



International Civil Aviation Organization

WORKING PAPER

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(Information paper)

English and Spanish only

ASSEMBLY — 40TH SESSION

EXECUTIVE COMMITTEE

Agenda Item 14: Facilitation Programmes

CONCEPT OF “MINOR” IN ANNEX 9 — FACILITATION OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

(Working paper submitted by Chile and supported by all Member States of the Latin American Civil Aviation Commission – LACAC)

EXECUTIVE SUMMARY

This information paper aims to demonstrate the need for harmonizing the terminology used in Annex 9 — *Facilitation* to refer to children and adolescents with the Convention on the Rights of the Child. In particular, it is estimated that the concepts "minor" and "handling of minors" used in Annex 9 do not conform to the aforementioned Convention.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective — <i>Security and Facilitation</i> .
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<i>Financial implications:</i>	N/A
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<i>References:</i>	Annex 9 — <i>Facilitation</i> (14th Edition, 2015) General Assembly of the United Nations (20 November 1989). UNICEF. Recovered on 18 May 2017, <i>the Convention on the Rights of the Child</i> . Ratified by Chile in 1990: http://unicef.cl/web/observaciones-del-comite-a-chile/ International Civil Aviation Organization (19 April 2017, Council-211th session) Adoption of Amendment 26 to Annex 9 — <i>Facilitation</i> . Working Paper Subject No. 15.4 Facilitation (C-WP/14557)
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1. INTRODUCTION

1.1 In 2018, the 26th amendment to the Convention on International Civil Aviation’s Annex 9, on facilitation, became applicable. Particularly, this amendment includes a section regarding the treatment that should be given to “minors”.

¹ English and Spanish versions provided by Chile.

1.2 The adoption of the amendment 26 responds to the considerable number of children and adolescents who emigrate every year without the company of their parents, relatives or adults, and to the limited availability of official and harmonised international documents providing guidance about formalities relating to the air transport of underage people. Thus, the incorporation of specific standards and recommended practices (SARPs) for children and adolescents was formally proposed in 2016, during the 9th Meeting of ICAO's Facilitation Panel (FALP).

1.3 This working paper proposes the modification of the term "minor" in the Annex 9, in order to harmonize the terminology used in the aforementioned Annex with the Convention on the Rights of the Child, approved by the United Nations in 1989.

2. BACKGROUND

2.1 It is in WP/10, addressed in the FAL Panel's 9th meeting (FALP/9) in April 2016, that the proposal made by France, on behalf of the European Civil Aviation Conference (ECAC), on the incorporation of definitions and SARPs for the "transport of minors, both accompanied and unaccompanied" are considered. The proposed amendment incorporated the definition of the terms "minor", "accompanied minor" and "unaccompanied minor"; training of aircraft operators; age limit for the children or adolescents to travel without company of an adult; unaccompanied children and adolescents programme; and transportation of inadmissible or deported child or adolescent.

2.2 This proposal was included by the International Civil Aviation Organisation (ICAO) in Annex 9 through its 26th amendment by means of the new section "Q. Minors" in Chapter 3 on the entry and departure of persons and their baggage. In summary, the new section recognises the necessity of a special treatment of children and adolescent under legal age in relation to other people.

3. ANALYSIS

a. Observations to the proposed amend to the Annex 9 of the Convention on International Civil Aviation – Transport of minors (ECAC, 2016)

3.1 The proposed amendment was not exempt to observations prior to its approval. In December 2016, ICAO undertook the reception of comments made by the States party of the Convention regarding the entire proposal (26th amendment). In the WP of session No. 221° (C-WP/14557), the ICAO Council acknowledged the reception of commentaries and evidenced the observations made to the amendment, stating the levels of agreement achieved and its explanation. With regard to the definition of the term "minor", Chile as well as Venezuela suggested that it should be effected a change from "minor" to "child or adolescent". Similarly, in the proposed section "Q. Minors", it is suggested to replace the use of the word "minor" in the same direction as previously states, and to replace the term "handling of minors" for "treatment of children and adolescents", in accordance with the Convention on the Right of the Child, as will be explained in the following letter b.

3.2 In this regard, Chile's comments were not accepted, arguing that the concept "minor" corresponds to a "state of the art" inside the aeronautical industry, which would have been standardized in IATA's Passenger Services Conference Resolution, when the term "unaccompanied minors" began to be used. In short, the importance of maintaining the term "minor" is expressed in order to avoid confusion and protect the conceptual stability.

3.3 Throughout Annex 9 the term "handling" is used exclusively in relation to "objects", such as cargo, mail, aircraft, and supplies. Therefore, its use contributes to support the argument that entails that the use of the term "handling of minors", as used in the recommended practice (RP) 3.79, is totally inappropriate to refer to the treatment that should be given to a special category of people, in this case, to children and adolescents. Additionally, RP 8.26, which refers to another special category of people, as people with disabilities, uses, as an example, the term "assistance"; this is especially relevant considering that both recommended practices refer to having trained personnel for the attention of each special category of people.

b. Application to Annex 9 of the Convention on International Civil Aviation

3.4 The Convention on the Rights of the Child was approved in 1989 by the United Nations, seeking to promote the rights of this special category of people². The Convention grants children and adolescents the status of "subjects of law" and, as such, they deserve the same inalienable rights of adults plus other special rights that respond to their particular state of development and protection needs. The States that ratify the Convention accept to submit themselves legally to its stipulations, which is part of the International Human Rights system.

3.5 ICAO as a specialized agency of the United Nations works collectively with 193 States parties to the Chicago Convention, with the objective of reaching consensus on standards and recommended practices. Many of the countries that are parties to the Convention are also United Nations' member States and therefore have the mandate to respect Human Rights³. In this regard, is of special relevance the regulatory coherence between the different international conventions, particularly the concepts used in the international system of Human Rights.

3.6 Additionally, considering the fundamental principle of the Convention on the Rights of the Child about safeguarding the best interests of the child or adolescent, as subject of law and not object to them, the use of the term "minor" is incongruous, as well as the verb "to handle" applied to them. The use of the term "minor" as a generic of children and adolescents refers to their age rather than their human nature. On the other hand, the use of the verb "to handle" is inappropriate for a person, as it implies their manipulation, indicating an exercise of predominance over the person and thereby acquiring a connotation of power being exercised over them.

3.7 Since the *best interest of the child* is a guarantee aimed at overcoming the abuse of power as well as the paternalism from the authorities exercised over them, the terminology for referring to them must be precise, so there is no space to infringe the aforementioned Convention. On the other hand, the principles and terms used by international human rights conventions becomes the current "state of the art", beyond those of any sector or industry.

3.8 Finally, in accordance with the principle of *Best Interest of the Child*, Annex 9's standards 5.11.2 and 5.18.2 present redaction issues, as they do not clearly establish that the measures adopted by a State in relation to a child or adolescent must be based on their (the child or adolescent's) best interest, as a fundamental decision criterion.

² UNICEF (2018). Convention on the Rights of the Child. Approved by the UN General Assembly on 20 November 1989, ratified by Chile in 1990: Available at: <http://unicef.cl/web/convencion-sobre-los-derechos-del-nino2/>.

³ "In 1948, the General Assembly of the United Nations adopted a Universal Declaration of Human Rights. Implicitly, this founding document included the rights of the Children, but it was not long before the worldwide agreement that the particular needs of children should have been specially defined "(UNICEF (2018) Convention on the Rights of Children." Approved by the Assembly General of the United Nations on November 20, 1989, ratified by Chile in 1990. Available at: <http://unicef.cl/web/convencion/>)

4. RECOMMENDATION

- 4.1 Considering the presented arguments, the Assembly is invited to agree on the revision of Annex 9's text, in order to be preceded by an analysis from the Facilitation Panel- consider the possibility of harmonizing the terms used to refer to children and adolescents with the ones accepted by the Convention on the Rights of the Child and those used by the United Nations.

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