



LEGAL COMMITTEE – 34TH SESSION

(Montréal, 9 – 17 September 2009)

Agenda Item 5: Report on work done at the Session

DRAFT REPORT ON THE WORK OF THE LEGAL COMMITTEE DURING ITS 34TH SESSION

The attached paragraphs 4:1 to 4:8 of the draft Report of the Legal Committee relate to Agenda Item 4.

Agenda Item 4: Any other business

4:1 The observer from IATA presented LC/34-WP/2-4 which recommended the formation of an ICAO Special Study Group to Examine Emerging Legal Issues Presented by Unruly/Disruptive Passengers. The observer noted that unfortunately incidents involving disruptive and unruly passengers have continued to rise steadily since 2001. LC/34-WP/2-4 stated that although in most cases the unruly passenger can be easily identified, this did not automatically mean that the passenger can be prosecuted. Quite often, the State of arrival refuses to assert jurisdiction when the aircraft is registered in another State. Therefore, there was a jurisdictional gap that required a proper and effective legal remedy. None of the existing aviation security instruments were designed to deal expressly with unruly/disruptive passengers, let alone serious offences. The Tokyo Convention (1963) applied to offences against penal law that may not be considered offences but may still jeopardize the safety of the aircraft. This Convention had a number of shortcomings among which was the fact that it did not impose any obligation on the State of disembarkation to prosecute an offender and there was no obligation to assert jurisdiction in relation to offences and crimes committed on board a foreign aircraft. The Tokyo Convention was ripe for re-examination, and IATA suggested that the Committee recommends to the Council that a Special Working Group be formed to engage in a thorough study of the issue of unruly/disruptive passengers, and to consider whether or not the existing international legal regime must be revised to address the apparent flaws relating to the lack of jurisdiction and enforcement mechanisms. The Group should conduct its work independently of the ongoing efforts related to new and emerging threats.

4:2 Many delegations supported the proposal of IATA.

4:3 One such delegation opined that ICAO Circular 288 (*Guidance on Legal Aspects of Unruly/Disruptive passengers*) was perhaps not as effective as it could be. The manner in which the work on this should be pursued should be left to ICAO. This item should be placed on the Work Programme of the Legal Committee; this suggestion was supported by some other delegations.

4:4 The Chairman observed that any study on this subject should look into the degree of effectiveness of the Circular.

4:5 A few delegations, while supporting the proposal, also felt that it was necessary to study how the effects of deterioration of service on passenger aircraft contributed to the rise in the number of unruly passengers.

4:6 One delegation wondered whether jurisdiction could be given to the State of the Operator, in light of the growing trend to use leased aircraft.

4:7 Observing that the Tokyo, The Hague and Montreal Conventions were regarded as one group, one delegation believed that the Tokyo Convention should be examined and updated as necessary, considering that the other two conventions were now being modernized.

4:8 The Chairman stated that it was clear that the Committee supported the idea that ICAO should address the issue of unruly/disruptive passengers. There was general support for the idea of the establishment of a Special Study Group to do so. There was also a suggestion to include this in the Work Programme of the Committee. The Council would be informed accordingly.