



WORKING PAPER

FACILITATION PANEL (FALP)

SEVENTH MEETING

Montréal, 22-26 October 2012

Agenda Item 5: Amendments to Annex 9

**PERSONS IDENTIFIED AS HOLDING FRAUDULENT OR FALSIFIED
TRAVEL DOCUMENTS PROPOSALS TO AMEND
ANNEX 9 – FACILITATION**

(Presented by Canada on behalf of IATA CAWG)

SUMMARY

Annex 9, Chapter 3, provides Standards and Recommended Practices (SARPs) for Contracting States to assist aircraft operators in the evaluation of travel documents presented by passengers and to take travel documents out of circulation where possible. However there are inconsistencies between Contracting State responsibilities at departure and transit points and those undertaken on arrival. Therefore, the IATA's Control Authorities Working Group (IATA/CAWG) seeks to make amendments to Annex 9 to clarify that Contracting States shall not require aircraft operators to seize travel documents or direct an aircraft operator to carry a passenger known to be holding a fraudulent, falsified, counterfeit document, or is an imposter holding a valid travel document. The IATA/CAWG also proposes that Contracting States, where possible, seek to seize fraudulent, falsified or counterfeit travel documents as specified by standard 3.46, or those held by an imposter at departure and transit points. Additionally, as the term "imposter" appears in Annex 9, but is not defined, IATA/CAWG is requesting the Facilitation Panel to consider adding a definition of that term to Chapter 1 of the Annex.

Action by the FAL Panel:

The FAL Panel is invited to consider the proposals described in this paper and adopt the proposed amendments to the Annex as set out in the Appendix to this Working Paper.

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 a representative from a national airline from each State, are presently represented in the IATA/CAWG.

1.2 Based on analysis by members of the IATA/CAWG, the group determined that inconsistencies in the manner with which Contracting States respond to persons holding fraudulent, falsified or counterfeit travel documents or a person impersonating the rightful holder of the travel document (imposter). Therefore, in order to guide both aircraft operator and public authorities in the Contracting States, IATA/CAWG developed and publically released its “*Guidelines Relating to Persons Identified as Holding Fraudulent or Falsified Travel Documents*” (“the Guidelines”) in December 2010. While not binding on any entity, these guidelines are fully aligned with existing Annex 9 SARPS and designed to clarify points of order not fully described in the Annex itself.

1.3 The members of IATA/CAWG are of the opinion that the provisions of Annex 9 relating to the handling of persons identified as holding fraudulent or falsified travel documents require additional clarification, with particular emphasis being placed on processes by public authorities to assist aircraft operators in evaluating travel documents and taking those found by the Contracting State to be fraudulent, falsified, entirely counterfeit or held by an imposter out of circulation as stipulated in Standard 3.46.

1.4 An IATA/CAWG Working Group¹ was selected to review the Guidelines and to compare its agreed provisions with existing Annex 9 SARPs, and from that review to develop recommendations for consideration by the Seventh ICAO Facilitation Panel.

1.5 The group subsequently agreed that the following issues warranted additional consideration, with recommendations concerning each and proposed additions to or amendments of Annex 9 described in the Appendix to this Working Paper:

- a) While used in the Annex, the term “Imposter” is not clearly defined. A definition of this term added to Chapter 1- Definitions and General Principles will help to ensure a consistent interpretation and lead to a more globally aligned approach to this type of inadmissible person.
- b) Questions are frequently raised and national differences noted relating to persons whose documents are identified as questionable either 1) at check-in or prior to entering into an airport sterile airside area, or 2) once in an airport’s sterile airside area (i.e. in an airport transit area and identified by en route). IATA/CAWG is recommending that a new standard, as presented in the Appendix to this Working Paper, be adopted and inserted in Chapter 3 of the Annex.
- c) Cases continue to be reported where aircraft operators are obliged to board and transport individuals even after their travel documents have been identified as being fraudulent, or held by a person other than the legitimate bearer (i.e. and imposter). IATA/CAWG is suggesting that a new standard, as presented in the Appendix to this Working Paper, be adopted and inserted in Chapter 3 of the Annex.

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.

2. DISCUSSION

2.1 A review of Annex 9 determined that the term imposter appears in Appendix 9, and in Chapter 3, there is a statement indicating Contracting States should seize documents from a person who is impersonating a rightful holder of a travel document; however, as there is no definition within Annex 9 that defines an imposter, the group would like to recommend that the definition of an imposter be added to Annex 9.

2.2 Although existing Standard 3.31 obliges Contracting States to “*assist aircraft operators in the evaluation of travel documents presented by passengers, in order to defer fraud and abuse*” (an obligation reflected in the IATA/CAWG “Guidelines”), aircraft operators continue to experience incidences where Contracting States do not provide direct assistance at airports of origin and/or at transit locations. Other incidences have been reported in which the Public Authorities request (or require) that the aircraft operator confiscate fraudulent, falsified or counterfeit travel documents or those held by an imposter rather than an official of that State making the seizure. Discussion amongst the Working Group resulted in a request for a new standard to Annex 9, Chapter 3 as set forth in the Appendix, to indicate Contracting States shall not request aircraft operators to confiscate other Contracting States travel documents.

2.3 To supplement the new proposed standard referred to in 2.2 above, and to further clarify Standard 3.46’s intent, the Working Group suggests that existing Standard 3.46 should be moved to Section I – Inspection of Travel Documents. This would then more clearly indicate to Contracting States that this provision (assisting in travel document verification for the purpose of deferring fraud and abuse) should be applied at any point during the journey, including at the point of departure (origin) and at transit points.

2.4 As discussed in 1.5 c) above, the Working Group has also identified situations where public authorities in some Contracting States continue to require aircraft operators to board and transport persons known to be holding fraudulent documents or who are known to be an imposter. Given the serious nature of these incidents, and the potentially negative impact that these actions can have on aircraft operators and other Contracting States, the Working Group is recommending that the Facilitation Panel consider and adopt a new Standard, as set forth in the Appendix to this Working Paper, for inclusion in Chapter 3.

APPENDIX

Amend Annex 9 as follows:

Chapter 1 - Definitions and General Principles

Imposter. A person who impersonates the rightful holder of a genuine travel document.

Chapter 3 – The entry and departure of persons and their baggage

3.XX.1 New Standard - Contracting States shall not require Aircraft Operators to seize documents referred to in Standard 3.46.

3.XX.2 New Standard - Contracting States shall not require an Aircraft Operator to carry a passenger from a point of departure or transit when the travel document presented by that passenger is determined by the State to be fraudulent, falsified, or counterfeit, or is held by a person other than to whom the document was legitimately issued.

Note - Nothing in this provision is to be construed so as to prevent the return of inadmissible passengers whose travel document(s) are fraudulent, falsified or counterfeit or held by an imposter, and have been seized by a Contracting State, in accordance with Standard 3.46 and who are travelling under a covering letter issued in accordance with 5.7.

3.46 (existing standard) - Suggest moving to Section I – Inspection of travel documents.

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