



LC/35-WP/7-11
14/5/13
English only

LEGAL COMMITTEE – 35TH SESSION

(Montréal, 6 – 15 May 2013)

Agenda Item 7: Report on work done at the Session

DRAFT REPORT ON THE WORK OF THE LEGAL COMMITTEE DURING ITS 35TH SESSION

The attached Appendix D relates to the draft Report of the Legal Committee.

— — — — —

APPENDIX D

REPORT FRIENDS OF CHAIR (FC)

on

Review of LC/35 Agenda Item 2 on ‘the establishment of common standards and practices with regard to offences’ Art 15 *bis* draft Protocol and ICAO Circular 288

(9 May 2013)

Argentina, China, Colombia, Ecuador, France, Indonesia, Jamaica (Chair), Japan, Singapore, Uganda and IATA.

FC Terms of Reference:

to revise Article 15 *bis* in view of the various revision proposals made in the plenary and to present by lunchtime on Friday 10th May 2013. Not to question whether to keep Article 15 *bis* or not.

DISCUSSION & RATIONALE

The FC reiterated its understanding that the intent was not to create new offences nor to change the character of the Convention. However, it was to encourage States to codify the types of offences which were being emphasised. After some discussion, it was found useful to use the Singapore proposal made in Plenary as the basis for the discussions going forward since it was closest to what the Delegates in this FC determined was required.

It is to be noted that the references to the particularised acts in Article 15 *bis* paragraph 1 (a) and (b) were a means of drawing States’ attention to them, given that airlines had determined that they were particularly troublesome.

The FC’s recommendations and draft Art 15 *bis* presented are intended to achieve the following:

1. Prevent overlap in the offences outlined with offences created in other aviation security conventions
2. Meet the concerns of states which prefer not to include a list of offences in the Convention as well as those who prefer to include such a list
3. The words “are encouraged to” are used (instead of obligatory language) as States would, in their national legislation, have already provided for punishment of all offences under their penal law

and thus, an appropriate action is to encourage States to initiate criminal or administrative proceedings particularly where the offences or acts committed on aircraft endanger the aircraft or persons or property on board.

4. Reference to assault on crewmembers was maintained in order to highlight the safety impact to civil aviation.
5. Square brackets are used in paragraph 1(b) – to allow the LC to confirm which of the commander’s lawful instructions would be covered (i.e. whether to cover only lawful instructions given to ensure safety or cover instructions given to secure good order and discipline as well).
6. Square brackets are used around paragraph 2, - since this provision guarantees sovereignty of states but we are uncertain if that is strictly necessary; yet we wanted to ensure that states recognise that the acts mentioned are not the only ones to be addressed
7. Square brackets are used within paragraph 2, - penalties are generally used in Conventions to relate to punishment but measures would allow for other sanctions (*used in Beijing Convention*)
8. We removed the word ‘other’ in the original paragraph 2 – in order to bring clarity
9. We were strongly tempted to categorise the six (6) offences/acts listed into those which are suitable for criminal proceedings and penalties (the first 3 listed) and for administrative proceedings and penalties (the second 3 listed) for inclusion into Circular 288 but refrained since we did not desire to tell States how to order their internal legislation. Also, we understand that not all States use/apply administrative proceedings and penalties.

The FC would also like to add that it notes that the redrafted Article 15 *bis* and the proposed update to Circular 288 **form a package** to achieve harmonisation among Contracting States of actions to address the unruly passenger problem.

RECOMMENDATIONS TO THE CHAIRMAN OF THE LEGAL COMMITTEE:

(i) Redraft Art 15 *bis* thus:

“1. Each Contracting State is encouraged to take such measures as may be necessary to initiate appropriate criminal or administrative proceedings against any person who commits on board an aircraft an offence or act referred to in Article 1 paragraph 1, in particular:

- (a) physical assault or a threat to commit such assault against a crew member;
- (b) refusal to follow a lawful instruction given by or on behalf of the aircraft commander for the [purposes set out in Article 6, paragraph 1(a) or (b)] / [purpose of protecting the safety of the aircraft or the persons or property therein].

[2. Nothing in this Convention shall affect the right of each Contracting State to introduce, according to its national legislation, appropriate [penalties] / [measures] in order to punish unruly or disruptive acts committed on board.]

(ii) Update Circular 288

That the Legal Committee recommends that the Diplomatic Conference, if/when convened, adopts a resolution calling upon ICAO to update Circular 288 with, if necessary, the support of, say, an *ad hoc* group created from among the States and Observers participating in the Diplomatic Conference, to include a list of unruly acts commonly occurring on board aircraft and in respect of which States Parties would be strongly encouraged to take criminal or administrative action under their national laws and to punish with appropriate criminal or administrative penalties. This list may include the offences/acts already set out in Circular 288 and the following:

Intentional commission on board an aircraft of any act that:

- jeopardises the safety of the aircraft;
- harms or endangers the life or the physical or moral integrity of passengers or crewmembers;
- affects the property of said persons or of the aircraft operator;
- affects the good order or discipline on board;
- disrupts the peace or quiet or disturbs any person on board;
- causes delays or disrupts any operations.

— — — — —