



FACILITATION (FAL) DIVISION — TWELFTH SESSION

Cairo, Egypt, 22 March to 2 April 2004

Agenda Item 6: International Health Regulations (IHRs)

LEGAL RESPONSIBILITY OF STATES AND AIRLINES IN PREVENTING THE SPREAD OF COMMUNICABLE DISEASES

(Presented by the Secretariat)

1. INTRODUCTION

1.1 From an aviation perspective, it is important to be aware of the grave risk that may be posed by a virus at an airport or in an in-flight situation where persons come into close contact with one another. The enormity of the problem is brought to bear by the response of ICAO to the outbreak of Severe Acute Respiratory Syndrome (SARS). After an intensive, multi-agency consultation, ICAO issued guidelines on 2 May 2003 urging member States to:

- a) implement pre-boarding medical screening of passengers at check-in;
- b) provide all incoming passengers with a detailed information leaflet on SARS
- c) implement medical screening of passengers arriving directly from or via affected areas;
- d) advise pilots to radio ahead if someone on board exhibits SARS symptoms;
- e) instruct crew on dealing with suspected SARS-patients in flight; and
- f) disinfect aircraft on which a suspected SARS-patient has traveled.

1.2 The pre-eminent legal provision which governs this issue is contained in the Convention on International Civil Aviation¹; Article 14 of which requires every State to take effective measures to prevent the spread by means of air navigation of communicable diseases. In signing the Convention, a Contracting State agrees to take effective measures to prevent the spread by means of air navigation of communicable diseases and, *inter alia*, keep in close consultation with the agencies concerned with international regulations relating to sanitary measures applicable to aircraft. Such consultation shall be without prejudice to the application of any existing international convention on this subject to which the Contracting States may be parties.

1.3 Article 14 explicitly devolves primary responsibility on States to take effective measures to prevent airborne diseases in aircraft and implicitly requires States to issue guidelines for airlines, by liaising

¹ *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944. Seventh Edition, 1997, Doc 7300/7.

with the international agencies concerned. This notwithstanding, airlines have to face certain legal issues themselves in terms of their conduct. Primarily, airlines are expected to conform to applicable international health regulations and the laws of the countries in which their aircraft land. Furthermore, the airline owes its passengers a duty of care to exercise all caution in protecting their rights, so that a blatant instance of a person who looks sickly and coughs incessantly at the check-in counter cannot be ignored.

1.4 In selling an airline ticket for travel by air, an airline offers a composite service, not only to carry a passenger from point A to B, but also to ensure that transportation is accomplished in a safe and sanitary manner. Therefore, the services offered by the airline, including clean air in the cabin and proper assistance to persons becoming ill during the flight, become extremely relevant and critical to the issue.

1.5 As for the responsibility of States, effective border control is the preeminent factor in a State's performance. Legal and therefore supervised immigration, in which health screening is possible and quarantine measures can be effectively applied, should be the norm.

2. ACTION BY THE DIVISION

2.1 The Division is invited to note the contents of this paper and to exchange views in its consideration of Agenda Item 6.

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