



DIRECTORS GENERAL OF CIVIL AVIATION-MIDDLE EAST REGION

Third Meeting (DGCA-MID/3) (Doha, Qatar, 27-29 April 2015)

Agenda Item 6: Aviation Security & Facilitation

REQUESTS BY STATES FOR IMPLEMENTATION OF ADDITIONAL SECURITY MEASURES

(Presented by Qatar)

SUMMARY

This paper raises the issue of requests from individual States for the implementation of additional security measures to be applied in another State, and the manner in which the requests are made. Proposed action by the Meeting is in paragraph 3.

1. INTRODUCTION

1.1 A trend has emerged over recent years whereby individual ICAO Member States request another ICAO Member State to implement additional measures above and beyond what is already in place to secure compliance with Annex 17 Standards and Recommended Practices (SARPs). These requests may be made as a result of a threat and risk assessment conducted by the requesting State and are usually made for specific flights with direct services into the territory of the requesting State.

1.2 Annex 17 - Security (Standard 2.4.1) allows such requests on the basis that the additional measures can be met by the State receiving the request 'as far as may be practicable'. The Standard also states 'the requesting State shall give consideration to alternative measures of the other State that are equivalent to those requested.'

2. CURRENT SITUATION & CONSEQUENCE

2.1 Unfortunately, what happens in practice is that the requesting State does not always share the threat information that leads to the risk assessment and in those cases when information is shared, the State receiving the request may not agree with the conclusions of that threat and risk assessment. When there is a disagreement on the risk assessment, the State receiving the request may be reluctant to implement any additional measures. This reluctance may be stronger when the results of ICAO USAP audits do not reveal any major Lack of Effective Implementation (LEI) on the part of the State receiving the request. Another factor compounding the issue is where serious operational disruption would be caused by the implementation of additional measures and a significant financial burden placed on the State receiving such requests. One possible method for removing this reluctance could be for the requesting State to meet the costs incurred by the implementation of additional measures in another State's territory.

2.2 The original Annex 17 Standard 2.4.1 was designed to cater for increased measures to be applied for a specific flight or flights based upon an increase in the threat to the stipulated flight or flights. The assumption was that the measures would go back to normal once the period of increased threat had passed. In other words, there would be a finite period for the increased measures to remain in place. In many cases, practical experience has shown that, once additional measures are introduced, the requesting State requires that they be implemented on a continuing basis. In other words they become a permanent measure. In this manner individual States making such requests are de facto introducing additional Standards and Recommended Practices which have the effect of circumventing the normal process for the amendment of ICAO Annexes.

2.3 When States cannot reach agreement on the nature of the measures to be implemented, pressure is sometimes brought to bear by the requesting State on all air carriers operating from the State receiving the request into the territory of the requesting State to require them to implement the additional measures for their flights. In such instances, air carriers may feel obliged to implement the additional measures to ensure they can continue operating to the requesting State. In this situation, some States may well feel that this obligation on the air carriers is unilateral, extra-territorial and discriminatory in nature and is contrary to the spirit of the Chicago Convention.

2.4 ICAO Assembly Resolution 38-15 contains a consolidated statement of continuing ICAO policies related to aviation security. That continuing policy reaffirms ICAO's responsibility to facilitate the consistent and uniform resolution of questions which may arise between Member States in matters affecting the safe and orderly operation of international civil aviation throughout the world (A38-15, Appendix A, paragraph 5). The same consolidated statement of continuing policies also mentions that the ICAO Assembly calls upon Member States, while respecting their sovereignty, to minimize disruption to air travel resulting from confusion or inconsistent interpretation of standards by cooperating and coordinating actions in order to implement SARPs and guidance consistently, efficiently and effectively (A38-15, Appendix C, paragraph 9). The 38th Assembly of ICAO also called upon Member States, when requesting another State to apply security measures to protect aircraft flying into its territory, to take fully into account the security measures already in place in the requested State and, where appropriate, to recognize those measures as equivalent.

3. ACTION BY THE MEETING

3.1 The meeting is invited to:

- a) encourage Member States to refrain from unilateral action of an extra-territorial or discriminatory nature when requesting the implementation of additional security measures in another State; and
- b) support ICAO in performing any coordinating or facilitating function with regards to the resolution of issues between Member States in accordance with A38-15.