FACILITATION (FAL) DIVISION — TWELFTH SESSION

Cairo, Egypt, 22 March to 2 April 2004

Agenda Item 4: Controlling travel document fraud and illegal migration

**REMOVALS OF INADMISSIBLE PERSONS – DEVELOPING
A GLOBAL STRATEGY**

(Presented by the International Air Transport Association (IATA))

SUMMARY
This paper describes the current situation with respect to those persons found inadmissible at destination, and the varied responses that States have developed to achieve their removal. While certainly not a new phenomenon, the ever-increasing number of persons seeking to use international civil air transport to effect illegal migration and the growing difficulties faced during their removal warrants development of globally harmonized policies and enhanced cooperation between States and between States and operators.
Action by the Division is in paragraph 4.1.

1. **INTRODUCTION**

1.1   The concept of persons seeking to improve the quality and/or security of their lives by migrating to new lands is far from new. In fact, migration has played a critical role in the development of modern society. Control of migration and of general migratory patterns has also been long practiced as part of that development process. While most societies – then and now – have focussed significant resource on erecting physical or regulatory barriers at the external frontier, such utilization of resources has not prevented mass migration, and has led to a growing dilemma in recent years. Once physically present in the territory of a State, it has become far more problematic to effect safe and efficient removals of inadmissible persons to their home territory or to another State that will accept their entry.

1.2   Political and economic dislocation continues to occur in many areas of the world, as do military/civil conflicts. Each of these are principal factors leading to individuals' decisions to flee their homes and seek relief elsewhere. The United Nations recently estimated that up to 175 million persons are currently outside of their home States – either in or moving toward their destination of choice. The International Organization for Migration (IOM) projects that this number could increase to between 230 and 250 million persons in the near future. Some of these people will utilize civil aviation as the vehicle for their movement - and may be able to avoid detection despite the best efforts of governments and operators at

ports of embarkation or transit. The incidence of arriving inadmissible persons will continue to increase over time.

1.3   The sheer number of inadmissible passengers arriving in certain destination States has led to political demands for their rapid removal back to the territory of the last point of embarkation or to any other State that might accept their entry. In many cases, forced repatriation to the last port simply results in immediate refusal at that point and return to the removing State. Further, sanctions have been levied upon the operator for complying with another State's order for removal. In addition, forced removal of unwilling persons has, in far too many cases in recent years, led to situations in the aircraft cabin where the individual's health has been jeopardized and the safety of the flight put at risk.

2.   **COMMON APPROACHES**

2.1   In most cases today, national legislation grants appropriate border control agencies authority to require the operator involved in the inbound movement of the inadmissible person (inbound operator) to transport that person from the territory of that State immediately upon issuance of a removal order. Frequently, this order is issued without due consideration with respect to the individual's suitability for travel via commercial services, the presence or lack thereof of necessary travel documents or even the likelihood that the individual will be accepted into the territory of the State to which the operator is ordered to transport the person.

2.2   In other cases, the State ordering the removal will notify the operator of the need to remove a person and will provide assistance to ensure that the removal can be accomplished in a safe and orderly manner. In doing so, the State is required to exercise flexibility in its approach, and to coordinate with the operator and with authorities in other States to or through which the person will travel.

2.3   Where the person under removal order is deemed to represent an unacceptable level of risk to the safety of commercial flight operations, some States have entered into bilateral and multilateral arrangements to effect removals via chartered flights. In some instances, the State assumes the costs for such services and in others that cost is assigned to the inbound carrier.

3.   **EMERGING PRACTICES AND AGREEMENTS**

3.1   Recognizing that an absence of standardization in respect of removals for inadmissible persons has led to unnecessary complications for both governments and operators alike, a number of initiatives have been undertaken that seek to harmonise governmental practices. The value in such initiatives is that the success of removal operations becomes more far predictable. In addition, by carefully examining all aspects of the removal in cooperation with the operator, any risks to the safety of the flight involved are minimized.

3.2   Within the European Council, an initiative is now under way to develop a community-wide policy that applies both to political asylum and to controlling illegal migration. This issue has been given high priority by the Irish and Dutch Presidencies, and should be resolved during 2004.

3.3   The European Commission's Justice and Home Affairs Directorate has initiated work on a directive that will lead to harmonization between Member States in respect of third country nationals who must be removed from one Member State via the territory of another. While this initiative relates solely to removal coordination between EC Member States, its reliance on formalized procedures, expanded cooperation and required communication between authorities is worthy of consideration as an example of how a global approach to standardization might develop.

3.4   The IATA/Control Authorities Working Group (IATA/CAWG), a body comprised of Immigration/Border Control Agencies of 19 States and representatives of their national carriers have recently adopted a non-binding best practice agreement that lays out guidelines related to these removals (attached). In developing these guidelines, the members of IATA/CAWG sought to identify and resolve each issue of concern, ranging from requirements for notification to timeliness of removals, and responsibility for each action to the use of escorts in flight. The guidelines have, to the greatest extent possible, been drafted to ensure consistency with recognized international norms while providing valuable procedural guidance that applies to each phase of the removal process.

3.5   During a recent Council meeting, the Directors General of the European Civil Aviation Conference (ECAC) adopted the full text of the IATA/CAWG Guidelines for the Removal of Inadmissible Persons, and has incorporated it as guidance material in ECAC's Document 30.

4.   **ACTION BY THE DIVISION**

4.1   The Division is invited to adopt the following B-type Recommendations:

> **Recommendation B/XXX —**
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> It is recommended that ICAO work cooperatively with other bodies to develop a standardized program to support inadmissible passenger removals that can be implemented on a global basis.

> **Recommendation B/XXX —**
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> It is recommended that ICAO adopt the text of the IATA/CAWG Guidelines for the Removal of Inadmissible Passengers, and incorporate that text as guidance material in the forthcoming ICAO Facilitation Manual.

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