



WORKING PAPER

HIGH-LEVEL CONFERENCE ON AVIATION SECURITY (HLCAS)

Montréal, 12 to 14 September 2012

Agenda Item 6: Ensuring the sustainability of aviation security measures – equivalence

PRINCIPLES GOVERNING INTERNATIONAL AVIATION SECURITY CO-OPERATION

(Presented by Australia, Argentina, Brazil, Canada, China, France, Germany, Italy, Japan, Mexico, New Zealand, Nigeria, Qatar, Russian Federation, Saudi Arabia, Senegal, Singapore, South Africa, Spain, Switzerland, and United Kingdom)

SUMMARY

International aviation security co-operation is strongly advocated by ICAO and unanimously supported by its Member States in view of the cross-boundary nature of aviation security threats. This paper proposes three principles for consideration by ICAO and its Member States to foster international aviation security co-operation in an effective, robust, and sustainable manner, with a view to elaborating the Standards and Recommended Practices (SARPs) on international aviation security co-operation in Annex 17 to the Convention on International Civil Aviation based on these three principles.

Action: The High-level Conference on Aviation Security is invited to take the actions proposed in paragraph 4.

1. INTRODUCTION

1.1 The International Civil Aviation Organization (ICAO), its Member States, and many international and regional organizations, have consistently recognised the importance of fostering international co-operation amongst States and stakeholders to enhance the level of aviation security both locally and globally. This is also in view of the fact that security threats to civil aviation operations are becoming more complex and cut across borders and boundaries. To successfully mitigate security threats to civil aviation and enhance security, while balancing the need for facilitation and to support the economic growth of air transport, international collaboration amongst Contracting States, and between Contracting States and other stakeholders, is necessary and critical.

1.2 Chapter 2.4 (International Cooperation) of Annex 17 — *Security* of the Chicago Convention provides a set of Standards and Recommended Practices (SARPs) related to international co-operation on aviation security, while Chapter 5 (Management of Response to Acts of Unlawful Interference) provides further SARPs that also require co-operation amongst Contracting States in the event of an act of unlawful interference (see [Appendix A](#)).

1.3 International co-operation is regularly emphasised at various ICAO conferences and at its Assemblies. The ICAO High-level, Ministerial Conference on Aviation Security (19-20 February 2002) declared its commitment to “*foster international cooperation in the field of aviation security and harmonize the implementation of security measures*”, “*ensure that security measures are implemented in a most cost effective way in order to avoid undue burden on civil aviation*”, as well as to “*ensure to the*

extent possible that security measures do not disrupt or impede the flow of passengers, freight, mail or aircraft” (see [Appendix B](#)). At the 37th Session of the ICAO Assembly in 2010, the Assembly, under Appendix G of Assembly Resolution A37-17, recognised “*that success in eliminating threats to civil aviation can only be achieved through the concerted effort of everyone concerned and a close working relationship between national agencies and aviation security regulators of all Contracting States*”. The Assembly also “*urges all Contracting States to insert into their multilateral and bilateral agreements on air services a clause on aviation security, taking into account the model clause adopted by the Council on 25 June 1986 and the model agreement adopted by the Council on 30 June 1989*” (see [Appendix C](#)). The Security Declaration adopted by the 37th Session of the ICAO Assembly also urged Contracting States to undertake a number of actions to enhance international co-operation to counter threats to civil aviation, and the various ICAO regional aviation security conferences held over the past two years have similarly given strong emphasis to international co-operation in aviation security amongst Contracting States and stakeholders.

2. PRINCIPLES TOWARDS INTERNATIONAL CO-OPERATION ON AVIATION SECURITY

2.1 In order for international co-operation amongst Contracting States on aviation security to be effective, robust and sustainable, it is recommended that some key principles be considered and adopted by Contracting States in the course of working with each other, such as in making requests from one State to another to implement enhanced security measures concerning specific threats or specific flights between each other’s territories. These principles are intended to help guide Contracting States and stakeholders to effect international co-operation on aviation security in a practical manner to achieve the intended objectives.

2.2 The suggested principles are as follows:

a) **Respecting the spirit of co-operation defined in bilateral and/or multilateral Air Services Agreements**

The security clause in the bilateral and/or multilateral Air Services Agreements (ASAs) between Contracting States should set the spirit of co-operation between the parties concerned, and this should be maintained, such as when requesting assistance or seeking for another Contracting State’s airports or aircraft operators to implement additional or specific security measures. This is in line with the Resolution adopted by the ICAO Council of 25 June 1986 relating to aviation security in bilateral agreements, where the Council noted “*that the bilateral agreements on air services represent the main legal basis for international carriage of passengers, baggage, cargo and mail*”, and “*that provisions on aviation security should form an integral part of bilateral agreements on air services*”. Noting that States would be willing to co-operate with each other to mitigate aviation security threats effectively, such requests for assistance on additional or specific security measures to be implemented should be made on a State-to-State basis, in line with the ASA framework.

b) **Recognising equivalent security measures**

The second principle is to give recognition to equivalence of security measures. Contracting States may request another Contracting State to implement additional security measures, either by airports or aircraft operators under their jurisdiction or both, owing to specific threats or in response to incidents. While doing so, the requesting State should first take into consideration the security measures that are

already in place in the other State to mitigate the threat and manage the risk. Then, the requesting State should recognise the existing measures as equivalent if they reach the same security objectives (e.g., detection of prohibited articles on persons). The requesting State should refrain from prescribing specific measures to be undertaken without due consideration of the security measures already in place. All parties should instead adopt an outcome-based approach for maximum effectiveness. Otherwise, there will be confusion for the travelling public and unnecessary duplication of measures, ultimately leading to a sub-optimal use of limited resources. This re-allocation of resources to satisfy the demands from the requesting State may also create critical gaps in other areas of aviation security, which may be in turn be exploited by terrorist groups. There should also be prior and constant consultation between the requesting State and other Contracting States so that the most practical and effective level of co-operation can be achieved.

c) Focussing on security outcomes

Closely related to 2.2(b) above, the third principle recommended is for Contracting States to focus on security outcomes when co-operating on implementing international aviation security measures. Taking an outcome-based approach, instead of an overly prescriptive approach, is reasonable and much more practical. Under this principle, Contracting States should work with each other to address the aviation security threat concerned, taking the approach that each State is allowed to exercise flexibility and to determine for themselves the security measures and processes that are the best possible and practicable to achieve the desired outcome, given the resources available to them. This allows Contracting States to take into consideration important factors such as their national risk and threat assessments; their airport and airline operations; security and facilitation processes and procedures concerned; availability of resources; local geography; legislation; cultural issues; and other national factors concerned. This is in line with Standard 2.4.1 of Annex 17, which states that “*Each Contracting State shall ensure that requests from other Contracting States for additional security measures in respect of a specific flight(s) by operators of such other States are met, as far as may be practicable. The requesting State shall give consideration to alternative measures of the other State that are equivalent to those requested.*” This principle would also encompass the use of risk-based approaches to addressing aviation security measures, and that Contracting States should mutually recognise each other’s security measures and processes, rather than demanding that identical security measures be taken and implemented. The important factor is that there is common understanding and agreement on the threat concerned, and that effective measures are undertaken to mitigate the threat to reach the desired outcome. Only measures that are defined taking into consideration local conditions are likely to be sustainable.

2.3 In the implementation of the above three principles, partnership with industry should be kept in mind. This is in recognition that industry, including airports and aircraft operators, are often the parties who have to take concrete action to implement security measures on the ground. Contracting States should therefore engage industry on international aviation security co-operation wherever appropriate, particularly when undertaking mutual recognition efforts with other Contracting States. This especially relates to 2.2(b) and 2.2(c) above, where avoiding duplication should be a key objective to maximise the efficient use of resources and minimise compliance costs for industry. In addition States should engage with industry on the most appropriate security measures and processes to meet stipulated security outcomes, taking into account business operations and related circumstances. This is especially in

view of the fact that many aircraft operators and other industry entities operate internationally, across State borders and in multiple jurisdictions.

3. CONCLUSION

3.1 The above three principles are recommended for adoption by the ICAO and its Member States to enhance international co-operation in aviation security in a practical, sustainable, and effective manner. These principles are in line with respect for sovereignty, abidance with the spirit of bilateral and/or multilateral ASAs, and adherence to the ICAO SARPs. They also aim to avoid confusion and unnecessary duplication, as well as the unilateral imposition of security measures without due regard for the security measures already in place to address the security threats concerned. This will further allow for the implementation of measures that are really necessary, flexibility in approaches and processes for implementation, optimal use of limited resources, and effective attainment of the desired security outcomes.

4. ACTION BY THE HIGH-LEVEL CONFERENCE ON AVIATION SECURITY (HLCAS)

4.1 The HLCAS is invited to:

- a) consider the three principles presented under paragraph 2.2 with regard to international aviation security co-operation;
 - b) recommend that these three principles be adopted by the ICAO and its Member States as the basis for international co-operation in aviation security; and
 - c) recommend that the Standards and Recommended Practices (SARPs) on international aviation security co-operation in Annex 17 to the Convention on International Civil Aviation be elaborated based on these three principles.
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APPENDIX A

EXCERPTS CONCERNING INTERNATIONAL CO-OPERATION FROM CHAPTERS 2 AND 5 OF ANNEX 17 — *SECURITY* TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

2.4 International cooperation

2.4.1 Each Contracting State shall ensure that requests from other Contracting States for additional security measures in respect of a specific flight(s) by operators of such other States are met, as far as may be practicable. The requesting State shall give consideration to alternative measures of the other State that are equivalent to those requested.

2.4.2 Each Contracting State shall cooperate with other States in the development and exchange of information concerning national civil aviation security programmes, training programmes and quality control programmes, as necessary.

2.4.3 Each Contracting State shall establish and implement procedures to share with other Contracting States threat information that applies to the aviation security interests of those States, to the extent practicable.

2.4.4 Each Contracting State shall establish and implement suitable protection and handling procedures for security information shared by other Contracting States, or security information that affects the security interests of other Contracting States, in order to ensure that inappropriate use or disclosure of such information is avoided.

2.4.5 **Recommendation.**— *Each Contracting State should share, as appropriate, and consistent with its sovereignty, the results of the audit carried out by ICAO and the corrective actions taken by the audited State if requested by another State.*

2.4.6 **Recommendation.**— *Each Contracting State should include in each of its bilateral agreements on air transport a clause related to aviation security, taking into account the model clause developed by ICAO.*

2.4.7 **Recommendation.**— *Each Contracting State should make available to other Contracting States on request a written version of the appropriate parts of its national civil aviation security programme.*

2.4.8 **Recommendation.**— *Each Contracting State should notify ICAO where it has shared information under 2.4.5.*

5.2 Response

5.2.2 Each Contracting State responsible for providing air traffic services for an aircraft, which is the subject of an act of unlawful interference, shall collect all pertinent information on the flight of that aircraft and transmit that information to all other States responsible for the air traffic services units concerned, including those at the airport of known or presumed destination, so that timely and appropriate safeguarding action may be taken en route and at the aircraft's known, likely or possible destination.

5.2.5 Each Contracting State in which an aircraft subjected to an act of unlawful interference has landed shall notify by the most expeditious means the State of Registry of the aircraft and the State of the Operator of the landing and shall similarly transmit by the most expeditious means all other relevant information to:

- a) the two above-mentioned States;
- b) each State whose citizens suffered fatalities or injuries;
- c) each State whose citizens were detained as hostages;
- d) each State whose citizens are known to be on board the aircraft; and
- e) the International Civil Aviation Organization.

5.2.6 **Recommendation.**— *Each Contracting State should ensure that information received as a consequence of action taken in accordance with 5.2.2 is distributed locally to the air traffic services units concerned, the appropriate airport administrations, the operator and others concerned as soon as practicable.*

5.2.7 **Recommendation.**— *Each Contracting State should cooperate with other States for the purpose of providing a joint response in connection with an act of unlawful interference. When taking measures in their territory to free passengers and crew members of an aircraft subjected to an act of unlawful interference, each Contracting State should use, as necessary, the experience and capability of the State of the Operator, the State of manufacture and the State of Registry of that aircraft.*

5.3 Exchange of information and reporting

5.3.1 Each Contracting State concerned with an act of unlawful interference shall provide ICAO with all pertinent information concerning the security aspects of the act of unlawful interference as soon as practicable after the act is resolved.

5.3.2 **Recommendation.**— *Each Contracting State should exchange information with other Contracting States as considered appropriate on the management of response to an act of unlawful interference, at the same time supplying such information to ICAO.*

APPENDIX B

DECLARATION OF THE HIGH-LEVEL, MINISTERIAL CONFERENCE ON AVIATION SECURITY (19-20 FEBRUARY 2002, MONTREAL)

The High-level, Ministerial Conference on Aviation Security, convened by the International Civil Aviation Organization (ICAO) at its Headquarters in Montréal on 19 and 20 February 2002 and attended by Ministers and other high-level officials representing 154 States and 24 international organizations:

Reaffirming condemnation of the use of civil aircraft as weapons of destruction as well as of other acts of unlawful interference with civil aviation wherever and by whomsoever and for whatever reason they are perpetrated;

Mindful of the need for strengthening measures to prevent all acts of unlawful interference with civil aviation;

Emphasizing the vital role which civil aviation plays in economic development;

Stressing the preeminence of safety and security as underlying fundamentals in civil aviation which need global address;

Reaffirming the responsibility of States for the security and the safety of civil aviation, irrespective of whether the air transport and related services concerned are provided by Government, autonomous or private entities;

Noting the significant improvements in aviation security recently initiated in a large number of States;

Recognizing that a uniform approach in a global system is essential to ensure aviation security throughout the world and that deficiencies in any part of the system constitute a threat to the entire global system;

Affirming that a global aviation security system imposes a collective responsibility on all States;

Noting that the additional resources which will be required to meet enhanced aviation security measures may create an undue financial burden on the already limited resources of developing countries;

DECLARES its commitment to:

— achieve full implementation of the multilateral conventions on aviation security and the ICAO Standards and Recommended Practices (SARPs) and Procedures for Air Navigation Services (PANS) as well as ICAO Assembly Resolutions and Council Decisions relating to aviation security and safety;

— apply within national territories appropriate additional aviation security measures to meet the level of threat;

— foster international cooperation in the field of aviation security and harmonize the implementation of security measures;

— ensure that security measures are implemented in a most cost effective way in order to avoid undue burden on civil aviation;

- ensure to the extent possible that security measures do not disrupt or impede the flow of passengers, freight, mail or aircraft;
- ensure that security measures are implemented in a manner which is objective and non-discriminatory on the basis of gender, race, religion or nationality;
- enhance the quality of human resource functioning within aviation security, including application of sustained education and training; and
- restore public confidence in air travel and revitalize the air transport industry;

ENDORSES the establishment of a comprehensive ICAO *Aviation Security Plan of Action* for strengthening aviation security worldwide, including:

- identification, analysis and development of an effective global response to new and emerging threats, integrating timely measures to be taken in specific fields including airports, aircraft and air traffic control systems;
- strengthening of the security-related provisions in the Annexes to the *Convention on International Civil Aviation*, using expedited procedures where warranted and subject to overall safety considerations, notably in the first instance to provide for protection of the flight deck;
- regular, mandatory, systematic and harmonized aviation security audits to evaluate security in place in all Contracting States at national level and, on a sample basis, at airport level for each State, under the ICAO Aviation Security Mechanism;
- close coordination and coherence with audit programmes at the regional and sub-regional level;
- processing of the results by ICAO in a way which reconciles confidentiality and transparency; and
- a follow-up programme for assistance, with rectification of identified deficiencies;

CALLS ON the Council of ICAO to develop this *Plan of Action* for adoption not later than 14 June 2002 (the closing date of the 166th Session of the Council) and implementation commencing immediately thereafter;

CALLS ON the full and active participation of all ICAO Member States and, where applicable, of relevant international organizations, in implementation of the *Plan of Action* in order to achieve concrete results at the earliest possible date; and

CALLS ON States, international organizations and civil aviation industry to provide, on a voluntary basis, adequate funding and/or assistance in kind for implementation of the *Plan of Action*, both for ICAO activities and to enable all States worldwide to meet the requirements of enhanced security measures on a sustainable basis.

APPENDIX C

RESOLUTION ADOPTED BY THE ICAO COUNCIL ON 25 JUNE 1986 RELATING TO AVIATION SECURITY FOR BILATERAL AIR AGREEMENTS

THE COUNCIL OF ICAO

CONSIDERING that the continuing threat of acts of unlawful interference with international civil aviation requires urgent and continuing attention by the Organization and the full cooperation of all contracting States in order to promote the safety of international civil aviation,

CONSIDERING that the rights and obligations of States under the international conventions on aviation security and under the Standards and Recommended Practices adopted by the Council of ICAO on aviation security could be complemented and reinforced in bilateral cooperation between States,

CONSIDERING that the bilateral agreements on air services represent the main legal basis for international carriage of passengers, baggage, cargo and mail, CONSIDERING that provisions on aviation security should form an integral part of bilateral agreements on air services,

CONSIDERING that Annex 17 to the *Convention on International Civil Aviation* contains a recommendation that each contracting State should include in its bilateral agreements on air transport a clause related to aviation security,

URGES all contracting States to insert into their bilateral agreements on air services a clause on aviation security, and

RECOMMENDS that contracting States take into account the model clause attached to this resolution.

Attachment to Council Resolution of 25 June 1986

MODEL CLAUSE ON AVIATION SECURITY

Note.— this model clause has been drafted for possible insertion into bilateral agreements on air services; it is intended only for guidance of States, is not compulsory and in no way limits the contractual freedom of States to expand or limit its scope or to use a different approach.

ARTICLE “X”

(a) Consistent with their rights and obligations under international law, the contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the contracting Parties shall in particular act in conformity with the provisions of the *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963, the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970 and the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971.

Note.— The provision of the second sentence would be applicable only if the States concerned are parties to those Conventions.

(b) The contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

(c) The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the *Convention on International Civil Aviation* to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

(d) Each contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph (c) above required by the other contracting Party for entry into, departure from, or while within, the territory of that other contracting Party. Each contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each contracting Party shall also give sympathetic consideration to any request from the other contracting Party for reasonable special security measures to meet a particular threat.

(e) When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

— END —