

## **FACILITATION PANEL (FALP)**

(Third Meeting, Montreal, 12 to 16 February 2001)

### **Agenda Item 3: General revision of Annex 9 – Chapters 2 and 3**

#### **READMISSION OF INADMISSIBLE PERSONS AND DEPORTEES BY THE STATE OF ORIGIN, DEPARTURE OR TRANSIT**

(Presented by Mr. Urs Haldimann, Switzerland)

#### **1. BACKGROUND**

1.1 Annex 9 contains several standards and recommended practices to prevent inadmissible persons by i.e. document controls at the point of embarkation (3.39) and cooperation between States and operators. As inadmissible persons nevertheless cannot be avoided, there are other standards and recommended practices which describe the procedure to be followed in case a person is found inadmissible by the public authorities. An inadmissible person has to be transferred back into the custody of the operator (3.44) responsible for their prompt return according to Standard 3.46 of Annex 9.

1.2 Despite these clear procedures, Annex 9 does not contain any standard or recommended practice concerning the readmission of inadmissible persons by the State of origin, departure or transit. As there appear more and more problems in repatriating inadmissible persons, Annex 9 should be completed in order to cover this kind of problem. As a similar situation exists for the repatriation of deportees, the following proposal covers both types of repatriation, inadmissible persons and deportees.

#### **2. PROPOSALS OF NEW SARPS**

2.1 The following standards shall ensure that the State of origin, departure or transit accept or facilitate the readmission of inadmissible persons and deportees. It shall also facilitate the repatriation of inadmissible persons and deportees with charter flights, specially organized for this purpose. As already mentioned, Note 2 to Standard 3.44 clarifies the extent of this provision in the sense that nothing in the proposed provision is to be construed so as to allow the return of a person seeking asylum in the territory of 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. The proposed new SARPs should clarify the responsibilities of the different partners involved, when prompt removal of persons is required.

### 2.1.1 **Inadmissibles**

#### *New Standards after 3.46.1*

Each Contracting State shall readmit on its territory its nationals who have been found inadmissible on the territory of another Contracting State if it is proven or presumed that they are nationals of the former.

Each Contracting State shall readmit on its territory any person who has been found inadmissible on the territory of another Contracting State if it is evident that the person commenced his journey from the territory of the former.

Each Contracting State shall facilitate the transit of persons who have been found inadmissible on the territory of another Contracting State and who are repatriated in accordance with *new standards*, especially when the passengers have to transit through the territory of the former. The transit State shall cooperate with the operator responsible for the transport and allow the transit of a flight which is dedicated to the repatriation of inadmissible passengers other than his own nationals.

### 2.1.2 **Deportees**

#### *New Standards after 3.53*

Each Contracting State shall readmit on its territory its nationals who have to be repatriated because they do not fulfil the conditions of residence anymore if it is proven or presumed that they are nationals of the former.

Each Contracting State shall readmit on its territory any person who does not fulfil the conditions of residence anymore on the territory of another Contracting State if it is evident that the person commenced his journey from the territory of the former.

Each Contracting State shall facilitate the transit of persons who do not fulfil the conditions of residence anymore on the territory of another Contracting State and who are repatriated in accordance with *new standards*, especially when the passengers have to transit through the territory of the former. The transit State shall cooperate with the operator responsible for the transport and allow the transit of a flight which is dedicated to the repatriation of deportees other than his own nationals.

2.2 In order to facilitate the readmission and repatriation of inadmissible persons and deportees, we suggest to approve the text of a clause to be inserted in the bilateral agreements between Contracting States. This idea is inspired by similar clauses concerning safety and security. For this purpose, we suggest a note to the proposed standard as follows:

*“Note.— A clause on the readmission of inadmissible persons and deportees by the State of origin, departure or transit shall be inserted into bilateral agreements on air services.”*

The standards should be completed by Guidance Material according to the proposal presented in the annex.

3. **ACTION BY THE PANEL**

- 3.1 The panel is invited to consider these proposals and to decide on their inclusion in Annex 9.

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**ATTACHMENT**  
**GUIDANCE MATERIAL**

**MODEL CLAUSE ON THE READMISSION OF INADMISSIBLE PERSONS AND DEPORTEES  
BY THE STATE OF ORIGIN, DEPARTURE OR TRANSIT**

*Note.— This model clause has been drafted for possible insertion into bilateral agreements on air services; it is intended only for guidance of States, is not compulsory and in no way limits the contractual freedom of States to expand or limit its scope or to use a different approach.*

- a) Consistent with the rights and obligations under international law the Contracting Parties reaffirm that their obligations concerning the repatriation and readmission of inadmissible persons or deportees form an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the relevant provisions of Annex 9 to the Convention on International Civil Aviation.
- b) The Contracting Parties shall assist upon requests each other by facilitating communication and cooperation between themselves, but also with their operators. For this purpose they shall act for the repatriation and readmission of inadmissible persons and deportees according to the relevant provisions of Annex 9 to the Convention on International Civil Aviation and facilitate the readmission of their nationals to be repatriated from the territory of the other Contracting Party.
- c) Either Contracting Party may request consultation to establish a Memorandum of Understanding defining the mutual cooperation in detail.

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