

**For information on
7 December 2004**

Legislative Council Panel on Security

Proposal to amend the Aviation Security Ordinance (Cap. 494)

Purpose

This paper briefs members on the proposal to enact legislation to enable the Hong Kong Special Administrative Region Government to strengthen the control over unruly passenger offences committed on board Hong Kong-controlled aircraft¹, and extend Hong Kong's jurisdiction over criminal acts and offences constituting unruly or disruptive behaviour on board non-Hong Kong-controlled aircraft outside Hong Kong while they are coming to land at Hong Kong.

Background

2. There are various international conventions (the Tokyo Convention, the Hague Convention, the Montreal Convention and the Montreal Protocol) on aviation security. While these conventions had been made to deal with acts of unlawful interference with civil aviation, they were not intended to specifically deal with less serious offences committed by unruly passengers whose behaviour may or may not endanger the safety of civil aviation.

3. With the increase in the number and gravity of reported incidents involving unruly or disruptive passengers, the International Civil Aviation Organization (ICAO) saw the need to develop and implement a set of new laws and regulations for universal implementation by civil aviation authorities so that

¹ As defined in s.2(1) of the Aviation Security Ordinance (Cap. 494), Hong Kong-controlled aircraft means an aircraft –

- (a) which is for the time being registered in Hong Kong; or
- (b) which, being for the time being registered outside Hong Kong, is for the time being chartered by demise to a person who, or to persons each of whom –
 - (i) is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Hong Kong; and
 - (ii) resides or has his principal place of business in Hong Kong; or
- (c) which is not for the time being registered in any place but in the case of which either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it –
 - (i) is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Hong Kong; and
 - (ii) resides or has his principal place of business in Hong Kong.

law enforcement agencies can effectively tackle the problem. In June 1997, ICAO established a Study Group on Unruly Passengers to study "Acts or offences of concern to the international aviation community and not covered by existing air law instruments".

4. Subsequent to the Study Group's recommendations, a resolution was adopted at the ICAO Assembly in Montreal in October 2001. The resolution urged Contracting States to enact law and regulations to deal effectively with the problem of unruly passenger offences, incorporating as far as practicable, a Model Legislation on Certain Offences Committed on Board Civil Aircraft (the Model Legislation) developed by ICAO. A copy of the ICAO resolution and Model Legislation is at **Annex**.

Aviation Security Ordinance

5. In Hong Kong, the Aviation Security Ordinance (ASO) (Cap.494) is the principal legislation on aviation security. The main purposes of the ASO are to prohibit acts which pose threat to international civil aviation and to give effect to international conventions on aviation security. The ASO addresses mainly very serious offences such as hijacking and sabotage, and does not specifically provide for offences involving unruly behaviour.

6. Section 3 of the ASO states that "any act or omission taking place on board a Hong Kong-controlled aircraft while in flight elsewhere than in or over Hong Kong which, if taking place in Hong Kong, would constitute an offence under the law of Hong Kong shall constitute that offence". Therefore, relevant criminal laws can be invoked against the offenders if the act takes place on board a Hong Kong-controlled aircraft, wherever the aircraft may be. The same cannot be done if the act takes place on board a non-Hong Kong-controlled aircraft outside Hong Kong.

Reasons for proposing implementation of the ICAO Model Legislation

7. As an international aviation centre, Hong Kong has observed closely the safety and security standards and practices promulgated by ICAO under the relevant international conventions. We have an obligation to play our part in the international effort to deal more effectively with the growing problem of unruly passengers. The international as well as Hong Kong based aviation industry have also called for such response.

8. Legislative amendment is proposed to fill the gap in the existing legislation to strengthen the control over unruly passenger offences committed on board Hong Kong-controlled aircraft and to extend Hong Kong's jurisdiction over such acts committed on board non-Hong Kong-controlled aircraft outside Hong Kong while they are coming to land at Hong Kong. A number of other states, such as Australia, Canada, New Zealand, the UK and the US, have enacted or are considering enacting legislation to extend their domestic jurisdiction to certain offences committed on board foreign aircraft subsequently landing in their respective territories.

Main legislative proposals

9. We propose to incorporate as far as practicable and with necessary adjustment the provisions of the ICAO Model Legislation into the ASO. The policy intent, consistent with that expressed in the ICAO resolution of October 2001, is to enable the Hong Kong authorities to prosecute in appropriate cases criminal acts and offences constituting unruly or disruptive behaviour on board Hong Kong-controlled and non-Hong Kong-controlled aircraft.

New unruly passenger offences

10. As noted in paragraph 5, there are certain unruly passenger behaviours that are not covered by the existing law. To strengthen the control over such behaviour, we propose to incorporate a new part on unruly passenger offences (with penalties) in the ASO to provide against acts or omissions taking place on board civil aircraft which may be briefly described as follows -

- (a) acting in a manner that interferes with the performance of the duties of a crew member or lessens the ability of the crew member to perform those duties;
- (b) intentionally failing to comply with the lawful instructions given by the aircraft commander, or a crew member on behalf of the aircraft commander, for the purpose of ensuring the safety of the aircraft or for the purpose of maintaining good order and discipline on board;
- (c) tampering or interfering with any aircraft, any component of an aircraft, or its equipment, including, but not limited to, smoke detectors;

- (d) boarding an aircraft while intoxicated or becoming intoxicated on an aircraft to such an extent as to (i) present a hazard to the aircraft or to persons on the aircraft; or (ii) offend against the good order and discipline on board the aircraft;
- (e) smoking when instructed not to smoke by a crew member, passenger information signs, or placards; and
- (f) operating an electronic device when such act is prohibited.

Other criminal acts and offences constituting unruly or disruptive behaviour

11. The ICAO Model Legislation also lists certain criminal acts and offences generally referred to as “assault”, “intimidation or threat”, “sexual assault” and “child molestation”. In incorporating these into the ASO, we propose to list the specific offences in our existing Ordinances that fall within the general description of assault, intimidation, threat, etc. while at the same time limiting such list of offences to those that are likely to occur on an aircraft and be regarded as unruly or disruptive behaviour. We also propose to include certain offences related to criminal damage, disorderly behaviour and fighting in public place.

12. Accordingly, we propose that the new legislation should list the following offences occurring on civil aircraft, over which Hong Kong would have jurisdiction to prosecute regardless of whether the aircraft is a Hong Kong-controlled aircraft or not (cf. paragraph 13 below) –

- (a) Offences Against the Person Ordinance (Cap. 212)
 - ✧ Wounding or striking with intent to do grievous bodily harm (s.17(a))
 - ✧ Wounding or inflicting grievous bodily harm (s. 19)
 - ✧ Assault occasioning actual bodily harm (s. 39)
 - ✧ Common assault (s. 40)
- (b) Crimes Ordinance (Cap. 200)
 - ✧ Threat (s. 24)
 - ✧ Destroying or damaging property (s. 60)
 - ✧ Rape (s.118)
 - ✧ Non-consensual buggery (s.118A)

- ◇ Indecent assault (s. 122)
- ◇ Indecent conduct towards child under 16 (s. 146)
- ◇ Indecency in public (s. 148)

(c) Public Order Ordinance (Cap. 245)

- ◇ Disorderly behaviour in public place (s. 17B(2))
- ◇ Fighting in public (s. 25).

Restrictive conditions in extending jurisdiction

13. Taking reference from section 4 of the ICAO Model Legislation, we propose to extend Hong Kong's jurisdiction over the aforesaid offences that take place on board non-Hong Kong controlled aircraft subject to the following restrictive conditions -

- (a) the next landing of the aircraft is in Hong Kong; and
- (b) the aircraft commander must have delivered the suspected offender to the Hong Kong Police with the request in a form to be specified in a schedule to the ASO that the Hong Kong authorities prosecute the suspected offender. The request by the aircraft commander should include a statement to the effect that no similar request has been or will be made by the commander or the operator to any other jurisdiction.

Consultation

14. The International Air Transportation Association (IATA) had been involved in the drafting of the ICAO Model Legislation. The aviation industry of Hong Kong, including both Hong Kong and foreign aircraft operators that are members of IATA, also supported the implementation of the ICAO Model Legislation in Hong Kong. The Aviation Security Committee has been consulted and the committee supported the early enactment of relevant legislation.

Legislative Timeframe

15. We aim to introduce an amendment bill into the Legislative Council in the current legislative session.

Advice Sought

16. Members are invited to comment on the above proposal.

RESOLUTION OF THE ICAO ASSEMBLY

A33-4: Adoption of national legislation on certain offences committed on board civil aircraft (unruly/disruptive passengers)

The Assembly:

Recognizing that, under the Preamble and Article 44 of the *Convention on International Civil Aviation*, one of the aims and objectives of the Organization is to foster the planning and development of international air transport so as to meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;

Noting the increase of the number and gravity of reported incidents involving unruly or disruptive passengers on board civil aircraft;

Considering the implications of these incidents for the safety of the aircraft and the passengers and crew on board these aircraft;

Mindful of the fact that the existing international law as well as national law and regulations in many States are not fully adequate to deal effectively with this problem;

Recognizing the special environment of aircraft in flight and inherent risks connected therewith, as well as the need to adopt adequate measures of national law for the purpose of enabling States to prosecute criminal acts and offences constituting unruly or disruptive behaviour on board aircraft;

Encouraging the adoption of national legal rules enabling States to exercise jurisdiction in appropriate cases to prosecute criminal acts and offences constituting unruly or disruptive behaviour on board aircraft registered in other States;

Therefore:

Urges all Contracting States to enact as soon as possible national law and regulations to deal effectively with the problem of unruly or disruptive passengers, incorporating so far as practical the provisions set out in the Appendix to this Resolution; and

Calls on all Contracting States to submit to their competent authorities for consideration of prosecution all persons whom they have a reasonable ground to consider as having committed any of the offences set out in the national laws and regulations so enacted, and for which they have jurisdiction in accordance with these laws and regulations.

Appendix

MODEL LEGISLATION ON CERTAIN OFFENCES COMMITTED ON BOARD CIVIL AIRCRAFT

Section 1: Assault and Other Acts of Interference against a Crew Member on Board a Civil Aircraft

Any person who commits on board a civil aircraft any of the following acts thereby commits an offence:

- (1) assault, intimidation or threat, whether physical or verbal, against a crew member if such act interferes with the performance of the duties of the crew member or lessens the ability of the crew member to perform those duties;
- (2) refusal to follow a lawful instruction given by the aircraft commander, or on behalf of the aircraft commander by a crew member, for the purpose of ensuring the safety of the aircraft or of any person or property on board or for the purpose of maintaining good order and discipline on board.

Section 2: Assault and Other Acts Endangering Safety or Jeopardizing Good Order and Discipline on Board a Civil Aircraft

- (1) Any person who commits on board a civil aircraft an act of physical violence against a person or of sexual assault or child molestation thereby commits an offence.
- (2) Any person who commits on board a civil aircraft any of the following acts thereby commits an offence if such act is likely to endanger the safety of the aircraft or of any person on board or if such act jeopardizes the good order and discipline on board the aircraft:
 - (a) assault, intimidation or threat, whether physical or verbal, against another person;
 - (b) intentionally causing damage to, or destruction of, property;
 - (c) consuming alcoholic beverages or drugs resulting in intoxication.

Section 3: Other Offences Committed on Board a Civil Aircraft

Any person who commits on board a civil aircraft any of the following acts thereby commits an offence:

- (1) smoking in a lavatory, or smoking elsewhere in a manner likely to endanger the safety of the aircraft;

- (2) tampering with a smoke detector or any other safety-related device on board the aircraft;
- (3) operating a portable electronic device when such act is prohibited.

Section 4: Jurisdiction

1. The jurisdiction of (*Name of State*) shall extend to any offence under Sections 1, 2, or 3 of this Act if the act constituting the offence took place on board:

- (1) any civil aircraft registered in (*Name of State*); or
- (2) any civil aircraft leased with or without crew to an operator whose principal place of business is in (*Name of State*) or, if the operator does not have a principal place of business, whose permanent residence is in (*Name of State*); or
- (3) any civil aircraft on or over the territory of (*Name of State*); or
- (4) any other civil aircraft in flight outside (*Name of State*), if
 - (a) the next landing of the aircraft is in (*Name of State*); and
 - (b) the aircraft commander has delivered the suspected offender to the competent authorities of (*Name of State*), with the request that the authorities prosecute the suspected offender and with the affirmation that no similar request has been or will be made by the commander or the operator to any other State.

2. The term "in flight" as used in this section means the period from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.

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