



ASSEMBLY – 35TH SESSION

EXECUTIVE COMMITTEE AND LEGAL COMMISSION

- Agenda Item 14: Aviation security**
Agenda Item 37: Work Programme of the Organization in the legal field

AVIATION SECURITY ISSUES

[Presented by the International Air Transport Association (IATA)]

SUMMARY

This paper presents the Airline Industry view on critical Next Steps in three main areas of aviation security: 1) responsibility for and funding of aviation security, 2) handling of unruly/disruptive passengers and 3) restrictions on the illicit sale and movement of Man Portable Air Defense Systems (MANPADS).

Recommended actions by the Assembly are found at paragraph 3.1.

1. INTRODUCTION

1.1 Though there are many security related issues affecting the air transport industry, especially since the tragic events of 11 September, 2001 (“9/11”) this paper will concentrate on three:

- a) Responsibility for and funding of aviation security,
- b) Handling of unruly/disruptive passengers, and
- c) Restrictions on the illicit sale and movement of MANPADS. It is these three issues that IATA feels need the urgent attention of the highest levels of ICAO due to their multidisciplinary nature.

1.2 IATA has welcomed and indeed been very active in initiatives taken by ICAO, especially since the events of 9/11, including fast tracking of amendments to Annex 17 to deal with the numerous issues confronting the world of aviation security. ICAO has been active in each of the three areas of aviation security covered by this paper and substantial progress has been made. It is now time to consolidate that progress and look forward to the “Next Steps” to be taken in each of these three areas.

1.3 For its part, the industry, in September 2001 formed a coalition of stakeholders to coordinate the global aviation industry’s inputs to achieve an effective world-wide security system and ensure public confidence in civil aviation. Partners in this coalition, known as the Global Aviation Security Action Group (GASAG), have been working together and individually on a host of issues including the three dealt with in this paper. The positions put forth in this paper can be considered as a united aviation industry view on these issues.

¹ All language versions provided by IATA.

2. KEY ISSUES

Responsibility for and Funding of Aviation Security

2.1 IATA believes that governments have direct responsibility for aviation security and its funding. This responsibility includes protection of its citizens in the air and on the ground. The security threat against airlines is a manifestation of the threat against the State and as such the provision and cost of aviation security should be borne by the State from general revenue and not from taxes or user fees specifically applied to aviation.

2.2 IATA finds that the imposition of security charges, are often not equitably applied, not sufficiently transparent and cost-based, and can be discriminatory in nature vis-à-vis other modes of transport. Given the fragile state of the air transport industry, airlines can ill-afford to be burdened by the added costs of new security measures, related to acts against a State, whether these are bona fide or not.

2.3 Where the cost recovery of security measures from users is nevertheless pursued, IATA draws a distinction between funding of security measures directly relating to civil aviation and those relating to overall national security and intelligence. The costs of security that are not directly attributable to civil aviation should not be passed on to the providers and users of air transportation services. IATA urges States to observe ICAO's Policies on Charges for Airports and Air Navigation Services (Doc. 9082/6) paragraph 29 regarding the costs recovery of security measures.

Unruly and Disruptive Passengers

2.4 The unruly/disruptive passenger continues to be a threat to aviation safety and security on a worldwide basis. Incidents continue to occur around the world and vary from minor (the irate passenger) to the severely disruptive that threaten the safety of others both in the airport terminal and even worse on board an aircraft in flight.

2.5 One of the main problems with implementation of an effective and consistent strategy on unruly/disruptive passengers is the difficulty to take legal action against those who have committed serious offences on board an aircraft. This is largely due to the problem of legal jurisdiction. Many States' legal systems do not include jurisdiction to charge a person for an offence, which has not taken place within its own territory. This means that it is often impossible to lay charges against the offender, if an offence has taken place in a State that is not the State of arrival and on an aircraft that is not registered in the State of arrival.

2.6 To address this issue, in 1997, ICAO established, under the responsibility of the Legal Bureau, the Secretariat Study Group on Unruly Passengers. During the next three years the Study Group developed model national legislation on offences committed on board civil aircraft by unruly passengers. Following Resolution A33-4 adopted by the 33rd session, Circular 288 LE/1: Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers was issued to Contracting States in June of 2002.

2.7 While the model national legislation has been implemented by a number of States, global implementation is still far from being completed. Therefore, while the model legislation will have some impact, it does not yet have the broad effect that would occur should a substantial number of States integrate it into their own national legislation.

2.8 In addition to legislative activities at the State level, IATA believes that there is a need for the ICAO Study Group to resume its work and to look at necessary amendments to current international instruments (Conventions and Protocols) or perhaps development of an entirely new Convention or Protocol specifically related to the issue of unruly/disruptive passengers. It is obvious that there are still many “loopholes” in the existing international instruments that often result in inadequate national legislation in many States to properly deal with unruly/disruptive passengers.

Man-Portable Air Defence Systems (MANPADS)

2.9 IATA considers that States have the responsibility for protection of the civil aircraft operating in or through airspace over the territory of that State. This includes protection against attack by MANPADS on civil aircraft operating at vulnerable altitudes, particularly during the takeoff and landing phases at airports in that State and full funding of any countermeasures to be implemented to counter this threat.

2.10 Although most of the attention paid to this issue is related to on board technical countermeasures, IATA believes that it is necessary to further study the feasibility and effectiveness of such systems in the commercial aviation environment. Most of the information and data available on these systems is related to their use with armed forces. The military operating environment is different and in many cases less demanding on systems than the commercial aviation environment, especially in terms of operating hours per year for a typical aircraft.

2.11 As such IATA fully supports efforts underway within international organizations such as ICAO and the European Union as well as within individual States such as the United States to gain a full understanding of the feasibility of such systems in a commercial aviation environment.

2.12 IATA also feels that more attention must be paid to so-called Tactical Countermeasures (ground-based and flight profile) as viable alternatives to on board systems to counter the threat posed not only by MANPADS but also other ground-based weapons such as rocket propelled grenades (RPG) which are not countered by onboard systems. We have been heavily involved in the ICAO AVSEC Panel work on this issue.

2.13 However, IATA feels that the most effective countermeasure to this threat involves preventing these systems from being used or becoming a threat in the first place.

2.14 Efforts to achieve the aim of removing or at least minimizing the threat posed to civil aviation by MANPADS, must begin with better intelligence sharing among States. There is a critical need to develop a more effective and rigorous global framework to limit the availability of such weapons to unauthorized groups and individuals and to restrict the illicit sale and movement of these systems across international borders.

3. ACTION BY THE ASSEMBLY

3.1 IATA invites the Assembly to consider the following actions as key Next Steps on the issues raised in this paper:

- a) Request States re-evaluate the current funding mechanisms for aviation security within their jurisdiction. The responsibility and funding of aviation security should be considered a State function. The funding mechanism should be the same as that for other national security issues

- and should be non-discriminatory versus other modes of transport. If fees are assessed for aviation security, they should be in alignment with ICAO's Policies on Charges for Airports and Air Navigation Services (Doc. 9082/6) paragraph 29.
- b) Request States to establish internationally co-ordinated legislation to enable the arrest and prosecution of unruly and disruptive passengers as outlined in the ICAO document "Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers". The Assembly is also requested to direct that the ICAO Secretariat Study Group on Unruly Passengers resume its work and look at necessary amendments to current international instruments (Conventions and Protocols) or perhaps development of a new Convention or Protocol specifically related to the issue of unruly/disruptive passengers.
- c) Direct ICAO to further investigate how to facilitate the global counter-MANPADS effort by:
1. Working in conjunction or through other international bodies, to enhance the current intelligence sharing mechanism among States as well as to develop a more effective global framework (possibly an amendment to an existing Convention or Protocol or development of a new international instrument) to restrict the availability and illicit sale and movement of MANPADS across international borders.
 2. Continuing its work through the AVSEC Panel and other appropriate groups to enhance the global effort to develop effective Tactical Countermeasures (ground-based and flight profile) to counter the threat posed not only by MANPADS but also other ground-based weapons systems such as RPGs.
 3. Working to ensure that any efforts by various States to develop onboard technical countermeasures are harmonized, especially as related to certification criteria and other technical issues. In cases where States determine that such systems are necessary, this decision must be based on a full evaluation of the effectiveness and feasibility of such systems and that any costs, both direct and indirect, are borne by the State.

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