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## **Unruly passengers – how can airlines legally respond**

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## **Preface**

I extend my heartfelt gratitude to Sandra Eilertsen, my dedicated and insightful master thesis supervisor, whose guidance, and unwavering support was essential in shaping this work. Your expertise, patience, and encouragement were invaluable throughout these past months.

Thank you!

# 1 Chapter One

Unruly and disruptive passengers is an increasing problem in civil aviation. This master thesis will focus on the legal action and consequences available to airlines, firstly in Norway, but also in the EU. Civil Aviation is highly internationally regulated, and it is therefore necessary to look at this issue from an international perspective.

I have chosen this specific topic based on my personal experience as cabin crew for two major Norwegian airlines, Scandinavian Airlines (SAS) and Widerøe Flyveselskap AS (Widerøe). I have handled unruly passengers and witnessed the increased problem myself. Because of this, my motivation for studying law, and specifically aviation law grew. I am still employed as cabin crew and have worked full time during my law studies. A combination of my working experience in aviation and my education puts me at a vantage position to be able to come up with my own personal analysis and perspective of the matter.

This master thesis will focus on mapping out the current legal actions available to airlines, and then look at how the laws and regulations can, or should, be changed to facilitate the airlines better when handling these types of passengers.

The civil aviation industry is an industry which heavily relies on safety and security in every aspect of its operation. It is strictly regulated, and the safety standards are incredibly high. Because of this aviation today is considered the safest way of transportation.

Still, the aviation industry is threatened by safety breaches all the time. And now, increasingly from its own passengers. Unruly passengers pose a threat to the working crew, the other passengers, and the aircraft itself. The worst cases, of course, being hijacking and forced crashes. The most known probably being the 9/11-hijackings, where al-Qaida, a terrorist organization, hijacked four civil aircrafts, and crashed two of them into the World Trade Center's Twin Towers in New York, the third into The Pentagon outside of Washington D.C, and the fourth crashed in a field in Pennsylvania.<sup>1</sup> The attacks claimed 2977 lives.<sup>2</sup>

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<sup>1</sup> Encyclopedia Britannica. *What were the September 11 attacks?*

<sup>2</sup> Encyclopedia Britannica. *How many people were killed in the September 11 attacks?*

Some airlines, like El Al, still flies with armed air marshals onboard. Is there still an active need for this? And should other airlines consider the same solution?

Chapter Two will be a short introduction to airline terminology necessary to read the thesis. It will also explain when a person is considered an unruly passenger, and how EUs aviation agency EASA (European Union Aviation Safety Agency) is categorizing these passengers.

Chapter Three will introduce the legal framework, actions, and consequences as they are today. This chapter will look at how the Norwegian Aviation Act, specifically focusing on the 6<sup>th</sup> chapter of the Act, and how the pilot in commands' role and authority is important when handling unruly passengers.

Additionally, I will investigate the terms and conditions, the Condition of Carriage, presented by a major airline operating in Norway, Scandinavian Airlines (SAS). These terms and conditions of the airlines plays a role when denying boarding of unruly passengers. This subchapter also raises the question if the airline can ban passengers from flying.

Lastly in this chapter I will analyze three Norwegian court cases that are relevant to the subject matter of this thesis.

Chapter Four will be a comparative look on the Federal Aviation Administration (FAA) and the Norwegian Civil Aviation Authority's (CAA) handling and interpretation of the regulations regarding unruly passengers. Specifically, I will look on the differences of fining unruly and disruptive passengers, as well as the differences in cooperation with local law enforcements.

Chapter Five will investigate possible alternative and/or new ways of dealing with these passengers. Are fines paid to the airline or the local Civil Aviation Authorities an option? Is there a need for court orders, or can the airline or the local CAA handle the issue without involving the court or local police enforcement?

Chapter Six will summarize and conclude the master thesis.

**Disclaimer**

This thesis is written in English, but some Norwegian regulations of significant importance, which do not have official translations, will be translated by me. I will present the relevant regulations first in Norwegian before I translate to English, in order to ensure that nothing is lost in translation.

## 2 Chapter Two

In this chapter I will begin with presenting the different aviation organizations important to the thesis. Thereafter I will go through what an unruly passenger is and the threats they pose to aviation safety.

### 2.1.1 International Civil Aviation Organization

In 1944 the Convention on International Civil Aviation, the Chicago Convention, was signed by 52 states.<sup>3</sup> This established what is today known as the International Civil Aviation Organization (ICAO), and functions as the United Nations agency within aviation.<sup>4</sup> Today ICAO has 193 member states across the globe, making the Chicago Convention and ICAO one of the most widely ratified treaties of the world.

ICAO states its mission as such:

“To serve as the global forum of States for international civil aviation. ICAO develops policies and Standards, undertakes compliance audits, perform studies and analyses, provides assistance and builds aviation capacity through many other activities and the cooperation of its Member States and stakeholders.”<sup>5</sup>

As the aviation industry grows, and the worlds it being digitalized, so does the need for the international forum ICAO.

### 2.1.2 European Union Aviation Safety Agency

The European Union Aviation Safety Agency (EASA) is an agency whose role is shaping and regulating civil aviation across Europe. Its responsibilities include a range of critical functions aimed at ensuring safety, standardization, and the seamless operation of the aviation industry.<sup>6</sup> The agency was established in 2002, with headquarters in Cologne, Germany.

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<sup>3</sup> International Civil Aviation Organization. ICAO Doc 7300: Convention on International Civil Aviation.

<sup>4</sup> International Civil Aviation Organization. About ICAO.

<sup>5</sup> International Civil Aviation Organization. Vision and Mission.

<sup>6</sup> European Union Aviation Safety Agency. The Agency.

### **2.1.3 What constitutes and unruly passenger**

Unruly passengers pose a threat to the onboard safety. A threat to passengers, the crew on board, and the aircraft itself. There is a rapid increase in the reports of unruly passengers, and it is concerning. The European Union Aviation Safety Agency (EASA) reports that every 3 hours the safety of a flight within the EU is threatened by unruly passengers.<sup>7</sup> Once a month it is necessary to perform an emergency landing. This is an additional expense for the affected airlines.

So, what is an unruly passenger? An unruly passenger is disruptive and non-compliant. Some may be under the influence of drugs and/or alcohol, while others may be violent. These are all factors which distract the cabin crew from doing their duties and contribute to jeopardizing the safety and security of crew and passengers.

Annex 17 to the ICAO Chicago Convention states that an unruly passenger is “a passenger who fails to respect the rules of conduct at an airport or on board an 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 on board the aircraft”.

It is important to note here, while it may seem obvious, the cabin crew’s duties are firstly in regard to the on board safety. They are trained in first aid, evacuations and maintaining the safety and order on board. When the cabin crew is disturbed, protocols and routines might be overlooked, and hazards and errors occur. An example may be when the cabin crew are arming the doors, engaging the evacuation slides, which is a manual maneuver. An unruly passenger disturbs them, and when returning to their stations an error when arming the doors, may have occurred. If an emergency situation would happen, and one of the evacuation doors are unarmed, the slide would not deploy, and passengers would have to be redirected to other exits. This takes valuable time when evacuating. Coffee and tea served on board are simply a service gesture, not why the cabin crew is on board.

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<sup>7</sup> European Union Aviation Safety Agency. Not on My Flight.



The issue of unruly passengers applies to all stages of the travel, from arrival at the departure airport, to arrival at arrival airport. Long queues, security screenings, delays and missed connections all contribute to stress and frustration which can lead to non-compliant behavior<sup>8</sup>. When finally on board the lack of personal space, and equipment not working properly or other passengers with children and infants may cause annoyance to a point of unruly behavior.

ICAO has developed a chart, categorizing the unruly behavior into 4 levels<sup>9</sup>:

- Level 1 - disruptive verbal behavior
- Level 2 - physically abusive behavior
- Level 3 - life-threatening behavior (or display of a weapon)
- Level 4 - attempted or actual breach of the flight crew compartment (hijacking and entering of cockpit).

This chart is used as a guidance for airlines when training crew, generally focusing on preventions and interventions, and how to deescalate the situation. I will not go further into the training of crew here but will look more into the training in Chapter Five.

In Norway it was reported 288 incidents of unruly passengers in 2022. That amounts to almost one incident a day. The Norwegian Civil Aviation Authority (Luftfartstilsynet – CAA) shows a chart of the past 10 years, from 2013-2022 showing the increase of reports.<sup>10</sup> During the covid pandemic in 2020 and 2021 there is a decrease in the number of reported and documented incidents of unruly passengers. Considering the downsizing of all airlines and fewer flights in this period, it is still a considerable number of unruly passenger incidents. The following charts are created by the Norwegian CAA.

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<sup>8</sup> SKYbrary Aviation Safety. Unruly Passengers

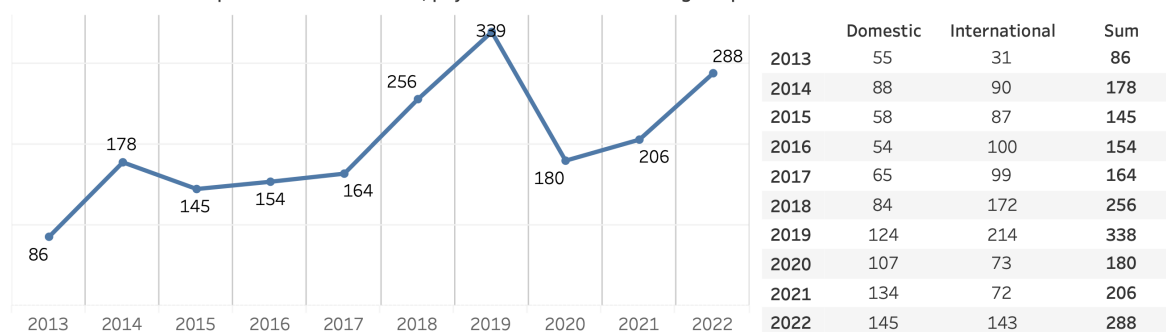
<sup>9</sup> SKYbrary Aviation Safety. Unruly Passengers

<sup>10</sup> The Norwegian Civil Aviation Authority. 22.09.2023. Unruly PAX – 10-year period.

## Unruly PAX - 10-year period

22.09.2023

Incompliance with instruction, physical assault or other irregular pax behaviour on board an aircraft



As flights are picking up again to normal levels, pre-pandemic, so are the reports of unruly passenger incidents.

The CAA also has statistics on which phase of the flight the unruly behavior is occurring. The statistics show that most incidents happen while airborne, en route to destination. This is alarming, as incidents in air are not as easily contained and handled as they might be on ground where police and security personnel are readily available at the airport.

	Phase of flight									
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Approach	2	6	9	10	8	15	10	8	5	5
En route	41	92	71	97	82	154	191	81	94	168
Landing		1			2	3	4	1	2	6
Manoeuvring				1	1		2	1		
Standing	27	56	46	32	47	60	86	47	74	80
Take-off		5	2			5	2	3	2	3
Taxi	7	9	12	8	9	10	23	15	7	22
Unknown	1		1		7	8	19	19	19	2
Not Applicable									1	

In addition, the different types of behavior are also charted, showing that smoking on board is still an issue, which in absolute worst-case scenarios can lead to fire onboard.

	Type of unruly behaviour										
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	
Difficult/Unruly Passenger	78	146	121	130	123	220	275	163	192	261	
Drunk Passenger				15	54	74	109	76	65	85	
Smoking in Cabin/Toilet	7	34	24	18	20	35	36	6	5	18	
Unauthorised Use of Mobile Devices and PEDs	1			2	3	1	8	8	5	9	

After a meeting with the Norwegian CAA's employee David Moldskred, who is functioning as a coordinator for cooperation between airlines, and my master thesis advisor Sandra Eilertsen, I got sent over the newest reports and estimation on unruly and non-compliant incident for 2023.

In 2022 there were 10,23 incidences with unruly passengers per 10000 flights. In 2023 it is estimated to be 13,61 incidents. The estimated number of incidents in 2022 is 476. A significant and concerning growth which is not showing any signs of slowing down. This confirms a growing need for new ways of dealing with unruly passengers. I will investigate this further in Chapter Five.

Numbers of reported incidents show an increase in sexual harassment in addition to increasing numbers of violent incidents. This is highly concerning and shows the absolute need for a solution to the problem. The safety issue of the matter is one side, but also the concern for a healthy work environment for all employees working both on board the aircraft but also on ground at the airports.

## 3 Chapter Three

### 3.1 The Aviation Act Chapter VI

This subchapter will summarize the importance of the sixth chapter of the Aviation Act (Lov om luftfart av 11.06.1993 nr. 101 (Luftfartsloven)), specifically Sections 6-1 to 6-6, and the importance of the role of the pilot in command, or in more informal terms, the captain. The chapter lays down the responsibility area, and the scope of action available to the pilot in command and ensures the safe operation of the aircraft.

The pilot in command holds a central position in ensuring the safety and smooth operation of the aircraft. This responsibility encompasses the safety and well-being of the aircrew and the passengers.

For the Sections in chapter VI there is an unofficial translation made by the Norwegian Department of Transport (Samferdselsdepartementet).<sup>11</sup> The translations were last revised on the 23<sup>rd</sup> of February in 2006. This means it is not up to date, and I will only be using the translations as a guideline. I have removed the paragraphs not relevant to this thesis, which pertain to the flight crew.

#### 3.1.1.1 Section 6-1

The Aviation Act Section 6-1 states:

“På norsk fartøy, [...], skal det være en fartøysjef.

Fartøysjefen har høyeste myndighet ombord.”

This translates to:

“On Norwegian vessel, [...] there shall be a pilot in command.

The pilot in command has the highest authority onboard”.

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<sup>11</sup> Act No. 101 of 11 June 1993 relating to Aviation (Aviation Act). Government of Norway.

The unofficial translation uses the word “Aircraft commander” instead of “pilot in command”. In this thesis I will use the term “pilot in command” as a more accurate term, as the chain of command can shift in certain events. The word “fartøysjef” does not indicate the captain specifically, but the pilot in command. The pilot in command is first and foremost the captain on board, usually indicated by the four stripes on his uniform. One reason the chain of command can shift, may be pilot incapacitation for any reason, such as sickness or delusions. In these instances, the chain of command will shift to the first officer, and he will be the pilot in command. This clear hierarchy is necessary to ensure safe air travel.

This means that the pilot in command holds the ultimate authority and responsibility for a safe and effective operation of the aircraft, such as decision making, crew management, passenger safety and of course in any event of emergencies, the pilot in command has the authority to take immediate action to address such situations.

### **3.1.1.2 Section 6-2**

The next regulation, Section 6-2 (1) states the duties of the pilot in command:

“Fartøysjefen skal påse at fartøyet er luftdyktig, miljødyktig og behørig utrustet, bemannet og lastet og at flygningen ellers forberedes og gjennomføres i samsvar med gjeldende bestemmelser.”

This translates to:

“The pilot in command shall ensure that the aircraft is airworthy, environmentally safe, properly equipped, staffed and loaded, and that the flight is otherwise prepared and conducted in accordance with applicable regulations.”

In other words, the pilot in command is responsible for the safe and proper care of the flight operation onboard.

### 3.1.1.3 Section 6-3

The Aviation Act Section 6-3 regulates the pilot in command scope of action available to him. This is an important regulation when dealing with the question of unruly passengers.

“Fartøysjefen fører oppsyn med fartøy, besetning, passasjerer og gods.

[...]

Passasjerer plikter å rette seg etter de anvisninger for god skikk og orden ombord som gis av fartøysjefen, den ansvarlige i kabinen eller andre besetningsmedlemmer som fartøysjefen bemyndiger. Passasjerer må ikke opptre slik at sikkerheten til fartøy, besetning eller andre passasjerer settes i fare.

Fartøysjefen kan nekte å ta ombord og har rett til å sette av besetningsmedlemmer, passasjerer og god når forholdene krever det.”

This translates to:

“The pilot in command oversees the vessel, crew, passengers, and cargo.

[...]

Passengers are obliged to comply with the instructions for proper conduct and order on board, as given by the pilot in command, the chief cabin crew, or other crew members authorized by the pilot in command. Passengers must not behave in a way that jeopardizes the safety of the vessel, crew, or other passengers.

The pilot in command has the right to refuse boarding, and to disembark crew members, passengers, and cargo when circumstances require it.”

When interpreting this regulation, it's clear that the first paragraph states the authority of the pilot in command. It is his responsibility to supervise and oversee the operation onboard.

The third paragraph describes the pilot in command's authority to issue instructions to passengers regarding proper conduct on board. The pilot in command can give instructions through delegating his authority to the chief cabin crew, or other relevant crew members.

The fourth and last paragraph states the pilot in command's right/authority to deny boarding, and disembarkation of crew members, passengers, and cargo when circumstances require it. This applies to non-compliance or unruly behavior occurring at the specific moment of boarding. The pilot in command may deny boarding if a passenger is clearly drunk, non-compliant or in other way disruptive. The regulation also applies to unruly behavior while airborne.

In the case TALST-2020-116550, which I will look further into further down, the High Court established two obligations for passengers on board aircrafts. The first one being the obligation to obey any instructions given by the pilot in command, the chief cabin crew or other crew members under the authority of the pilot in command. The second obligation for the passenger is to not do any action which may jeopardize the safety and security of the aircraft, the crew members, or passengers on board.

This statement underscores the authority of the pilot in command, and the clarity of the expectations passengers will be met with.

#### **3.1.1.4 Section 6-4**

In certain circumstances the use of force may be necessary to ensure the safety of aircrew and passengers. This right/authority of the pilot in command is ensured by Section 6-4, which states:

“Når det er nødvendig av hensyn til fartøyets sikkerhet eller for å beskytte person eller eiendom ombord eller for å opprettholde orden og lydighet ombord, har fartøysjefen rett til å bruke makt og iverksette andre tiltak i den utstrekning det etter forholdene kan ansees forsvarlig.

Ethvert medlem av besetningen plikter å yte fartøysjefens hjelp. Etter oppfordring av fartøysjefen kan også passasjerer yte hjelp.

Når det er påtrengende nødvendig av hensyn til fartøyets sikkerhet eller for å beskytte person eller eiendom ombord, kan besetningsmedlemmer og passasjerer uten oppfordring fra fartøysjefen iverksette forebyggende tiltak og herunder bruke makt, i den utstrekning det etter forholdene kan ansees forsvarlig.”

This translates to:

“When it is necessary for the safety of the vessel or to protect persons or property on board, or to maintain order and discipline on board, the pilot in command has the right to use force and take other measures to the extent that it may be deemed reasonable under the circumstances.

Any member of the crew is obliged to assist the pilot in command. Upon the pilot in command's request, passengers may also assist.

When it is urgently necessary for the safety of the vessel or to protect persons or property on board, crew members and passengers may, without being prompted by the pilot in command, take preventive measures, including the use of force, to the extent that it may be deemed reasonable under the circumstances.”

What this means is that the use of force, such as strapping a passenger to his seat, is available to the pilot in command if necessary. Most airlines carry restraint kits, with strips or handcuffs to restrain passengers to their seats. This regulation may specifically come into action if an unruly passenger is physically abusing crew members or other passengers, making severe threats towards the safety of the aircraft, crew, or passengers, or is attempting to breach the cockpit and/or hijack the aircraft.

The authority to use force for civilians without police enforcement is unusual in Norwegian law. The reason behind is the “unusual” circumstance an airborne aircraft is in. One could argue that it would be sufficient to lean on the penal term of “self-defense”, instead of having this Section in the Aviation Act, but having it makes sure there is no doubt in the power and authority of the pilot in command. The Section makes a clear statement on the importance of aviation safety.



### 3.1.1.5 Section 6-5

Furthermore, in the Aviation Act Section 6-5 regarding perpetration of criminal acts on board, it states:

“Blir det ombord på luftfartøy forøvd straffbar handling av alvorligere art, skal fartøysjefen så vidt mulig foreta det som trengs for å sikre bevis, og som ikke uten skade kan utsettes.

Fartøysjefen skal såvidt mulig sørge for at den skyldige ikke unnviker, og kan i det øyemed om nødvendig ta ham i forvaring. Uten eget samtykke kan den skyldige ikke holdes i forvaring lenger enn inntil han kan overleveres til politiet i Norge eller til vedkommende myndighet i utlandet.

Fartøysjefen kan ta i forvaring gjenstander som antas å ha betydning som bevismidler. Han skal gi politiet eller myndighet som nevnt i annet ledd de nødvendige opplysninger og bevismidler som han har sikret etter første punktum.

Reglene i § 6-4 annet ledd gjelder tilsvarende.”

This translates to:

“If a more serious criminal act is committed on board an aircraft, the pilot in command shall, to the extent possible, take the necessary steps to secure evidence that cannot be postponed without harm.

The pilot in command shall, to the extent possible, ensure that the offender does not escape and, if necessary, may take the offender into custody. Without the individual’s consent, the offender may not be held in custody for longer than necessary for the individual to be handed over to the police in Norway or the relevant authority abroad.

The pilot in command may take into custody objects believed to be of significance as evidence. He shall provide the police, or the authority mentioned in the second paragraph with the necessary information and evidence he has secured in accordance with the first sentence.

The regulations in Section 6-4, second paragraph, are applicable in a similar manner.”

This raises the question on what a more serious criminal act on board is. It is undoubtable that hijacking will fall under this regulation, as this puts everyone's life in severe and acute danger. This is as stated above considered to be a level 4 (attempted or actual breach of the flight crew compartment (hijacking and entering of cockpit)) unruly passenger. Section 6-5 in correlation with Section 6-4 third paragraph will ensure that crew and passengers may take forceful actions when handling hijackers.

It is also indisputable that a level 3 (life-threatening behavior (or display of a weapon)) unruly passenger is committing serious criminal acts, as it is stated within the category, that these passengers are doing serious life-threatening harm, or displaying weapons, to aircraft, crew, or fellow passengers.

In addition, other obvious serious crimes as they are stated in the Penal Code (Lov om straff 20.05.2005 nr. 28, Straffeloven).

#### **3.1.1.6 Section 6-6**

Furthermore, to protect the crew onboard from being liable for a claim on damages resulting from actions taken under Sections 6-4 and 6-5, the Aviation Act Section 6-6 states:

“Blir tiltak etter §§ 6-4 og 6-5 iverksatt på forsvarlig mate, kan det for skade som derved voldes den som tiltaket var rettet mot ikke kreves erstatning av fartøysjefen, besetningsmedlemmer eller passasjerer, og heller ikke av fartøyets eier eller bruker eller den på hvis vegne reisen ble foretatt.”

This translates to:

“If actions taken under Sections 6-4 or 6-5 are carried out in a reasonable manner, no compensation can be claimed from the pilot in command, crew members, or passengers, nor from the vessel's owner or operator, or on behalf of whom the journey was undertaken, for any damage caused to the person towards whom the action was directed.”

Seen in accordance with Sections 6-4 and 6-5 this states that any actions taken to ensure the safety onboard, must be done in a reasonable manner. A natural understanding of the wording is a manner which is appropriate and justifiable. It therefore becomes an assessment of what is “reasonable” and in which cases it is reasonable to employ measures such as force or other measures deemed necessary to contain an unruly passenger.

The decision to use force or restraint on an unruly passenger is typically made when they pose a threat to the safety of the aircraft, its passengers and crew members. The action may be considered reasonable when it's necessary to prevent harm or maintain order. The specific circumstances and the level of threat, and what options for de-escalations plays a crucial role in determining the reasonableness of using force or restraint.

Disarming and restraining hijackers, who is forcefully trying to enter the flight deck, is reasonable and justifiable. It may also be appropriate to forcefully restrain a passenger who is simply refusing to wear his seatbelt before landing. Refusing to wear your seatbelt is unruly behavior, although it's only categorized as Unruly Level 1 (disruptive verbal behavior). Unruly Level 1 is the lowest level of unruly behavior.

It may not be reasonable to use measures such as force or restraint towards a passenger who is yelling or is refusing to put his laptop away.

### **3.1.2 The Aviation Act Section 14-11**

In addition to the above-mentioned regulations in the Aviation Act chapter VI, chapter XIV on penal provisions is relevant when handling unruly passengers, specifically Section 14-11 which states:

“[...]”

Passasjerer som opptrer i strid med § 6-3 tredje ledd straffes med bøter eller fengsel inntil 6 måneder eller med begge deler.

Har [...] passasjer ved ulydighetsnektelsen utsatt fartøyet eller menneskeliv for fare, eller har han fastholdt den tross gjentatt ordre, eller foreligger det for øvrig særdeles skjerpene omstendigheter, kan fengsle inntil 3 år anvendes».

This translates to:

“ [...]”

Passengers who act in breach of Section 6-3 third paragraph shall be punished with fines or imprisonment for up to six months or both.

If [...] a passenger's failure to obey an order exposes the aircraft or persons to danger, or if he continues to disobey despite repeated orders, or if there are any other particularly aggravating circumstances, he may be imprisoned for up to three years.”

It is not unusual that penal provisions for very specific offences are described in other laws than the Penal Code. Such as here, in the Aviation Act chapter XIV, and for this specific issue Section 14-11.

This Section has been used in the court cases to determine the penalty for the offence committed by unruly passengers. In the case of TALST-2020-116550, the High court referred to the Section 14-11, and remarked that penalties for non-compliant behavior from passengers were only added on the 1<sup>st</sup> of July 2001. The change was done to clarify the pilot in commands authority towards unruly passengers on board cf. ot.prp.nr.28 (2000-2001) p. 34.

The High court in this case also remarked this on Section 14-11:

“The objective conditions for refusal to obey under Section 14-11 (2), to be punishable, are therefore that the passenger either refused to comply with instructions of good conduct given by the pilot in command or other crew members, or that the passenger has acted in a way that jeopardizes the safety of the aircraft, crew members or other passengers on board. These are alternative conditions, and it is not necessary that both obligations are met. However, the High court established that not every instance of failure to comply with instructions from the crew members is punishable. It is behavior of such nature that, under the circumstances, “may constitute a danger to aviation safety” that is subject to punishment.”

Further down I will analyze the case and see how the High court used this Section to sentence the accused.

### **3.2 Terms and Conditions of Carriage**

Most airlines have Conditions of Carriage. This is a form of contract and represents the terms and conditions that passengers agree to when they purchase a ticket and utilizes the services provided by the airline.

The contract outlines the rights and duties, obligations, and limitations for both the passenger and the airline. It covers various aspects of the travel experience, such as baggage allowance, ticket changes or cancellations, as well as passenger behavior expectations and liability limitations.

When a passenger purchases a ticket, they agree to these Conditions of Carriage, whether they read them or not, typically by checking a box with the document available next to it as a direct link.

For the sake of this thesis, I will only explore SAS' Conditions of Carriage documents. The Conditions of Carriage for both Norwegian Air Shuttle and Widerøe are almost identical and cover the same conditions.

### **3.2.1 SAS' Condition of Carriage**

SAS' current Condition of Carriage came into effect on the 27<sup>th</sup> of June 2023. As mentioned above this document contains various obligations and rights. For this thesis it is relevant to explore Article 8: Right to refuse carriage, check-in, and boarding. The article lists multiple reasons for refusal of carriage, check-in or boarding and to avoid reiterate the whole article, I will edit out reasons not applicable to explicit unruly behavior.

The Article 8.1 states<sup>12</sup>:

“In the reasonable exercise of our discretion, we may refuse to carry you or you Baggage provided we have notified you in writing that we would not at any time after the date of such notice carry you on our flights. We may also refuse to check-in, board or carry you or your Baggage if one or more of the following have occurred or we reasonably believe may occur;

- (a) Such action is necessary in order to comply with any applicable laws, regulations, or orders;
- (b) The Carriage of you or your Baggage may endanger or affect the safety, health, or mentally affect the comfort of other Passengers and crew;
- (c) Your mental or physical state, including your impairment from alcohol and drugs, present a hazard or risk to yourself, to Passengers, to crew, or to property;

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<sup>12</sup> SAS. *Conditions of Carriage*

(d) You have committed misconduct on a previous flight, and we have reason to believe that such conduct may be repeated;

(e) You have refused to submit to a security check;

[...]

(j) You fail to observe our instructions with respect to safety or security.

We are not liable for any damages you incur due to refused carriage because of one of the above reasons. You will not be entitled to any denied boarding compensation in case of our decision to deny check-in, boarding or carriage in accordance with the above.”

This Article gives the airline a broad discretion to refuse carriage of passenger and their baggage if the conditions of the Article are not met.

What is especially interesting in this Article is the letter (d) which goes a lot further than just denying boarding or check-in but may amount to a ban of the passenger for future flights. The Aviation Act has no provisions regarding banning of passengers, but instead it states the pilot in command’s authority on ongoing incidents of non-compliant and unruly passengers. The pilot in command may deny boarding or disembark a non-compliant passenger at any point during an ongoing flight. The letter (d) allows for the airline to deny the sales of future tickets to a passenger who has previously behaved in a disruptive or non-compliant way.

This raises multiple legal questions.

The implementation of such rules, as Articles letter (d) states, poses new legal and logistical challenges. Maintaining records of passengers’ previous conducts and establishing and/or implementing an airline ban on future travel demand robust systems. However, the absence of prior court cases testing the Conditions of Carriage leaves uncertainties about the extent of the airlines’ authority to enforce such bans on passengers based on behavior.

The airline’s discretion to refuse carriage based on past misconduct implies a form of ongoing monitoring and record-keeping of passengers’ behavior. This can potentially intersect with the General Data Protection Regulation’s (GDPR) regulations on handling and processing personal data, as storing of information about past incidents involving passengers might constitute the collection and retention of sensitive data.

The GDPR Article 6, first paragraph, letters (a), (b) and (c) states:

“Processing shall be lawful only if and to the extent that at least one of the following applies:

- (a) The data subject has given consent to the processing of his or her personal data for one or more specific purposes;
- (b) Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) Processing is necessary for compliance with a legal obligation to which the controller is subject;

[...]

Processing of personal data is allowed if the data subject, the passenger, has given explicit consent. This is included when the passengers agree to the terms and conditions while booking a ticket. It is necessary for the airline to process personal data to the extent of managing flight bookings and for providing the services agreed upon in the Conditions of Carriage.

Any collection, storage, or usage of personal data must be in accordance with the principles of GDPR Article 6, to ensure the safe keeping of sensitive personal data. In the context of the SAS Conditions of Carriage, the airline would need to ensure that their processing of passenger data, especially in situations such as refusal of carriage based on past behavior, as outlined in Article 8 in the Conditions of Carriage, aligns with the GDPR.

As mentioned, the Conditions of Carriage has never been tested by the court, so there is still uncertainty revolving around this question, and if the Conditions of Carriage are in line with the GDPR when processing passenger data on unruly behavior from previous incidents.

This also raises a question in general on the airline’s procedures on possible airline bans. How serious or severe must the incident of unruly behavior be to amount to an airline ban? For how long is a ban enforced? Is the ban for 6 months, a year, or indefinite? Who is the “court of appeal”?

In this context, I would argue against further exploration by highlighting that cases involving the permanent or temporary ban of passengers are not publicly accessible information. Without specific details or concrete information, any analysis or conclusions drawn would be purely speculative.

### **3.3 Norwegian Court cases**

There are few examples of judicial precedent in Norway regarding this matter, none from Høyesterett (The Supreme Court). There are three levels of court in Norway: Tingretten, which equivalates to the High Court. Lagmannsretten, Court of Appeal, and Høyesterett, The Supreme Court.

The three following cases are the only ones in the past 10 years, and all judged by Tingretten, The High Court, the lowest court instance in Norway.

#### **3.3.1 Threats resulting in diversion**

TAHER-2016-57260

A 51-year-old man was found guilty of violating of the Penal Code Section 227, and the Aviation Act Sections 14-11 (3) cf. Section 6-3 (3) first sentence, after he made death threats to fellow passengers on board a Norwegian flight en route Bangkok from Oslo, which resulted in a diversion to Warsaw.

The accused had met to other men at Oslo Airport prior to the flight, and together, the three of them had consumed alcohol, Jägermeister, in a restroom before departure. In addition, the accused received two sleeping pills from the men. He took one pill before departure, and the other onboard the aircraft. The accused explained that he did not remember anything about the flight and only recalled being picked up by armed police in Warsaw.

A passenger (B) witnessed the accused being so loud during the flight that another passenger moved away from the seat row. B was seated in the aisle seat opposite the accused. The accused then attempted to make contact with B, and B testified that the accused was still consuming alcohol which the accused had brought onboard, which is not allowed. B asked the accused to leave him alone, to which the accused responded with various rude remarks such as, “you’re not any better than me,” and “din jævla hestkuk” which translates to “you damned horse cock”. When B ignored the accused, he became so angry he asked B “do you want to die, you bastard?”.



Another passenger (C) was seated behind the accused man. While C was in the lavatory, the accused leaned over the woman C was traveling with to take pictures of the sunset. C asked the accused to return to his seat. The accused then said he was going to kill C and that C would die a brutal death. C testified that these threats were repeated 15-20 times before they diverted to Warsaw.

The cabin crew and a captain who was traveling privately had spoken with the accused several times, and eventually the captain onboard came out of the flightdeck to speak to the accused. It was then decided to divert to Warsaw and have the accused disembarked.

The court found that the threats directed at the passengers were to be considered death threats, and under the circumstances, the threats were capable of eliciting serious fear. Since the accused was under self-induced intoxication, the court found that he should be assessed as sober according to the Penal Code Section 40, first paragraph. There was no doubt the accused acted with intent.

The court then found that death threats are serious, even if the accused likely had no intentions of carrying them out. It was aggravated by the fact that the threats were made on board an aircraft, where passengers and crew had limited opportunities to escape or withdraw from the situation.

The court convicted the accused for violation of the Penal Code of 1902 Section 227, and The Aviation Act Sections 14-11 (3) cf. 6-3 (3) first sentence. The accused was sentenced to 21 days' imprisonment and was found liable for damages amounting to 95,978 NOK to Norwegian Air Shuttle ASA. The damages were claimed to compensate the landing fee into Warsaw.

The sentence was not appealed.

In this case the High Court took the matter of the case very seriously. The judgement was unanimous. The verdict illustrates that unruly and non-compliant behavior shall be judged severely. The court's decision emphasizes the consequences for disruptive conduct. This verdict serves a role as preventive measures. It also serves as a predictable way to foresee the outcome of future cases of unruly or non-compliant passengers, both for the airline and the passenger in question.

Cases involving unruly passengers shall not be looked lightly upon. A strict response sends a clear message that disruptive behavior onboard an aircraft is unacceptable and will be faced with consequences. This not only ensures justice for specific incidents, like the above-mentioned case, but also serves as a deterrent, discouraging potential future disruptions and upholding the safety and security of all passengers, crew members and the aircraft itself. Additionally, a strong judicial reaction establishes a precedent that underscores the seriousness of such actions, contributing to the maintenance of order and the smooth operation of air travel.

### **3.3.2 Smoking onboard**

TNETE-2015-22159

A 30-year-old woman smoked onboard a Norwegian aircraft, while en route from Tromsø to Oslo Airport, and in doing so she violated the Aviation act § 14-11 second paragraph cf. § 6-3 third paragraph, first punctuation. She provided a full confession to Nedre Telemark district court and agreed to an admission of guilt judgment. Her confession aligned with the crew's reports. It is not stated where on board she smoked.

The case then revolved around the determination of the fine for her breach of the rules. The court emphasized that it is common knowledge that smoking is not permitted on any flights. And as with all flights, the smoking ban was made clear both from the crew, and lights in the passenger control panel above their heads. For the sake of general prevention, the court favored a strict level of fines.

The court convicted the accused woman for violation of The Aviation Act Section 14-11 (2) cf. Section 6-3 (3) and sentenced her to pay a fine of 7000NOK.

The case itself is quite short, as it is a not a trial, but a sentencing. Because of this there were no opportunity to test the Conditions of Carriage. There was enough evidence, and the accused accepted the sentence.

The sentence was not appealed.

It is not stated where she smoked, and the court did not expound on why it is prohibited to smoke on board. The severity of this act puts everyone at risk. It is commonly said in the aviation industry that the worst thing to happen on board is fire. There are multiple fire safety precautions in place, both in the cargo hold, the lavatories, the flight deck and in the cabin.

Such as Halon Fire Extinguishers placed in both front and aft cabin, installed in the lavatory bins, in the flight deck along with a fire axe and additional water loaded to soak whatever object has caught on fire. If the fire is not contained quickly and safely, it may spread to the fuselage body and disrupt several essential instruments putting the passengers and crew in severe life-threatening risk.

Because of the persistent problem of passengers smoking on board, the smoke ash trays may still be found in all lavatories, and some arm rests in seats, so the crew have a safe place to dispose of the cigarette. The alternative would be in the lavatory bin, which probably is full of flammable paper.

### **3.3.3 Refusing to wear seatbelt**

TALST-2020-116550

This incident regarded a passenger refusing to wear his seatbelt before landing on a Widerøe flight bound for Mosjøen, Norway. The 30-year-old man refused wearing his seatbelt when asked by the flight attendant when doing the pre-landing safety check on all passengers. He told the flight attendant that he felt like a caged animal, and he wanted to know on what authority she could instruct him wearing the seatbelt. The flight attendant told him she was chief cabin crew and had authority to instruct this. At this point the passenger fastened his seatbelt, but so loosely the flight attendant testified it was “hanging on his knees”. She then reported the incident to the pilot in command, the captain.

The captain testified that he had experienced a situation previously to this flight, where another flight attendant had not been seated during turbulence, and she flew into the roof and hurt herself badly, and he therefore meant it was strictly necessary that the passenger was wearing his seatbelt.

The captain then decided to place the aircraft in a holding pattern above the airport of Mosjøen, and to leave the flightdeck to speak to the passenger himself. A holding pattern is when an aircraft circles in a specific pattern while airborne, typically awaiting clearance to land. The passenger was at that point no longer wearing his seatbelt. The captain firmly told the accused that he had to fasten his seatbelt, or the flight would continue to Bodø, where the police would be waiting for him. The accused passenger then fastened his seatbelt. The prosecution and the defense were in agreement on the fact that the total time spent on this incident was around 5 minutes.

The prosecutor requested a sentence of 14 days of conditional imprisonment for the accused, and payment of compensation to Widerøe, along with covering all legal expenses.

The defense counsel requested a complete acquittal or, alternatively, the minimum possible penalty.

In this case, the High court concluded that there had been a violation of the Aviation Act Section 14-11 second paragraph cf. Section 6-3 third paragraph, after also consulting the two judgements mentioned above. They found that the third paragraph of Section 14-11 was not applicable, as there were no presented facts to the court indicating that the passenger had posed any real danger to other passengers or crew, and that the passenger could simply be punished for non-compliance. The Court remarked that the culpability requirement for a violation of Section 14-11 second paragraph, is intent.

The accused declared himself not guilty, but the Court found that the requirements of Section 14-11 second paragraph was fulfilled, and that the accused had acted with intent, and jeopardized the safety on board by refusing to wear his seatbelt.

The court further believed that a fine was the appropriate response and, additionally, emphasized that, for the sake of general prevention, the punishment level for non-compliance on board an aircraft should be strict. They also gave weight to the significant safety reasons behind the requirement for passengers to comply with clear orders from the crew onboard.

The court then unanimously decided on a fine of NOK15,000 and that the accused also were to pay the liability claim of NOK1,846 to Widerøe. Additionally, the accused had to cover all legal expenses.

### **3.3.4 Summary of the Norwegian Court Cases**

It is interesting that only three cases have been through the court system in Norway the past ten years, considering the number of reported cases of unruly behavior done by flight crew on the issue of unruly passengers. Only one case concerns smoking on board, even though it's been reported 18 cases in 2022 alone. In 2019, which was a top year, there were 36 cases. A possible explanation may be that people are smoking e-cigarettes or vapes.

E-cigarettes and vapes are generally prohibited during flights due to concerns about them setting off smoke alarms on the aircraft. The steam or vapor produced by the e-cigarettes and vapes may also disturb the duties of the crew, as it may look like smoke from a potential fire on board. Airlines implement these restrictions to maintain a safe and controlled environment on board. So, even if there is no open flame/fire, like an ordinary cigarette would produce, vaping and smoking e-cigarettes can make for expensive delays and technical issues, like switching the smoke alarms. Additionally, it is to prevent the possibilities of fumes, which may mask other dangerous fumes the cabin crew may need to smell, like hydraulic fluids, the galley equipment or other electrical or overheating issues. This is also, for example, why it is not allowed to polish your nails during a flight.

Based on the sentences the court looks upon offences committed on board an aircraft as serious and severe.

## 3.4 The Issue of jurisdiction – The Tokyo Convention

### 3.4.1 The Tokyo Convention

The convention on offences and certain other acts committed on board aircraft, also known as The Tokyo Convention, took effect on the 4<sup>th</sup> of December 1969, and has by 2022 187 signed parties<sup>13</sup>. Only nine member states of the UN have not ratified the Convention. The Convention was set in motion by ICAO, as the aviation industry was emerging as a bigger industry than ever with new legal issues, spanning internationally like never before. Sir Richard Orme Wilberforce, a British judge, described it like this in 1947:

“But now we have one to 200 people flying together, commonly for four to seven hours, at times for 12 to 15 hours. They fly in conditions of security and comfort. They have room to move about. They include both sexes. They are plentifully supplied with alcoholic stimulants... and the purely statistical chances of abnormal behavior are obviously greatly increased. Moreover, aircraft pass rapidly over frontiers which on land may be carefully controlled. They offer great opportunities for the transfer from one country to another... of commodities for which a high price will be paid and which cannot pass to their most profitable market by land or sea: things such as gold, drugs, diamonds, secret plans and designs. It is very tempting for passengers on these aircraft and for their crews to undertake or lend themselves as accessories to these trades.”

Today this description still fits the industry, although it has expanded vastly, and is bigger than ever before. New, modern aircrafts, such as the double-decker Airbus A380 which can seat between 525 in a three-class-configuration to a maximum of 853 passengers in a economy-configuration.<sup>14</sup> With multiple airlines still doing full free service onboard to all passengers, free-flowing alcohol is still a major issue.

The description goes further than simply unruly passengers, but also includes them. As stated, before in the thesis hijackers are also categorized as unruly passengers.

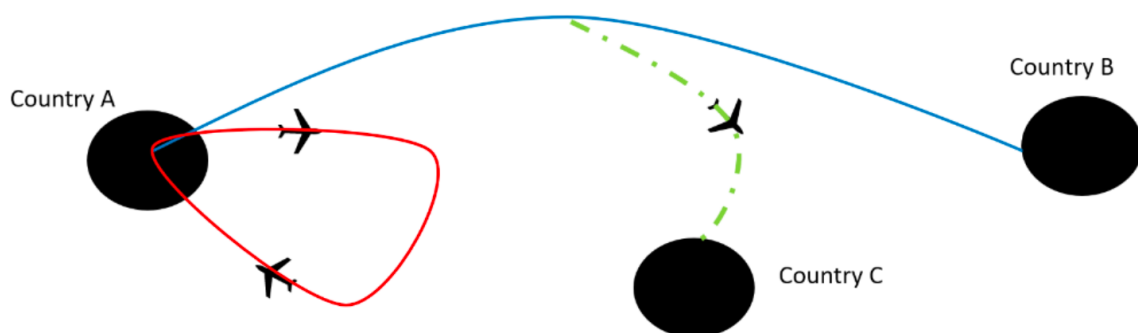
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<sup>13</sup> International Civil Aviation Organization. *List of Parties to the Tokyo Convention*

<sup>14</sup> Airbus. A380.

The Convention states that the country where the aircraft is registered, has jurisdiction over offenses/incidents occurring while en route on flights, cf. Article 3 first paragraph. This in theory should not be subject to any issues but in reality, the Convention has gaps. When jurisdiction is belongs to the country where the aircraft is registered, and the flight is domestic within that same country, there are no issues. But international flights, some being 10 to 19 hours long, flying over multiple countries and time zones means that the juridical police authority is literally miles away. This means that if an unruly passenger is being let go in another country, the local police authorities are powerless to act, and the passenger is often just released with no punishment for their non-compliant behavior.<sup>15</sup> Article 4 of the Convention states several exceptions to when jurisdiction does not fall to the State of aircraft registration. This will be explored further down in this subchapter.

The illustration below is made by The International Air Transport Association (IATA) to showcase how different scenarios may result in different outcomes when looking into which country has jurisdiction and where the gaps in jurisdiction occur. The aircraft in question is registered in Country A. The following scenarios are developed by the IATA to showcase the gaps in the Tokyo Convention along with the illustration.



“Scenario 1 – The Captain elects to return to Country A – The aircraft is registered in Country A. Police and prosecutors can deal with the passenger under national law. No problems.

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<sup>15</sup> The International Air Transport Association. *Even safer and more enjoyable air travel for all.*

Scenario 2 – The Captain elects to continue to Country B (scheduled destination) – but authorities in Country A as State of aircraft registration have jurisdiction under the Tokyo Convention 1963. But they are 5000km away. What can the police at the airport in Country B do? Usually they release the passenger without charge.

Scenario 3 – The Captain elects to divert to an airport in Country C, but again Country A has jurisdiction and the same problem occurs as Scenario 2.

Scenario 4 – The aircraft is dry-leased from a lessor and is registered in Country D. In this case, authorities in Country A (where the aircraft operates most flights to/from), Country B or Country C do not have jurisdiction. 50% of the world's fleet is leased so these jurisdictional gaps may be increased.”

The IATA is the trade association for the world's airlines and is representing 320 airlines around the world. This amount to 83% of the total air traffic.<sup>16</sup> Both SAS and Widerøe are members of IATA, while Norwegian Air Shuttle is not a of this date.<sup>17</sup>

Due to the international circumstances of aviation, it is highly concerning that when dealing with and handling unruly passengers, it often ends up in nothing. As shown in Scenario 4, it is also concerning that such a high percentage of the world's aviation fleet is leased, and often so from another country entirely, which suddenly gives jurisdiction to a country not even necessarily involved as departure state or arrival state.

To demonstrate the gap, I will make up an example (this is fictional, and is not an actual event that has happened):

SAS flight 907 departs from Oslo Airport (OSL) bound for Newark Liberty International Airport (EWR). The plane is registered in Denmark. During the flight a Norwegian man takes narcotics in the economy class lavatory in the aft section of the plane. A member of the cabin crew demands that he quits, and the passenger lunges at her leaving her severely injured. Upon arrival at EWR, the SAS pilot-in-command has contacted the local police authority to

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<sup>16</sup> International Air Transport Association. About IATA

<sup>17</sup> International Air Transport Association. Airline List



detain the passenger. After assessing the matter of the case, the police conclude there is no jurisdiction to prosecute the offence which happened on board.

### **3.4.2 The original content of the Tokyo Convention**

#### **3.4.2.1 Scope of the Convention**

Chapter 1 of the convention charts the scope of it, with Article 1 stating:

“1. This Convention shall apply in respect of:

- (a) Offences against penal law;
- (b) Acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.

2. Except as provide in Chapter III, this Convention shall apply in respect of offences committed or acts done by a person 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 State.

3. For the purposes of this Convention, and aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment the landing run ends.

4. This Convention shall not apply to aircraft used in military, customs or police services.”

The first paragraph states that as long as the action committed by a person jeopardizes the safety of the aircraft or other persons on board the Convention will be applicable. This means that even though the offence is not criminal by law, the disturbance may be so severe or serious that the aircraft may need to divert into other countries for disembarkation of persons disrupting the safety on board.

#### **3.4.2.2 Jurisdiction**

Chapter II of The Convention regards the question of jurisdiction. Article 3 states:

“1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.

2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.”

Article 4 states the exemptions to Article 3 of the Convention:

“A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases:

- (a) The offence has effect on the territory of such State;
- (b) The offence has been committed by or against a national or permanent resident of such State;
- (c) The offence is against the security of such State;
- (d) The offence consists of a breach of any rules or regulations relating to the flight or maneuver of aircraft in force in such State;
- (e) The exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.”

These exemptions cover a wide range of potential offenses, including but not limited to, crimes against individuals, breaches of aviation regulations, security threats, and offences that have effect within the territory of the country where the aircraft is flying.

Article 4 (a) refers to crimes that have effect on the territory of the state other than the state where the aircraft is registered. Crimes that might fall under this provision might be illegal drug trafficking, human trafficking, or other kinds of smuggling. In addition, environmental crimes and/or financial crimes might be exempt from Article 3.

Article 4 (b) will be applicable if the offence involves a citizen or permanent resident of the country that is not the state of registration that state might have grounds to exercise jurisdiction. For example, the aircraft is registered in Country A, with destination in Country B. On board is an unruly passenger with citizenship in Country B. The aircraft diverts, and lands back in the departing Country A. Even though Country A has jurisdiction, Country B may still exercise jurisdiction over the case as the passenger is a citizen of Country B.

Article 4 (c) will be applicable for offences against the security of a State other than the State of registration. Any offence that compromises the security of the state other than the state of registration could lead to the state intervening and exercising jurisdiction. This could be acts of terrorism, espionage and other threats to public safety.

Article 4 (d) will be applicable for offences regarding breach of flight or maneuver regulations. Violations of specific rules or regulations related to the operation and navigation of the aircraft in force within the state that is not the state of registration might lead to that state exercising jurisdiction.

If an offence relates to an international agreement to which the state that is not the state of registration is a party, that state might claim jurisdiction to ensure compliance with its international obligations, cf. Article 4 (e).

### **3.4.3 The Montréal Protocol**

Most incidents of unruly and non-compliant passengers do not fall under the exemptions of the Convention Article 4, as there are quite few incidents with such severity. Therefore, the issue of gaps in the Convention is very much a persisting issue. This is rectified by the Montreal Protocol of 2014. In 2014 the ICAO member states recognized the need to close the gaps and created the Protocol to amend the Convention on offences and certain other acts committed on board aircraft (Montréal Protocol, 2014).

The main reason for ratification was summarized as such in the Administrative Package for the Protocol (4):

“The Montréal Protocol is the result of collective efforts by the international community to expand the scope of the Tokyo Convention to enable States other than the State of registration to exercise jurisdiction over unruly passengers. By expanding the scope of jurisdiction on a mandatory basis, it will strengthen the capacity of States to curb the escalation of the severity and frequency of unruly behavior on board aircraft. The Protocol also recognizes the desire for many States to assist each other curbing unruly behavior and restoring good order and discipline on board aircraft”.<sup>18</sup>

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<sup>18</sup> International Civil Aviation Organization. Montreal Protocol

The Montreal Protocol Final Act of the International Conference on Air Law to Consider Amending the Convention of Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963) was enforced on the 1<sup>st</sup> of January 2020. The Conventions Article 3 now states<sup>19</sup>:

“1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.

1 *bis*. A State is also competent to exercise jurisdiction over offences and acts committed on board:

- a) As the State of landing, when the aircraft on board which the offence or act is committed lands in its territory with the alleged offender still on board; and
- b) As the State of the operator, when the offence or act is committed on board 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.

2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.

2 *bis*. Each Contracting State shall also take such measures as may be necessary to establish its jurisdiction over offences committed on board aircraft in the following cases:

- a) as State of landing, when:
  - i) the aircraft on board which the offence is committed has its last point of take-off or next point of intended landing within its territory, and the aircraft subsequently lands in its territory with the alleged offender still on board; and
  - ii) the safety of the aircraft or of persons or property therein, or good order and discipline on board, is jeopardised;

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<sup>19</sup> International Civil Aviation Organization. Final act: of the International Conference on Air Law to Consider Amending the *Convention of Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo, 1963)

- b) as the State of the operator, when the offence is committed on board 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.

2 *ter*. In exercising its jurisdiction as the State of landing, a State shall consider whether the offence in question is an offence in the State of the operator.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.”

The State of registrations holds the primary jurisdiction of offences committed on board aircrafts, but the Protocol now extends jurisdiction to the State of landing if the offender is still on board. The Article further states that the State of landing must take into consideration if the offence is considered an offence in the State of the operator. By defining the competence of the State of landing, the Convention ensures clarity and consistency in determining which authorities have the right to prosecute offences occurring on board aircrafts flying across international borders. The Article prevents jurisdictional vagueness by clearly allocating responsibilities among the State of registration, the State of landing, and the State of operator, and thereby facilitating effective legal actions against offenders.

This closes the jurisdictional gap that was present in the Tokyo Convention of 1963, and further seeks to prevent illegal acts occurring, and ensuring and promoting safety, security with an international standard in the aviation industry.

## 4 Chapter Four

In this chapter I will analyze the differences between the Federal Aviation Administration (FAA) in the USA and the Norwegian Civil Aviation Authority (CAA). The purpose of the analysis is to see if there are beneficial differences that may ease the handling of unruly passengers for the airlines industry.

The FAA is a governmental agency in the United States of America responsible for regulating and overseeing all aspects of civil aviation. Such aspects are the airspace above the entire country, all airports and aircrafts registered in the USA. The FAA was established in 1958 and operates under the Department of Transportation. “Our continuing mission is to provide the safest, most efficient aerospace system in the world.”<sup>20</sup>

Luftfartstilsynet, The Norwegian Civil Aviation Authority (CAA), is an independent administrative agency, operating under the Norwegian Department of Transport, Samferdselsdepartementet. Their office resides in Bodø, a small town located in the north of Norway.

The core tasks of the CAA involve the approval process, including inspections and testing before issuing legal documentation for aviation-related entities, aircraft, personnel, and organizations. In addition, they oversee and monitor aviation activity in line with international safety standards coming from both ICAO (the International Civil Aviation Organization) and EASA (the European Union Aviation Safety Agency). Furthermore, the CAA engages in rule development at international forums and updating Norwegian regulations as the global aviation standards evolves and changes.<sup>21</sup>

When assessing the question of unruly passengers, and how the continuous problem should be handled, the FAA and the CAA have a different approach. The FAA has outlined on their website three clear approaches for dealing with unruly, disruptive, and non-compliant passengers.

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<sup>20</sup> Federal Aviation Administration. Our Mission.

<sup>21</sup> Civil Aviation Authority Norway. About CAA

The FAA has a close cooperation with the Federal Bureau of Investigation (FBI).<sup>22</sup> Since late 2021 the FAA has referred more than 250 cases to the FBI. The FBI has developed the “Be Air Aware” campaign prompting the public as well as employees within the aviation industry to report incidences involving crimes on board aircrafts via calling a hotline or tipping website.<sup>23</sup>

The FBI investigates crimes during flights such as sexual assault, assault, interference with flight crew members and theft. Additionally, they also investigate crimes at the airport, such as violence towards people or property, or interfering with the security personnel. Bomb threats also falls within the FBI’s scope of investigation.

Since establishing the cooperation with the FBI, the reported incidents of unruly passengers has dropped by 80%. There is therefore evidence suggesting that a close cooperation with a police authority, coupled with public awareness and efforts, may contribute to reducing the incidents involving unruly passengers. Public awareness is crucial for deterring future incidents. When knowing that there are strict consequences for disruptive and unruly behavior both on ground and on board an aircraft, this can dissuade passengers from engaging in such actions.

As mentioned in Chapter Two, I had a meeting with the CAAs employee and inspector David Moldskred. He oversees a new project regarding handling unruly passengers, in cooperation with the airlines and ground staff, and the respective labor unions which represent the employees who are facing unruly passengers almost daily. The project also involves the police authority in Norway. Hopefully this project will ensure the same amazing results the FAA had with its cooperation with the FBI.

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<sup>22</sup> Federal Aviation Administration. 13.04.2023. *FAA refers more unruly passenger cases to FBI.*

<sup>23</sup> Federal Bureau of Investigation. (n.d.) *Crimes Aboard Aircraft.*

The FAA has also taken a stringent stance against unruly passenger behavior, imposing fines of up to \$37 000 per violation.<sup>24</sup> The FAA reserves the right to levy multiple fines for violations arising from a single incident. These fines serve as a deterrent, aiming to maintain the safety and orderliness of air travel. This measure underscores the seriousness with which the FAA addresses any behavior that compromises the safety and security of passengers, crew members and aircraft. The significant fines are intended not only to penalize but also to discourage disruptive conduct, ensuring a safer and more pleasant flying experience for everyone on board.

In Norway, a comparable practice to the FAA's imposition of fines for unruly passengers is not explicitly regulated. The Norwegian CAA and airlines operating in the country handle disruptive and non-compliant passenger incidents through emphasizing de-escalation and involving the local law enforcement. It is generally not a standard practice in Norway to impose fines of such a degree as the USA.

The Norwegian CAA does not have the authority to fine individual passengers, and as such all penalties must be issued by the Court.

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<sup>24</sup> Federal Aviation Administration. 13.04.2023. *FAA refers more unruly passenger cases to FBI.*



## 5 Chapter Five

Earlier in the thesis, I have focused on the current situation, and the legal framework already in place. I will now shift focus onto new and/or different ways to react to the issue of unruly and non-compliant passengers.

While we know several factors contribute to unruly behavior, emphasis is placed on measures to avoid further issues. Even being able to check-in online yourself, skipping the long check-in queues at the airport. Fast Tracks in the security line for faster movement of people through the security screenings, and soon better technology screening machines so passengers won't need to unpack liquids and electronic devices like laptops. All are factors contributing to decreasing stress and frustration.

Already the EU is looking at ways to standardize hand baggage rules. In the case of EC 1008/2008 Vueling Airlines SA vs. Instituto Galego de Consumo de la Xunta de Galicia (40)<sup>25</sup> the European Court of Justice states regarding hand baggage: “[...] that such baggage must be considered, in principle, as constituting a necessary aspect of the carriage of passengers and that its carriage cannot, therefore, be made subject to a price supplement, on condition that such hand baggage meet reasonable requirements in terms of weight and dimensions, and complies with applicable security requirements.” In other words, hand baggage which fits the aircraft are seen as a natural part of traveling and shall not be subject to additional fees. This is an older case and has not been enforced.

We know that different rules for different airlines cause confusion, not only for passengers, but also for ground personnel. Such confusion may easily lead to frustration and unwanted situations already at check-in. Hand baggage is one subject with multiple size allowances depending on the airline. Additionally, hand baggage is split into one personal item and one suitcase. These rules are now sought to be standardized by the EU, so all European airlines follow the same rules, and at no additional cost to the passenger.<sup>26</sup> This will certainly help with some parts of every passenger's journey when traveling.

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<sup>25</sup> Court of Justice of the European Union. Case C-487/12

<sup>26</sup> European Parliament. 04.10.2023. *MEPs want to tackle inconsistent rules for airline carry-on luggage.*

In addition, there is always an intense emphasis on handling of passengers when training staff members, both on ground and flying crew members. How to deescalate arising situations, and how to retain and restrain if necessary. As mentioned above, the situation is more easily handled on ground with the presence of police and security personnel.

For more serious incidences of unruly behavior, the legal framework is in place. The aviation industry naturally want these serious incidents to be prosecuted under penal law in court. But not all cases of unruly behavior are that serious and may just as well be handled efficiently by the local police enforcement. A possible way to deter passengers from unruly behavior may be a clear rule stating that fines may be imposed, in the same way fines are imposed for speeding in car traffic or using your mobile phone while driving.

I am showing these statistics again, to remind the reader of the incidents happening every year. The statistics are made by the Norwegian CAA and shows numbers of incidents happening on aircrafts registered in Norway. Alcohol or intoxication is usually seen as the root cause of unruly behavior. As shown in the statistics below, intoxication by alcohol is identified as the root cause of 30% of reported incidents. This naturally also means that about 60% of the incidents are not happening because of intoxication.

	Type of unruly behaviour									
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Difficult/Unruly Passenger	78	146	121	130	123	220	275	163	192	261
Drunk Passenger				15	54	74	109	76	65	85
Smoking in Cabin/Toilet	7	34	24	18	20	35	36	6	5	18
Unauthorised Use of Mobile Devices and PEDs	1			2	3	1	8	8	5	9

One possible way of dealing with the alcohol problem is of course to ask of all passengers to drink responsibly before flying, and while on board. In addition, it may be necessary to train staff to restrict alcohol service more than they are already doing. Alcohol is easily accessible at almost every airport around the world, being in the duty free-shops, bars, or the airport lounges. What is a particular problem here; passengers are drinking at the airport in bars, or they enjoy a complimentary drink at a bar in the airport lounge. On board the aircraft, the cabin crew have no way of knowing the number of units passengers have consumed prior to boarding, and while airborne the cabin crew continues serving alcohol. This could easily lead to a situation where a passenger has had too much to drink and then becomes unruly.

Another new issue is the amount of self-service from check-in to boarding. The behavior of passengers is becoming less visible to staff working on the airport. Often, the first person any passenger meets are the cabin crew working on board. This means that passengers who are clearly intoxicated, may not be observed until they have boarded. The cabin crew is trained in monitoring and observation of passengers as they board. These are incidents one would rather have solved at the gate, where the accessibility for police or airport security are more available. Then again, this issue of self-service is not only a negative thing.

However, as alcohol consumption remains a significant trigger for unruly behavior, the need for preventive measures resides. The evolving trend of self-service processes at the airports presents a dual-edged sword when offering convenience, but potentially hindering the identification of intoxicated passengers before boarding. It may seem like the approach must be a blend of preventive measures, including robust staff training and a stricter regulation of alcohol service at the airport.

## 6 Chapter Six

The handling of unruly passengers within the aviation industry involves a multifaceted approach aimed at maintaining safety and order. Airlines and aviation authorities worldwide have established protocols to address disruptive behavior, emphasizing prevention, de-escalation, and swift action when incidents occur. Crew training is fundamental, equipping staff with conflict resolution skills and guidelines to manage unruly passenger situations, ensuring the safety and well-being of everyone on board.

Central to this approach is the balance between proactive measures and responsive actions. Collaboration with law enforcement authorities facilitates immediate engagement when deemed necessary.

Throughout this master thesis I have investigated how national law framework is structured. I have looked at different parts of the law, how they connect and what they mean for the subject matter of the thesis.

Chapter Three was the most important framework for this thesis. The chapter gives insight in the actual legal regulations as they are today.

The Aviation Act Chapter VI is centered around the pilot in commands authority on board the aircraft. By emphasizing the pilot in commands authority, the provisions of chapter VI enforce a clear chain of command, enabling swift and decisive actions crucial for ensuring the safety and well-being of passengers, crew members and the aircraft.

While investigating the Conditions of Carriage from a major airline, SAS, operating in Norway several questions around the possibility of an airline ban arose. It is still unresolved, and the Conditions remains to be tested by a Court.

Court cases and precedence play a big role in shaping how incidents involving unruly and disruptive passengers are addressed within the aviation industry. As I've shown above, they establish a benchmark for how serious the problem of unruly passengers is. The cases provide clarity and guidance for both the airlines and authorities in handling these incidents. Additionally, the cases contribute towards standardized interpretations of the law and regulations, ensuring consistency and fairness to both the airline and the passenger.

Lastly in this chapter, I investigated the Tokyo Convention, which at the time was a significant milestone in aviation law, addressing the offences of unruly passengers and the jurisdiction across international borders. However, as seen, the Convention left a jurisdictional gap, which was recognized and sought mended by the Montreal Protocol by extending jurisdiction to states which is not the state of aircraft registration.

The Tokyo Convention marked a crucial step in addressing offences and violations committed on international flights. Yet its limitations in dealing with incidents occurring en route to destination created a jurisdictional void. The Montreal Protocol closed the gap. This expansion enabled the State of Landing and/or the State of operator to prosecute unruly and disruptive passengers responsible for offences.

In Chapter Four I investigated the differences in handling unruly passengers between the Federal Aviation Administration (FAA) and the Norwegian Civil Aviation Authority (CAA). Where the FAA takes a role of law enforcer and fines the individuals, the CAA does in a far lesser manner intervene in the cases between the airline and the passenger. Leaving the issue to be solved by the local police enforcement and the courts.

Chapter Five revolved around new or other ways of dealing with unruly passengers. Staff training, and a bigger focus on preventive measures together with clear consequences for the passengers might help the situation.

The Aviation Industry stands as a pinnacle of safety standards for millions of travelers worldwide. Yet, amid this commitment, the concerning trend continues – instances of disruptive and unruly behavior threaten the safety of air travel. While the majority enjoys safe travels, some jeopardizes the safety of all on board. This escalating challenge underscores the need for collective vigilance and strict measures to safeguard the integrity of air travel. The industry is working hard to close jurisdictional gaps, and through collaborative efforts make robust regulations to preserve their reputation: Air travel is the safest way of traveling in the world.

# Reference List

## Legislation:

- Lov 11. juni 1993 nr. 101 om luftfart (Luftfartsloven) (The Aviation Act)
- Lov 20. mai 2005 nr. 28 om straff (Straffeloven) (The Penal Code)

## Legislative materials:

- Ot.prp.nr.28 (2000-2001) p. 34 Om lov om luftfart (luftfartsloven) (The Aviation Act)

## Conventions:

- The International Civil Aviation Organizations Convention on offences and certain other acts committed on board aircraft of 14 September 1963 (The Tokyo Convention)

## Court Rulings:

- TAHER-2016-57260
- TNETE-2015-22159
- TALST-2020-116550
- EC 1008/2008 Vueling Airlines SA vs. Insituto Galego de Consumo de la Xunta de Galicia

## Civil Aviation Authority Norway (CAA):

- Civil Aviation Authority Norway. (2023, September 22). *Unruly PAX - 10-year period*. Retrieved from <https://pdf.caa.no/pax.pdf> (Read: 20.09.2023)
- Civil Aviation Authority Norway. (n.d.). About CAA Norway. Retrieved from <https://luftfartstilsynet.no/en/about-us/about-cao-norway/> (Read: 01.12.2023)

### **Encyclopedia Britannica:**

- Encyclopedia Britannica (n.d.). *What were the September 11 attacks?* Britannica. Retrieved from <https://www.britannica.com/question/What-were-the-September-11-attacks> (Read: 12.10.2023)
- Encyclopedia Britannica (n.d.). *How many people were killed in the September 11 attacks?* Britannica. Retrieved from <https://www.britannica.com/question/How-many-people-were-killed-in-the-September-11-attacks> (Read: 12.10.2023)

### **European Union Aviation Safety Agency (EASA):**

- European Union Aviation Safety Agency. (n.d.). *The Agency*. Retrieved from <https://chat.openai.com/c/acfe7300-043b-46c8-b79a-c12ac52e9f6e> (Read: 19.09.2023)
- European Union Aviation Safety Agency. (n.d.). *Not on My Flight*. Retrieved from <https://www.easa.europa.eu/en/notonmyflight> (Read: 19.09.2023)

### **Federal Aviation Administration (FAA):**

- Federal Aviation Administration. (n.d.). *Our Mission*. Retrieved from <https://www.faa.gov/about/mission> (Read: 29.11.2023)
- Federal Aviation Administration. (2023, April 13). *FAA Refers More Unruly Passenger Cases to FBI*. Retrieved from <https://www.faa.gov/newsroom/faa-refers-more-unruly-passenger-cases-fbi-2023> (Read: 29.11.2023)

### **Federal Bureau of Investigation (FBI):**

- Federal Bureau of Investigation. (n.d.) *Crimes Aboard Aircraft*. Retrieved from <https://www.fbi.gov/how-we-can-help-you/crimes-aboard-aircraft> (Read: 29.11.2023)

### **International Air Transport Association (IATA):**

- International Air Transport Association. (2023, June). *Even safer and more enjoyable air travel for all*. Retrieved from <https://www.iata.org/contentassets/b7efd7f114b44a30b9cflade59a02f06/tackling-unruly-disruptive-passengers-strategy.pdf> (Read 10.10.2023)
- International Air Transport Association (n.d.). *About IATA*. Retrieved from <https://www.iata.org/en/about/> (Read: 29.10.2023)
- International Air Transport Association. (n.d.). *Airline List*. Retrieved from <https://www.iata.org/en/about/members/airline-list/> (Read: 29.10.2023)

### **International Civil Aviation Organization (ICAO):**

- International Civil Aviation Organization. (n.d.). *Convention on International Civil Aviation – Doc 7300*. Retrieved from <https://www.icao.int/publications/pages/doc7300.aspx> (Read: 09.09.2023)
- International Civil Aviation Organization. (n.d.). *About ICAO*. Retrieved from <https://www.icao.int/about-icao/Pages/default.aspx> (Read: 09.09.2023)
- International Civil Aviation Organization. (n.d.). *Vision and Mission*. Retrieved from <https://www.icao.int/about-icao/Council/Pages/vision-and-mission.aspx> (Read: 09.09.2023)
- International Civil Aviation Organization. (n.d.). *List of Parties to the Tokyo Convention*. Retrieved from [https://www.icao.int/secretariat/legal/List%20of%20Parties/Tokyo\\_EN.pdf](https://www.icao.int/secretariat/legal/List%20of%20Parties/Tokyo_EN.pdf) (Read: 15.11.2023)
- International Civil Aviation Organization. (2014). *Montreal Protocol 2014*. Retrieved from [https://www.icao.int/secretariat/legal/Administrative%20Packages/Montreal%20Protocol%202014\\_EN.pdf](https://www.icao.int/secretariat/legal/Administrative%20Packages/Montreal%20Protocol%202014_EN.pdf) (Read: 25.11.2023)
- International Civil Aviation Organization. (2014, April). *Final Act: of the International Conference on Air Law to Consider Amending the **Convention of Offences and Certain Other Acts Committed on Board Aircraft** (Tokyo, 1963)*. Retrieved from [https://www.icao.int/secretariat/legal/Docs/Final\\_act\\_mu.pdf](https://www.icao.int/secretariat/legal/Docs/Final_act_mu.pdf) (Read: 25.11.2023)



### Other Aviation References:

- Airbus. (n.d.). *A380*. Retrieved from <https://www.airbus.com/en/products-services/commercial-aircraft/passenger-aircraft/a380> (Read: 15.11.2023)
- European Parliament. (2023, October 4). *MEPs want to tackle inconsistent rules for airline carry-on luggage*. Retrieved from <https://www.europarl.europa.eu/news/en/press-room/20230929IPR06131/meps-want-to-tackle-inconsistent-rules-for-airline-carry-on-luggage> (Read: 29.11.2023)
- SAS. (2023, June 27). *Conditions of Carriage*. Retrieved from <https://www.flysas.com/ie-en/legal-info/conditions-of-carriage/> (Read: 05.12.2023)
- SKYbrary Aviation Safety. (n.d.). *Unruly Passengers*. Retrieved from <https://skybrary.aero/articles/unruly-passengers> (Read: 20.09.2023)

