



## **INTERNATIONAL CONFERENCE ON AIR LAW**

(Montréal, 26 March to 4 April 2014)

### **COMMENTS ON THE PROJECTED PROTOCOL TEXT SUBMITTED BY THE ICAO LEGAL COMMITTEE DURING ITS 35th MEETING PERIOD**

(Presented by the Latin American Association of Aeronautical and Space Law – ALADA)

#### **1. INTRODUCTION**

1.1 ALADA is highly compromised in contributing to the adequate modernization and development of the civil aviation in all matters being developed by ICAO. Presentation of this Working Paper aims at such purpose offering certain suggestions to the participants on this International Conference, in line with the process of completing the aeronautical penal law framework, with the purpose of reinforcing the legally protected right of Safety.

1.2 The Convention on infractions and certain other acts committed on board aircrafts was entered into in Tokyo over half a century ago, that is in 1963. The current Conference aims at modernizing its text in order to adapt it to the evolution that passengers' behavior on board of international flights have been showing during the last decades.

1.3 The importance of this subject should be given especial consideration taking into account its direct relationship with safety and security in civil aviation, which rank first among ICAO's strategic goals.

#### **2. THE SECURITY OFFICER ON BOARD**

2.1 ALADA understands that the incorporation of a "Security Officer on board" is the most important matter within the group of modifications proposed by the Legal Committee and it shares the criterion of incorporating it into the new Protocol due to the factual and juridical reasons that follow:

- a) The increase of cases of "undisciplined passengers" shows that in many cases certain passengers' attitudes not only fit in the infractions as well as other actions included in the 1963 Tokyo Convention, but they also provoke serious risks on the security of the flight.

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<sup>1</sup> English and Spanish versions provided by ALADA.

- b) The anonymous presence of such Security Officers among passengers is a clear example of preventing the surveillance of safety and security as regards actions and infractions, such being an essential matter in a good security system, both in general and specifically in aviation.
- c) ICAO has already defined “undisciplined passengers” in its Document 288, being clear that behaviors therein described can generate serious risks in security matters.
- d) It is quite frequent that such misconducts can start in the passengers’ cabin without the aircraft Commander or any other member of the crew having noticed it, which can start an action or event that might put security in danger. Precisely at this moment is when the Security Officer, duly trained for such events and placed among passengers fulfilling his duty, which is working on surveillance of security, can instantly notice the starting of “indiscipline” and take immediate action to avoid completion of the danger.
- e) The appropriate action of the Security Officer will thus be highly effective in preventing and avoiding the danger as he has been adequately trained to act quicker than the Commander, who is in the cockpit complying with his duties and several minutes can pass before he can take the pertinent action.
- f) We would recall that such figure is not new in the international regulations of civil aeronautics as it was incorporated in Annex 17 of the Chicago Convention. Consequently, if it was adequate for the purpose of such Annex, it would be contradictory not to adopt it in this new Protocol because it is a matter directly related to security and proper prevention.
- g) The figure of the Security Officer is already effective in several international flights. Consequently, modernization of such Protocol would comply with the Tokyo Convention of in such matter and it would grant a formal juridical framework to actions shown in the reality of the aero-commercial environment as something typical of Custom, this being one of the main sources of Aeronautic law.

2.2 ALADA considers that the definition of the Security Officer on board proposed by the Legal Committee contemplates that such Officer can or cannot be an individual that depends from a specific government. To such extent, it is known that airlines and airports hire the security to specialized companies in several countries and this does not exclude the final responsibility of the respective States.

2.3 Consequently, taking into account the final responsibility of all States, ALADA suggests that the text should include such circumstance that would be as follows; “... of an individual “hired by the government or especially chosen, trained and authorized by the government of the State of...”.

2.4 The projected modification of Section 6 of the Tokyo Convention includes two alternatives: the first one attributes to the Security Officer the same faculties and responsibilities conferred to the aircraft Commander, meaning that he is entitled to act by himself and if he has justified reason to believe that an individual has committed or is on the verge of committing an undue fact or act, such Officer is entitled to guarantee the security of the aircraft, including individuals and goods.

2.5 The second alternative of the projected text includes the Security Officer with the same rank of the crew members and passengers, as regards the decision to act according to his own criterion.

2.6 We would mention that the difference between both options is quite important. In the first case, the Security Officer would have the authority delegated by the respective State to act in case of a passenger's indiscipline, which does not occur in the second case. Also, in the first alternative the Security Officer is placed for such purpose in the same level of the aircraft Commander, this being legally advisable as in the specific moment the Officer should act he is specifically complying with his prevention security task. In such circumstance, the aircraft Commander cannot carry out such task since he is generally far from the place in which the action is taking place.

2.7 It is clear that as soon as the aircraft Commander is acknowledged of the episode, he will be the one to decide as from such moment the actions that will be adopted inside the aircraft, because he is the top authority on board. The fact is that the preventive conduct of the Security Officer has already taken action, this being the act that justifies the legal framework of this new figure of Civil Aeronautics.

2.8 Following this line of ideas, ALADA mentions that during the XXXVII Latin American Meeting on Aeronautical and Space Law held in Lima, Peru in November 2013, a Conclusion was unanimously approved after a debate on the matter that clearly reflects the Doctrine, which reads as follows:

*“Taking into account the modifications proposed to the 1963 Tokyo Convention by the Diplomatic Conference called by ICAO for March 24, 2014 it will be convenient that ALADA submits a Working Paper suggesting the incorporation of the Security Officer on board figure, as described in the first option to the modifications of Article 6 of such Convention in line with the proposals of the OACI's Legal Committee. Finally, the criterion of the aircraft Commander should prevail in accordance with the circumstances of the event.”*

2.9 Consequently, the Legal Committee's proposal of the first option to the modifications to Article 6 of the Convention is the prevailing opinion on the Aeronautic Law doctrine field.

### 3. “FLYING AIRCRAFT” CONCEPT

3.1 Another interesting modification proposed by the Legal Committee to the Diplomatic Conference is the new “flying aircraft” concept, which widely reflects the aeronautics reality as at the time in which the aircraft's doors are shut for the plane to take off, the crew, the passengers and the cargo are under the Commander's responsibility, until the aircrafts' doors are opened for disembarking. Consequently, ALADA coincides with this new criterion, which certainly modernizes the concept.

### 4. STATES OF THE OPERATOR AND OF THE REGISTRATION OF THE AIRCRAFT

4.1 Inclusion of the definitions of the States of the operator and of the registration of the aircraft in the proposed modification of the Convention's Article 1, paragraph 3, in accordance with ALADA are accurate as they adequate to the current reality of the use of aircrafts in the aircommercial field. Also, they contribute to conceptualize the Security Officer on board figure as the mentioned States can delegate the prevention of security as well as the respective public functions on the aircraft Commander.

## 5. STATES OF THE FIRST LANDING AND THE AIRCRAFT OPERATOR

5.1 Proposals of modifications of the Convention's Article 3, including the jurisdictions of the States regarding the first landing and registration of the aircraft are the better ones, according to the characteristics of international flights as well as an improved systematization of the penal jurisdiction criteria.

## 6. MODIFICATION OR THE CONVENTION'S SECTION 10

6.1 The proposal to modify the current Convention's Article 10, including the Security Officer on board among the individuals who will have no personal responsibility for the procedures adopted before a fact or act mentioned in the Convention, is rather fair and it has the due juridical coherence with all the other criteria stated by ALADA in this Working Paper, essentially because it is complying with a specific aeronautical security prevention issue.

## 7. CLASSIFICATION OF TWO SPECIFIC PENAL OFFENSES

7.1 Incorporation of the two conducts classified in the proposed Article 15b) is correct and ALADA believes that both conducts should be approved since they are the two types of behaviors that may occur more frequently in cases of passengers' indiscipline both in international and domestic flights.

7.2 On the contrary, ALADA does not share the expression "encourage" in the proposed Article and suggests to replace it by "each State commits itself to" as it is more coherent with the effective disposition of States to guarantee security. Consequently, ALADA understands that all States will guarantee more effectively the compliance with all security requirements, which is the top purpose of the international aeronautic community.

## 8. EXTRADITION

8.1 ALADA also shares the text proposed as new paragraph 1 of the Convention's Article 16, which admits infractions committed on board as subject to extradition, as the international aeronautic community coincides with the Agreement in force that deal with aeronautic illegal actions.

## 9. DAMAGES CAUSED BY UNDISCIPLINED PASSENGERS

9.1 The text proposed as new Article 18b) put forward by the Legal Committee can be placed in the sphere of equity and in the international juridical frameworks. Consequently, ALADA agrees with such text.