



FAL/12-WP/116
31/3/04

FACILITATION (FAL) DIVISION — TWELFTH SESSION

Cairo, Egypt, 22 March to 2 April 2004

**REPORT OF COMMITTEE 2 TO THE PLENARY
ON AGENDA ITEM 4**

Agenda Item 4: Controlling travel document fraud and illegal migration

4.1 The Division considered WP/6 presented by the Secretariat which recommended adoption of new and amended definitions to be inserted into Chapter 1 of Annex 9.

4.2 The Division, in examining the proposed definitions as presented in the Appendix to the working paper, made some adjustments and agreed to adopt the following definitions for inclusion in Chapter 1:

CHAPTER 1. DEFINITIONS AND GENERAL PRINCIPLES

Amend Chapter 1 as follows:

Recommendation A/xx —

A. DEFINITIONS

When the following terms are used in the Standards and Recommended Practices on Facilitation, they have the following meanings:

Admission. The permission granted to a person to enter a State by the public authorities of that State in accordance with its national laws.

(...)

Border integrity. The enforcement, by a State, of its laws and/or regulations concerning the movement of goods and/or persons across its borders.

(...)

Commencement of journey. The point at which the person began his journey, without taking into account any airport at which he stopped in direct transit, either on a through-flight or a connecting flight, if he did not leave the direct transit area of the airport in question.

(...)

Deportation order. A written order, issued by the competent authorities of a State and served upon a deportee, directing him to leave that State.

Deportee. A person who had legally been admitted to a State by its authorities or who had entered a State illegally, and who at some later time is formally ordered by the competent authorities to leave that State.

Direct transit area. A special area established in an international airport, approved by the public authorities concerned and under their direct supervision, where passengers can stay during transit or transfer without being submitted to border control measures.

(...)

Immigration control. Measures adopted by States to control the entry into, transit through and departure from their territories of persons travelling by air.

(...)

Improperly documented person. A person who travels, or attempts to travel with: (a) an expired travel document or an invalid visa; (b) a counterfeit, forged or altered travel document or visa; (c) someone else's travel document or visa; or (d) no travel document or a visa, if required.

Inadmissible person. A person who is or will be refused admission to a State by its authorities.

(...)

Removal of a person. Action by the public authorities of a State, in accordance with its laws, to direct a person to leave that State.

Removal order. A written order served by a State on the operator on whose flight an inadmissible person traveled into that State, directing the operator to remove that person from its territory.

Risk assessment. An assessment by a departing State of a deportee's suitability for escorted or unescorted removal via commercial air services. The assessment should take into account all pertinent factors, including medical, mental and physical fitness for carriage on a commercial flight, willingness to travel, behavioural patterns and any history of violence.

(...)

Travel document. A passport or other official document of identity issued by a State or organization, which may be used by the rightful holder for international travel.

(...)

4.3 During the discussion on the definition for "Direct transit area," some delegations expressed concern over the fact that some States charge to issue transit visas. With reference to the definition on "Improperly documented person," the Division agreed that detailed information on this matter should be included in the planned FAL Manual.

4.4 The Division then considered WP/5, presented by the Secretariat, which contained proposals for SARPs for inclusion in a new Chapter 5 of Annex 9. These were also developed by the "Passenger-Processing Drafting Group" established by the FAL Panel, in conjunction with the proposals for Chapter 1 of Annex 9. The goal of the drafting group was to address problems identified in accounts received by the Secretariat and in differences filed by various States to Chapter 3 SARPs. The paper also contained additional recommendations with regard to deportees, for which there is, at present, very little guidance in Annex 9.

4.5 The Division discussed the proposals for Chapter 5, contained in the Appendix to WP/5, at length, taking up each paragraph, in turn. At the same time, at the appropriate juncture, the Division also considered WP/49, presented by AFCAC and WP/77, presented by India (described below, in paragraphs ...).

4.6 Paragraphs 5.1 and 5.2, as well as paragraphs 5.3 to 5.8, inclusive, were adopted with some debate. A new paragraph 5.2*bis* was inserted as a result of the proposal in WP/49, with the addition of a Note to elucidate on “dignity of persons.”

4.7 With reference to a proposal to elevate Recommended Practice 5.9 to a Standard and a proposal in WP/77 regarding the cost element of custody and care of inadmissible persons, there was an extensive exchange. In the light of the views expressed, it was agreed, by a majority of the Division, to adopt the proposal with some amendments. The second proposal made in WP/77 with regard to the physical custody of inadmissible persons is already covered by the words “official detention” in paragraph 5.15 in WP/5.

4.8 Paragraphs 5.10 to 5.13 were readily adopted, as proposed. With regard to paragraph 5.14.1, the Division agreed to retain this as a Recommended Practice, although a significant number of delegations would have wished to see this upgraded to a Standard.

4.9 With reference to Recommended Practice 5.15, it was proposed that, for the purpose of consistency with Standard 5.9, this provision should be elevated to a Standard. Since a large majority of delegations supported this proposal, the Division agreed to do so, and also place it after Standard 5.9.

4.10 When reviewing proposed Standard 5.17, some delegations indicated that this provision was contrary to their legislation. A compromise text was therefore proposed and adopted by the Division, with the agreement that guidance material on this subject would be inserted in the FAL Manual. With reference to proposed Standard 5.22, one delegation advised that if the Standard were adopted, it would notify a difference.

4.11 In conclusion, the Division adopted the following recommendation, after making appropriate amendments to the proposed text in the Appendix to WP/5:

Recommendation A/xx —

Insert a new Chapter 5 in Annex 9 as follows:

CHAPTER 5. INADMISSIBLE PERSONS AND DEPORTEES

A. General

5.1 In order to minimize disruptions to the orderly operations of international civil aviation, Contracting States shall cooperate with one another to promptly resolve any differences arising in the course of implementing the provisions of this Chapter.

5.2 Contracting States shall facilitate the transit of persons being removed from another State pursuant to the provisions of this Chapter, and extend necessary cooperation to the operator(s) and escort(s) carrying out such removal.

5.2 bis During the period when an inadmissible passenger or a person to be deported is under their custody, the state Officers concerned shall preserve the dignity of such persons and take no action likely to infringe such dignity.

Note. - These persons should be treated in accordance with the relevant unilateral provisions of the UN International Covenant on Civil and Political Rights.

B. Inadmissible persons

5.3 3-58 (first part) Contracting States ~~The public authorities shall without delay inform~~ notify the operator, in writing, when a person is found inadmissible, pursuant to 3.44, ~~and consult the operator regarding the possibilities for removal.~~

Note 1.—A person found inadmissible shall be transferred back into the custody of the operator who transported that person directly to the final destination or, where appropriate, into the custody of one of the operators who carried the person to one of the transit destinations.

Note 2.—Nothing in this provision or in Note 1 is to be construed so as to allow the return of a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.

5.4 3-58 (second part) **Recommended Practice.**— *The Contracting States, through their public authorities shall without delay inform the operator when a person is found inadmissible and should consult the operator regarding the possibilities on the time-frame for removal of the person found inadmissible, in order to allow the operator a reasonable amount of time during which to effect the person's removal via its own services or to make alternative removal arrangements.*

Note 1.—A person found inadmissible shall be transferred back into the custody of the operator who transported that person directly to the final destination or, where appropriate, into the custody of one of the operators who carried the person to one of the transit destinations.

Note 2.—Nothing in this provision or in Note 1 is to be construed so as to allow the return of a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.

5.5 Contracting States shall ensure that a removal order is issued to the operator in respect of a person found inadmissible. The removal order shall include, if known, the name, age, gender and citizenship of the person in question.

3-59 ~~In place of a seized document, a covering letter shall be issued by the removing State and attached to it will be a photocopy of the seized travel documents (if available) as well as any important information such as the removal order. The covering letter and its attachments shall be handed over to the operator responsible for the removal of the inadmissible person. It will serve to give information to the authorities at the transit and/or the original point of embarkation. In the event the person found inadmissible has lost or destroyed his travel documents, a similar letter shall be issued.~~

Note.—Suggested formats for letters applicable to the removal of improperly documented passengers are set forth in Appendix 9.

5.6 Contracting States ordering the removal of an inadmissible person who has lost or destroyed his travel documents shall deliver a covering letter in the format set forth in Appendix 9 (a) in order to give information to the authorities of the transit and/or the commencement of journey. The covering letter, the removal order and any relevant information shall be handed over to the operator or, in the case of escorted persons, the escort, who shall be responsible for delivering them to the public authorities at the State of destination.

5.7 Contracting States ordering the removal of an inadmissible person whose travel documents have been seized pursuant to 3.46 shall deliver a covering letter in the format set forth in Appendix 9 (b) in order to give information to the authorities of the transit and/or the commencement of journey. The covering letter together with a photocopy of the seized travel documents and the removal order shall be handed over to the operator or, in the case of escorted persons, the escort, who shall be responsible for delivering them to the public authorities at the State of destination.

5.8 ~~3.60.1~~ Contracting States, that ~~When the public authorities~~ have reason to believe that an inadmissible person ~~who has been declared inadmissible~~ might offer resistance to his removal, ~~they~~ shall ~~so~~ inform the operator concerned as far in advance as possible of scheduled departure ~~in sufficient time~~ so that the operator can take precautions to ensure the security of the flight.

Note.—To this end, security should be provided by government officials, wherever appropriate under national regulations, or by the operator who should use his own security personnel or, at his expense, hire personnel whom he considers to be competent.

5.9 ~~3.52.2~~ (second part) **Recommended Practice.**— ~~After such acceptance, whether conditional or unconditional, the public authorities concerned should be responsible for the custody and care of passengers and crew until they are legally admitted for entry. or The operator shall be held responsible for the cost of custody and care of an improperly documented person from the moment that person is found to be inadmissible and transferred back returned to the custody of the operator for transport away from the territory of removal from the State, pursuant to 5.4.~~

5.9 bis ~~3.57~~ **Recommended Practice.**— In the event that the precautions referred to in ~~3.53~~ ~~3.33~~ have been taken but the ~~passenger~~ person is nevertheless not admitted due to document problems beyond the expertise of the operator or for reasons other than improper documents, the operator ~~should~~ shall not be held ~~directly~~ responsible for any costs related to official detention of the ~~passenger~~ person.

5.10 ~~3.62~~ When a person is found inadmissible and is returned to the operator for transport away from the territory of the State, the operator shall not be precluded from recovering from such person any transportation costs ~~arising from his inadmissibility~~ involved in his removal.

5.11 ~~3.60~~ Each Contracting State shall ensure that a person found inadmissible is transferred back into the custody of the ~~The operator, who shall be responsible for prompt removal~~ remove the inadmissible person to:

- a) the point where ~~the person he~~ commenced his journey; or
- b) to any place where ~~the person he~~ is admissible.

5.12 ~~3.63~~ A Contracting States shall accept for examination a person removed from a State ~~being returned from his point of disembarkation after having been~~ where he was found inadmissible, if this person ~~previously stayed in~~ commenced his journey from ~~their~~ its territory. ~~before embarkation, other than in direct transit.~~ A Contracting States shall not return such a person to the country where he was earlier found ~~to be~~ inadmissible.

Note.—This provision is not intended to prevent public authorities from further examining a returned inadmissible person to determine his eventual acceptability in the State or make arrangements for his transfer, removal or deportation to a State of which he is a national or where he is otherwise acceptable.

5.13 ~~3.63.1~~ In following the procedure in 3.63, where a person who has been found to be inadmissible has lost or destroyed his travel document, Contracting States shall accept instead a document attesting to the circumstances of embarkation and arrival issued by the public authorities of the Contracting State where the person was found to be inadmissible the covering letter and other papers delivered pursuant to 5.6 or 5.7 as sufficient documentation to carry out the examination of the person referred to in the letter.

~~3.64~~ Where the procedure in 3.59 has been followed, Contracting States shall accept the covering letter referred to and shall not require the production of the fraudulent, falsified or counterfeit travel document concerned.

5.14 ~~3.55~~ Contracting States shall not fine operators in the event that arriving and in-transit passengers persons are found to be improperly documented where operators can demonstrate that they have taken adequate precautions to ensure that these passengers persons had complied with the documentary requirements for entry into the receiving State.

5.14.1 ~~3.55.1~~ **Recommended Practice.**— *When operators have co-operated with the public authorities to the satisfaction of those authorities, for example pursuant to memoranda of understanding reached between the parties concerned, in measures designed to prevent the transportation of improperly documented inadmissible persons, Contracting States should mitigate the fines and penalties that might otherwise be applicable should such persons be carried to their territory.*

5.16 Contracting States shall not prevent the departure of an operator's aircraft pending a determination of admissibility of any of its arriving passengers.

Note.—*An exception to this provision could be made if the Contracting State had reason to believe that there might be an irregularly high number of inadmissible persons on a specific flight.*

~~3.59.1~~ **Recommended Practice.**—*Each Contracting State should, where practicable, ensure that the public authorities issuing a removal order give notice to the public authorities of the countries of transit and, where advisable, final destination of the trip planned.*

Note.—*This notice should contain the following information:*

- a) — identity of the person;*
- b) — reason for transport;*
- c) — escort(s), if any; and*
- d) — risk assessment by the competent authorities.*

~~3.61~~ When a passenger is found inadmissible and is transferred back pursuant to 3.60, the public authorities ordering the removal shall deliver the travel documents of the inadmissible person (including the letters applicable to the return of improperly documented passengers) to the operator or, in the case of escorted persons, to the escort/guard, who shall be responsible for delivering them to the public authorities of the State of destination.

C. Deportees

5.17 A Contracting State deporting a person from its territory shall serve him a deportation order. Contracting States shall indicate to the deportee the name of the destination State.

5.18 Contracting States removing deportees from their territories shall assume all obligations, responsibilities and costs associated with the removal.

~~3.66 Each Contracting State shall ensure that the operators concerned are informed when persons are obliged to travel because they have been formally ordered by the public authorities to be removed from that State. The public authorities shall inform the operators in sufficient time so that the operators can take precautions to ensure the security of the flight.~~

Note.—The following information is to be provided, subject to national privacy legislation, to the operators by the public authorities:

- ~~===== name of person to be identified as deportee;~~
- ~~===== reason for deportation;~~
- ~~===== names of escorts/guards;~~
- ~~===== willingness or unwillingness to travel; and~~
- ~~===== any other information that would allow the operators to assess the risk of endangering the security of the flight.~~

In order to ensure appropriate coordination of facilitation and security specifications, attention is drawn to the applicable provisions of Annex 17, Chapter 4.

5.19 Contracting States, when making arrangements with an operator for the removal of a deportee, shall make available the following information as soon as possible, but in any case not later than 24 hours before the scheduled time of departure of the flight:

- a) a copy of the deportation order, if legislation of the Contracting State allows for it;
- b) the deportee's willingness to travel;
- c) a risk assessment by the State and/or any other pertinent information that would help the operator assess the risk to the security of the flight; and
- d) the names and nationalities of any escorts.

Note.— In order to ensure coordination of facilitation and security standards, attention is drawn to the applicable provisions of Annex 17, Chapter 4.

5.20 Contracting States, in making arrangements for the removal of a deportee to a destination State, shall use direct non-stop flights whenever practicable.

5.21 A Contracting State, when presenting a deportee for removal, shall ensure that all official travel documentation required by any transit and/or destination State is provided to the operator.

5.22 A Contracting State shall admit into its territory its nationals who have been deported from another State.

5.23 A Contracting State shall give special consideration to the admission of a person, deported from another State, who holds evidence of valid and authorized residence within its territory.

5.24 Contracting States, when determining that a deportee must be escorted and the itinerary involves a transit stop in an intermediate State, shall ensure that the escort(s) remains with the deportee to his final destination, unless suitable alternative arrangements are agreed, in advance of arrival, by the authorities and the operator involved at the transit location.

~~3.67 Each Contracting State shall ensure that the public authorities ordering the deportation inform the public authorities of transit and, if advisable, those of destination countries of the planned transport.~~

D. Procurement of a replacement travel document

5.25 When a replacement travel document must be obtained in order to facilitate removal and acceptance of an inadmissible person at his destination, the State ordering the removal shall provide as much assistance as practicable in obtaining that document.

Note. - In order to clarify application of this Standard, attention is drawn to Standard 5.13

5.26 ~~3.68~~ A Contracting State shall, when requested to provide travel documents to facilitate the return of one of its nationals, respond within a reasonable period of time and not more than 30 days after such a request was made either by issuing a travel document or by satisfying the requesting State that the person concerned is not one of its nationals.

5.27 ~~3.69~~ A Contracting State shall not make the signing by the person concerned of an application for a travel document a prerequisite for the issuance of that document.

5.28 ~~3.70~~ When a Contracting State has determined that a person for whom a travel document has been requested is one of its nationals but cannot issue a passport within 30 days of the request, the State shall issue an emergency travel document that attests to the nationality of the person concerned and that is valid for readmission to that State.

5.29 ~~3.71~~ A Contracting State shall not refuse to issue a travel document to or otherwise thwart the return of one of its nationals by rendering that person stateless.

4.12 The Division considered WP/49 presented by AFCAC which emphasized the respect of human rights of inadmissible persons and deportees and which proposed a new standard for inclusion in Chapter 5 taking into consideration these rights. The Division expressed strong support for this proposal and agreed to include it in Chapter 5, following Standard 5.2 as presented in the Appendix to WP/5. The Division also agreed to include a note referring to the UN International Covenant on Civil and Political Rights, in order to elucidate the new provision.

4.13 In WP/77, India drew attention of the Division to the new provision contained in paragraph 5.9 of Chapter 5, regarding custody and care of inadmissible persons. This paper suggested that its text should be amplified to take into account the actual conditions prevailing at India's airports for example. Part of the proposal was accepted as explained above.

4.14 In WP/26, ECAC presented principles and time frames on which the development of an ICAO FAL Manual should be based in order to ease and improve the comprehension and implementation of Annex 9. The paper focused on issues including controlling travel document fraud, preventing irregular migration and managing risks.

4.15 The Division agreed that the availability of the FAL Manual to States is very important. As there are many ways to implement SARPs contained in Annex 9, the Manual should provide several options taking into account the practice of all States. Attention was drawn to already existing material developed by other bodies. With reference to the composition of the drafting group, the Division agreed that all regions should be represented. Accordingly, the Division adopted the following recommendation, with reference also to WPs/40 and 35 (see below):

Recommendation B/xx —

It is recommended that:

ICAO establish a FAL Manual Drafting Group under the aegis of the FAL Panel to develop step-by-step the FAL Manual containing the necessary guidance material making also appropriate use of existing material such as IATA/CAWG guidelines and code of conduct.

4.16 In WP/40, the United Kingdom proposed that the IATA/CAWG Code of Conduct for Immigration Liaison Officers be incorporated into the ICAO FAL Manual. In WP/35, IATA proposed that the IATA/CAWG inadmissible passenger guidelines be inserted into the Manual. The Division agreed that these documents be taken into account when developing the Manual.

4.17 In WP/59, ITF proposed means by which the facilitation objectives of ICAO can be more comprehensively reconciled with States' broader obligations to protect the rights of refugees, asylum seekers and deported persons.

4.18 The Division considered this working paper together with proposals put forward in WP/35 and adopted the following recommendation:

Recommendation B/xx —

It is recommended that:

ICAO and all parties are further encouraged to integrate facilitation measures and the broader obligation of States to protect the rights of refugees, asylum seekers and deported persons, so that no one is returned to a location where their lives or freedoms would be threatened. States are encouraged to work cooperatively nationally and internationally with stakeholders, including operators and employees, as well as other interested parties, including the UNHCR and ILO, to develop protocols and procedures relating to standards of custody and care and matters related to the application of interception and control measures.

4.19 The Division also noted IPs/27 and 28 presented by Turkey on updated country report on Turkey illegal migration and on trafficking in human beings.

— END —