



NOTE DE TRAVAIL

GROUPE D'EXPERTS DE LA FACILITATION (FALP)

SEPTIÈME RÉUNION

Montréal, 22 – 26 octobre 2012

Point 5 : Amendement de l'Annexe 9

**REFOULEMENT DES PERSONNES NON ADMISSIBLES : PROPOSITIONS
D'AMENDEMENT DE L'ANNEXE 9 — FACILITATION**

(Note présentée par le Canada au nom du CAWG de l'IATA)

(Faute de ressources, seuls le sommaire et l'appendice ont été traduits.)

SOMMAIRE

Le Chapitre 5 de l'Annexe 9 contient des normes et pratiques recommandées (SARP) destinées aux États contractants sur le refoulement des personnes non admissibles, mais des difficultés matérielles souvent dues à l'absence de renseignements suffisants et à un manque de temps pour procéder efficacement à ces refoulements continuent de se manifester. Dans certains cas, les exploitants d'aéronefs peuvent être frappés de graves pénalités quand ils ne sont pas en mesure de refouler immédiatement une personne non admissible qui voyage à bord d'un de leurs aéronefs. De plus, ces exploitants continuent souvent d'être obligés de refouler des personnes non admissibles qui ne sont pas en possession des documents exigés pour entrer dans l'État de destination ou dans les États de correspondance que ces personnes doivent traverser. C'est pourquoi le Canada, au nom du Groupe de travail des services de contrôle de l'IATA (IATA/CAWG) souhaite modifier certaines dispositions de l'Annexe 9 pour préciser comment les personnes non admissibles devraient être refoulées.

Suite à donner par le Groupe d'experts FAL :

Le Groupe d'experts FAL est invité à examiner les propositions de la présente note et à adopter les modifications proposées dans son appendice.

1. INTRODUCTION

1.1 The IATA/Control Authorities Working Group (IATA/CAWG) was established in 1987, primarily as a forum for on-going dialogue between Airlines and Immigration officials in respect of the control of illegal migration. Whilst the original focus was on inadmissible passengers, IATA/CAWG now deals with many key areas of passenger facilitation. Twenty-one (21) Contracting States, along with a representative from a national airline from each State are presently represented on the IATA/CAWG.

1.2 Based on analyses conducted, IATA/CAWG determined that, on a global level, there are significant inconsistencies in the approach that individual States take in respect of processes employed to

support the removal of inadmissible persons. Accordingly, the group undertook to develop best practice materials, the intent of which was to provide guidance to both Aircraft Operators and Public Authorities based largely upon existing Annex 9 provisions. The document, “*IATA/CAWG Guidelines for the Removal of Inadmissible Persons*” (“Inadmissible Removal Guidelines”), was first adopted in 2004, and has most recently been reviewed and updated with its third revision released on 12 May 2012.

1.3 Although the IATA/CAWG “Inadmissible Removal Guidelines” are largely aligned with existing SARPs, the document makes references to additional processes/concepts that are not contained in Annex 9 (Chapter 5 or elsewhere). While IATA/CAWG is an “informal” body, and its recommendations not binding on any entities, the group, during its 49th plenary session, agreed that its work in this critical area should be referred to the 7th ICAO Facilitation Panel, for its consideration. Accordingly, a sub-group was selected to conduct a review of the Annex and the IATA/CAWG document, and to develop recommendations for amendment of the Annex¹. This working paper, and the proposal contained in its Appendix are the result of that work.

1.4 Specifically, this Working Paper asks that the Panel consider 3 issues, including 1) amending text in an existing Standard, 2) elevating an existing Recommended Practice to a Standard and 3) potentially adopting a Type A Resolution relating to acceptance of ICAO-compliant transportation letters issued in lieu of seized and/or missing travel documents.

2. DISCUSSION

2.1 The IATA/CAWG’s “Inadmissible Removal Guidelines” recommend that Contracting States should provide the aircraft operator which transported the Inadmissible Person to its territory with a removal order containing sufficient information so as to permit the aircraft operator to confirm that the inadmissible passenger is, in fact, its responsibility and also to investigate the circumstances relating to that arrival. Existing Annex 9 provisions address only that information concerning the inadmissible person as an individual and the destination to which that person is to be removed. IATA/CAWG recommends that in addition to that already specified in the existing provision, information concerning the passenger’s inbound flight should also be included in any Removal Order. The Appendix to this Working Paper contains proposed language to amend existing Standard 5.5.

2.2 The “Inadmissible Removal Guidelines” includes a statement that the Public Authorities in Contracting States should consult with Aircraft Operators regarding the removal of an inadmissible person, and allow the Aircraft Operator reasonable time to effect the removal of that individual. In its document, IATA/CAWG sought to clarify what “reasonable time” might represent, and in doing so, identified that term to normally represent a period of up to 24 hours following receipt of the Removal Order. Annex 9, Recommended Practice 5.4 contains essentially the same concept – but absent any specific time frame defining the term “reasonable time”. Rather than seeking to define a specific time-frame in the existing RP, IATA/CAWG is instead recommending that the current provision be elevated from a Recommended Practice to a Standard, and would entertain additional language that would make compliance with the new Standard subject to compliance with national and/or international laws. The suggested revised language for RP 5.4 is contained in the Appendix to this document.

¹ The working group was comprised of representatives from Austrian Federal Minister of the Interior, Australia Department of Immigration and Citizenship, Canada Border Service Agency, Netherlands Immigration and Naturalization Service, Swedish National Police Board and the UK Border Agency, Air Canada, Austrian Airlines, QANTAS, KLM, Scandinavian Airlines and the National Airlines Council of Canada

2.3 The IATA/CAWG “Inadmissible Removal Guidelines” supports the concept for the issuance of an ICAO-compliant Covering Letter to facilitate the removal of an inadmissible passenger not holding a valid travel document, or for whom an invalid travel document has been seized. However, when a Covering Letter will not be accepted by the public authorities in the State of final destination (or transit), the aircraft operator should not be required to accept the passenger for removal until suitable alternate arrangements have been agreed between all parties.

2.4 Existing Standards 5.6 and 5.7 speak to the requirement that States ordering the removal of persons found inadmissible and who are not in possession of a required travel document (5.6), or whose travel documents have been seized (5.7) issue the ICAO-compliant Covering Letter. Existing Standard 5.13 mandates that “*Contracting States shall accept the covering letter and other papers delivered pursuant to 5.6 or 5.7 as sufficient documentation to carry out the examination of the person referred to in the letter*”. Even with these clear and concise Standards, a number of States have long refused to accept individuals transported only with the ICAO-compliant covering letters, even when they are believed to be nationals of that State. In these instances, the aircraft operator is often held responsible – facing potential financial penalties and frequently obliged to return the individual to the State that had ordered that person removed – a requirement that is entirely inconsistent with Standard 5.12.

2.5 As there are already a number of existing Standards that address the issue of States issuing and accepting covering letters issued by another, IATA/CAWG does not believe that additional provisions are required or would resolve the issues relating to non-observance of these provisions by Public Authorities in several Contracting States. Instead, the members of IATA/CAWG would welcome an ICAO Resolution calling upon all Contracting States to observe the obligations as described in those existing Standards (5.6, 5.7, 5.12 and 5.13).

APPENDICE

Amender l'Annexe 9 comme suit:

5.4 Pratique recommandée. — ~~Il est recommandé que les~~ Les États contractants, par l'entremise de leurs pouvoirs publics, ~~consultent~~ consulteront l'exploitant d'aéronefs sur le calendrier d'exécution du refoulement de la personne jugée non admissible, afin de donner à l'exploitant d'aéronefs un délai raisonnable pour procéder au refoulement de la personne sur ses propres services ou pour prendre d'autres dispositions à cet effet.

Note.— La présente disposition ne doit en aucune manière être interprétée comme une autorisation de renvoyer quiconque demande asile dans le territoire d'un État contractant vers un pays dans lequel sa vie ou sa liberté serait menacée en raison de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social particulier ou de ses opinions politiques.

5.5 Les États contractants veilleront à ce qu'un ordre de refoulement soit donné à l'exploitant d'aéronefs à l'égard d'une personne jugée non admissible. L'ordre de refoulement comprendra des renseignements sur l'aéronef à bord duquel cette personne arrive et ~~l'arrivée qui transporte cette personne et~~ s'ils sont connus, son âge, son sexe et sa citoyenneté.

— FIN —