

Legal liability of flight crewmembers for actions to prevent criminal acts on aircraft

Since the terrorist acts that took place in the United States on September 11, 2001, both regulatory authorities and air carriers have either implemented or proposed several initiatives to prevent future acts of air piracy. Some of these initiatives require the locking of cockpit doors, requirement that flight crews do not leave the cockpit other than for physiological reasons, the carriage of armed sky marshals and arming the flight crew. Because the pilot-in-command (PIC) is responsible for the safety of all persons aboard the aircraft, a question arises as to the PIC's liability should injuries or death occur as a result of an act of air piracy.

At the urging of IFALPA's Security Committee, Captain Ted Murphy, raised the question of PIC liability with the Secretary General, ICAO. Captain Murphy suggested that ICAO "take the subject of the indemnification of operators and crewmembers for acts occurring during acts of unlawful interference into consideration when conducting its review of the existing provisions of international security related conventions and annexes to the International Civil Aviation Convention so that uniform international provisions can be encouraged and facilitated." Captain Murphy's inquiry was made because there are no Standards and Recommended Practices (SARPS) that provide specific protection from civil or criminal proceedings for flight crewmembers that perform as required in the event of an act of air piracy.

Any defence to civil or criminal legal actions brought against a flight crewmember would have to be based on national law. However, the SARPS do provide that "... crewmembers are expected to respond to and perform in various threat conditions". This would include actions taken in response to unlawful acts on an aircraft.

The questions raised by Captain Murphy were referred to the European Civil Aviation Conference Legal Task Force for consideration. The Legal Task Force has responded with their opinion, which is of interest to all pilots.

The Task Force was of the opinion that flight crewmembers and operators have adequate protections from civil damage lawsuits and there is no need for ICAO to take any further action regarding the indemnification question raised by Captain Murphy. This opinion was based on the Tokyo convention. In the view of the Legal Task Force, Article 10 of the Tokyo convention of 1963 provides clear protection for actions taken to prevent unlawful acts on board an aircraft if the convention is followed. Therefore, SARPS to protect crewmembers are not necessary. The Legal Task Force opined: "Besides ICAO's SARPS, other international legal instruments within the scope of ICAO include relevant provisions.

Particularly relevant are the Tokyo Convention of 1963 on offenses and other acts committed on board aircraft, which was complemented by the Montreal Protocol of 24th February, 1988, the Hague Convention of 1970 for the suppression of unlawful seizure of aircraft and the Montreal Convention of 1971 for the suppression of unlawful acts against the safety of civil aviation. Together, these conventions form a system of international criminal air law, almost universally accepted. They provide a set of principles designed to enhance civil aviation and air transport security.

Each of these conventions is a formally independent instrument, but, because they are complementary to one another, together they can be considered as forming a single coordinated system of legal rules, along with technical ICAO safety and security regulations (Annex 17 to the Chicago Convention). Of these, the Tokyo Convention is the only one that defines the powers of the aircraft commander, which makes it especially relevant to our issue. This Convention has been ratified by 171 States, which include all ECAC States. The Tokyo Convention of 1963 applies in respect of offenses against penal law and other acts which, whether or not they are offenses, may or do jeopardise the safety of the aircraft or of persons or property therein, or which jeopardise good order and discipline, when committed on board any aircraft registered in a contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any States (article 1, paragraphs 1 and 2). Chapter III of the Convention regulates the powers of the aircraft commander. Article 6 states that the aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offense.



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