty is aggravated by the fact that the commander must under the present wording base his action on two undefined terms. The wording of this provision requires the commander to determine subjectivity whether these conditions are fulfilled. Swerdlow¹⁰⁴ believes that such failure to define offences may lead to divergent interpretations and fails to provide for a sufficient framework for prosecution of offenders.¹⁰⁵

A crucial point arises from this unclear terminology, at what point is the safety of the aircraft or of persons jeopardised by an unruly passenger¹⁰⁶. Many State Parties do not have any provisions and definitions on such “acts” in their laws. Therefore, it is

¹⁰⁰ Convention on Offences and Certain Other Acts Committed on Board Aircraft, 14 September 1963.

¹⁰¹ Disruptive Passengers: The Civil Aviation (Amendment) Act 1996 Strikes Back (1997).

¹⁰² Convention on Offences and Certain Other Acts Committed on Board Aircraft, 14 September 1963.

¹⁰³ Fitzgerald. The Development of International Rules Concerning Offences and Certain Other Acts Committed onboard Aircraft 1963 1 Can. Y.B. International Law 245 .

¹⁰⁴ Swerdlow .Modern Approaches to the Powers of the Aircraft Commander under Article 6 of the Tokyo Convention 134.

¹⁰⁵ See fn 104 135.

¹⁰⁶ Giesecke .Existing Legal System and the Proposed Improvements 50.

impossible to determine what kinds of “acts” are illegal on board the aircraft, let alone the corresponding punishment. Even for State Parties that include such “acts” in their laws, they may also have problems in deciding whether to punish in particular, unruly foreign behaviour.¹⁰⁷ One case required a German Appellate court to determine if the act of smoking on non-smoking flights breached article 315 of the German Criminal Code¹⁰⁸. The Prosecutor alleged that the noise of the smoke detector triggered by smoking caused the crewmembers to feel panic and interfered with the performance of their duties. The court ruled that real fire rather than the triggering of a smoke detector could jeopardise the safety of a flight.

In the *United States. v. Flores*,¹⁰⁹ the Court held that not every assault interferes with the flight attendant’s performance of duties. However, in contrast, the Court had another view in the case of the *United States .v. James Tabacco*. It held following the Federal Aviation Act that no evidence was needed for the accusation of an assault that endangers the safety of an aircraft. Any assault or threatening act proved to have disturbed a flight attendant’s fulfilment of duties would be deemed unlawful.¹¹⁰

The lack of definition of offences created difficulties in that different courts may give different decisions or punishment on the same act as the convention does not define “good order” and “discipline”. This created uncertainty and confusion. Michaelides¹¹¹ argues that the lack of definition defies the whole purpose of harmonisation in international law.

- *Narrow or Double Standard Definition of “in Flight”*. The Tokyo Convention sets out that for this Convention, an aircraft is considered to be in flight from the moment when power is applied for take-off until the moment when the landing run ends.¹¹² This article means that the Convention only applies when the aircraft is in flight.

¹⁰⁷ See fn 6 112.

¹⁰⁸ According to Section 315 of the German Criminal Code, whoever interferes with the safety of traffic by rail, suspension rail, ship or air by the following acts and thereby endangers the life or limb of another person or property of significant value belonging to another shall be liable to imprisonment from six months to ten years: (1) destroying, damaging or removing facilities or means of transport, (2) setting up obstacles, (3) giving false signals, or (4) undertaking a similar act of intervention of equal dangerousness.

¹⁰⁹ *United States .v. Flores*, 1968 F.2d1366 (1st Cirular.1992).

¹¹⁰ *U.S. v. James Tabacca*, 924 F. 2d 906,907(9th Cirular.1991).

¹¹¹ Michaelides. *Unruly Passenger Behaviour and the Tokyo Convention* 45.

¹¹² Article 1, paragraph 3 of the Tokyo Convention 1963.

Article 2(a) paragraph 1 of the Beijing Convention¹¹³ provides that an aircraft is considered to be in flight any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. The Convention on Compensation for Damage Caused by Aircraft to Third Parties¹¹⁴ and the Convention on Compensation for Damage to Third Parties resulting from Acts of Unlawful Interference Involving Aircraft¹¹⁵ employ the same definition of “in-flight” as found in the Beijing Convention.

According to ICAO, the Tokyo Convention definition of “in-flight” is limiting regarding the handling of offences committed outside the scope of the definition as contained in the Convention. ICAO holds the view that the aircraft commander is authorised to exercise his discretion, i.e. if the offence is committed once the aircraft doors are closed, but before power is applied for the purpose of takeoff.¹¹⁶ IATA also agreed with the views as expressed by the ICAO¹¹⁷

- *Ineffective Punishment of Unruly/ Disruptive Acts due to Jurisdictional Gap.* Article 3(1) of the Tokyo Convention grants jurisdiction for offences committed on aircraft to the State of registration. Art 3(2) contains the respective obligations for all Contracting States to establish such jurisdiction under their particular domestic laws. Abeyratne¹¹⁸ mentions that Article 3(1) together with the geographical scope of the Convention under Article 1(2) accords international recognition for extraterritorial jurisdiction. Matte¹¹⁹ agrees with the submission made by Abeyratne and mentions that Article 3(3) makes clear that the Convention does not exclude national criminal jurisdiction. Therefore, a system of concurrent jurisdiction exists between all States, the criminal law that has been exercised in accordance with its national laws.

¹¹³ Beijing Convention of 2010.

¹¹⁴ Convention on Compensation for Damage Caused by Aircraft to Third Parties 1952

¹¹⁵ Convention on Compensation for Damage to Third Parties resulting from Acts of Unlawful Interference Involving Aircraft 2009.

¹¹⁶ Special Sub Committee of the Legal Committee for the Modernisation of the Tokyo Convention Including the issue of unruly passenger. Report Montreal, 22 to 25 May 2012. A4 -11 to A4 -12.

¹¹⁷ See fn 116.

¹¹⁸ Abeyratne. Unruly Passengers-Legal regulatory and jurisdictional issues 1999 XXIV Air & Space Law 46 50.

¹¹⁹ Matte. Treaties on Air Aeronautical Law 335.1981.

Fitzgerald¹²⁰ holds the view that a system of concurrent jurisdictions has some fundamental difficulties. It establishes broad grounds of jurisdiction to allow prosecution of the unruly passenger but has a negative side effect that the passenger runs the risk of double jeopardy, namely of being prosecuted for the same offence in another State. Fitzgerald¹²¹ further argues that the Convention does not define the term “penal law” the application of this principle can become difficult since the unruly passenger could be punished under different kinds of laws or by a different type of tribunals.

According to Mendelson¹²², Article 3 suffers from definitions and terminology. Although the State of registration is obliged to extend its jurisdiction over offences and other acts committed on board aircraft, the missing definition of offence leaves it to the discretion of States to define which crimes shall be defined as offences leading to the disunification in law. It can be concluded that it is up to the State to decide whether to exercise jurisdiction over an act if the act does not constitute an offence according to its national laws¹²³. Moreover, the Tokyo Convention produces the awkward result in respect of jurisdiction, on the one hand, State of landing usually cannot exercise its jurisdiction over offences or unruly acts committed on board aircraft due to lack of a direct link between it and the offence. On the other hand, the State of landing may lack interest in exercising jurisdiction over offences when committed on board in another State, on an aircraft registered in another State, or involving persons from another State.¹²⁴

- *Insufficient Provisions relating to the Delivery and Extradition of Offenders and Unruly/ Disruptive Passengers.* Article 8 and 9 of the Tokyo Convention¹²⁵ provide regulations on the delivery of offenders and other unruly passengers. Article 8 ,para 1 , the aircraft commander may, in so far as it is necessary for the purpose of protecting the safety of the aircraft, or of persons or property therein, and for maintaining good order and discipline on board, disembark in the territory of any State in which the aircraft lands, any persons who he has reasonable grounds to

¹²⁰ Fitzgerald. The Development of International Rules Concerning Offences and Certain Other Acts Committed on Board Aircraft 1963 230.

¹²¹ See fn 120 239-240.

¹²² See fn 61 516.

¹²³ See fn 107 114.

¹²⁴ See fn 123 114.

¹²⁵ Convention on Offences and Certain Other Acts Committed on Board Aircraft, 14 September 1963.

believe has committed, or is about to commit on board the aircraft an act which jeopardises the safety of the aircraft or persons or property therein, or which jeopardises good order and discipline on board.¹²⁶

Article 9, paragraph 1 mentions that the aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which in his opinion, is a serious offence according to the penal laws of the State of registration of the aircraft.

According to Fogg,¹²⁷ the aircraft commander is only authorised to deliver a passenger that he or she believes has committed a serious crime to the authorities of the State of landing. He /she can only require a passenger who has committed a minor crime or other unruly disruptive act to leave the aircraft, which means that the Convention cannot make sure that unruly passenger receives the punishment he/she deserves. The Convention does not oblige the Contracting State of Landing, after disembarkation of the offending passenger, to punish such a passenger who committed an offence while onboard the aircraft. Should the State of Landing refuse to prosecute, the passenger must be set free and be allowed to continue to his destination.

Milde¹²⁸ opined that State Parties of the Tokyo Convention have no obligation to extradite an alleged offender. Swerdlow¹²⁹ is concerned about the fact that if prosecution does not follow, repeat offenders may contribute to increased violence on board aircraft, or that a commander may be less likely to act, i.e. To disembark a disruptive passenger, because of concerns that a State will not prosecute an individual who poses a threat to the safety of the aircraft.

¹²⁶ Article 8, paragraph 1 of the Tokyo Convention 1963.

¹²⁷ Fogg. Air Rage: Is it a Global Problem? What Proactive Measures Can be Taken to Reduce Air Rage, and whether the Tokyo Convention Should be Amended to Ensure Prosecution of Air Rage Offenders? *ILSA Journal International & Comparative Law* Volume 7 2000 512.

¹²⁸ See fn 66 232.

¹²⁹ See fn 104 134 -135.

Fitzgerald¹³⁰ mentions that the problem is Article 16(2), which explicitly does not create an obligation to grant extradition. Abeyratne¹³¹ strengthens this argument by stating that very offence must be dealt with under the network of existing extradition treaties. The issue assumes even greater importance under the global scope of aviation. In today's aviation, the majority of aircraft are leased. Concerning extradition, the State of the leasing company will have little interest in pursuing a matter in which none of its national has been involved and will try to avoid facing the trouble and expense of extradition and subsequent trial¹³²

o Limited powers of aircraft commander to deliver disruptive or unruly passenger.

Article 9 of the authorises the commander to deliver any passenger to the competent authorities of any Contracting State if he believes that this passenger has committed a serious offence under penal law of the State of registration.

According to Fitzgerald,¹³³ this provision suffers from some serious problems. Already the missing definition of the term "offence" had created uncertainty, but this uncertainty is aggravated by the fact that the commander must under the present wording base his actions on two undefined terms. The wording of this provision requires him to determine subjectively whether these conditions are fulfilled¹³⁴. Matte¹³⁵ argues that it is impossible to determine in what capacity, according to what knowledge and to what extent can the commander assess the seriousness of the crime without the Tokyo Convention at least citing examples.

Article 6(1) gives the commander the right to take reasonable measures including restraint if upon reasonable grounds he believes that an offence or jeopardising act in the sense of Article (1) has been committed or is about to be committed. With the reading of Article 6 and Article 9, it is clear that the decisions of the aircraft commander are somehow restricted, in that the commander may only allow disembarkation until a serious offence has been committed.

¹³⁰ See fn 120 201.

¹³¹ See fn 118. 55.

¹³² See fn 131 50.

¹³³ See fn 120 245

¹³⁴ Matte. *Treaties on Air Aeronautical Law* 343.1981.

¹³⁵ See fn 134 343.

Kane¹³⁶ says the situation becomes even more complicated in the case of an aircraft leased without crew. Since the penal laws of the State of registration are to be applied, the commander can easily and excusably be very ignorant of the laws of the State in which the aircraft he is flying is registered. In this case, the aircraft commander may be required to determine whether certain actions of this aircraft does constitute a crime. Milde¹³⁷ agrees with Kane and raises the issue of jurisdiction over aircraft operated based on a lease or other financial arrangements and the aircraft remains registered in the country of the lessor or creditor. He mentions that the State of registration may feel too remote from the act to exercise jurisdiction.

- Lack of recourse by airlines against disruptive/ unruly passengers. IATA made an argument that the Tokyo Convention should make provisions that the carrier has a right of recourse against a disruptive passenger.¹³⁸ The reason why IATA advocated for this right of recourse is that often at times when there are incidents of unruly behaviour, the disembarkation of the disruptive passenger is unplanned and it requires the aircraft commander to deviate from the original flight plan to another suitable airport. This causes inconvenience for the crew and passengers and becomes costly.
- Insufficient Encouragement for International Cooperation¹³⁹. During the SSG's first meeting, IATA raised that the Tokyo Convention does not sufficiently encourage cooperation amongst state parties¹⁴⁰. It is silent on this issue. Fostering international collaboration is warranted to prevent unruly behaviour from happening onboard the aircraft¹⁴¹. It was also suggested that cooperation should be strengthened to harmonise enforcement procedures amongst member states¹⁴² What IATA was saying was that, States are encouraged to adopt the Tokyo Convention into their domestic laws. International cooperation between the States is essential to prevent unruly incidents. A future common goal for curbing unruly behaviour is the only way to ensure safety in aviation.

¹³⁶ See fn 91 194.

¹³⁷ See fn 66 260.

¹³⁸ IATA Position Paper- Reform of the Tokyo Convention 1963. November 2013 1.

¹³⁹ See fn 72.

¹⁴⁰ ICAO,SSG/UNP-WP/3.

¹⁴¹ ICAO,SSG/UNP/2-WP/4.

¹⁴² ICAO,SSG/UNP/ 1- Report at 3.

- Leased Aircraft¹⁴³. The State where the aircraft is registered may exercise jurisdiction. However, this State may not necessarily be that of the aircraft operator, for an example where an aircraft has been leased. Boyle and Pulsifer¹⁴⁴ opined that in terms of the powers granted to the aircraft commander, the principle of flag jurisdiction implicitly presupposes that the aircraft commander has minimum knowledge of the criminal laws of that state concerning offences committed on board the aircraft. Where the aircraft is operated under a dry lease arrangement, it is unlikely that the aircraft would be familiar with the laws of the State of the registry. The ICAO Legal Committee considered that an aircraft may be registered in one State, but operated under a charter by an aircraft operator of another State. During the Tokyo Diplomatic Conference, a special working group was tasked to address this issue. The group recommended that when an aircraft is leased without crew, the State to which the aircraft is leased (operator) may also exercise jurisdiction. This remains unresolved, as the Tokyo Convention is silent on the issue.

- Delivery. The fact that the aircraft commander is only authorised to deliver a person to the authorities when he or she has reasonable grounds to believe that person has committed a serious crime under the national laws of the State of the registry has been identified as a weakness in the Tokyo Convention¹⁴⁵. The aircraft commander cannot turn over a person who has committed a minor offence, but that may have endangered the safety of the aircraft. The Tokyo Convention does not shed light on what constitutes a “serious offence. The aircraft commander must carry out that assessment when deciding whether to deliver a person to the authorities on the ground under the national law of the State of the registry.¹⁴⁶

Conclusion. The Tokyo Convention of 1963 was under a lot of criticism. There were increased incidents of unruly behaviour, and as a result, of that, there was an urgent need to modify the convention. The international community saw the need to introduce an instrument that will remedy the Tokyo Convention of its flaws and jurisdictional gaps.

¹⁴³ See fn 139.

¹⁴⁴ See fn 70 324.

¹⁴⁵ See fn 127 512.

¹⁴⁶ See fn 139.

CHAPTER 3: DEFINITION OF UNRULY PASSENGERS; CAUSES OF UNRULY BEHAVIOUR

Introduction. In the past few years, terms of unruly or disruptive passengers were in the agendas of ICAO, IATA, Airlines and national authorities. Unruly behaviour onboard the aircraft became a problem for airlines and aviation in general. Incident range from general disobedience to cabin crew trying to enforce key regulations affecting onboard safety to offensive behaviour, threatening, sexual harassment and the most violent physical aggression towards other passengers¹⁴⁷

According to a survey by the International Air Transport Association, the incidents of unruly behaviour onboard the aircraft are growing fast

Definition. *Unruly passenger* means a person who is not easy to manage or to control. Another meaning can say that a passenger who does not comply with the rules applicable to his travel by plane. Such rules may comprise of legal regulations but can also include crew orders.

Disruptive passenger means a person who disturbs the public peace, undermines safety or causing difficulties on board the aircraft.

Categories of unruly behaviour. The International Air Transport Association (IATA) has made the following compilation for unruly passengers¹⁴⁸

- Refusal to comply with safety instructions, for example, ignoring cabin crew request to fasten a seatbelt, not to smoke, turn off a portable electronic device or disrupting the safety announcements
- Illegal consumption of narcotics
- Verbal or physical confrontation with crew members and other passengers
- Uncooperative passengers, for example, those interfering with the crew's duties, refusing to follow instructions to board or leave the aircraft

¹⁴⁷ Giesecke . Unruly Passenger and Passenger Rights: A legal perspective on handling unruly behaviour taking into account the rights of the passenger 7.

¹⁴⁸ IATA Guidance on Unruly Passengers and Management. December 2012 11.

- Making threats, whether direct it against a person, or intended to cause confusion and chaos, such as statements referring to a bomb threat, threatening behaviour that could affect the safety of the crew, passenger and aircraft
- Sexual abuse
- Other types of riotous behaviour will include screaming, causing a nuisance, kicking and banging heads on setbacks or tray tables.

Impact of Unruly Behaviour. In recent years incidents of unruly behaviour on board the aircraft have received more public attention. The following examples of unruly behaviour will show the impact of the unruly passenger onboard the aircraft:

Incident 2: In December 2000, a Kenyan stormed into the cockpit of a British Airways Boeing 747 passenger jet and started struggling with the pilot. During the struggle, the autopilot became disengaged, forcing the plane into a nosedive, which ended in a crash.¹⁴⁹

Incident 1: A British Airways flight from Brazil had to make an emergency landing in Teneriffe after a passenger went beserk and tried to open a door over the Atlantic.¹⁵⁰

In recent years, incidents like those mentioned above have received more and more public attention. The sudden awareness of this problem has mainly resulted from the dramatic increase in incidents involving unruly passengers. The *Cordova* case is the first case to illustrate the problem of unruly behaviour. Giesecke¹⁵¹ opines that examples of unruly behaviour describe the impact and the importance of unruly passengers in aviation. Because of its nature, aviation is sensitive to any disruptions. It is the crew who mainly guarantees flight safety. Interfering with the crew's duties by unruly behaviour can, therefore, cause serious disturbance in the operation of the aircraft. Thus such interference with onboard procedures may threaten the aircraft flight safety and threaten and the lives of the persons on board.

The aeroplane is a closed environment with no place to escape; therefore, everyone on the plane is being placed in danger. Pilots can become disrupted and make serious flying

¹⁴⁹ Kenyan held in Air drama "may fly soon" Gulf News 8 January 2000.

¹⁵⁰ "Prevention is better than cure" Airline Business (February 1999) 36.

¹⁵¹ See fn 147 7.

errors if interrupted by unruly passengers. These errors can threaten the safety of both the aircraft and the passengers.

Reasons for unruly behaviour. The first objective is to find out what causes people to become unruly or disruptive on board the aircraft. A study done by the London Guildhall University tried to examine the problems causing unruly behaviour and the reactions to that. IATA also compiled a list of possible causes of disruptive behaviour onboard the aircraft¹⁵²:

- *Alcohol:* A recent study from the German association Cockpit outlines the percentage of intoxicated behaviour from a total of 1252 incidents, of which 389 included excessive alcohol consumption. But usually, alcohol is not the root problem which causes the person to become unruly. Alcohol is the facilitating factor in exacerbating underlying psychological characteristics as it loosens control over certain personal traits.¹⁵³
- Frustrations linked with the passenger's journey, for example, long haul flights, inability to smoke or use portable devices, dissatisfaction with customer service and poor delivery at the airport on board the aircraft.
- Mental breakdown
- Personality or cultural differences amongst passengers, or between crew members and passengers
- Lack of medication or alcohol withdrawal symptoms
- Environmental factors that are present during the act of flying, such as large crowds at airports, having to sit and travel in a confined space, fear of flying or height, media reports of a possible terrorist event.

¹⁵² See fn 148.

¹⁵³ See fn 151 7.

Authors agree that the effects of cabin environment on passengers stem from two factors such as bad cabin air and cramped seating.

The way cabin air is used influences the amount of oxygen in the blood. A lack of oxygen and a high level of carbon dioxide in the cabin air can have some serious impact on a passenger's behaviour. Fogg mentions¹⁵⁴ that unruly behaviour is displayed by all sectors of the population: male, female, young, old, first-class business and economy. She also states that other causes contributing to unruly behaviour include stuffy cabin air, blood sugar levels that cause stress, selfish behaviour etc.

Harkey¹⁵⁵ mentions that cramped seats are another factor that influences passenger behaviour from a psychological basis. The seat that reclined to into passenger space is one cause for unruly behaviour. It is precisely the feeling of intrusion into personal space, which raises the sense of aggression¹⁵⁶. There is no room for own space, which always leads to a sense of being threatened and intensified emotional reactions.¹⁵⁷

According to Milde¹⁵⁸, the moment the passenger leaves home for the airport, he or she is exposed to some level of additional and unusual stress. A normal daily routine is upset, and there is heightened concern to have preparatory work, luggage and documents in order, to reach an airport on time, cope with the traffic congestion on the road. At the airport, the passenger is often faced with long lines at the check-in counters, aggravating procedures at immigration and customs control, intrusive security checks, one of which adds to the more than usual level of daily stress. Further aggravating factors could be caused by flight delays, waiting in overcrowded departures lounges Milde also¹⁵⁹ mentions that gone are the years when an air passenger was special and could expect individual personalised attention, respect and courtesy that is currently not available even for premium class passengers. The passengers are now an anonymous part of travelling mass, and the social interaction within that mass is not immune from the typical social conflicts frequent in society in general. Air travel creates an environment to cause behavioural social conflicts¹⁶⁰

¹⁵⁴ See fn 127 520.

¹⁵⁵ Harkey. "Causes of and Remedies for Passenger Misconduct".

¹⁵⁶ See fn 153 14.

¹⁵⁷ See fn 156. 14.

¹⁵⁸ Milde. "Unruly Passenger and the Law" Mc Gill Faculty of Law. Institute of Air and Space Law. Public International Air Law, Volume 2, 259 -260. 2002.

¹⁵⁹ See fn 158.

¹⁶⁰ See fn 158 259.

Further Examples of Unruly/ Disruptive Behaviour. There are different categories of passenger misconduct. Some events do not interfere with flight safety. However, some actions do interfere with flight safety and cause crewmember to be injured. The following will further serve as examples of disruptive behaviour or air rage:

Shortly after an All Nippon Airways jet left Tokyo, a twenty-eight-year-old Tokyo man forced his way into the cockpit by attacking a flight attendant with an eight-inch knife. He told the co-pilot to exit, stabbed the pilot and then took control of the plane. The plane came as close as 1,000 feet to the ground. The co-pilot and two employees entered the cockpit and overpowered the man. The plane was landed safely, but tragically, the pilot bled to death.¹⁶¹

Another example would be, on a flight to Florida from England, a British woman headbutted a flight attendant after she was asked to stop smoking in the bathroom. The woman was detained in a cubicle, but she broke loose and had to be controlled by passengers and the flight crew. The pilot had to abort landing the aeroplane and went into a holding pattern until the woman calmed down. The flight attendant was treated later for a suspected broken nose.¹⁶²

On a United Airlines flight from Buenos Aires, Argentina to New York, a passenger was fined \$50,000 (clean up fees) by the airline after he assaulted a flight attendant and defecated on a first-class food cart¹⁶³

Role of Airline Unions. Airline Unions play a very crucial role in campaigning against unruly behaviour or air rage as some call it. The International Transport Workers Federation (ITF) which represents a thousand of aviation workers around the globe began a worldwide movement in they decrease the episodes of aggression on aircraft and hope to compel governments into signing an international convention that would end the current loopholes allowing air rage offenders to avoid criminal charges¹⁶⁴. The Convention calls on all countries to enact laws that prosecute all offenders on all flights that land in their

¹⁶¹ See fn 154 514.

¹⁶² See fn 161 514.

¹⁶³ See fn 161 514.

¹⁶⁴ See fn 161 514.

territory. Cities like Chicago, Montreal, Paris, London, Mexico, Oslo, Stockholm demonstrated and passed out literature. Unions are playing a pivotal role in targeting air rage offenders, hoping to keep the skies safe for the crew and passengers.¹⁶⁵

The Role of Culture and Society in unruly/ disruptive behaviour. Experts in various fields have researched on the problem at hand. According to the experts, unruly behaviour is displayed by all sectors of the population: male, female, young, old, first-class, business and economy. Experts also theorise that there is a growing feeling of superiority amongst travellers. They also point to factors such as less time, overcrowding, advancing technology and other demands on the public in the future. Another expert said unruly behaviour could be anything from increased impatience over waiting at airport lines to more selfishness in society.

According to the experts specifically Dr Vincent Mark, passengers are not the only cause of unruly or disruptive behaviour. Airlines must also accept a portion of the blame for the problem. Curtailment of fresh air in aeroplanes can be the other cause of deficient oxygen in the brain of the passengers, and this often makes the passengers act in a belligerent manner.

Pilots and Passengers Concerns. According to the Airline Pilots Association (ALPA), passenger interference is the most persistent safety problem facing the airline industry. ALPA is concerned about the extreme forms of violence on board the airlines, those that can cause injuries to passengers.¹⁶⁶

Mr Thomas J. Payne, a frequent business traveller and corporate executive who travels both internationally and domestically shared his personal experience and viewpoints regarding the topic of unruly behaviour or air rage. He experienced air rage first hand both in the plane, on the ground and in the air. In one incident, he described two passengers who fought on a flight triggered when one passenger merely pressed the recline button on his chair. The person sitting behind him slapped the individual who had reclined the chair. Mr Payne commended the professional crew who responded immediately and prevented the situation from becoming out of control. The crew asked one of the parties to exchange seats with another passenger. Mr Payne believes that air rage is a combination of several factors, including societal changes, job stress. If a flight is late or cancelled due to

¹⁶⁵ See fn 161 515.

¹⁶⁶ See fn 161 523.

circumstances within the airline's control, people get outraged and irritated; however, airlines exacerbate the problem when they do not communicate candidly with their customers¹⁶⁷.

Briefly, what this means is that Pilots and aircrew need to exercise patience when communicating with frustrated passengers.

Measures taken by airlines to combat or minimise unruly/disruptive behaviour. In response to the growing number of unruly behaviour, airlines are taking the necessary steps to prevent this behaviour. These include additional training and more proactive measures in dealing with the offenders. The following will demonstrate what measures are being taken by the airlines to mitigate the risk of unruly behaviour:

American Airline issues written warning notices to disruptive passengers ordering them to stop their disorderly behaviour.¹⁶⁸

Swiss Air installed plastic restraints on its aircraft to control unruly passengers¹⁶⁹

British Airways do not lock their cockpit doors during flight. Top British Airways officials have concluded that locking the doors would cause more problems than not. They stated that flight attendants and pilots need to have constant communication at all times.¹⁷⁰

Sometimes airline crews have taken too drastic measures, which have caused disastrous consequences. For example, in December of 1998, an unruly passenger onboard a Malov flight between Bangkok and Budapest was tied to his seat with the airline headset cords. A doctor in a flight injected him with a tranquilliser and the passenger died. When the crew noticed that the passenger had died, the plane made an unscheduled stop at Instabul. The Turkish police detained five witnesses along with the doctor. An autopsy showed that the passenger died due to mixture in his blood of the tranquilliser and some other drug or alcohol¹⁷¹.

Another incident, which occurred on board, was when fellow passengers tried to assist in restraining an unruly passenger. This happened onboard a Southwest Airline plane to Salt Lake City. A nineteen-year-old man tried to break into the cockpit and began hitting fellow passengers. Eight passengers on board restrained him. It was reported that the man died of a heart attack. However, an autopsy classified his death as homicide confirming that the

¹⁶⁷ See fn 154 524.

¹⁶⁸ See fn 167 526.

¹⁶⁹ See fn 168 526.

¹⁷⁰ See fn 169 526.

¹⁷¹ See fn 167 528.

man died as a result of intentional actions by another person. The man died after he was removed from the plane, and the report noted that he had bruises, scratches and experienced force blunt injuries.¹⁷²

Conclusion. People are using flying as a common mode of transport. Airlines must make the public aware of the penalties involved in disruptive or unruly behaviour. The crew must also be trained more effectively. Prosecution of offenders needs to be effective and to serve the purpose.

¹⁷² See fn 167 528 .

CHAPTER 4: MEANS TO CLOSE JURISDICTIONAL GAPS IN THE LEGAL FRAMEWORK: ADOPTED MONTREAL PROTOCOL TO ADDRESS SHORTCOMING OF THE TOKYO CONVENTION.

INTRODUCTION

This chapter will look at the remedial actions taken at the Diplomatic Conference in 2014, which considered amending the Tokyo Convention of 1963. The Chapter will look at how the Protocol and the Resolution A33-4 relating to Circular 288 tried to address the legal shortcomings of the Tokyo Convention 1963.

BACKGROUND OF THE PROTOCOL TO AMEND THE CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD THE AIRCRAFT¹⁷³.

While The Convention implemented beneficial principles, the unruly behaviour onboard the aircraft did not cease after its creation and became an increasing threat. Not only did the hijackings and terrorist attacks by aircraft increase, but there were also smaller acts of unruly behaviour. Events of unruly behaviour ranged from an intoxicated Iceland passenger who had to be duct-taped to his seat to an emotional support pig and its owner to being forcefully asked to disembark a US Airways flight. The Tokyo Convention did not address many critical issues.¹⁷⁴

At the 33rd Session of the ICAO Assembly, held in Montreal from 25 September to 5 October 2000, unanimously adopted Resolution A33-4 which calls upon the Member States to enact as soon as possible national laws and regulations to deal effectively with the problem of unruly/ disruptive passenger.

The Circular introduces a model clause on the jurisdiction, where the State of next landing of an aircraft may assert jurisdiction, irrespective of the State of registry or the nationality of the offender¹⁷⁵. The Circular also seeks to tackle the issue of leased aircraft by granting jurisdiction to the State of the principal place of business or the permanent residence of the operator¹⁷⁶ ; however, the States did not adopt the circular in their domestic laws. The

¹⁷³ Montreal Protocol.

¹⁷⁴ <https://www.icao.int/legal> visited on 09 September 2019.

¹⁷⁵ See fn 72.

¹⁷⁶ ICAO, A 33-4 Adoption of National Legislation on Certain Offences Committed on Board Civil Aircraft (Unruly/ Disruptive Passengers).

Circular only served as a guidance material that the Member States may or may not decide to use. It has no binding effect whatsoever.

At the 34th Session of the ICAO Legal Committee in 2009, the IATA tabled a report proposing to form a Secretariat study group to consider whether the Tokyo Convention should be revised and the reasons provided were:

- It does not provide an adequate deterrent to unruly or disruptive behaviour onboard the aircraft
- There are gaps in the current text of the Convention
- There is a need to eliminate inconsistent interpretation¹⁷⁷

Following these questions, the Secretariat Study Group recommended that a Special Sub Committee of the ICAO Legal Committee be established to examine the feasibility of introducing amendments to the Tokyo Convention, 1963 concerning the issue of unruly passengers¹⁷⁸.

At the 35th Session of the Legal Committee of the ICAO held in 2013, the main item considered by the Legal Committee was the issue of acts or offences of concern to the International Aviation Community and not covered by the existing air law instruments. In pointing the jurisdictional lacuna in the Tokyo Convention, the IATA¹⁷⁹ emphasised the need for the modernisation of the Tokyo Convention. The problem lies in the fact that, under the Tokyo Convention, jurisdiction over offences committed on board the aircraft is afforded to the state of registration of the aircraft¹⁸⁰. According to Fogg¹⁸¹, there is no automatic prosecution by the competent authorities at the place of landing. In *R.v. Remy Martins Duggan*, the court noted the absence of a state of landing jurisdiction in the following terms “I express the hope that signatories to the Tokyo Convention will be astute

¹⁷⁷ The International Air Transport Association’s views on the Modernisation of the Tokyo Convention 1963 and the emerging Problem of Unruly Disruptive Passengers 1(International Law Civil Aviation Organisation, Working Paper No LC/SC-MOT-WP/2,2012.

¹⁷⁸ See fn 175.

¹⁷⁹ Comments of the International Air Transport Association (IATA) on LC/35-WP 2-1 and the Legal Aspects of the issue of unruly passenger 1(International Civil Aviation Organisation, Working Paper No LC/35-WP2-2, 2013.

¹⁸⁰ See fn 177.

¹⁸¹ See fn 167 533.

in seeking the extradition for the prosecution of those who commit offences onboard their registered or controlled aircraft. Failing this, crimes committed onboard aircraft may go unpunished.¹⁸²

IATA notes that some states have amended their domestic laws to provide for national courts to exercise jurisdiction over events that occur onboard foreign aircraft, which land in their territory¹⁸³. The IATA submission also notes that some states are reluctant to act in the absence coverage under a treaty. In the absence of a mandatory state of landing jurisdiction provision, it may be challenging to convince national legislators of the importance to modify their applicable laws.¹⁸⁴IATA argues for a “mandatory state of landing jurisdiction” and a mandatory “State of operator” jurisdiction.¹⁸⁵

The ICAO proposal also seeks to provide a clear definition of what constitutes an offence. Where the Tokyo Convention leaves this to the state of jurisdiction, ICAO advocates a more explicit approach¹⁸⁶. Currently, the Tokyo Convention only applies when the aircraft is in flight. The IATA argues for greater uniformity with the approaches adopted in the Warsaw and Montreal Convention and the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation Convention of 2010¹⁸⁷

Again at the 35th session, the ICAO Legal Committee saw it fit to include the in-flight security officer(IFSO) in its Option 1 version of Article 6 essentially conferring power provided to the aircraft commander also to the IFSO¹⁸⁸. The US Court of Appeals for the Ninth Circuit case in *Eid .v Alaska Airlines*¹⁸⁹. In this case, during a flight from Vancouver, Canada to Las Vegas, United States, a report from flight attendant to the effect that she had “lost control of the first-class cabin” prompted a diversionary landing at Reno. In deciding this case, the decision of the Tokyo Diplomatic Conference was a reference by the majority opinion that observed that:

Within the general concept of United States law, the phrase “reasonable grounds” would give the impression that the aircraft commander would be required to have substantial

¹⁸² *The Queen .v. Remy Martins Duggam* 1995 2 H.K.C.L.R 137,142.

¹⁸³ See fn 179.

¹⁸⁴ See fn 183.

¹⁸⁵ See fn 184.

¹⁸⁶ See fn 185.

¹⁸⁷ See fn 186.

¹⁸⁸ ICAO, Report of the 35th Session of the Legal Committee, at 2-1, ICAO Doc 10014-LC/35(My 6-15,2013)

¹⁸⁹ *Eid .v. Alaska Airlines, Inc* 621 F 3D 858(9th Circular 2010).

basis for his belief, that he could not act on the basis of facts which were inadequate to support his belief to the effect that a person had committed or was about to commit the kind of action under consideration.¹⁹⁰

AMENDMENTS TO THE TOKYO CONVENTION, 1963

In the press release at the conclusion of the Diplomatic Conference, the ICAO Council President Dr Olumuyiwa Bernad Aliu drew attention to the significant initiatives embedded in the new Protocol¹⁹¹. The amendments introduced by the Protocol would extend the jurisdiction of States over any offence also to the State of the Operator and to the State of the landing of the aircraft with the alleged offender on board. Moreover, the Protocol did not attempt to define any “offences” or “acts” and only in new Article 15 bis encouraged the States to initiate a criminal proceeding in cases of physical assault or refusal to follow lawful instructions issued on behalf of the commander of the aircraft¹⁹². The following have been identified as the main reasons why the Tokyo Convention was amended:

Scope

- *Replacement of Article 1(3) of the Tokyo Convention 1963 by Article 1(3) (a) of the Protocol*¹⁹³. The Tokyo Convention’s alignment with the Beijing Convention’s definition of “in-flight” is captured in this Article of the Protocol. As with the Beijing Convention, the aircraft is considered to be in flight, from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for the persons and property on board¹⁹⁴.

During the position of the Tokyo Convention, an aircraft was not in flight until power was applied for the purpose of take-off until the moment when the landing run

¹⁹⁰ See fn 180.

¹⁹¹ Press Release, International Civil Aviation Organisation, ICAO Diplomatic Conference Delivers new Protocol Addressing Disruptive Passengers, April 7 2014.

¹⁹² See fn 66 271.

¹⁹³ Final Act of the International Conference on Air Law to Consider Amending the Convention on Offences and Certain Other Acts Committed on Board Aircraft(Tokyo Convention, 1963) held under the auspices of the International Civil Aviation Organisation at Montreal, 26 March to 4 April 2014.

¹⁹⁴ See fn 193.

ends¹⁹⁵. Therefore, it can be concluded that the Protocol made an amendment to Article 1(3) of the Tokyo Convention to enlarge its scope of “in-flight” definition and it does not restrict the applicability of the Tokyo Convention. The Tokyo Convention remains applicable to the period after the doors are closed but before the power is applied, upon landing, the period while taxiing to the jet bridge and before the external doors are open for disembarkation¹⁹⁶.

Jurisdiction

- Article 3(1) of the Tokyo Convention 1963 is replaced by Article 1(3) (b) of the Protocol.¹⁹⁷The insertion of the Article in the Protocol solves any problem that may occur if the state of the operator is different from the state of registration. The Protocol declares that the term State of registration as used in Articles 4, 5 and 13 of the Tokyo Convention shall be deemed the State of the operator.¹⁹⁸
The Protocol is aimed at reshaping the jurisdictional provisions of the Tokyo Convention. The methodology of the Tokyo Convention was to provide for a flag state jurisdiction (state of registration) over criminal offences committed on board an aircraft¹⁹⁹. This created lacunae in that the state of the operator and the state of the landing were not clearly catered for.
- Article 3 of the Tokyo Convention replaced by Article 3(1) bis and 3(2) bis. This is an important jurisdictional option in that it expands jurisdiction to the State of Landing and the State of Operator. The latter article applies to aircraft leased without crew, under certain conditions.²⁰⁰During the ICAO conference, Germany outlined its objections and suggested that The State of Landing and the State of the operator do not appear to be more effective in terms of dealing with the typical cases of unruly behaviour than the state of registration. This is because of the probable large number of cases of unruly behaviour where the crew, the offender

¹⁹⁵ Tokyo Convention 1963, Article 1(3).

¹⁹⁶ ICAO, Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft 1963, Article 2.

¹⁹⁷ See fn 193.

¹⁹⁸ See fn 196.

¹⁹⁹ Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention 1963).

²⁰⁰ See fn 193.

and the witnesses live in different countries and not necessarily at the State of landing.²⁰¹

Germany further argued on practical grounds that the new jurisdiction would lead to additional problems and expenses, such as (1) expenses associated with legal assistance translations (2) the obligation on the part of the crew to miss connecting flights in order to remain available to give testimony.²⁰²

These amendments that were done to the Tokyo Convention simply means that the scope of jurisdiction has been widened enough in order to allow the State of landing and the State of operation to have jurisdiction over offences committed on board the aircraft.

Article 8 of the Beijing Convention states“ Each State Party shall take such measures as may be necessary to establish its jurisdiction (a)when the offence is committed in the territory of that State; (b) when the offence is committed against or onboard an aircraft registered in that State, (c) when the aircraft onboard which the offence is committed lands in its territory with the alleged offender still on board; (d) when the offence is committed against or onboard 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. The Protocol adopts similar practices to the Beijing Convention.²⁰³

According to the Protocol, almost all the State Party related to offences and unruly acts committed on board civil aircraft could exercise jurisdiction based on the elements including the State of registration, State of landing, State of operation, the State where a lessee’s principle of business or permanent residence exist, the State of occurrence, the State where the victim is from, the State where the unruly disruptive passenger is from and the State which should fulfil any obligation under a multilateral international agreement.²⁰⁴The wording in Article 3bis is important in that it is peremptory because it dictates to the Contracting State that should it arise that one or more other Contracting States are conducting an investigation, prosecution or judicial proceedings in respect of the same offences, contracting

²⁰¹Proposal for Amendments to the Reference Text (Presented by Germany) DCTC Document No 8 (2014) (hereinafter Germany Proposals).

²⁰² See fn 201.

²⁰³ See fn 107 120.

²⁰⁴ See fn 203 120.

states shall, as appropriate, consult one another with a view to coordinate their actions²⁰⁵.

Powers of the Aircraft Commander and Immunity

- Article 5 of the Tokyo Convention deleted and replaced by Article 6, 9 and 10: As mentioned in Chapter III, Article 6 of the Tokyo Convention gives the aircraft commander certain rights while the aircraft is in flight. Article 6 (1) gives him the right to take reasonable measures including, restraint if upon reasonable grounds he believes that an offence or jeopardising act in the sense of Article 1(1) has been committed or is about to be committed. His actions must be necessary either to protect the safety of the aircraft or persons or property therein, or to maintain good order and discipline on board, or to enable him to deliver persons in custody.²⁰⁶

A major initiative of the Protocol is the inclusion of the IFSO, within the protection of the convention. The Protocol's Article 7 replaces the old article 6 of the Tokyo Convention. Article 6 now includes paragraphs 2, 3, and 4, which extend to the aircraft commander the power to request or authorise, but not to require the assistance of in-flight security officers or passengers to restrain any person whom he is entitled to restrain²⁰⁷. When the IFSO is deployed pursuant to a bilateral or multilateral agreement between the Contracting States, the IFSO may take reasonable preventative measures without such authorisation when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of an aircraft or person therein from an act of unlawful interference, and if the agreement so allows, from the commission of serious offence.²⁰⁸ It is important to note that there is no obligation for states to establish an IFSO programme in order to deploy an IFSO. It is therefore suggested that, before an IFSO can be deployed, there must be prior international agreements between the states to deploy such IFSO. The research has shown that the deployment of IFSO is not regarded as customary. Countries like Canada, India, Japan introduced the concept of sky marshal for their aviation security. The marshals keep the flights safe from

²⁰⁵ Article 3 bis, Protocol to amend the Tokyo Convention 1963.

²⁰⁶ Article 6 (1) of the Tokyo Convention 1963.

²⁰⁷ ICAO Protocol.

²⁰⁸ See fn 207.

terrorists. Therefore protecting the safety of an aircraft and passengers.²⁰⁹ The report of the Rapporteur²¹⁰ mentions that various delegates requested that the issue of in-flight security officers must be addressed when the review of the Tokyo Convention was to be done.

In support of the inclusion of the IFSO in the new Protocol, Japan maintained that the primary purpose of such is to prevent serious offences such as terrorism including hijacking, which may jeopardise the safety of persons onboard the aircraft.²¹¹ The Latin American Association of Aeronautical and Space Law maintain that the presence of IFSO was justified by the increased number of undisciplined passengers who posed a risk to security on flights²¹². It is very clear that there are States and Airlines that support the deployment of IFSO in the aircraft. However, Airlines like Qatar argue that IFSO deployment should be an agreement between the States by means of bilateral agreements rather than including their recognition thereof in the new Protocol.

The wording of Article 9(1) of the Tokyo Convention was also replaced. The only words that were replaced were ... “According to the penal laws of the registration of the aircraft” and the rest of the article was left as is. This means that if an aircraft commander has reasonable grounds to believe that an offence has been committed on board the aircraft, the offence will no longer be subjected to the penal laws of the state of registration nor the state of landing nor the operator. IATA has earlier on expressed its concerns that an aircraft commander cannot be reasonably expected to know the penal laws of the different Contracting States.²¹³

Article 10 of the Tokyo Convention of 1963 was also replaced to extend the immunity of in-flight officers in any proceedings on account of the treatment undergone by the person against whom the actions were made.

²⁰⁹ [www.https://www.work.chron.com](https://www.work.chron.com), role-air-marshal

²¹⁰ See fn 175.

²¹¹ ICAO, Comments on the Draft Text of the Protocol to the Tokyo Convention of 1963 (Presented by Japan) DCTC Doc. No, 10 (2014).

²¹² ICAO, Comments on the Projected Protocol Text Submitted by the ICAO Legal Committee During Its 35th Meeting Period (Presented by the Latin American Association of Aeronautical and Space Law-ALADA) 1 DCTC Doc. No.11 (2014).

²¹³ See fn 210.

- *The interrelationship between Article 6 and Article 10.* In the new article 6(2) of the Protocol, the aircraft commander may require or authorise the assistance of crew members and may request or authorise, but not require the assistance of in-flight security officers or passengers to restrain any person a passenger whom he is entitled to restrain²¹⁴. However if there a bilateral agreement that authorises the deployment of such IFSO, he may exercise similar powers as that of the commander based on his reasonable belief²¹⁵. The wording simply means that the IFSO may be requested or authorised to assists when there is a hostile behaviour in an aircraft. The IFSO may exercise his powers similar to that of an aircraft commander if he has a reasonable belief that aviation security is jeopardised. It, therefore, means that IFSO is not limited when he wants to exercise his powers. The issue of bilateral agreements is very important in the deployment of the IFSO, because if there are no bilateral or multilateral agreements in place, States may refuse such an aircraft into their airspace, thereby exercising their legal authority. This legal authority derives its power from international customary law or the Chicago Convention²¹⁶The new Article 10 contains immunity from prosecution for the commander, crew or IFSO with respect to their treatment. of a restrained individual²¹⁷. This article now reads s follows:

“For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, any in-flight security officer, the owner or the operator of the aircraft, nor the person on whose behalf the flight was performed be held responsible in any proceedings on account of the treatment undergone by the person against whom the actions were taken.

Extradition

- *Replacement of Article 16 (1) of the Tokyo Convention, 1963.* The Protocol extends jurisdiction to the State of Landing and the State of Operator. The reason for this amendment is because; usually, the State of landing is the closest to the offender and the main witnesses. It is clear from the Tokyo Convention that the State of landing is not given jurisdictional powers. This can result in a situation where the

²¹⁴ ICAO Protocol, Article 6 (2).

²¹⁵ ICAO, Consolidated Text of the Convention on Offences and Certain Other Acts Committed on Board Aircraft(Tokyo 1963) and the Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft(Montreal, 2014)5, DCTC Doc No.33(2014).

²¹⁶Convention on International Civil Aviation (Chicago Convention 1944).

²¹⁷ See fn 215.

State of landing does not have jurisdictional powers over the unruly passenger under the Tokyo Convention or domestic, consequently, this State should extradite the offender to a state having jurisdiction, and in most probable cases it's the State of registration²¹⁸.

It should be noted that extradition requires taking the alleged offender into custody. Article 13(2) obliges a State to take a perpetrator into custody only if he is satisfied that the circumstances warrant such an action. The obligation is only applicable if the passenger is suspected of unlawful seizure of an aircraft or having committed serious offences under the penal laws of the State of registration²¹⁹. Even if these conditions are met, the State is left free to judge for itself whether:

- the act is of such nature as to warrant such action

- It would be consistent with the laws of the State taking a perpetrator into custody²²⁰

According to Matte²²¹, the problem that arises is that the State might not be able to keep the offender long enough in custody since domestic law can restrict the time of custody. This could oblige the State to set the unruly passenger free before being able to extradite him. Therefore, it always depends on the State of landing to fulfil the condition for extraditing unruly passenger. Furthermore, extradition of an unruly passenger requires a request from a State having jurisdiction²²²

It would seem like the process of extradition is lengthily and drawn out. The domestic laws of the Contracting States must provide for the extradition. Another consideration that must be made the State of registration is to calculate whether the expenses directed for the prosecution of the offence would be proportionate to the National interest that might be served by the prosecution of such an unruly passenger²²³. The result or the effect of this consideration could be that many unruly offenders walk free without facing prosecution.

²¹⁸ See fn 106 53.

²¹⁹ See fn 218 53.

²²⁰ See fn 144 305,335.

²²¹ Matte. *Treaties on Aeronautical Law*.335. 1981.

²²² See fn 221 335.

²²³ See fn 122 516.

The wording of 16(1) does not include “jeopardising acts”, and as a result, this issue is left to the extradition treaties that the States have entered into in order to make a determination whether it would be possible to extradite “jeopardising acts”. It is worth mentioning that extradition is dependent on the extradition treaties between the Contracting States. With the omission of the words “jeopardising acts”, one asks and wonders whether unruly passengers would not be extradited if they have committed jeopardising acts? Moreover, the Convention fails to make the offences and other acts committed on board extraditable offences.²²⁴

- Inclusion of Article 15 bis to the Tokyo Convention, 1963. The section requires the Contracting States to take measures as may be necessary to initiate appropriate criminal, administrative or any form of legal proceeding against any person who commits an act or offence as referred in Article 1.
- Cooperation amongst the States. The Protocol seeks to promote cooperation amongst State Parties for the prevention of instances of unruly behaviour onboard aircraft²²⁵. State Parties are required to assist each other in proceedings involving these offences. States are also required to provide any available information when they have reason to believe that an offence is about to be committed.²²⁶
- Inclusion of Article 18 bis to the Tokyo Convention, 1963. The article allows for States to seek recovery under the national law of damages incurred from a person disembarked in terms of Article 8 or 9 of the Tokyo Convention. IATA expressed that airlines should have a right of recourse against such passengers since such unplanned disembarkation have a huge impact on operational costs. This means that the recovery must be adjudicated in accordance with the domestic laws of the States where legal action is to be instituted. The recovery is therefore not only at the disposal of airlines but could be wider. It is foreseen that it could also include damages or losses sustained by other passengers as a result of delays caused due to the unforeseen disembarkation of unruly/disruptive passengers²²⁷.

²²⁴ See fn 91 187-188.

²²⁵ See fn 210.

²²⁶ See fn 225.

²²⁷ Gernadt. Disruptive/Unruly Air Passengers: Could the Tokyo Convention of 1963 be Saved?50.

OTHER EFFECTIVE LEGAL REMEDIES

Regarding the conclusion drawn from the existing legal system and the attempts made by the Protocol to remedy the Tokyo Convention, further necessary legal requirements to fight unruly behaviour shall be elaborated upon. The progress report on Unruly Passengers by the Legal Commission for the ICAO General Assembly shall be taken into account. The following legal remedies are discussed as follows:

- Catalogue of punishable Offences. The problems of “disunified” law due to different national legislation constitute a severe problem in prosecuting unruly passengers. Apart from the uncertainty about the applicable law, it hinders prosecution in the State of Landing. Since the jurisdiction over unruly passengers will sometimes involve extraterritorial elements, the State of Landing may encounter difficulties in ascertaining the scope of its jurisdiction²²⁸. Furthermore, the double criminality principle rule has to be fulfilled thereby creating difficulties in providing evidence as to what constitutes an offence in another country²²⁹. According to the ICAO- GA Report²³⁰ it is important to have international standards as to which behaviour will be considered criminal in order to facilitate international prosecution. ICAO proposes a list of offences to provide a common denominator for offences as a basis for national prosecution and to offer uniform criteria for States to extend their jurisdiction²³¹. These offences will include;
 - Assault and Other Acts of Interference against a Crew Member on Board a Civil Aircraft (such as assault, threat and intimidation of crew, refusal to follow instructions: This section gives the crew member on duty the protection and ensures that the crew maintains good order the safety of the aircraft.²³²

²²⁸ See fn 147 53.

²²⁹ See fn 228 53.

²³⁰ ICAO GA Report: Legal Commission Progress Report on the acts or offences of concern to the international aviation community and not covered by existing law instruments (unruly passengers), ICAO GA, 33rd session IACO Document A 33-WP/35 LE 6 (2001).

²³¹ See fn 230.

²³² See fn 228 56.

- Assault and Other Acts Endangering Safety or Jeopardising Good Order and Discipline on Board a Civil Aircraft(such as assault or intimidation of fellow passengers, damage or destruction of property, consuming alcoholic beverages or drugs resulting in intoxication: This category of offences provides for good security of all passengers against unruly behaviour. It is important to note that consumption of alcohol resulting in intoxication constitutes an offence. First, there is no definition at what point a person is considered intoxicated. Although every individual has individual tolerance of alcohol, it requires a defined threshold to inform people when they are considered to be intoxicated so that they know when they are about to commit an offence²³³.
- Other Offences Committed on Board a Civil Aircraft (such as smoking in the lavatory, tampering with a smoke detector, operating an EPD): This offence prevents potentially dangerous behaviour. The only disadvantage is that there is no general clause for other behaviours that are likely to endanger the safety of the aircraft.²³⁴

One can say that, by having a list of offences, ICAO made a good step towards an international standard against an unruly passenger.

- Powers of the Crew. The successful handling of disruptive passengers begins on board the aircraft. The crew, therefore, needs to have a special right to deal with an unruly passenger in the proper way. According to the International Transport Workers Federation²³⁵, it gives employees the authority to act. Means of restraint are of special importance in order to detain violent behaviour. What this means is that crew members on board the aircraft are given the powers to restrain, disembark or to bring him to competent authorities should there be reasonable suspicions that the passengers are unruly or disruptive. However, when exercising those powers the crewmember shall receive immunity from prosecution.

²³³ See fn 232 53.

²³⁴ See fn 233 53.

²³⁵ International Transport Workers Federation, Civil Aviation Section Air Rage- The Prevention and the Management of Disruptive Passenger Behaviour (200) 13.

- Prosecution and Punishment. The ICAO proposal does not include any guidelines to what extent the offences should be punished. The matter is left to the discretion of the States. This missing limitation of the extent of penalties can lead to international tensions and injustice when a wide discrepancy in punishment exists between the state of registration/ nationality of the offender and the State which prosecutes him²³⁶. A State might even be reluctant to extradite an offender to the requesting State, which is likely to treat the offence in the harshest manner. Therefore, ICAO should issue clause, penalties, or guidelines on how to punish offenders. However, some authors argue that human rights limit the possible variety of different kinds of penalties²³⁷. Authors further argue that it is questionable whether an alleged offender will get a fair trial since ICAO intends implementation of their proposal into domestic law, but there are still states, which do not comply with international human rights. The danger of political trial can also pose another challenge. If one takes into account the recent problems of States to agree to other States to exercise jurisdiction over their respective nationals because of fear of political trials which could result in excessive punishment²³⁸. Therefore it is advised that States should not be reluctant to accept the ICAO proposal with the suggested changes and amendments.

- Implementation. The ICAO Report²³⁹ proposes that each State shall extend its jurisdiction to every act of the list of offences if the offences took place on board:
 - (a) any civil aircraft registered in that State or

 - (b) any civil aircraft leased with or without a crew to an operator whose principal place of business in that State or, if the operator does not have a principal place of business whose permanent residence is in that State or

 - (c) any civil aircraft on or over the territory of that State or

²³⁶ See fn 228 73.

²³⁷ See fn 236 73.

²³⁸ See fn 237 73

²³⁹ Legal Commission Progress Report on the acts or offences of concern to the international aviation community and not covered by existing law instruments (unruly passenger), ICAO GA, 33rd Session ICAO Doc A33-WP35.2001.

(d) any other aircraft outside the State if the next landing of the aircraft is in that State and the aircraft commander has delivered the suspected offender to the competent authorities of that State.

The question that arises is how to implement this proposal mentioned above. The existing options are to implement into *national law*, *amend Annex 17* or the current international system or *to create a new international convention*. The outlined above options will be further discussed below:

- Implementation of the proposal into national laws. ICAO considers this proposal into national laws as short and medium-term measure and therefore should serve as a primary legal mechanism for dealing with unruly passengers. ICAO further opines that only if the measure does not deal with the problem effectively, should international legal instrument become necessary for the long term solution. However according to ICAO commission, the problem with this option is that there is the absence of clear basis in international law to support the jurisdiction of the State of the landing, States might be reluctant to extend their jurisdiction due to this ambiguity and might consider it unlawful.
- Amendment of Annex 17. Another enforcement of the ICAO proposal would be to amend Annex 17 by introducing the term “unlawful endangerment”. The problem with this will be whether States will be willing to accept that an Annex will implement decisions to the Chicago Convention? If the States are reluctant to extend their national jurisdiction, because there is no uniformity of rules under international law, they will be unwilling to do so under an Annex.
- Amendment of the Tokyo Convention or the Montreal Convention. The problem with this is that there is no establishment of a unified legal system and extradition regarding unruly passengers. The Montreal Convention has a small scale of application but prevented several mistakes made in the Tokyo Convention. For instance, it embodies the

jurisdiction of the State of landing and creates universal jurisdiction. It further provides for proper extradition system and further provides that the offences under the Montreal Convention constitute offences under the Tokyo Convention so that States which are parties to both can apply the powers of the commander to offences under the Montreal Convention.

CHAPTER 5: CONCLUSION

The Diplomatic Conference which was held in Montreal revealed that the Tokyo Conventions had serious legal shortcomings and those shortcomings should be reviewed as they impacted negatively on the aviation community. The Diplomatic Conference was aimed at rectifying major defects. The jurisdictional issue was flagged as a major challenge in that the State of Landing or the State of Operator could exercise jurisdiction. This right is given to the State of registration. The definition of in-flight was further modified, as the definition of the Tokyo Convention was narrow or a double standard. The inclusion of in-flight officers and the immunity of these officers was another critical modification of the Tokyo Convention. This enabled States who wished to use them to do so freely. However, the use of these IFSO is dependent on bi- multilateral agreements between contracting states.

The international community's attempt to adopt the Montreal Protocol showed to be a great achievement. It is therefore up to the contracting States to ratify the Protocol and to implement ICAO circular into their domestic laws to give effect to the Protocol.

It is also encouraged that States should have international cooperation amongst each other to address the problem of unruly passenger and prevalent incidents. This international obligation upon contracting States means that the States need to ensure that they have proper and effective domestic laws to exercise effective jurisdiction. If the Contracting States are unable to meet the requirements, there will be an issue of liability incurred by the particular State.

BIBLIOGRAPHY

B. Cheng. Crimes on Board the Aircraft”, Current Legal Problems. 1959.

G. Oduntan. Sovereignty and Jurisdiction in the Airspace and Outer Space: Legal Criteria for Spatial Delimitation. 2012.

L. Hao. On the punishment of Unruly/Disruptive Passengers and the Modernisation of the Tokyo Convention.

C. Giesecke Unruly Passenger: The existing Legal System and proposed Improvements 45, 43,26 Annals of Air & Space Law. (2001)

M. Jennison ICAO adopts a flawed protocol to amend the Tokyo Convention of 1963.

M. Milde. International Air Law and ICAO, 3rd Edition 2008.

ICAO Annex 17 to the Convention on International Civil Aviation (Chicago Convention) 1944.

C. Giesecke.”A Legal perspective on handling unruly behaviour taking into account the rights of passengers.”

Balfour & Highley, “Disruptive Passengers”: The Civil Aviation Amendment Act 1996 Strikes Back (1997) XXII Air & Space.Law.194.

www.faa.gov/data-statistics/passengers-cargo/unruly-passengers >(accessed on 20 May 2019).

<https://assets.publishing.service.gov.uk>.

<https://www.iata.org/policy>.

<https://www.icao.int/legal> visited on 09 September 2019.

Dr A Timmis, Professor S Ison and Dr L Budd International comparison of disruptive passenger prevalence.

International Civil Aviation Organisation (ICAO). Press Release dated 07 April 2014. <https://www.icao.international>.

Campbell. "Get off my plane" The need for extreme deference to Captains and crews on international flights under the Tokyo Convention of 1963.

A.I. Mendelson. In-Flight crime: The International and Domestic Picture under the Tokyo Convention. Virginia Law Review Volume 53 April 1967 Number 3.

R. Abeyratne. Safety in the Air: Air Carriers' Rights and Responsibilities at National and International Law, 2003 293.

Y. Alexander & E. Sochor. Aerial Piracy and Aviation Security 1990.

Boyle & Pulsifer. The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft 1963.

W.P. Schwab. Air Rage: Screaming for International Uniformity 2001.

M. Milde. ICAO Legal Committee and Progress in the Development of International Air Law: The 35th Session of the ICAO Legal Committee Drafts a Protocol on Unruly Passenger.

Adoption of National Legislation on Certain Offences Committed on Board Civil Aircraft (Unruly/ Disruptive Passengers), ICAO Assembly Res A33-4(2001), compiled in Assembly Resolutions in Force at V-3, ICAO Doc.10022 (Oct 4, 2013)/

International Civil Aviation Organisation, Circular 288 LE-1, Guidance Material on the Legal Aspects of Unruly/ Disruptive Passengers (2002).

Report of the Rapporteur of the Special Sub Committee on the Preparation of an Instrument to Modernise the Convention on Offences and Certain Other Acts Committed on Board the Aircraft of 1963(International Civil Aviation Org, Working Paper No LC/SC-MOT-WP/1,2012).

D. Verschoor. An Introduction to Law 151(1983) (discussing the Tokyo, Hague and Montreal Convention 'where the introduction of new rules and sanctions had become so very urgent in the past few decades").

R. Kane. Is It Time to Put Teeth into Tokyo? 1994

D. Joyner, Aerial Hijacking as an International Crime (1974).

G.F. Fitzgerald. Towards Legal Suppression of Acts Against Civil Aviation in Air Hijacking: An International Perspective, 585 International Conciliation 7, 19 (Nov 1971).

Disruptive Passengers: The Civil Aviation (Amendment) Act 1996 Strikes Back (1997).

G.F. Fitzgerald. The Development of International Rules Concerning Offences and Certain Other Acts Committed onboard Aircraft 1963 .

A.B. Swerdlow. Modern Approaches to the Powers of the Aircraft Commander under Article 6 of the Tokyo Convention 2001.

German Criminal Code Section 315.

S. Michaelides. Unruly Passenger Behaviour and the Tokyo Convention 1963.

L. Gernadt. Disruptive/Unruly Air Passengers: Could the Tokyo Convention of 1963 be Saved?

ICAO Special Sub Committee of the Legal Committee for the Modernisation of the Tokyo Convention including the issue of an unruly passenger. Report Montreal, 22 to 25 May 2012.

R. Abeyratne. Unruly Passengers-Legal regulatory and jurisdictional issues 1999 XXIV Air & Space Law 46, 50.

N. M. Matte. Treaties on Aeronautical Law 1981. 335.

G.F. Fitzgerald. The Development of International Rules Concerning Offences and Certain Other Acts Committed on Board Aircraft 1963, 230.

M.P. Fogg. Air Rage: Is it a Global Problem? What Proactive Measures Can be Taken to Reduce Air Rage, and whether the Tokyo Convention Should be Amended to Ensure Prosecution of Air Rage Offenders? ILSA Journal International & Comparative Law Volume 7 2000.

Harkey. "Causes of and Remedies for Passenger Misconduct 2003.

M. Milde. "Unruly passenger and the law" Mc Gill Faculty of Law. Institute of Air and Space Law. Public International Air Law, Volume Two, 2002 259 -260.

IATA Position Paper- Reform of the Tokyo Convention 1963. November 2013.

IATA Guidance on Unruly Passengers and Management. December 2012.

Kenyan held in Air drama "may fly soon" Gulf News 8 January 2000.

Prevention is better than cure" Airline Business (February 1999).

ICAO, A 33-4 Adoption of National Legislation on Certain Offences Committed on Board Civil Aircraft (Unruly/ Disruptive Passengers.

The International Air Transport Association's views on the Modernisation of the Tokyo Convention 1963 and the emerging Problem of Unruly Disruptive Passengers 1(International Law Civil Aviation Organisation, Working Paper No LC/SC-MOT-WP/2,2012.

Comments of the International Air Transport Association (IATA) on LC/35-WP 2-1 and the Legal Aspects of the issue of unruly passenger 1(International Civil Aviation Organisation, Working Paper No LC/35-WP2-2, 2013).

ICAO, Report of the 35th Session of the Legal Committee, at 2-1, ICAO Doc 10014-LC/35(My 6-15, 2013).

Press Release, International Civil Aviation Organisation, ICAO Diplomatic Conference Delivers new Protocol Addressing Disruptive Passengers, April 7 2014.

Final Act of the International Conference on Air Law to Consider Amending the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention, 1963) held under the auspices of the International Civil Aviation Organisation at Montreal, 26 March to 4 April 2014.

ICAO, Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft, Article 2.

Proposal for Amendments to the Reference Text (Presented by Germany) DCTC Document No 8 (2014)/

ICAO, Comments on the Draft Text of the Protocol to the Tokyo Convention of 1963 (Presented by Japan) DCTC Doc. No,10 (2014).

ICAO, Comments on the Projected Protocol Text Submitted by the ICAO Legal Committee during its 35th Meeting Period (Presented by the Latin American Association of Aeronautical and Space Law-ALADA) 1 DCTC Doc. No.11 (2014).

ICAO Protocol, Article 6 (2).

ICAO, Consolidated Text of the Convention on Offences and Certain Other Acts Committed on Board Aircraft(Tokyo 1963) and the Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft(Montreal, 2014)5, DCTC Doc No.33(2014).

ICAO GA Report: Legal Commission Progress Report on the acts or offences of concern to the international aviation community and not covered by existing law instruments (unruly passengers), ICAO GA, 33rd session IACO Document A 33-WP/35 LE 6 (2001).

International Transport Workers Federation, Civil Aviation Section Air Rage- The Prevention and the Management of Disruptive Passenger Behaviour (2000)

Legal Commission Progress Report on the acts or offences of concern to the international aviation community and not covered by existing law instruments (unruly passenger), ICAO GA, 33rd Session ICAO Doc A33-WP35.2001.

Cases

O Carrol .v. American Airline Inc, 863 F 2d 11,12(5th Circular. 1989).

The Queen .v. Remy Martins Duggam 1995 2 H.K.C.L.R 137,142.

Eid .v. Alaska Airlines, Inc 621 F 3D 858(9th Circular 2010).

Harris .v. American Airline Inc 55 F. 3d 1472, 1473(9th Circular 1995).

Tsevas v. Delta Airlines Inc No 97C320,1997 WL 767278.

United States v Diego Cordova 89 (E.D.N.Y.1950).

United States .v. Flores, 1968 F.2d1366 (1stCircular.1992).

U.S. v. James Tabacca, 924 F. 2d 906,907(9th Circular.1991).

International Conventions

Convention on Offences and Certain Other Acts Committed on Board Aircraft, 14 September (Tokyo Convention) 1963, Article 3, Paragraph 2.

Beijing Convention 2010.

Convention on Compensation for Damage Caused by Aircraft to Third Parties 1952.

Convention on Compensation for Damage to Third Parties resulting from Acts of Unlawful Interference Involving Aircraft 2009.

Article 8, Paragraph 1 of the Tokyo Convention 1963.

Montreal Protocol.

Annex 17 to the Convention on International Civil Aviation (Chicago Convention) 1944.

