

Notes for ICLMG submission to Transport Committee on Bill C-42 and U.S. SECURE FLIGHT

Spokesperson : Roch Tassé

November 25, 2010

Je tiens d'abord à remercier les membres du comité pour l'invitation à faire part de nos préoccupations concernant le projet de Loi C-42 qui, s'il est adopté, aura pour effet de permettre aux autorités d'un pays étranger de décider de manière arbitraire et discrétionnaire qui pourra monter à bord d'un avion, et ce pour la majorité des vols internationaux en provenance ou à destination du Canada. Compte-tenu des nombreux témoignages de voyageurs qui ont déjà été victimes d'interdiction de vol depuis la mise en place graduelle de Secure Flight au cours des dernier mois, il faut s'attendre qu'avec l'adoption de C-42, on verra un nombre accru de Canadiens et visiteurs au Canada littéralement cloués au sol même s'ils n'ont aucune intention de voyager aux Etats-Unis, et ce sans aucun recours ou moyen de redressement.

Under the "Final Rule"¹ of the international component of Secure Flight, published in late October 2008, airlines are required to transmit all passenger information to Homeland Security and U.S. Customs and Border Protection

72 hours before departure, for all flight to and from the U.S. as well as for all flights that overfly U.S. territory. This includes not only basic API information (name, gender, date of birth), but all information contained in reservations systems known as PNR (Passenger Name Record). After running a risk assessment for each passenger using data mining technology, Homeland Security in turn issues a “boarding pass result” back to the airline. The “result” instructs the airline to issue a boarding pass, deny permission to travel, or issue an enhanced screening requirement (SSSS). These regulations give access to the U.S. to a whole subset of information on air passengers who are not entering the U.S. but merely overflying its airspace. Furthermore, this information can be shared among at least 16 U.S. agencies and with foreign governments.

The program gives the government of a foreign country a *de facto* right to decide who gets to travel to and from Canada, since the vast majority of Canadian flights to and from Europe, the Caribbean and South America overfly American airspace.

Let me quote from an internal document of Public Safety obtained by the Canadian Press, dated January 26, 2009:

“There are a number of concerns that the Secure Flight Program poses for

Canada. Secure Flight affects both passengers and airlines. Airlines will be compelled to share personal data with the U.S. government – an act that is currently prohibited by the Personal Information and Electronic Documents Act. It is possible that Canadians overflying the United States could be denied boarding based on U.S. No-Fly lists that were developed based on lower U.S. risk tolerance. There are also no guarantees how the U.S. will use the information it obtains from carriers overflying its territory.” END OF QUOTE

During debate on second reading, Liberal MP Joe Volpe said , and I quote: “This bill is a total abnegation of our sovereignty responsibility”. He is absolutely right. None of us in this room, even respected members of the Canadian Parliament, will be allowed to fly virtually anywhere in the world without the explicit consent of the United States. It creates the very real possibility that the Charter rights of Canadians, and their rights to privacy, will be violated by the legislation of a foreign country, without Canada being able to defend those rights. We know that Maher Arar is on the U.S. no-fly list. Several other cases have also been reported where Canadians have been denied boarding by the U.S., even for domestic flights in Canada. That includes several individuals who have been deemed by

Canadian courts and Commissions of Inquiry not to pose a risk to the national security of Canada, such as Abdullah Almaki and Adil Charkaoui among others. So if C-42 is adopted, even the rulings of Canadian courts won't be able to be enforced.

There are other concerns related to Canada's sovereignty. For example, half the Cabinet members of the Bolivian government are *personae non gratae* in the U.S. So if Canada were to invite one of those ministers for a diplomatic meeting in Canada, the U.S. could bar this minister from boarding a plane to Canada. The same could apply to refugee claimants who, even if admitted by Canada, could be denied the possibility of leaving their country by the U.S. Other impacts on refugees and immigrants include the possibility of mistreatment abroad by third countries with whom the U.S. might share travel information. By adopting C-42, Canada could become an accomplice in the U.S. rendition program already responsible for the torture of Canadians in Syria and Egypt, among others. At the very least, it would support Canadian complicity with a foreign government's program that violates due process and the principles of natural justice.

Disclosure of personal information to the Department of Homeland Security

(DHS) on passengers travelling to certain destinations – particularly Cuba – could lead to unpleasant consequences. For example, this information could be used to identify Canadian companies who do business with Cuba or penalize travellers who have visited Cuba by subsequently refusing them entry in the U.S. How will Canada ensure that the U.S. not use the Secure Flight program to apply its *Helms-Burton Act*, which imposes penalties on foreign companies that do business with Cuba?

There are also serious concerns related to the huge number of passengers who are intercepted as false positives, and have no redress mechanism other than being told to change their name. ICLMG has received testimonies from several Canadians who have been intercepted as false positives on the U.S. list in Canadian airports and have been told by Homeland Security that the redress mechanism, known as TRIP, could not apply to them because the incident did not occur on U.S. territory. And even if TRIP did apply, there is still no redress mechanism whatsoever if you are the real person on the no-fly list.

As you can see, the U.S. Secure Flight program will have a very harmful impact on Canadian travellers and visitors to Canada. The ICLMG calls on you to oppose these measures. Canadians expect their government to protect

the sovereignty of their country and uphold their rights. The rule of law and the Charter rights of Canadians cannot be sacrificed at the altar of short-term commercial interests.