



NOTA DE ESTUDIO

GRUPO DE EXPERTOS SOBRE FACILITACIÓN (FALP)

SÉPTIMA REUNIÓN

Montreal, 22 – 26 de octubre de 2012

**Cuestión 5 del
orden del día: Enmiendas del Anexo 9**

**RETIRO DE LAS PERSONAS NO ADMISIBLES:
PROPUESTAS DE ENMIENDA DEL ANEXO 9 – FACILITACIÓN**

(Nota presentada por el Canadá en representación del Grupo IATA/CAWG)

Por falta de recursos, sólo se han traducido el resumen y el apéndice

RESUMEN

Si bien en el Capítulo 5 del Anexo 9, se proporciona a los Estados contratantes normas y métodos recomendados (SARPS) relativos al retiro de las personas no admisibles, aún persisten dificultades operativas que suelen estar relacionadas con el suministro de información insuficiente y plazos inadecuados que permitan hacer arreglos eficaces para el retiro de las personas en cuestión. En algunos casos, las sanciones que se imponen a los explotadores de aeronaves que no pueden retirar inmediatamente a una persona no admisible utilizando sus propias aeronaves pueden ser severas. Además, a menudo se obliga a los explotadores de aeronaves a que retiren a personas no admisibles para los cuales no se dispone de la documentación de viaje necesaria para su entrada al lugar de destino o para el tránsito por Estados a través de los cuales debe pasar durante su traslado. Por consiguiente, el Canadá, en nombre del Grupo IATA/Grupo de trabajo de autoridades de control (IATA/CAWG) propone que se enmienden ciertas disposiciones existentes del Anexo 9 a fin de aclarar mejor los procesos con arreglo a los cuales deben realizarse los retiros de las personas no admisibles.

Medidas propuestas al Grupo de expertos FAL:

Se invita al grupo de expertos a examinar las propuestas descritas en esta nota y a adoptar las enmiendas propuestas según figuran en el Apéndice.

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

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

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.

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).

APÉNDICE

Enmiédese el Anexo 9 como sigue:

5.4 ~~Método recomendado.~~— Los Estados contratantes, mediante sus autoridades competentes ~~deberían consultar~~ consultarán a los explotadores de aeronaves con respecto al plazo para el retiro de la persona que ha sido considerada no admisible, a fin de conceder al explotador de aeronaves el tiempo necesario para facilitar el retiro de la persona utilizando sus propios servicios o haciendo arreglos alternativos para el retiro.

Nota.— Nada en esta disposición deberá interpretarse en el sentido de permitir el regreso de una persona que busque asilo en el territorio de un Estado contratante a un país donde su vida o libertad pudieran verse amenazadas por razón de su raza, religión, nacionalidad, pertenencia a un determinado grupo social o de sus opiniones políticas.

5.5 Los Estados contratantes se cerciorarán de que se entregue al explotador de aeronaves la orden de retiro de una persona que ha sido considerada no admisible. La orden de retiro incluirá información relativa al vuelo de entrada (de llegada) que transporta a dicha persona y el nombre, la edad, el sexo y la nacionalidad de la persona en cuestión, si se conocen esos datos.

— FIN —