



## **FACILITATION (FAL) DIVISION — TWELFTH SESSION**

**Cairo, Egypt, 22 March to 2 April 2004**

### **Agenda Item 4: Controlling travel document fraud and illegal migration**

#### **CUSTODY AND CARE OF INADMISSIBLE PERSONS**

(Presented by India)

#### **1. INTRODUCTION**

1.1 This paper attempts to draw the attention of the Division to the new provision proposed to be included in Chapter 5 regarding custody and care of inadmissible persons and suggests that its text be amplified a bit to take into account the actual conditions obtaining at our airports. The suggested revision will help in making the provision more clear. The provision being referred here is: Paragraph 5.9 of Chapter 5 as contained in Appendix to WP/5.

#### **2. DISCUSSION**

2.1 In view of the increasing threat of unlawful interference with civil aviation, the efforts undertaken by ICAO to make better provision in Annex 9 for tackling the problem of travel document fraud and inadmissible persons must be appreciated. These efforts are bearing fruits now in the form of a revised Chapter 3 having tighter provisions to check the travel document fraud and a new Chapter 5 containing more clearly worded provisions for handling of the inadmissible persons and deportees. These new provisions will not only help the cause of security but will also enhance facilitation since the responsibilities of the Government, airlines and the airport operators have been clearly delineated.

2.2 The issue of custody and care of arriving passengers is an important part of the structure that has been built under new Chapters 3 & 5. It gets divided into three parts, viz. (i) from the time of disembarkation till the time the passengers are accepted for examination by the control authorities, (ii) during the period they are under the process of examination, and (iii) if found inadmissible, from the time of that decision until they are removed from the territory of the State. It is heartening to see that clear division of responsibility of custody and care has been proposed for these three categories in paragraphs 3.43 to 3.45 of Chapter 3 (Appendix to WPI3) and paragraph 5.9 of Chapters (Appendix to WPIS). While the operators are responsible in cases (i) and (iii), the public authorities have the responsibility in case (ii).

2.3 Insofar as the basic principle is concerned, there can be no quarrel with the division of responsibility as contained in the paragraphs referred above. It is only the operator who can be held responsible for the custody and care of passengers from embarkation to the point of first appearance before a control officer. Again, it is the operator who has to take the responsibility of the custody and care of a passenger found inadmissible by the public authorities. In the in-between stage, the passenger is

under the charge of the public authorities and naturally they themselves have to be responsible for his custody and care.

2.4                However, looking from a practical angle, the above scheme suffers from a serious flaw in the third case i.e. the custody and care of a person declared inadmissible. If it is possible for the operator to get a flight for such a person within a few hours, the operator will have no problem. But it is not uncommon to come across cases when the next flight is available only after 24 hours or sometimes even longer than that. In such cases, the operator will require a separate detention room to hold the inadmissible person and that room will have to be in the arrival area itself since the person has been denied entry. Furthermore, it will be necessary to guard the room to avoid a slip-away incident. Due to various resource constraints, including space constraint, it does not appear possible that various airlines operating flights to a given airport would all be in a position to organize their own facilities for detention of such persons. A more practical option would be that technically such persons should be deemed as returned to the operators from the moment they are declared as inadmissible and the respective operators should start bearing the cost of their detention and care but the physical handing over of such persons by the public authorities to the concerned operators is effected only a few hours before the flight on which the removal arrangements have been made.

2.5                Paragraph 5.9 of Appendix to WP/5 is reproduced below:

"The operator shall be held responsible for the custody and care of a person from the moment that person is found inadmissible and returned to the operator for removal from that State, pursuant to 5.4."

It appears from the above wording that the responsibility of the operator will begin only when both the actions by the public authorities i.e. finding a person inadmissible and returning him to the operator have been completed. This is the root cause of the problem that needs to be attended. The wording should be amended in such a way that finding a person inadmissible and returning him to the operator need not be simultaneous. In other words, even if there is a time gap between the two actions, the responsibility of the operator towards the custody and care of the person will still begin from the moment the person is found inadmissible and the operator is informed by the public authorities about the inadmissibility. A revised draft of paragraph 5.9 is given in the Attachment.

### **3. ACTION BY THE DIVISION**

3.1                The Division is invited to give consideration to adoption of the attached revised draft text of the proposed paragraph 5.9 in Chapters of Annex 9.

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**ATTACHMENT**

**REVISED PARAGRAPH 5.9 (APPENDIX TO WP/5)**

*“The operator shall be held responsible for the custody and care of an inadmissible person and shall bear all the related costs from the moment (he public authorities have notified it in writing pursuant to 5.3 until such person is removed from the State pursuant to 5.11. The timing of physical transfer of custody of such a person from the public authorities to the operator may be decided by mutual convenience based on the detention facilities available with the operator.”*

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