

Dealing with Unruly Behavior on Board Aircraft: A Chinese Perspective

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I . Introduction

1.1 Incidents involving unruly/disruptive passenger on board aircraft: a growing concern

Aviation is the fastest-growing mode of transportation. Air traffic demand has grown without parallel.¹⁾ China's aviation transportation has experienced a remarkable increase in recent years particularly.²⁾ It may well be expected that the incidents involving unruly/disruptive passenger will be increased dramatically. On September 2, the flight LX196 operated by Swiss Air en route from Zurich to Beijing was forced to return to Zurich six hours later after taking off. The event was caused by the brawl between two Chinese passengers on board the aircraft due to drinking some alcohol. Several days later, on September 7, a number of passengers on board the aircraft carried by Sichuan Airline en route from Saipan to Shanghai fight each other and quickly controlled by the air marshals on board the aircraft.

Since this kind of event is very likely to endanger the safety of the aircraft, the legal issue regarding the unruly/disruptive passenger is seriously reconsidered by aviation in general and by airlines in particular.

1.2 Definition

Although referring to the same problem, the terms "unruly passenger", "disruptive passenger" and "air rage" are all used to describe it. This stems from the fact that there are no guidelines as to what should be called "disruptive behavior".³⁾

Literally interpretation, "unruly passenger" means a person who is "not easy to

1) See Airbus, Delivering the Future: Global Market Forecast 2011-2030 (May 1, 2012, 10:00 am) <http://www.airbus.com/company/market/forecast/>.

2) See Gezette of the Statics of the Civil Aviation Development 2011, issued by Civil Aviation Administration of China. <http://www.caac.gov.cn/>

3) S.J. Prew "Training to combat air rage" CAT-Magazine (June 1999) 34.

manage or to control”.⁴⁾ In its literal sense it can also be understood as any passenger, who does not comply with the rules applicable to his travel by plane. Such rules can comprise legal regulations but also crew orders to secure safety on board.

The term “disruptive”, defined as to “disturb the public peace, undermine safety”⁵⁾ or “causing difficulties to proceed”⁶⁾ seems to refer to passengers causing problems or interruptions in the process of organized air travel. It does not clearly refer to or content a breach of legal norms or illegal behaviour. Therefore, the term “disruptive” reflects the problem from a more factual and therefore broader point of view.

“Air rage” is the general term for disruptive and/or violent behavior perpetrated by passengers and crew of aircraft, typically during flight.⁷⁾ In the first book on the subject “Air Rage: Crisis in the Skies”, Air Rage is defined as “aberrant, abnormal, or violent behaviour exhibited during the air travel process”.⁸⁾

By viewing the fact that there is no unified and universally recognized definition of unruly/disruptive passenger, in the context of this article, no matter what term is used, they refer the same thing, that is the “passengers who fail to respect the rules of conduct on board aircraft or to follow the instructions of crew members and thereby disturb the good order and discipline on board aircraft.”⁹⁾ This description may suggest that only “passengers” can become unruly. Recently, however, some notorious, high profile incidents have demonstrated that crew members may also fail to respect the rules of conduct on board aircraft and may thereby become unruly or disruptive.¹⁰⁾ For the reason of the foregoing, the term “unruly/disruptive person

4) Oxford Advanced Learner’s Dictionary of Current English, 5thed., s.v. <unruly>.

5) Black’s Law Dictionary, 7th ed., s.v.<disorderly conduct>.

6) Sopra note 4, s.v.<disruptive>.

7) http://en.wikipedia.org/wiki/Air_rage.

8) Andrew R. Thomas “Air Rage: Crisis in the Skies” (Amherst, NY: Prometheus, 2001).

9) ICAO, Circular 288, Guidance Material on Legal Aspects of Unruly / Disruptive Passengers, at 1.

10) See Reuters, *Unruly JetBlue Pilot Charged with Interfering with the Flight* (May 1, 2012, 10:00 AM), <http://www.reuters.com/article/2012/04/13/uk-usa-jetblue-idUSLNE83C01E20120413>. The air carrier was forced to issue refunds to passengers for the inconvenience caused by the pilot’s disruptive behaviour. See Los Angeles Times, *JetBlue to Issue Refunds, Vouchers after Pilot’s Erratic Episode* (May 1, 2012, 10:00 AM), <http://articles.latimes.com/2012/mar/28/news/la-trb-jetblue-pilot-meltdown-20120328>. Similarly, earlier in March 2012, a flight attendant also behaved erratically causing significant disruption to passengers on an American Airlines flight from Dallas-Fort Worth

on board aircraft”, or alternatively, “unruly/disruptive behavior on board aircraft” is recommended to be used by replacing the “unruly/disruptive passengers”.¹¹⁾

1.3 Impact of unruly behaviour

Due to its nature, aviation is extremely sensitive to any disruption. It is the crew members who mainly guarantee the aircraft flight safety. Interfering with the crew’s duties by unruly behavior or violating the instructions given by the crew can therefore cause serious disturbance in the operation of the aircraft. Therefore, such disruptive behavior on board may endanger the safety of the aircraft and thereby put the lives of the persons on board in a dangerous condition. It is this threat to human lives which makes unruly behaviour a major issue for airlines and puts it in the focus of public interest.

1.4 Reasons for unruly behaviour

Unruly behaviour may be largely attributed to three factors: passenger factors, environmental factors and airport/carrier factors.

Passenger factors include physical and mental health status,¹²⁾ anxiety,¹³⁾ substance use, ¹⁴⁾ medications,¹⁵⁾ personality traits, separations, impending reunions, adoptions, work stressors in business travelers, traveling with agitated children and so on.

Environmental factors are mainly related to the conditions and atmosphere of the cabin of the aircraft, including heat, cold, poor ventilation, reduced oxygen pressure, physical confinement of cramped conditions, uncomfortable seating, excessive noise

to Chicago. See Chicago Tribune, *American Attendant Disrupts Flight to Chicago* (May 1, 2012, 10:00 AM), http://articles.chicagotribune.com/2012-03-09/news/chi-american-airlinesflight-attendant-disrupts-flight-en-route-to-chicago-20120309_1_flight-attendant-plane-startling-passengers.

11) LC/SC-MOT-WP/1.(7/5/12).

12) Such as illness, hunger, sleep deprivation, etc.

13) Which may be caused by delays, immigration problems, security restrictions, etc.

14) Such as intoxication or withdrawal.

15) Including intoxication, withdrawal, time zone effects on dosing schedule.

and vibration, lack of privacy and proximity to others, activities of crew/co-passengers, cultural and language misunderstandings and etc.

Airport/carrier factors are concerning such problems as ticketing, check-in and flight delays, inadequately trained ground agents and flight crew, lack of gate and airport seating, long queues for lavatories, restricted movement due to security restrictions, lack of information in native language, inoperative/inaccurate information displays, cabin baggage restrictions, no smoking policies, unsatisfactory food/ beverages, unsatisfactory seating arrangements and so forth.

Of particular note is the effect of psychological stress, inducing excessive alcohol use, and the effect of abstinence from tobacco smoking as important precipitants of unruly behavior. Inadequately trained ground agents or cabin crew may exacerbate the situation if their interpersonal management skills are lacking.

II . Legal Regime Governing the Unruly Behaviour on Board the Aircraft

2.1 International conventions

Given that various national laws provided different scenarios for the extra- territorial application of jurisdiction over crimes committed on board aircraft, the drafters of the *Convention on Offences and Certain Other Acts Committed on Board Aircraft of 1963* (hereinafter Tokyo Convention) intended to achieve some degree of international uniformity in the rules applicable to the prosecution of offences committed on board aircraft.¹⁶⁾ China acceded the Tokyo Convention in 1978 and then the *Tokyo Convention* became one of the legal resources governing the problem of unruly behaviour on board the aircraft in China. Due to the apparent flaws relating

16) See Tokyo Diplomatic Conference Minutes, ICAO Doc.8565-LC/152-1, Vol.1 at XIV, at 227.

to the lack of jurisdiction and enforcement mechanisms when dealing with incidents occurring on board aircraft and involving unruly and disruptive passengers, the International Air Transport Association (IATA) proposed to form a Secretariat Study Group (SSG) in order to undertake a study on unruly and disruptive behaviour on board the aircraft and then make amendment to the existing international legal regime or draft a new one instead.¹⁷⁾

Following meetings in Montreal from 2-3 May 2011¹⁸⁾ and in Paris from 3-4 October 2011,¹⁹⁾ the SSG recommended that a Special Sub-Committee of the ICAO Legal Committee(LC-SC) be established to examine the feasibility of introducing amendments to the *Tokyo Convention*, with particular reference to the issue of unruly passengers. ²⁰⁾At the 5th meeting of its 194th Session held on 15 November 2011, Council considered SSG's report and decided to request the Chairman of the Legal Committee to establish the LC-SC in order to review the existing international regime on unruly and disruptive passengers.²¹⁾

The shortcomings of the *Tokyo Convention* attracted major criticisms are mainly focused on the following problems: The lack of definition of "offence". The *Tokyo Convention* does not define what constitutes an "offence" under criminal laws, nor does it set forth the acts that may jeopardize good order and discipline on board aircraft. This lack of definition defies the whole purpose of harmonization in international law. In many cases, it creates an insurmountable lacuna.²²⁾ The second shortcoming of the *Tokyo Convention* is due to the lack of mandatory jurisdiction. Although the State of registry is competent to exercise jurisdiction over offences and acts committed on board its aircraft, ²³⁾however, the wording of the Tokyo Convention grants State Parties so much flexibility that, in practice, the exercise of jurisdiction

17) See ICAO, LC/34-WP/2-4.

18) See ICAO, SSG-UNP/1-Report.

19) See ICAO, SSG-UNP/2-Report.

20) See ICAO, SSG-UNP/2-Report, at 4.

21) See ICAO, C-DEC 194/5.

22) See Sofia Michaelides, Unruly Passenger Behaviour and the Tokyo Convention 38, 40 6 Cov. L. J.(2001).

23) See *Tokyo Convention*, art.3 (1).

even for the State of registry, is reduced to a mere "best efforts" obligation. Therefore, commentators often contend that Tokyo Convention does not provide for mandatory jurisdiction.²⁴⁾ Another criticism is concentrated on the jurisdictional gap. Although according to the Tokyo Convention that the State of landing is required to meet obligations such as: accepting passengers delivered by the aircraft commander, taking custody of certain persons, and making immediate preliminary inquiries into the facts, but the State of landing cannot assert jurisdiction when the offence is committed on board an aircraft registered in another State, unless the offence affects in some manner its territory or it involves national security issues.²⁵⁾

Question will be raised regarding how these obligations are to be performed by the State of landing in the absence of the power to exercise jurisdiction. In fact, due to this jurisdictional gap, in many cases the State of landing is unable to exercise jurisdiction.²⁶⁾ Thanks to the hard efforts made by the LC-SC, a *New Instrument to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* was already drafted for open discussion.²⁷⁾ By considering that there are numerous discussions on the modernization of the Tokyo Convention in the world aviation community, the author of this article would like to focus more on the Chinese legislation in this regard rather than to repeat the views or thought of other scholars. The purpose of doing so is to help Chinese legislative authorities to analyze the current domestic laws and put forward the useful and feasible suggestions.

2.2 Chinese legislations

2.2.1 *Civil Aviation Law of People's Republic of China*

Civil Aviation Law of People's Republic of China (hereinafter *Civil Aviation Law*), adopted at the 16th Meeting of the Standing Committee of the Eighth National

24) See Nancy Douglas Joyner, *Aerial Hijacking as an International Crime* (1974) at 134.

25) See Ruwantissa I. R. Abeyratne, *Unruly Passengers-Legal, Regulatory and Jurisdictional Issues* 46, 53 4 Air & Space Law (1999).

26) See J. M. Sharp, *Canada and the Hijacking of Aircraft* 451, 454 5 Man. L. J. (1972).

27) LC/SC-MOT-WP/1.

People's Congress of the People's Republic of China on October 30, 1995 and came into force on March 1, 1996, is on the top hierarchy among the legal resources governing the unruly behaviour on board aircraft in particular. It expressly stipulates that "A person who violates the provisions of this Law, not seriously enough for criminal punishment but should be subject to penalty for public security, shall be punished in accordance with the *Regulations on Administrative Penalties for Public Security*".²⁸⁾ For the serious situations, *Civil Aviation Law* stipulates that where a person endangers flight safety by using violence against a person on board a civil aircraft in flight, but without resulting in serious consequences, his criminal responsibility shall be investigated in accordance with the provisions of Article 105 of the *Criminal Law*; if grave consequence result from such act, his criminal responsibility shall be investigated in accordance with the provisions of Article 106 of the *Criminal Law*.²⁹⁾

2.2.2 Regulations of the People's Republic of China on the Safety and Security of Civil Aviation

Regulations of the People's Republic of China on the Safety and Security of Civil Aviation (hereinafter *Regulations on the Safety and Security*) was promulgated by Decree No. 201 of the State Council of the People's Republic of China on July 6, 1996. Although the hierarchy of the *Regulations* is lower than the *Civil Aviation Law* since it is promulgated by the State Council, it governs the unruly behaviour on board aircraft in a much more detailed manner than the *Civil Aviation Law*. Article 25 of the *Regulation* stipulates that the following acts are prohibited within an aircraft: (1) smoking in the no-smoking section; (2) racing to occupy a seat or a baggage compartment (rack); (3) fighting, getting drunk, or seeking a quarrel and stirring up trouble; (4) stealing,

28) Article 200 of *Civil Aviation Law*. It needs to be noticed that *Regulations on Administrative Penalties for Public Security* was declared nullified and replaced by *Law of the People's Republic of China on Penalties for Administration of Public Security* in 2006.

29) Article 192 of *Civil Aviation Law*. *Criminal Law* refers to *Criminal Law of People's Republic of China* which has been amended for eight times until now. Therefore the Articles referred in the *Civil Aviation Law* were also changed accordingly, in other word Article 123 of the current *Criminal Law* shall be referred for the same purpose instead of Article 105 and Article 106.

deliberately damaging or moving without authorization lifesaving articles and appliances;(5) other acts endangering flight safety or disturbing the order within the aircraft. Anyone who commits an act listed hereof shall be punished by the civil aviation public security organ in accordance with the relevant provisions of the *Law of the People's Republic of China on Penalties for Administration of Public Security*.

2.2.3 Criminal Law of the People's Republic of China

Criminal Law of the People's Republic of China (hereinafter *Criminal Law*) was promulgated in 1997 by the Standing Committee of the National People's Congress and were revised by eight amendments until 2011. The following articles of the *Criminal Law* regulates the incidents or accidents involving serious unruly or disruptive behaviour on board aircraft or concerning aircraft. For example, Article 116 stipulates "Whoever sabotages aircraft to such a dangerous extent as to overturn or destroy it, but with no serious consequences, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years." Article 121 says."

Whoever hijacks any aircraft by means of violence, coercion or by any other means shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment; any hijacker who causes serious injury to or death of any other person or serious damage to the aircraft shall be sentenced to death." Again Article 123 regulates "Whoever uses violence against any person on board an aircraft and thereby endangers air safety, if there are no serious consequences, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if there are serious consequences, he shall be sentenced to fixed-term imprisonment of not less than five years."

2.2.4 Law of the People's Republic of China on Penalties for Administration of Public Security

Law of the People's Republic of China on Penalties for Administration of Public Security (hereinafter *Law on Penalties for Administration of Public Security*) was

adopted at the 17th Meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on August 28, 2005 and came into force on March 1, 2006. It stipulates that "A person who steals, damages or moves to another place without permission aviation facilities in use, or forcibly enters the control cabin of an aircraft shall be detained for not less than 10 days but not more than 15 days. A person who uses implements or tools aboard an aircraft in use, which may impair the normal function of the navigation system, and turns a deaf ear to dissuasions shall be detained for not more than 5 days or be fined not more than 500 yuan."³⁰⁾ If the acts is serious enough to constitute crime, the person in question shall be investigated according to *Criminal Law*.³¹⁾

2.3 Comments on Chinese legislation

In light of the main provisions and regulations governing unruly or disruptive behaviour on board aircraft in China, the types of the behaviour could be divided into three tiers. The first tier addresses the more serious offences. This includes offences committed against crew member, such as assault, physical and verbal intimidation, interference with the performance of their duties, and refusal to comply with their instructions. Protection of crew members is desirable, given that "they are responsible not only for maintaining good order and discipline on board but also for the safety fo the aircraft."³²⁾

The second tier deals with less serious types of behaviour on board aircraft, which includes physical or verbal assaults, intentional destruction of property, and consumption of alcohol resulting in intoxication. However, this behaviour would only constitute an offence to the extent that the alleged offender endangers the safety of the aircraft or jeopardizes the good order and discipline on board.

The third tier encompasses behaviour which may pose significant challenges to

30) Article 34 of the *Law on Penalties for Administration of Public Security*.

31) Article 2 of the *Law on Penalties for Administration of Public Security*.

32) ICAO, Circular 288, Guidance Material on Legal Aspects of Unruly / Disruptive Passengers, at 4.

the safety of the aircraft. This covers acts such as smoking in the lavatory, tampering with a smoke detector, and operating an EPD when its use is prohibited.³³⁾

Correspondingly, the punishments against the unruly behaviour are also various subject to the gravity and nature of the behaviour. For the third tier behaviour, the punishments are mainly stipulated in the *Law on Penalties for Administration of Public Security*, including warning, fine and administrative detention. If the behaviour is committed by a foreigner, leaving the country within a time limit or deportation attached to a penalty may be applicable. ³⁴⁾ When dealing with the first two tiers of behaviour, the fix-term imprisonment and life imprisonment may be applied. For the extreme situation, death penalty is also likely to be triggered.

Besides the deterrence function exerted by the above-mentioned punishment measures, for the purpose of safeguarding the security and safety of the flight, the pilot-in-command is also vested some right and power to handle the unruly behaviour on board aircraft, even before the aircraft taking off. For example, the pilot-in-command has the right to take necessary and appropriate measures in flight, under the prerequisite of ensuring flight safety, against any acts which may destroy the civil aircraft, interfere with the order on board and jeopardize the safety of persons or property therein, and any other acts jeopardizing flight safety. ³⁵⁾

Generally speaking China's legislation on unruly behaviour on board aircraft is systematic and self-contained. Punishments imposed on the person who has committed unruly behaviour on board aircraft is subject to the gravity and nature of such behaviour. One suggestion is put forward regarding the amount of money sanction against unruly behavior subject to *Law on Penalties for Administration of Public Security*. In the author's view that the amount of fine is too low to exert the deterrent function 'pursued by the law, particularly taking into account the factor of inflation.

33) Recent reports reveal that EPDs pose serious challenges in maintaining good order and discipline on board. Passengers are often reluctant to put them away when requested by crew members.

34) Article 10 of the *Law on Penalties for Administration of Public Security*.

35) Article 46 of the *Civil Aviation Law*.

III. Passenger Rights and the Preventative Measures

Arguably, the eradication of unruly incidents on board aircraft requires a number of preventative measures. Law-making will not of itself resolve the problem. Meanwhile the passenger rights shall also be protected when such preventative measures are adopted.

3.1 Blacklist system

The passenger who is put into the blacklist will be denied boarding the aircraft in his future traveling. The function of the blacklist is to prevent the passenger who committed unruly behaviour on board aircraft from committing similar disruptive behaviour again and deter other passengers to do the same behaviour as well. However, China's legislation is silent on the regulation of blacklist practice by airlines, which causes some controversies regarding the legality and reasonableness about the blacklist system. Commentators argued that the existing of the blacklist system enjoys its justifiableness on the precondition that the right of accession of the information of the passenger is secured.³⁶⁾ In terms of the procedure, on the one hand, the passenger shall be informed before his/her name is put into the blacklist and should also be well explained the reasons for doing so. The passenger concerned shall be vested the right to get access of the legal remedy should he/she is not convinced for such punishment. On the other hand, the airline companies shall issue the situations under which the passenger may be put into the blacklist in an appropriate manner so that the passenger may have clear idea about what kind of thing she/he may do, what can not. By viewing that the blacklist system has very close relationship with the basic rights of the passenger and may cause serious consequences to the passenger

36) Xie Yujia, *Some Thoughts on the Issue of the Blacklist of Air Passengers*, Law and Society, (2012) at 268.

under some circumstances, it could only be used under some extreme situations while meeting the strict standards and procedures set up in advance by competent authorities.

3.2 Appropriate training of aviation staff

The aviation staff, particularly the crew members, plays a critical role for ensuring the good order and discipline on board aircraft and securing the safety of the aircraft and passengers as a whole. Therefore providing the appropriate training to the aviation staff is quite important for them to accomplish the task. They need to know the knowledge and skill on how to prevent the agitated mood of a passenger becoming worse and out of control so that to avoid the incidents which may endanger the safety of the aircraft and fellow passengers happen. In the long distant flight, for the purpose of dealing with some psychological emergencies happened to the passenger due to the boring long time flight, the in-flight physician is better to be provided as well as the medication for sedation. When dealing with the unruly passenger, the measure or action taken by the crew members or the fellow passengers should be proportionate to the unruly behaviour, otherwise the legitimate rights of the unruly passenger will be infringed due to such over reaction.

3.3 Education of the traveling public

Education of the traveling public is more important and urgent in China than in western countries where the development of the aviation carriage is much more matured. As a matter of fact that about ten years ago traveling by airplane was something luxury and could only be afforded by a small number of people. Owing to the fact that most of these passengers were well-educated and the comparatively good environment both in airport and on board of aircraft , quite few incidents involving unruly behaviour happened in the past few years.

But now the situation totally changed. China's airline industry is experiencing a

booming stage. Traveling by aircraft is no longer a privilege enjoyed by a small number of people, and particularly the development of the low-fare airline companies further makes the air carriage become available to almost all the people in the country. During the busy season of traveling, the surrounding of the airport is very noisy and chaos. Under this scenario, people will easily lose temper and become agitated even if they are well-educated. Therefore the incidents involving unruly behaviour are keeping growth. In this context, it is necessary and urgent to educate the traveling public to familiar with the travel common sense and regular risks concerning air flight for the purpose of eradicating their fear of flying. The passengers should also be informed that engaging in disruptive behaviour is unacceptable, as well as of the legal consequences entailed.

3.4 Providing assistances and care to the passengers in the event of delay, cancellation and denied boarding of flight

In the event of denied boarding, cancellations, long delays and involuntary downgrading, it is no surprise that the passenger will become uneasy and even anxiety. This situation will become even worse if they are not convinced by the explanation regarding the causes of such event given by the air carrier. Therefore it is very critical to provide assistances or compensation to comfort them, otherwise it is well expected that some of the passengers will be the trigger of the incidents involving unruly behaviour on board aircraft.

IV. Conclusion

Dealing with the unruly behaviour on board aircraft entails the joint efforts contributed by all the parties concerned. The airline companies shall be very careful

about their services for the passengers. The aim of such service which shall be born in mind is to ensure the safety of the flight and the passenger as a whole. As for the country, it has to contribute its share to prevent unruly behaviour by improving the infrastructure. Today, air travel tries to be a way of mass transit but does not meet the requirements. The weaknesses in infrastructure create bottlenecks that make air travel uncomfortable. Such obstacles have to be removed.

Apart from those, the situation must also be examined from the point of view of an unruly passenger. A strict approach to unruly passengers by enacting criminal law is justified, as long as the person could control his actions. However, it is not appropriate for cases in which psychological reasons like fear of flying cause the person to become uncontrollable. Therefore, not every action to every extent against unruly persons is automatically justified, but there are rights that the passenger possesses as a human being and as an airline passenger. Airlines must not trample on these rights in a desperate attempt to eradicate the problem by repressing it. The solution to deal with unruly passengers therefore lies in prevention.³⁷⁾

³⁷⁾ See Christian Giesecke, *Unruly Passengers and Passenger Rights*, (2001), at 108.

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Abstract

China's airline industry is experiencing a booming development as one hand, on the other hand the incidents involving unruly behaviour on board aircraft also becomes a growing concern for the whole industry. The thesis examines the basic issues concerning the unruly behaviour, such as definition of unruly behaviour, the impact and root causes of unruly behaviour. Then it focuses on the China's legal sources governing the problem of unruly behaviour. Generally speaking, China's legislation with this respect is systematic and self-contained, except some minor shortcomings which need to be revised. Finally the thesis holds the view that the preventative measures jointly contributed by all the parties concerned are something more important than the legislation itself.

Key Words : unruly behaviour, unruly passenger, air rage, Chinese legislation, China's airline industry, on board aircraft, incidents, blacklist system