



WORKING PAPER

LEGAL COMMITTEE – 36TH SESSION

(Montréal, 30 November to 3 December 2015)

Agenda Item 2: Consideration of the General Work Programme of the Legal Committee

**ACTS OR OFFENCES OF CONCERN
TO THE INTERNATIONAL AVIATION COMMUNITY
AND NOT COVERED BY EXISTING AIR LAW INSTRUMENTS**

(Presented by the Secretariat)

1. INTRODUCTION

1.1 The Diplomatic Conference held under the auspices of ICAO from 26 March to 4 April 2014 adopted the *Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Montréal Protocol of 2014).

1.2 The Montréal Protocol of 2014 modernizes the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* of 1963. The preamble of the Protocol expresses concern about the escalation of the severity and frequency of unruly behaviour on board aircraft and recognizes the desire of many States to assist each other in curbing unruly behaviour and restoring good order and discipline on board aircraft. The operative part of the Protocol recognizes, under certain conditions, the competence of the State of landing and the State of the operator to exercise jurisdiction over offences and acts on board aircraft. The establishment of such jurisdiction over offences is mandatory if the criteria set out in the Protocol are met. The Protocol extends legal recognition and certain protections to in-flight security officers. It contains provisions addressing such issues as coordination among States, due process and fair treatment, and right to seek recovery under national law.

2. THE TASK FORCE ON LEGAL ASPECTS OF UNRULY PASSENGERS

2.1 The Diplomatic Conference also adopted a Resolution which urges the Council of ICAO to request the Secretary General to update ICAO Circular 288 (*Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*) to include a more detailed list of offences and other acts, as well as to make consequential changes to the Circular arising from the adoption of the Protocol. Pursuant to the Resolution, the Council, at the second meeting of its 202nd Session on 11 June 2014, instructed the Secretary General to update the Circular. The Secretary General subsequently established a Task Force on Legal Aspects of Unruly Passengers.

2.2 The Task Force met in Montréal from 15 to 17 September 2015, chaired by Mrs. M. Polkowska (Poland). It concluded that the list of offences in the Circular is still relevant. The list is sufficiently comprehensive to cover the unruly behaviour that takes place on a daily basis. If any unruly behaviour is not specifically listed, it is likely to fall within the scope of the provision concerning the refusal to obey the instruction of the aircraft commander. It is further observed that the list of offences mentioned above does not restrict the power of a State to introduce into its domestic legislation any other offence or prohibited act relating to unruly behaviour on board civil aircraft. The Task Force therefore decided to maintain the list as it is.

2.3 The Task Force noted that certain States have the system of imposing civil, administrative or other penalties as an alternative for punishing unruly behaviour which amount to criminal offences as well as for those which do not amount to criminal offences. Accordingly, it was decided to insert a short text to Chapter 2 of the amended Circular to refer to the possibility that a State may, if it deems necessary, establish such a system of penalties.

2.4 The Task Force completed the initial identification of the possible consequential changes to the Circular arising from the adoption of the Montréal Protocol of 2014. The follow-up work is to be taken by three drafting groups respectively led by Singapore, Kenya and Finland for different chapters of the Circular. They plan to complete their initial drafts by 31 January 2016 for circulation by the Secretariat to all Members and Observers of the Task Force. Another meeting of the Task Force will be held for a 2 to 3 day period sometime between mid-March to mid-April 2016.

2.5 The Task Force further noted that following the consequential changes arising from the adoption of the Protocol, Assembly Resolution A37-22, Appendix E (*Adoption of national legislation on certain offences committed on board civil aircraft (unruly/disruptive passengers)*) may need to be amended. The Task Force will revisit this matter at its next meeting.

3. ACTION BY THE COMMITTEE

3.1 The Legal Committee is invited to consider this working paper and offer any comments it considers desirable.

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