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WORKING PAPER

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ASSEMBLY — 41ST SESSION

EXECUTIVE COMMITTEE

Agenda Item 28: Other high-level policy issues to be considered by the Executive Committee

FUNDAMENTAL RIGHTS OF PASSENGERS AT INTERNATIONAL AIRPORTS

(Presented by the Council of ICAO)

EXECUTIVE SUMMARY

This information paper reports on the work of the Council to consider what particular rights might be engaged in the passengers' journey as it relates to interactions with the various authorities at airports (e.g. pre-departure security checks), as well as ICAO's role in ensuring those rights are consistent with existing ICAO frameworks and become imbedded in the development of future policy and guidance.

<i>Strategic Objectives:</i>	This working paper relates to the <i>Security and Facilitation</i> Strategic Objective.
<i>Financial implications:</i>	The ICAO activities referred to in this paper are expected to be undertaken within the resources available in the 2023-2025 Regular Budget and/or from extra-budgetary contributions as guided by the ICAO Business Plan 2023-2025.
<i>References:</i>	Annex 9 – <i>Facilitation</i> Annex 17 – <i>Aviation Security</i>

1. BACKGROUND

1.1 The pre-departure screening of all passengers and their cabin baggage is an essential element of aviation security in order to ensure that prohibited articles do not enter a security-restricted area or an aircraft, which may be used to commit an act of unlawful interference against civil aviation. All passengers and cabin baggage, including transfer passengers and baggage, shall undergo appropriate security screening before being allowed access to an aircraft, sterile area or security-restricted area (unless a one-stop security arrangement is in effect). It should be noted that any person who refuses to undergo screening before entering an aircraft shall be denied boarding.

1.2 During the fourth meeting of the Council at the 221st Session, concern was expressed regarding incidents at different international airports where the rights of passengers were being violated as a result of inappropriate behavior by those responsible for airport security. It was suggested that ICAO did not have any kind of guidance material for the protection of passengers' rights in such circumstances.

1.3 During the 224th Session (C-DEC 224/4 refers), the Council agreed to establish a Small Working Group (SWG)¹ to provide direction for future work concerning the rights of travellers at international airports, including to develop a problem statement that could be used as the initial basis for further analysis by the relevant ICAO Panels.

1.4 During the 226th Session, the SWG presented the outcomes of its work to the Council (C-DEC 226/2 refers), which is summarized in paragraphs 2 through 4 hereunder. The Council noted, with satisfaction, the work carried out by the Small Working Group to review the fundamental rights of passengers travelling through international airports, and in reaffirming that the principles of human dignity, non-discrimination, data protection and accessible remedial mechanisms needed to be respected during passengers' various interactions with authorities at international airports.

2. PASSENGER'S FUNDAMENTAL RIGHTS

2.1 Noting that there is no clear and accepted definition of a passenger's rights at an airport, this paper does not exhaustively identify all rights that could be impacted as these could be wide ranging and that some areas are outside of the scope of ICAO's remit. Rather, the aim is to identify the fundamental rights that emerge with the practical operation of aviation security and air transport facilitation requirements in the airport environment, and articulate the situations in which those rights may be violated.

2.2 It is important to distinguish these fundamental rights from 'consumer rights'. Consumer rights are largely governed by a passenger's contract with the airlines, and an airline's customer charter. ICAO is actively addressing consumer rights through the ICAO core principles on consumer protection.

¹ Council Representatives from the following States: Australia (Chairperson), Côte d'Ivoire, India, Netherlands, Paraguay and United Arab Emirates. Airports Council International (ACI) and International Air Transport Association (IATA) are observers.

2.3 Both the United Nations and the European Union have issued guidelines that address rights of persons in the context of border controls², which could be applied to passengers at an international airport. As it relates to air travellers' interactions with the various authorities (e.g. pre-departure security check, border controls and health screening), the following situations should be considered:

- a) **Human dignity**, which may be affected at several stages during the passengers' journey, for example, when a more in-depth inspection is required by different authorities at the airport. Such inspections should always be carried out in a professional and respectful manner proportionate to the objectives pursued;
- b) **Non discrimination**, which prohibits the use of systematic discriminatory patterns of selecting passengers for questioning. Selection must not involve discrimination solely on ground of race, colour, sex, language, religion, political or other opinion, national or social origin, etc.;
- c) The collection and use of passenger information in applying border controls may increase the risk of **data protection** violations. Passengers may not always be aware of the type of data processed, the purpose of this processing or how to have their data corrected. Therefore the collection, use and storage of passenger data must be carried out in accordance with data protection principles (which in ICAO framework are captured in relevant Annex 9 Standards); and
- d) Recognizing that violation of passengers' fundamental rights can be very distressing to the passenger, it is important to ensure accessible remedial mechanisms or recourse against actions that are unjustified, inappropriate and/or unlawful, while recognizing applicability of unique laws and regulations in place in each airport/jurisdiction.

3. DISCUSSION

3.1 Although the Council does not believe that there are systemic breaches of these fundamental rights, there is an opportunity to ensure that ICAO is proactively addressing this matter.

3.2 International airports are the main departure, arrival and transit points for hundreds of million passengers every year, and their journey will involve various checks performed by authorities such as pre-departure security, immigration, health screening, etc. Ensuring that passengers' fundamental rights are respected during interactions with authorities at international airports must be at the center of all aviation policies and practices in each State in order to prevent incidents.

3.3 There is a need to ensure ICAO policies, practices and guidelines with respect to aviation security and facilitation are consistent with these fundamental rights. ICAO should also continue supporting Member States in implementing ICAO Annex 9 — *Facilitation* and Annex 17 — *Aviation Security* in a manner consistent with such fundamental rights.

² *Handbook on Human Rights and Screening in Border Security and Management (2018)* by the United Nations Office of Counter Terrorism (<https://www.un.org/counterterrorism/human-rights/publications>) and *Fundamental rights at airports: border checks at five international airports in the European Union (2014)* by the European Union Agency for Fundamental Rights (<https://fra.europa.eu/en/publication/2014/fundamental-rights-airports-border-checks-five-international-airports-european>).

4. WAY FORWARD

4.1 In considering how ICAO may move this work forward, the Council requested the Secretariat and experts, through the Aviation Security (AVSEC) and Facilitation (FAL) Panels, to:

- (i) consider reviewing the rights of travellers at international airports and build on the work outlined in Section 2 of this paper;
- (ii) review the relevant Annexes and related materials, where appropriate, to ensure ICAO frameworks are consistent with these fundamental rights; and
- (iii) human dignity, non-discrimination, data protection and accessible remedial mechanisms as a key consideration when developing future ICAO policies, practices and guidance, as well as by requesting ICAO Panels to take into account the fundamental rights in their respective work programmes, including when there is a need for the revision of ICAO Annexes and/or guidance.

4.2 The AVSEC and FAL Panels will therefore provide an update on their consideration of the rights of travellers at international airports in their regular course of reporting to the relevant ICAO bodies.

4.3 The Council disbanded the SWG since it concluded its tasks in an effective and timely manner and shares this Information Paper with a view to raising levels of awareness among Member States to ensure that those rights of passengers are respected throughout their journey.

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