



INTERNATIONAL CIVIL AVIATION ORGANIZATION

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## ASSEMBLY – 35TH SESSION

### EXECUTIVE COMMITTEE

#### Agenda Item 14: Aviation security

#### CONCEPT OF AVIATION SECURITY PROCEDURES IN INTERNATIONAL LEGISLATION

[Presented by the Members of the Arab Civil Aviation Council (ACAC<sup>1</sup>)]

#### SUMMARY

This paper deals with the concept of international civil aviation security procedures according to the tenets and principles of International Legitimacy.

Action by the General Assembly is in paragraph 6.

#### 1. INTRODUCTION

1.1. Since the sixties, the international civil aviation community has developed, through ICAO, several provisions and standards enshrined in the well-known AVSEC Conventions to address the phenomenon of unlawful acts of interference in civil aviation.

1.2. On 22 March 1974, the Council of ICAO approved the SARPs in the field of security which came to be known as Annex 17, pursuant to Article 37 of the International Civil Aviation Convention (Chicago, 1944).

1.3. In the wake of the events of 11 September 2001 when civil aviation was used as a weapon of mass destruction, the Council mandated supplementary security procedures and amendments to Annex 17 with a view to enhancing the level of international civil aviation security,. The stringent aviation security procedures were applied by some States, even though the measures conflicted with the interests of passengers and the tenets and principles of international civil aviation which were enacted for this purpose. The question to be raised is: **To what extent have legislators succeeded in laying down the legal foundations and international principles related to international civil aviation security procedures?**

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<sup>1</sup> Bahrain, Egypt, Iraq, Jordan, Lebanon, Libyan Arab Jamahiriya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, and Yemen.

## 2. **LEGAL FOUNDATIONS**

### 2.1. First, International Conventions

2.2. International legislators have formulated international instruments requiring States to adopt appropriate procedures to address the phenomenon of unlawful acts of interference in international civil aviation. Many controls and provisions have thus been developed so as to deal with the phenomenon and to and limit its spread. Hence, the conclusion of the Tokyo Convention (1963), the Hague Convention (1970) and Montreal Conventions of 1971, 1988 and 1991, as evidence of the awareness of the international community of the gravity of this problem ever since the 1960s.

2.3. The said Conventions have defined the legal treatment of the offence, the powers of the aircraft Commander and the obligations of the State. Although they have addressed the legal structure of the offence, they have not dealt in any way with the stringency of measures. Rather they were preoccupied by the application of severe penalties to the perpetrators, always having the interests of passengers in mind, regardless of their nationality, faith or colour. Given the profound concerns of States vis-à-vis criminal acts aimed at undermining and destroying air transport, several States have been calling on ICAO to give greater consideration to the containment of this heinous phenomenon, and to take appropriate international measures to eliminate it and work for ensuring the security and safety of international air navigation. The efforts exerted in this regard have culminated in the approval by the ICAO Council of Standards and Recommended Practices (SARPs) to guide its work in the field of aviation security, which, at a minimum, should be binding on Contracting States.

## 3. **STANDARDS AND RECOMMENDED PRACTICES (SARPs)**

### 3.1. **The Concept:**

To combat the unlawful and recurrent acts against civil aviation, the ICAO Council approved on 22 March 1973, pursuant to the Chicago Convention on International Civil Aviation, Standards and Recommended Practices named Annex 17 to the Convention. ICAO also published the Security Manual, which includes the detailed and practical aspects of these SARPs, whose uniform application worldwide is crucial to the safety of international air transport.

### 3.2. **Objectives:**

So far, ICAO has developed about 90 SARPs dealing with the security of international civil aviation with a view to safeguarding the safety of passenger, crews, ground staff and the public against acts of unlawful interference in civil aviation as provided for in Standard 1.1.2 in Annex 17. We note that this Standard provides for the safeguarding the safety, efficiency and regularity of air transport. This is further confirmed in Standard 2.1.2 which states that: "Each Contracting State shall establish an organization and develop and implement regulations, practices and procedures to safeguard civil aviation against the unlawful acts of interference, taking into account the safety, regularity and efficiency of air flights". The Standard infers that security measures are related to the interest of civil aviation.

### 3.3. **Scope of Application:**

The scope of the international application of AVSEC SARPs may be summed up as follows:

- a) On State Level:
  - The establishment and implementation of a written National Aviation Security Programme.
  - The establishment of a National Aviation Security Committee.
  - The establishment of an aviation security organization.
  
- b) On the level of the civil aviation services sector:

These include airport and airlines security, precautionary security measures and other areas including training, international cooperation, facilities and funding.

3.4. The objective of these measures is to prevent acts of unlawful interference against international civil aviation, particularly preventing the entry of weapons, explosives, or any other dangerous devices that could be used in the perpetration of an act of unlawful interference (Standard 4.1). States are required to develop the necessary measures to safeguard aircraft when well-founded suspicions exist that they might be subject to unlawful acts of interference (Standard 5.1.1).

3.5. The purpose here is to find effective means to ensure compliance with these SARPs. To this end, it is required to introduce the concept of certification in the aviation security programme to deal with such aspects as aviation security, inspectors, inspectors' manual, for security personnel licensing, and criteria for selection and qualification. This will lead us to the necessity of integrating aviation security standards into the requirements for obtaining airport and airline operation certificates.

## 4. **PRINCIPLES OF AVIATION SECURITY AND MEASURES IN INTERNATIONAL LEGISLATION**

4.1. On 25 March 1949, the ICAO Council approved, for the first time, the internationally SARPs on facilitation in conformity with Article 37 of the Convention on International Civil Aviation (Chicago 1944) which were called Annex 9 to the Convention. The excessive emphasis on more stringent aviation security procedures applied by some States may be a source of concern and inconvenience to passengers. However, Article 22 of the Convention reinforced policies concerning the implementation by states of SARPs relating to facilitation. This Article reflects the commitment, accepted by every Contracting State, to take all practical measures to facilitate the safety of aircraft and prevent unnecessary delay to aircraft, crew, passenger or cargo.

4.2. The question of facilitation was addressed by aviation security conventions. The last paragraph of Article 17 of the Tokyo Convention (1963) states: "The Contracting State shall pay due regard to the safety and other interests of air navigation and shall do so as to avoid unnecessary delay of aircraft, passengers, crew or cargo". The same principle was adopted by the Hague Convention (1970) as Article 9 of the Convention states that: "Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve control of his cargo ... and contracting states in which the aircraft or its passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable and shall without delay return the aircraft and its cargo to persons lawfully entitled to possession". The Montreal Convention (1971) emphasizes the principle of facilitation in air transport when it states that states shall facilitate the continuance of the flight as soon as practicable.

4.3. ICAO has developed several provisions and standards regarding the question of facilitation in civil aviation. Standard 8.17 states that: "Each Contracting State shall establish a national air transport programme on the facilitation requirements". The objective of this programme, according to Standard 18.8, is 'to adopt all practical measures to facilitate the movement of the aircraft, crews, passengers, cargo and mail, by removing any unnecessary obstacles or delays". Also, it is possible, as required, to establish National Air Transport Facilitation Committees so as to monitor the implementation of Standard 2.1 which states: "Contracting States shall adopt appropriate measures for the clearance of aircraft" including security measures so as to preserve the advantage of speed which is the hallmark of air transport.

4.4. Annex 17 addressed the question of facilitation using the same concept mentioned above. Standard 2.1.2 states that: "Each Contracting State shall establish ... regulations, practices and procedures to safeguard civil aviation ... taking into account the safety, regularity and efficiency of flights". This is also what Recommendation 2.2 of Annex 17 dealt with with regard to security and facilitation, when it stated that "Each State shall whenever possible arrange for security controls and procedures to cause a minimum interference with or delay to the activities of civil aviation, provided the effectiveness of these controls and procedures is not compromised".

4.5. Hence, we infer that excessive upgrading of aviation security measures in some States could be a source of concern because of their potential conflict with the interests of facilitation as enshrined in international legislations in force.

## 5. NON-DISCRIMINATION

5.1. The principles and objectives of the Chicago Convention make it clear that the role of ICAO and the international community is to consider offences of unlawful interference in civil aviation as a general term referring to a criminal activity. It is not confined to certain types of people or a special class, and should not be attributed to people of a specific nationality. The 33rd Session of the ICAO Assembly had strongly condemned all acts of unlawful interference in civil aviation, irrespective of where they are perpetrated, the identity of perpetrators or the cause thereof. The Universal Aviation Security Audit Programme was launched as a result, and stringent international standards were developed in relation to aviation security. This means that this criminal activity is a universal phenomenon and is not confined to a particular individual, tradition or religious ideology.

5.2. Ethnic, religious and racist profiling with regard to aviation security could run counter to the aims and objectives of ICAO, and conflicts with Article 44 of the Chicago Convention, particularly paragraph 9) which urges non-discrimination among Contracting States. It is also inconsistent with paragraph f) which calls for ensuring the full respect of the rights of Contracting States to invest in airlines, and to meet the needs of peoples of the world to a safe, regular, effective and economical air transport.

5.3. Discrimination in all its forms and practices is rejected internationally as expressed by the World Conference against Racial Discrimination which convened in Durban, South Africa, from 31/8 to 7/9/2004. The Conference developed an international convention to eradicate all forms of racial discrimination and intolerance. In the wake of 11 September, some States have tightened their procedures for thorough security inspection, including physical and electronic screening of passengers and their luggage. Even though this is required at times, it should not be performed on a selective basis.

5.4. In this context, it is necessary to draw attention to ethnic and religious profiling during civil aviation processes at airports on departure and arrival. These are unacceptable practices as they violate the principles of international law.

5.5. Hence, we infer that excessive aviation security measures could be a source of concern because of their potential conflict with the interest and facilities of civil aviation set forth in the above-mentioned international legislations in force.

## 6. ACTION BY THE GENERAL ASSEMBLY

6.1. The Assembly is invited to:

- a) Incorporate the concept of facilitation in the area of aviation security in conformity with the provisions of Annex 17 and Annex 9 to the Chicago Convention (1944).
- b) Introduce the compliance provision to the internationally-sanctioned SARPs in the field of aviation security as a requirement to obtain airport and airline operation certificates.
- c) Approve a system for granting licences (authorizations) to aviation security personnel pursuant to Standard 3.4.3, and endeavouring to create the post of an aviation security inspector, an inspector's manual and developing criteria for this post.
- d) Note that applying aviation security measures should not be at the expense of the passengers, and adhering to the principle of heightening security and reducing congestion at airports requires the acquisition of modern security systems and technologies to complete procedures for screening passengers without delay.
- e) Emphasize the commitment of Contracting States to the principle of non-discrimination in international civil aviation operations in conformity with international legislation in force.

— END —