



WORKING PAPER

FACILITATION PANEL (FALP)

FIFTH MEETING

Montréal, 31 March to 4 April 2008

Agenda Item 3: Other amendments to Annex 9

IMPLEMENTATION OF STANDARD 5.11 OF ANNEX 9

(Presented by the Secretary)

SUMMARY

One implementation difficulty concerning Standard 5.11 relates to the choice available to the aircraft operator whether to remove an inadmissible person to the place where he commenced his journey or to any other place where he is admissible. This choice, recognized by the Sixth Facilitation Division (1963), has not been specifically spelt out in the Annex. This paper proposes that Standard 5.11 should be amended to apply the decision of the Division.

Action by the FAL Panel:

The Panel is invited to consider and agree that Standard 5.11 be amended as indicated in Paragraph 2.7.

1. INTRODUCTION

1.1 Standard 5.11 of Annex 9 reads as follows:

“5.11 The aircraft operator shall remove the inadmissible person to:

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

1.2 “Commencement of journey” is defined in Chapter 1 as “[t]he point at which the person began his journey, without taking into account any airport at which he stopped in direct transit, either on a through-flight or a connecting flight, if he did not leave the direct transit area of the airport in question”. The term “any place where is admissible” is not defined in the Annex. However, it appears to be generally interpreted as being the State of which the person is a citizen or a valid and authorized resident.

2. DISCUSSION

2.1 In recent years, the Secretariat has received several requests with regard to the interpretation of one particular aspect of Standard 5.11, confusion regarding its application having caused

operational difficulties. This relates to the question of whether or not the aircraft operator can choose between options (a) and (b) of Standard 5.11 when required to remove an inadmissible person.

2.2 This issue of a choice between two options goes back to the Sixth Session of the Facilitation Division (FAL/6, 1963). At FAL/6, the provision (that had been in the Annex ever since the 1st Edition, in 1949) read: “Upon refusal of admission and transfer back of any person, the operator shall be responsible for promptly returning him to the point where he commenced the use of the operator’s aircraft.”

2.3 At FAL/6, the International Air Transport Association (IATA) proposed adding a sentence, at the end of the paragraph, exempting operators from transporting an inadmissible passenger to a country for which he did not have the documents required to ensure his admission. The Division did not agree. It preferred to give the operators the choice between returning inadmissible passengers to the point where they commenced the use of the operator’s aircraft or transporting such passengers to any other place where they were admissible.

2.4 As a result, the text of the Standard was amended and the clause, “to any place where the person is admissible” added. This paragraph has been amended several times since then, giving us today’s text (paragraph 1.1 above).

2.5 In providing guidance on this issue when requested, the Secretariat has conscientiously applied the decision taken by FAL/6, and has advised that an aircraft operator has a choice whether to remove an inadmissible person to the place where he commenced his journey or to any place where he is admissible.

2.6 It is clear that, in order to avoid continued misunderstandings or confusion on the issue, it has become necessary to reproduce the above-mentioned decision of the FAL Division in the text of the provision, itself.

2.7 Therefore, the Secretariat proposes that Standard 5.11 be amended so that it reads:

5.11 The aircraft operator shall have the choice whether to remove the inadmissible person to:

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

—END—