



FACILITATION (FAL) DIVISION — TWELFTH SESSION

Cairo, Egypt, 22 March to 2 April 2004

Agenda Item 4: Controlling travel document fraud and illegal migration

ANNEX 9 - FACILITATION CHAPTER 5 — INADMISSIBLE PERSONS AND DEPORTEES

(Presented by the Secretariat)

1. INTRODUCTION

1.1 Since the mid-1980s, attempted migration from one State to another, contrary to national laws of either, has become a worldwide phenomenon on a massive scale, placing extensive economic burdens on States in both the public sector and the private sector.

1.2 The challenges posed to civil aviation by the increasing numbers of attempts at illegal migration by air led to the adoption of new SARPs in Annex 9 by the Tenth and Eleventh Sessions of the Facilitation Division (FAL/10 and FAL/11) and further development by the first meeting of the Facilitation Panel (FALP/1), culminating in Amendment 17 to the Annex. Categories of problems which these SARPs seek to address include preventive measures, immigration procedures, and the repatriation of inadmissible persons.

1.3 Illegal migration continues to vex Governments and airlines globally. In recent years the problem has been compounded by the involvement of criminal elements in the organization of such illegal movements and the adoption by would-be migrants of various methods of evading or prolonging the immigration process in their chosen destination States. Such methods include the use of fraudulent travel documents (or the fraudulent use of valid documents by imposters), the destruction of travel documents during the flight or voyage, and *mala fide* applications for asylum upon arrival at the intended destination.

1.4 The use of improper travel documentation as a tactic for gaining access to air transportation to a desired destination is a worldwide problem which adversely affects the general security of States, regardless of whether their territories may be a source, a transit point or a recipient of this type of traffic. A concerted, international effort to address this problem is required, since its persistence may lead to the erosion of efficiency as States seek to contain it by tightening controls on legitimate traffic.

2. ILLEGAL MIGRATION: CONCERNS OF ICAO

2.1 Traditionally States have relied upon legislative provisions assigning to transportation operators responsibilities for ensuring that their passengers are adequately documented for travel and imposing liabilities for fines or penalties as deterrents to the international carriage of inadmissible persons. However, in the face of the increasing volumes of illegal traffic and the sophistication of methods employed, these provisions have become inadequate. International airlines in cooperation with States have been obliged to implement intensive programmes to detect fraudulent documents and to identify and intercept passengers who are travelling with the intent to migrate with improper documentation.

2.2 Concerns of ICAO extend beyond the considerable costs to the airline industry of problem-management tasks ranging from attempts to intercept cases of document fraud at the embarkation point to transport of inadmissible persons back to their point of origin. These problems of border control consume inordinate amounts of service resources of the entire civil aviation community, including control authorities at airports, and reactive measures are time-consuming; thus clearance service for the general travelling public is degraded. Moreover, inadmissible persons being repatriated against their will have been known to pose problems for the security of the flight. Finally, the criminal elements and activities often associated with illegal migration are in themselves considered to constitute threats to aviation security.

2.3 The effectiveness of the SARPs applicable to inadmissible persons depends heavily on widespread acceptance, conformance and cooperation among States. Reluctance on the part of a State from which improperly documented persons embark to take measures to control document fraud, and the unwillingness of a State to repatriate its nationals or accept for examination formerly admitted persons, tend to encourage rather than to deter the problem of document fraud.

2.4 Another increasing trend discernable today is the unwillingness of control authorities of States sending and receiving inadmissible persons to cooperate and communicate with one another, thus hindering the sound and economic functioning of international civil aviation. Reports have been received of persons being shuttled back and forth between States because of disagreements about their “inadmissible” or “deportee” status. Aircraft have been detained on the ground for days, and even weeks, because of disputes between administrations on their respective responsibilities with regard to inadmissible persons. Such delays and disruptions serve no useful purpose and can only encourage illegal migration by air.

2.5 A review of differences filed by various States to the SARPs in Annex 9, Chapter 3, Section E, as well as anecdotal accounts, indicate some outstanding problems, for example:

- a) a lack of acceptance of the covering or substitute letter which is issued in accordance with Appendix 9 of Annex 9 in the event that fraudulent, counterfeit or misappropriated travel documents have been seized or when the inadmissible person had arrived with no documents and insistence on receiving the improper documents;
- b) a reluctance on the part of the receiving State to confiscate fraudulent or counterfeit documents and remove them from circulation;
- c) a refusal to accept for examination a returned inadmissible person on the grounds that no previous record of entry to the State can be found; and
- d) a lack of communication between the governments concerned, who continue to place the burden on the airlines involved, delaying further the resolution of a problem case.

2.6 A working group of the FAL Panel, the Passenger-Processing Drafting Group, has drafted some amendments to the SARPs aimed at addressing these and other issues. The Appendix to this working

paper outlines these proposals and also contains additional recommendations with regard to deportees, for which there is, at present, very little guidance in Annex 9.

3. COMMENTS ON SPECIFIC PROPOSALS

3.1 *Paragraph 5.1.* This general principle urges greater communication and cooperation among affected States. The effectiveness of the provisions applicable to inadmissible persons, in particular, depends heavily on widespread acceptance of the SARPs, conformance to them and on cooperation, by States, in their implementation. The idea is to prevent cases in which the States concerned place the burden of inadmissible persons and deportees on the airlines involved, seriously delaying the resolution of problems.

3.2 *Paragraph 5.2.* This Standard provides States with a regulatory/legal basis to permit the transit of persons being removed from another State, and their escorts, if any. In the light of the increasing importance of escorts, this provision should facilitate the journey of escorts when accompanying an inadmissible person or deportee.

3.3 *Paragraph 5.9.* The question of the responsibility of the State for the custody and care of passengers and crew after they have been accepted for examination, a day-to-day function of the State, has been retained in Chapter 3 (see FAL/12-WP/3, para. 3.43). The separate issue of the responsibility of the operator for the custody and care of passengers and crew after they have been found inadmissible has been placed in Chapter 5 because it deals with a special situation arising from the admission and control of persons. Paragraph 5.9 itself has two elements, both of which must be satisfied before the operator becomes responsible for the inadmissible person: 1) the person has to be found inadmissible; and 2) he has to be returned to the operator for removal. Responsibility is not transferred if the inadmissible person is still under the detention/custody of the public authorities.

3.4 *Paragraph 5.12.* FAL/10 (1998) inserted this provision into the Annex, to seek a solution to the undesirable practice of having persons found inadmissible sent back and forth between States. In order to resolve problems of interpretation, a definition for the term “commencement of journey” is proposed for inclusion in Chapter 1 (see FAL/12-WP/6, Appendix). Its application can be explained as follows: If a passenger flies from State A to State C, in transit via State B, he is deemed to have “commenced his journey” in State A if he does not leave the direct transit area of the airport in State B. However, if the control authorities in State B permit him entry into the State, say, to rest in a hotel while waiting for his connecting flight to State C, then State B would be considered, *vis-à-vis* State C, as the place where the passenger “commences his journey”.

3.5 *Paragraph 5.16.* This Standard ensures that air transport is not disrupted by incidents of the kind described in the paragraph. The Note leaves States a certain latitude in applying the Standard above in order to take into account situations in which an irregularly high number of inadmissible persons are found on a specific flight.

3.6 *Paragraph 5.19.* This Standard allows the operator sufficient time to carry out a full assessment of the risk of possible damage, danger or injury that the carriage of the deportee might bring. The advance notice will also allow the operator to ensure an appropriate allocation of seating for the deportee and a possible escort, brief crew members and take all appropriate precautions for the transport.

3.7 *Paragraph 5.21.* A person being deported might not have the necessary travel documents (e.g. passport or visa). The Standard therefore ensures that the deportee is provided with the necessary travel document(s) to facilitate his travel through a transit State and entry into the destination State.

3.8 *Paragraph 5.25.* This Standard deals with an extremely problematic issue normally associated with inadmissible persons. In many instances, a person arriving with no documents is handed back to the inbound carrier with an order to remove him. The carrier then is placed in the position of either:

a) transporting the passenger to a place known not to accept the Appendix 9 letter and facing legal difficulty; or b) holding the inadmissible person in detention whilst attempting to get the authorities of that person's home country to issue a replacement document. It was felt that the State ordering the removal has a far greater ability to work with another State to ensure that an emergency or replacement document is issued in a timely manner.

4. **ACTION BY THE DIVISION**

4.1 The Division is invited to recommend adoption of the SARPs presented in the Appendix for Chapter 5 of Annex 9.

APPENDIX

CHAPTER 5. INADMISSIBLE PERSONS AND DEPORTEES

A. General

5.1 In order to minimize disruptions to the orderly operations of international civil aviation, Contracting States shall cooperate with one another to promptly resolve any differences arising in the course of implementing the provisions of this Chapter.

5.2 Contracting States shall facilitate the transit of persons being removed from another State pursuant to the provisions of this Chapter, and extend all necessary cooperation to the operator(s) and escort(s) carrying out such removal.

B. Inadmissible persons

5.3 3.58 (first part) **Contracting States** ~~The public authorities shall without delay inform~~ **notify** the operator, **in writing**, when a person is found inadmissible, **pursuant to 3.44.** ~~and consult the operator regarding the possibilities for removal.~~

Note 1.— A person found inadmissible shall be transferred back into the custody of the operator who transported that person directly to the final destination or, where appropriate, into the custody of one of the operators who carried the person to one of the transit destinations.

Note 2.— Nothing in this provision or in Note 1 is to be construed so as to allow the return of a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.

5.4 3.58 (second part) **Recommended Practice.**— ~~The public authorities shall without delay inform the operator when a person is found inadmissible and~~ **should** consult the operator ~~regarding the possibilities~~ **on the time-frame** for removal ~~of the person found inadmissible, in order to allow the operator a reasonable amount of time during which to effect the person's removal via its own services or to make alternative removal arrangements.~~

Note 1.— A person found inadmissible shall be transferred back into the custody of the operator who transported that person directly to the final destination or, where appropriate, into the custody of one of the operators who carried the person to one of the transit destinations.

Note 2.— Nothing in this provision or in Note 1 is to be construed so as to allow the return of a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.

5.5 Contracting States shall ensure that a removal order is issued to the operator in respect of a person found inadmissible. The removal order shall include, if known, the name, age, gender and citizenship of the person in question.

3.59— ~~In place of a seized document, a covering letter shall be issued by the removing State and attached to it will be a photocopy of the seized travel documents (if available) as well as any~~

important information such as the removal order. The covering letter and its attachments shall be handed over to the operator responsible for the removal of the inadmissible person. It will serve to give information to the authorities at the transit and/or the original point of embarkation. In the event the person found inadmissible has lost or destroyed his travel documents, a similar letter shall be issued.

Note.—Suggested formats for letters applicable to the removal of improperly documented passengers are set forth in Appendix 9.

5.6 Contracting States ordering the removal of an inadmissible person who has lost or destroyed his travel documents shall deliver a covering letter in the format set forth in Appendix 9 (a) in order to give information to the authorities of the transit and/or the original point of embarkation. The covering letter, the removal order and any relevant information shall be handed over to the operator or, in the case of escorted persons, the escort, who shall be responsible for delivering them to the public authorities at the State of destination.

5.7 Contracting States ordering the removal of an inadmissible person whose travel documents have been seized pursuant to 3.45 shall deliver a covering letter in the format set forth in Appendix 9 (b) in order to give information to the authorities of the transit and/or the original point of embarkation. The covering letter together with a photocopy of the seized travel documents and the removal order shall be handed over to the operator or, in the case of escorted persons, the escort, who shall be responsible for delivering them to the public authorities at the State of destination.

5.8 ~~3.60.1~~ Contracting States, that When the public authorities have reason to believe that an inadmissible person who has been declared inadmissible might offer resistance to his removal, they shall so inform the operator concerned as far in advance as possible of scheduled departure in sufficient time so that the operator can take precautions to ensure the security of the flight.

Note.—To this end, security should be provided by government officials, wherever appropriate under national regulations, or by the operator who should use his own security personnel or, at his expense, hire personnel whom he considers to be competent.

5.9 ~~3.52.2 (second part)~~ **Recommended Practice.**— After such acceptance, whether conditional or unconditional, the public authorities concerned should be responsible for the custody and care of passengers and crew until they are legally admitted for entry. or The operator shall be held responsible for the custody and care of a person from the moment that person is found to be inadmissible and transferred back returned to the custody of the operator for transport away from the territory of removal from the State, pursuant to 5.4.

5.10 ~~3.62~~ When a person is found inadmissible and is returned to the operator for transport away from the territory of the State, the operator shall not be precluded from recovering from such person any transportation costs arising from his inadmissibility involved in his removal.

5.11 ~~3.60~~ Each Contracting State shall ensure that a person found inadmissible is transferred back into the custody of the The operator, who shall be responsible for prompt removal remove the inadmissible person to:

- a) the point where the person he commenced his journey; or
- b) to any place where the person he is admissible.

5.12 ~~3.63~~ A Contracting States shall accept for examination a person removed from a State being returned from his point of disembarkation after having been where he was found inadmissible, if this person

previously stayed in **commenced his journey from their its** territory. before embarkation, other than in direct transit. **A** Contracting States shall not return such a person to the country where he was earlier found to be inadmissible.

Note.—This provision is not intended to prevent public authorities from further examining a returned inadmissible person to determine his eventual acceptability in the State or make arrangements for his transfer, removal or deportation to a State of which he is a national or where he is otherwise acceptable.

5.13 ~~3.63.1~~ In following the procedure in 3.63, where a person who has been found to be inadmissible has lost or destroyed his travel document, Contracting States shall accept instead a document attesting to the circumstances of embarkation and arrival issued by the public authorities of the Contracting State where the person was found to be inadmissible **the covering letter and other papers delivered pursuant to 5.6 or 5.7 as sufficient documentation to carry out the examination of the person referred to in the letter.**

~~3.64~~ Where the procedure in 3.59 has been followed, Contracting States shall accept the covering letter referred to and shall not require the production of the fraudulent, falsified or counterfeit travel document concerned.

5.14 ~~3.55~~ Contracting States shall not fine operators in the event that arriving and in-transit passengers **persons** are found to be improperly documented where operators can demonstrate that they have taken adequate precautions to ensure that these passengers **persons** had complied with the documentary requirements for entry into the receiving State.

5.14.1 ~~3.55.1~~ **Recommended Practice.**— *When operators have co-operated with the public authorities to the satisfaction of those authorities, for example pursuant to memoranda of understanding reached between the parties concerned, in measures designed to prevent the transportation of improperly documented inadmissible persons, Contracting States should mitigate the fines and penalties that might otherwise be applicable should such persons be carried to their territory.*

5.15 ~~3.57~~ **Recommended Practice.**— *In the event that the precautions referred to in 3.53 3.32 have been taken but the passenger person is nevertheless not admitted due to document problems beyond the expertise of the operator or for reasons other than improper documents, the operator should not be held directly responsible for any costs related to official detention of the passenger person.*

5.16 Contracting States shall not prevent the departure of an operator's aircraft pending a determination of admissibility of any of its arriving passengers.

Note.—An exception to this provision could be made if the Contracting State had reason to believe that there might be an irregularly high number of inadmissible persons on a specific flight.

~~3.59.1~~ **Recommended Practice.**— *Each Contracting State should, where practicable, ensure that the public authorities issuing a removal order give notice to the public authorities of the countries of transit and, where advisable, final destination of the trip planned.*

Note.—This notice should contain the following information:

- a) — identity of the person;*
- b) — reason for transport;*
- c) — escort(s), if any, and*
- d) — risk assessment by the competent authorities.*

~~3.61~~ When a passenger is found inadmissible and is transferred back pursuant to 3.60, the public authorities ordering the removal shall deliver the travel documents of the inadmissible person

(including the letters applicable to the return of improperly documented passengers) to the operator or, in the case of escorted persons, to the escort/guard, who shall be responsible for delivering them to the public authorities of the State of destination.

C. Deportees

5.17 A Contracting State deporting a person from its territory shall serve him a deportation order which shall indicate the name of the destination State.

5.18 Contracting States removing deportees from their territories shall assume all obligations, responsibilities and costs associated with the removal, if the same is not borne by the deportee.

~~3.66 Each Contracting State shall ensure that the operators concerned are informed when persons are obliged to travel because they have been formally ordered by the public authorities to be removed from that State. The public authorities shall inform the operators in sufficient time so that the operators can take precautions to ensure the security of the flight.~~

Note.—The following information is to be provided, subject to national privacy legislation, to the operators by the public authorities:

- ~~— name of person to be identified as deportee;~~
- ~~— reason for deportation;~~
- ~~— names of escorts/guards;~~
- ~~— willingness or unwillingness to travel; and~~
- ~~— any other information that would allow the operators to assess the risk of endangering the security of the flight.~~

In order to ensure appropriate coordination of facilitation and security specifications, attention is drawn to the applicable provisions of Annex 17, Chapter 4.

5.19 Contracting States, when making arrangements with an operator for the removal of a deportee, shall make available a copy of the deportation order and the following information as soon as possible, but in any case not later than 24 hours before the scheduled time of departure of the flight:

- a) the deportee's willingness or unwillingness to travel;
- b) a risk assessment by the State and/or any other pertinent information that would help the operator assess the risk to the security of the flight;
- c) the names and nationalities of any escorts; and
- d) proof of connection between the deportee and the destination State.

Note.—In order to ensure coordination of facilitation and security standards, attention is drawn to the applicable provisions of Annex 17, Chapter 4.

5.20 Contracting States, in making arrangements for the removal of a deportee to a destination State, shall use direct non-stop flights whenever practicable.

5.21 A Contracting State, when presenting a deportee for removal, shall ensure that all official travel documentation required by any transit and/or destination State is provided to the operator.

5.22 A Contracting State shall admit into its territory its nationals who have been deported from another State.

5.23 A Contracting State shall give special consideration to the admission of a person, deported from another State, who holds evidence of valid and authorized residence within its territory.

5.24 Contracting States, when determining that a deportee must be escorted and the itinerary involves a transit stop in an intermediate State, shall ensure that the escort(s) remains with the deportee to his final destination, unless suitable alternative arrangements are agreed, in advance of arrival, by the authorities and the operator involved at the transit location.

~~3.67 Each Contracting State shall ensure that the public authorities ordering the deportation inform the public authorities of transit and, if advisable, those of destination countries of the planned transport.~~

D. Procurement of a replacement travel document

5.25 When a replacement travel document must be obtained in order to facilitate removal and acceptance of the person at his destination, the State ordering the removal shall provide as much assistance as practicable in securing that document.

5.26 ~~3.68~~ A Contracting State shall, when requested to provide travel documents to facilitate the return of one of its nationals, respond within a reasonable period of time and not more than 30 days after such a request was made either by issuing a travel document or by satisfying the requesting State that the person concerned is not one of its nationals.

5.27 ~~3.69~~ A Contracting State shall not make the signing by the person concerned of an application for a travel document a prerequisite for the issuance of that document.

5.28 ~~3.70~~ When a Contracting State has determined that a person for whom a travel document has been requested is one of its nationals but cannot issue a passport within 30 days of the request, the State shall issue an emergency travel document that attests to the nationality of the person concerned and that is valid for readmission to that State.

5.29 ~~3.71~~ A Contracting State shall not refuse to issue a travel document to or otherwise thwart the return of one of its nationals by rendering that person stateless.

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