



**ASSEMBLY — 40TH SESSION**

**EXECUTIVE COMMITTEE**

**Agenda Item 14: Facilitation Programmes**

**PASSENGER NAME RECORD DATA IN SECURITY AND FACILITATION**

(Presented by the United States)

**EXECUTIVE SUMMARY**

The promulgation of an ICAO Standard(s) on the collection, use and analysis of Passenger Name Record (PNR) data is needed to further strengthen States' ability to identify risks to deter terrorist travel, as called for in United Nations Security Council Resolution (UNSCR) 2396, and enhance global security. ICAO established a PNR Task Force in 2019 to review the existing Standards and Recommended Practices for PNR and develop a Standard(s) for PNR's use in border and aviation security, in accordance with the obligations of UNSCR 2396. In September 2019, the PNR Task Force presented the Air Transport Committee with the Task Force's recommendations and draft text for PNR Standards. This text reflects best practice use of this data for law enforcement and counterterrorism purposes, which includes retention of PNR data – with appropriate privacy protections – after a traveller's departure from the destination country. While the definition of PNR and the rationale behind PNR collection are contained in ICAO Document 9944 - *Guidelines on Passenger Name Record Data*, there are no substantive provisions that address PNR's use for border and aviation security. The United States believes an ICAO PNR Standard(s) and accompanying Recommended Practices should explicitly provide for PNR use to detect and deter terrorist and criminal travel. In order to gain the most benefit from collection of PNR for purposes of border and aviation security, the Standard(s) must explicitly articulate the security-related aims, as well as retention requirements, as principles. PNR use and analysis are essential to deter terrorist and criminal travel and expanding global use of this information is a global counterterrorism priority and obligation. A strong ICAO PNR Standard(s) that includes appropriate retention principles will strengthen global border security and safeguard international civil aviation against terrorist and criminal travel and acts of unlawful interference, in line with the goals of UNSCR 2396.

<i>Strategic Objectives:</i>	This Information Paper relates to Strategic Objectives – <i>Security and Facilitation</i>
<i>Financial implications:</i>	The activities referred to in this Information Paper will be undertaken subject to available resources.
<i>References:</i>	Annex 9 — <i>Facilitation</i> Document 9944 - <i>Guidelines on Passenger Name Record Data</i> , HLC WPXX on PNR

## 1. INTRODUCTION

1.1 United Nations Security Council Resolution (UNSCR) 2396, adopted unanimously in December 2017 with 66 co-sponsors, creates new global obligations and provisions for Member States to deter terrorist travel and address the problem of foreign terrorist fighters (FTFs) departing conflict zones of Iraq and Syria for their countries of origin or other countries. Furthermore, UNSCR 2396 expresses concern that FTFs may use civil aviation both as a means of transportation and as a target, and may use cargo both to target civil aviation and ship materiel. As reinforced by the UN in its 2018 High Level Conference on Counterterrorism, ICAO's leadership must set the tone and ensure global aviation security Standards meet current threats.

1.2 Of urgent concern to combat would-be terrorists and terrorist activities, is the need to elevate the collection, use, processing and protection of Passenger Name Record (PNR) data to Standards within Annex 9 and/or Annex 17 to meet the obligations of UNSCR 2396. A similar urgent course of action was taken by ICAO Member States following the adoption of UNSCR 2178 in 2014, ultimately resulting in Standard 9.5 of Annex 9 — Facilitation, requiring the use of Advance Passenger Information in border screening. ICAO established a PNR Task Force in 2019 to accomplish this goal. The PNR Task Force presented draft text for a PNR Standards to the Air Transport Committee in September. We encourage Member States to accept the ICAO PNR Task Force's recommendations and approve the draft PNR Standards and that it be adopted as soon as possible.

## 2. PNR SUPPORTS GLOBAL EFFORTS TO DETECT AND DETER TERRORIST TRAVEL

2.1 Physical inspection of a traveler and a travel document is only a small part of border controls applied to passengers arriving by air. Effective border security incorporates analysis of secure electronic data, some of which is provided at the time a passenger buys a ticket and some that becomes known when a passenger boards an aircraft. Passenger identification controls must be applied before the arrival of the passenger in the country of destination, to enable relevant border agencies to perform risk-based assessments of passengers and the goods they are carrying. Analysis of this data can illuminate the hidden connections between known terrorists and their unknown associates.

2.2 The use of PNR has been identified by Member States, the UN and regional organizations as one of the most important tools to detect and deter illicit and terrorist travel. UNSCR 2396 obligates Member States to develop the capability to collect, process, and analyze PNR data and to ensure PNR is used by and shared with all their competent national authorities, with full respect for human rights and fundamental freedoms, for the purpose of preventing, detecting and investigating terrorist offenses and related travel.

2.3 Since 2010, the World Customs Organization (WCO) Contact Committee for WCO/IATA /ICAO Guidelines on Advanced Passenger Information (API) has been working to update the electronic reporting standards for PNR. This work has been essential to defining the parameters of what comprises PNR. Building on this work, the ICAO PNR Task Force agreed upon principles which describe how PNR should be used in border and aviation security screening to deter terrorist travel. The implementing guidelines for this Standard(s) will provide additional information on how to implement PNR systems and how to collect and analyze this information.

2.4 The ICAO Task Force agreed to the following language for PNR Standards, which are in line with UNSCR 2396's goals to deter terrorist travel:

Contracting States shall use PNR to:

- Detect terrorists, terrorist offenses and related crimes or those attempting to commit any such offense.
- Detect criminals, including those who have committed a crime in one country and is in or intends to travel to another country.
- To identify persons who would be subject to closer questioning or examination upon arrival for border control and/or immigration requirements.
- When necessary, to protect the vital interests of passengers who may have been exposed to health risks in the course of traveling to and from a country.

Contracting States shall also subject their collection and use of PNR to routine oversight by a competent government entity based on their national laws and systems of government. Such a competent authority shall have the power to determine whether the competent authorities collecting and using PNR are doing so with full respect for human rights and fundamental freedoms. Specifically:

- Contracting States shall ensure the safeguards applied to their collection, use and safeguarding of PNR apply to all passengers on an equal basis without unlawful discrimination.
- Contracting States shall retain PNR data for a set period as defined in its national law or regulations. To ensure proportionality, Contracting States should consider aligning their retention period for PNR with their national data retention schedules for other border, immigration, and customs information in order to maintain a complete and accurate record of all individuals' entry and exit to support future encounters with the individual, including at the border or in other customs and immigration matters.
- Contracting States shall ensure the PNR they have collected and retained are accessible by and have the appropriate legal authorities of their relevant agencies. Depending on the Contracting State's national law, this may include competent border (Customs and Immigration) authorities, transportation and aviation security officials, law enforcement, counter-terrorism and health agencies, as appropriate.
- Contracting States shall not prevent the transfer of PNR by an airline or other relevant party to a country with a PNR program established consistent with these SARPs for flights to and from its territory.
- Contracting States should not sanction, impose penalties or create unreasonable obstacles on airlines that provide PNR to Contracting States that are complying with these SARPs and in which the airline operates because they are transferring PNR to such a Contracting State.
- The collection and use of PNR by Contracting States shall be based on a clear, publicly available Law(s) and/or regulation(s) [Current ICAO guideline 2.4.1.]
- Delete the second sentence of existing Recommend Practice 9.23 (which reads "Where necessary, Contracting States requiring PNR data and those States restricting such exchange should engage in early cooperation to align legal requirements.").

2.5 The ICAO PNR Task Force also agreed on the following language for PNR Recommended Practices that should accompany the PNR Standards:

- Contracting States should collect PNR, in the PNRGov format or its successor, prior to departure on all passengers and crew entering, departing, or transiting (including overflying) the State's territory.
- Contracting States should be transparent with the traveling public about the collection, use, and retention of PNR data and related privacy standards employed, including through the publication of information on their website, the contract of carriage, etc. Similarly, airlines should be transparent with their customers about their obligation to provide governments PNR data during booking. However, implementation of these transparency provisions should not impede the operations of Contracting States or airlines, including through notification to the traveler about the use or sharing of collected PNR data.
- Contracting States should minimize their collection or use of sensitive data, which includes any phrase in a PNR data field that reveals the racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership or data concerning the health or sex life of a traveler, except where required in exceptional circumstances where the life of an individual could be imperiled or seriously impaired.
- Contracting States should not make decisions that produce significant adverse actions affecting the legal interests of individuals based solely on the automated processing and use of PNR data.
- Contracting States should employ modern, technical safeguards to secure PNR data and prevent unauthorized access and disclosure, and their legal framework should provide penalties for misuse, unauthorized access and/or unauthorized disclosure.

### 3. CAPACITY BUILDING

3.1 UNSCR 2396 specifically encourages improved cooperation between ICAO and the UN Counter-Terrorism Committee Executive Directorate (CTED), in coordination with other relevant UN entities to identify areas where Member States may need technical assistance and capacity building to implement the obligations of this resolution related to PNR and API and watch lists, as well as the implementation of the Global Aviation Security Plan (GASeP). UNSCR 2396 also calls upon Member States, the UN, and other international, regional, and sub-regional entities to provide technical assistance, resources and capacity building to Member States in order to implement such capabilities.

3.2 Advancing PNR use will take time and resources. The United Nations Office of Counter-Terrorism has launched the UN Countering Terrorist Travel Programme, which will be implemented in partnership with the CTED, ICAO, the Office of Information Communication Technology (OICT) and the United Nations Office on Drugs and Crime (UNODC). This programme aims to support Member States' use of travel information to detect, prevent, investigate and prosecute suspected terrorists, while respecting high safeguards for data protection and in compliance with international human rights laws. The United Nations will provide state-of-the-art software – goTravel – capable of analyzing travel data which, based on context-specific risks, will help them to detect and track suspected terrorists and their movements across borders. Prior to providing them with goTravel, the programme will support national authorities to develop the necessary legislative framework and national expertise via training and certification to operationalize it lawfully and effectively.

3.3 Also, the WCO offers its Global Travel Assessment System (GTAS) to Customs authorities looking to implement API and PNR systems.

3.4 Lastly, UNODC's Terrorism Prevention Branch is another resource for guidance on the use of API and PNR, biometrics, and other data for border security, as required under UNSCR 2396.

#### 4. **CONCLUSION**

4.1 ICAO's active participation with the UN on counterterrorism issues signifies its commitment to prioritizing the work of the Security Council and establishing global practices to reduce the threat of terrorism. Developing standards that detect and deter terrorist travel is a tangible demonstration of ICAO's commitment to counter terrorism and fulfilment of its obligations under UNSCR 2396. The Council's approval and expeditious adoption of the PNR Standards and Recommended Practices will enhance the global security community's ability to identify risks, detect and deter terrorism, and prevent acts of unlawful interference.

- END -