



Committee on Aviation Security– Topic 1

Director – Sylvain Lefoyer

Respect of Human Rights during aviation security screening and border control operations at airports

1. Foreword

The **International Civil Aviation Organization (ICAO)** is a UN specialized organization, established by States in 1944 to manage the administration and governance of the Convention on International Civil Aviation (Chicago Convention).

ICAO works with the Convention's 193 Member States and industry groups to reach consensus on international civil aviation Standards in support of a safe, efficient, secure, economically sustainable and environmentally responsible civil aviation sector.

The Standards and Recommended Practices (SARPs) are organized by technical domain amongst 20 Annexes, Annex 9 – *Facilitation* and Annex 17 – *Aviation Security*, are the two relevant for this simulation.

Article 22 of the Chicago Convention calls States “*to prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance*”.

Annex 9 contains all the provisions related to border management and crossing, including border security and passenger data exchange. In Annex 9 – *Facilitation*, the Standards and Recommended Practices on Facilitation inevitably take two forms: first a “negative” form, e.g. that States shall not impose more than certain maximum requirements in the way of paperwork, restrictions of freedom of movement, etc., and second a “positive” form, e.g. that States shall provide certain minimum facilities for passenger convenience, for traffic which is merely passing through, etc.

Whenever a question arises under a “negative” provision, it is assumed that States will, wherever possible, relax their requirements below the maximum set forth in the Standards and Recommended Practices. Wherever there is a “positive” provision, it is assumed that States will, wherever possible, furnish more than the minimum set forth in the Standards and Recommended Practices.

In Annex 17 – *Aviation Security* of the Chicago Convention, Aviation Security is defined as: *Safeguarding civil aviation against act of unlawful interference. This objective is achieved by a combination of measures and human and material resources.*

Annex 17 contains a set of preventive measures to protect civil aviation, in particular the physical screening of passengers and their luggage before entering the security-restricted area of an airport to prevent the introduction of prohibited items (weapons, explosives...). The measures implemented by States can be more or less intrusive and may contain physical search of a passenger and its belongings, x-ray screening, explosive detection, behaviour detection, questioning...

2. The importance of ensuring the respect of human rights during aviation security screening and border security controls.

The Charter of the United Nations established in 1945, mentions human rights in its preambles as “the common standard of achievement for all peoples and nations”. The first article of the Charter sets out the objective of developing and encouraging “respects for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion”. Respect and fulfillment of human rights are seen as conditions for international stability and peaceful relations between states.

The United Nations and the European Union have both issued guidelines that address principles on rights of persons in the context of border controls:

- **Human dignity**, which may be affected at several stages during the passengers’ journey, for example, when a more in-depth inspection is required by different authorities at the airport. Such inspections should always be carried out in a professional and respectful manner proportionate to the objectives pursued;
- The right of **non-discrimination**, which prohibits the use of systematic discriminatory patterns of selecting passengers for questioning. Selection must not involve discrimination solely on ground of race, color, sex, language, religion, political or other opinion, national or social origin, etc.;

- The collection and use of passenger information in applying border controls increases the risk of **data protection** violations. Passengers may not always be aware of the type of data processed, the purpose of this processing or how to have their data corrected. The collection, use and storage of such data must be carried out in accordance with data protection principles, including the right to privacy; and
- Recognizing that violation of passengers' fundamental rights can be very distressing to the passenger, it is important to have a uniform mechanism for invoking the **right for effective remedy** or recourse against actions that are unjustified, inappropriate and/or unlawful, while recognizing applicability of unique laws and regulations in place in each airport/jurisdiction.

3. Concerns on potential human rights violation

During the fourth meeting of the Council at the 221st Session in 2020, a Council Member expressed his concern (*see Annex B for the full statement*) for multiple incidents at different international airports where rights of passenger were being violated as result of inappropriate behaviors by those responsible for security at airports.

Although no specific example, no details and no evidence was provided to support this statement, the Council decided to consider the issue and to assess whether ICAO SARPS could be implemented in a way that would violate human rights.

4. Analysis and proposals for improvement

In this exercise, you will:

- Clarify the concepts of human rights and fundamental freedoms in the context of international air transport security processes;
- Identify and assess the extent to which human rights may be at risk in airports when passengers are confronted with security screening and/or border control;
- Make proposals to improve the consideration of, and respect for human rights in the airport security processes and in ICAO regulatory framework.

Annex A: Reference documentation

- Annex 9 - *Facilitation*
- Annex 17 - *Aviation security*
- C-WP/15259
- C-WP/15420
- A41-WP/442- Fundamental rights of passenger at international airports
- United Nations Security Council – Counter Terrorism Committee - Human Rights [Human Rights | Security Council - Counter-Terrorism Committee \(CTC\)](#)
- United Nations Office of Counter Terrorism (UNOCT) Programme on Human Rights [Human Rights | Office of Counter-Terrorism](#)
- Handbook on Human Rights and Screening in Border Security and Management by the United Nations Office of Counter Terrorism (UNOCT). <https://www.un.org/counterterrorism/human-rights/publications>
- *Fundamental rights at airports: border checks at five international airports in the European Union* (2014) by the European Union Agency for Fundamental Rights (<https://fra.europa.eu/en/publication/2014/fundamental-rights-airports-border-checks-five-international-airports-european>).

Annex B: Statement from a Council Member during the fourth meeting of the Council at the 221st Session.

“There are a number of international airports where the rights of travelers are being violated. I think most of these incidents are the results of the inappropriate behavior by those in charge of airport security. These violations that are not limited to developing States, but they're also happening in international airports in industrialized countries.

I have found that ICAO does not have any kind of guidance material for the protection of travelers human rights. In Annex 9 provisions refer to deportees, and people refuse entry into a country, and Annex 9 also has a number of guidance paragraphs as to how to deal with minors, that is all I found in Annex 9.

I have noticed that circular 285 has some guidance material to help the victims of the Air Accidents and their families, and I see that Circular 352 and Doc 9973 relate to human trafficking and the training of aircrew to detect and report such incidents, and there are also material on basic principles for the protection of the customers and the best practices in States. All of this is more commercial than human rights and I am interested in protecting the actual human rights of travelers. I have seen that IATA and ACI also have guidance materials for customer protection.

In the European Union, I saw that they have guidance material covering 5 international airports in the EU that explain how to deal with the migrants from developing countries to airport authorities.

The aim is to deal with situations where airport authorities have dealings with the travelers and what procedures to follow whether it is to do with protecting the human rights of travelers. The name of the document is border checks at 5 international airports in the European Union.

Mr. President, please allow me to ask Secretariat to please prepare for Council a working paper that could be presented at the 222nd Session, clarifying provisions that ICAO has in its documentation for this and what guidance material has been developed for the protection of human rights of travelers at international airports, in particular, the rights of women and children.

The Council needs that take measures to fill any gaps that might exist in this field and produce guidance material that would be of use at international airports, and in understanding and protecting the human rights of passengers. Passengers themselves need to know what their human rights are.

So, I would like to ask the Secretariat to develop a draft document on travelers rights at International airports, human rights at international airport with the help of ACI and IATA and the human rights organizations and the World Customs Organization, so far as the WCO activities relating to screening.

In some cases that passengers are not treated properly and in times inhumanely, especially travelers suspected of hiding something on their person. The objective of this would be to make it clear how international travelers are to be treated and how their rights, the human rights may be protected.

Thanks you Mr. President.”