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Unruly passengers: The international legal framework for the removal of passengers who may pose a threat.
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PRONUNCIATION:

'che-l&m, is Latin for airspace or sky. The Romans began questioning the rights they had in the space above the land they owned and how high above them those rights would extend. They decided on, Ad coelum et ad inferos, meaning that their property rights would extend as high up as the heavens and all the way down to hell.

Unruly passengers: The international legal framework for the removal of passengers who may pose a threat.

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Airlines and regulators remain concerned with the frequency and severity of insubordinate and disruptive passenger incidents. Such incidents range from failures to comply with crew instructions and verbal abuse to physical assault and attempts to breach the flight crew compartment.

Although these incidents involve only a minority of passengers, their impact is disproportionate. Disruptive behavior may threaten the health, safety, and security of passengers and crew, result in costly diversions, and impose additional burdens on coordination among flight crews, air navigation service providers, and law enforcement authorities.

The Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed in Tokyo on 14 September 1963 (Tokyo Convention of 1963), established an international legal framework for addressing disruptive conduct on board aircraft.¹ Over time, however, the increasing frequency and severity of such incidents prompted many States to seek an updated legal instrument.

In 2014, the Protocol Amending the Convention on Offences and Certain Other Acts Committed on Board Aircraft, known as the Montreal Protocol of 2014, was adopted and entered into force in January 2020.² This instrument introduced significant changes designed to strengthen the capacity of States to address disruptive conduct on board aircraft.

Among the most relevant modifications are the following. First, the Montreal Protocol expanded the scope of the original Convention. Whereas the Tokyo Convention of 1963 applied only to criminal offences, the 2014 Protocol extends its reach to acts which, whether or not they constitute offences, are likely to endanger the safety of the aircraft, or of persons or property on board, or to jeopardize good order and discipline on board.³ This broader formulation enables States to address a wider range of problematic conduct.

Second, the Protocol broadened the jurisdictional bases available to States. In addition to the State of registration of the aircraft, the Protocol recognizes, in certain circumstances, the competence of landing States and States of the operator to exercise jurisdiction over infringements and acts committed on board aircraft.⁴

Third, the Protocol imposes an obligation of consultation where multiple States are investigating or prosecuting the same incident.⁵ This requirement promotes inter-State coordination and reduces the risk of jurisdictional conflict.

Fourth, the Protocol strengthens enforcement authority by allowing aircraft commanders to take more robust measures to preserve order and safety on board, including the disembarkation of violators at the nearest landing point.⁶

Taken together, these changes significantly reinforce the international legal framework governing disruptive incidents on board aircraft and furnish States with more effective legal tools to maintain safety and order in civil aviation.

In addition to these treaty-based mechanisms, ICAO complements the framework through guidance documents such as Circular 288, Legal Guidance on Disruptive Passengers, and the Handbook on Legal Aspects of Unruly and Disruptive Passengers, Document 10117.⁷

In practice, each country and airline applies its own sanctions within this broader framework, including fines, flight bans, and criminal proceedings, depending on the applicable domestic legislation.

In Mexico, the treatment of disruptive passengers is governed by a specific legal scheme that varies depending on the location of the incident. The principal legal framework includes Mandatory Circular CO SA-17.11/16 of the Federal Civil Aviation Agency (AFAC), the Civil Aviation Law, the Airports Law, and the Federal Penal Code.⁸

Under this framework, and in the context of Mexican-flagged aircraft, two scenarios illustrate the allocation of authority and responsibility.

I. Incident at the Terminal Gate, Before Boarding

Where the incident occurs at the gate before boarding, the passenger remains on the ground. In that circumstance, the principal objectives are containment and the prevention of access to the aircraft.

Airline commander, crew, ground, and traffic personnel

1.- Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed Sept. 14, 1963.

2.- Protocol Amending the Convention on Offences and Certain Other Acts Committed on Board Aircraft, adopted in 2014, entered into force Jan. 2020.

3.- Id.

4.- Id.

5.- Id.

6.- Id.

7.- ICAO Circular 288; ICAO Handbook on Legal Aspects of Unruly and Disruptive Passengers, Doc. 10117.

8.- Mandatory Circular CO SA-17.11/16; Civil Aviation Law; Airports Law; Federal Penal Code.

possess both the authority and the legal obligation to deny boarding to any individual who is intoxicated, under the influence of drugs, or exhibiting violent behavior that places the flight at risk.⁹

The airport operator bears direct responsibility for maintaining order within the terminal. The Head of Airport Security must coordinate the initial physical intervention necessary to remove the passenger from the waiting gate or other public areas.

AFAC prepares the formal aeronautical report concerning the infraction.¹⁰ The National Guard or Auxiliary Police may intervene as the public force within the federal airport area in order to subdue and arrest the passenger where physical violence is involved. Depending on the seriousness of the conduct, the offender may be presented either before a local Civic Court for administrative offenses, such as disturbing public order, or before the Federal Public Ministry if the conduct allegedly constitutes a crime, for example by causing material damage to federal infrastructure.

II. Onboard Incident

Where the incident occurs on board the aircraft, a different legal regime applies. Pursuant to Article 5 of the Civil Aviation Law and international treaties such as the Tokyo Convention, Mexican-registered aircraft are regarded as Mexican territory while in flight, regardless of the airspace through which they pass.¹¹

Article 40 of the Civil Aviation Law provides that the Captain possesses broad judicial and operational authority on board for the preservation of order and safety.¹² This authority includes denying boarding, restraining passengers, removing passengers from the aircraft, and deciding upon an emergency diversion to the nearest airport for the purpose of disembarking the passenger.

Pilots are required immediately to notify Air Traffic Control so that the aeronautical authority and police authorities may be present upon landing. The airport operator's role at the destination or diversion airport is limited to ground logistics, including assigning a rapid contact position and facilitating immediate access by security forces to the aircraft at the time of landing.

Upon landing, AFAC receives formal notice from the Captain, coordinates the passenger's transfer, and classifies the conduct in accordance with the interference levels established in the Mandatory Circular,

namely Levels 1 through 4.¹³ The National Guard is the authority empowered to enter the Mexican aircraft once the doors are opened in order formally to arrest and remove the passenger.

Where the passenger's conduct interferes with the operation of the flight, involves an assault on the crew, or includes an attempt to open a door, the act is classified under Mexican law as a federal crime pursuant to the Federal Penal Code, including attacks on general communication routes and crimes against the safety of navigation.¹⁴ Such conduct may therefore give rise to a criminal investigation that results in imprisonment.

III. Involved Third Parties

Where the airline subcontracts gate personnel through ground handling companies, those personnel are contractually obligated to activate the security protocol and alert the captain prior to closure of the aircraft door if they identify a problematic passenger.

IV. Limits on the Exercise of Removal Authority

These provisions confer broad authority upon airlines, acting through their pilots, to remove passengers from a flight on safety grounds.

In fact, Article 10 of the Tokyo Convention, grants protection and exonerates responsibility arising from a pilot's actions taken for safety reasons, including impeding boarding, restraining a passenger, and removing a passenger.¹⁵ This provision confirms that airlines possess substantial discretion to remove potentially dangerous passengers without legal consequences.

That discretion, however, is not without limit. The law requires that the measure be reasonable and based upon reasonable grounds to believe that intervention is necessary. Accordingly, the governing standard implies that the exercise of such authority must not be arbitrary or capricious.

If a passenger contends that an airline unlawfully impeded boarding or removed him from the aircraft, the burden rests on that passenger to demonstrate that the actions of the pilot or crew were arbitrary rather than reasonable.

9.- Mandatory Circular CO SA-17.11/16.

10.- *Id.*

11.- Civil Aviation Law art. 5; Tokyo Convention of 1963.

12.- Civil Aviation Law art. 40.

13.- Mandatory Circular CO SA-17.11/16.

14.- Federal Penal Code.

15.- Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed Sept. 14, 1963.

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