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IFATCA POLICY ON UNLAWFUL SEIZURE OF AIRCRAFT AND UNLAWFUL INTERFERENCE WITH CIVIL AVIATION AND ITS FACILITIES

Guidance Material for Member Associations.

Version 1.0 – July 2022

MANUAL

IFATCA is the recognised international organisation representing air traffic controller associations. It is a non-political, not-for-profit, professional body that has been representing air traffic controllers for more than 50 years, and has more than 50,000 members in over 120 countries.

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1	31 st July 2022	The material contained in the TPM LM 11.4.1 is extracted and presented as a stand-alone document, as per Resolution C70 arising from WP 80 of the 61 st IFATCA Annual Conference (2022).
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IFATCA POLICY ON UNLAWFUL SEIZURE OF AIRCRAFT AND UNLAWFUL INTERFERENCE WITH CIVIL AVIATION AND ITS FACILITIES

1. Introduction

IFATCA, established in 1961, is a non-profit, non-political professional federation having as its main objectives the safety, efficiency and regularity of international air navigation, assists and advises in the development of orderly systems of air traffic control. In order to achieve these objectives, the Federation closely co-operates with national and international aviation authorities, sponsors and supports the passage of legislation and regulations which will increase the safety of air navigation and safeguard the integrity of its members.

Bearing in mind the controllers' fundamental responsibility to preserve safety in the air and deriving authority from its constitution, IFATCA adopts the following policy document as a tool designed to highlight the basic policies set out in the Manual on this subject.

2. Policy Document

ATC personnel are entitled to maximum security with respect to the safe-guarding of personal life, operational environment and the safety of aircraft under their control;

IFATCA endeavours to formulate some form of machinery by which it will effectively support its member controllers who assist aircraft victims of unlawful interference and as a result may have to act contrary to their administrative directions. IFATCA insists that it is the duty of every controller to provide all assistance possible to relieve the occupants of an aircraft in that situation from their ordeal and ensure a safe landing as soon as possible.

If during unlawful interference with civil aviation, the appropriate authorities instruct the Controller to deviate from or violate the ICAO rules, he shall in no way be held legally responsible for carrying out such an order.

All orders which imply a deviation from the established air traffic rules shall be conveyed through the appropriate authorities, normally the immediate superior and always through the authority responsible for the provision of Air Traffic Services. Such orders shall always be issued in written form, clearly identifying their origin and authority, and retained for investigative purposes.

The Air Traffic Controller on duty shall be granted relief from his working position when the conditions stated above are not followed, or when he considers the content of the order wrong or criminal.

During unlawful interference against ATC facilities or its threat, services may be withdrawn. Measures shall be included in national or international contingency procedures, designed in such a manner to ensure there will be minimal disruption of service.

According to the aims and objectives of his profession, the controller is required to sustain safety in the air and in cases of aircraft in emergency he is obliged to give those aircraft priority for landing. No doubt an aircraft victim of unlawful interference is one in emergency requiring immediate assistance. However, if it is quite clear that under normal circumstances a controller who acts according to instructions sees any responsibility arising out of such instructions automatically shifted to his immediate superiors (since only civil liability is, in principle, involved), when an aircraft victim of unlawful interference is involved criminal court will necessarily be involved and hence a controller who deviates from the ICAO rules - e.g. refusing landing clearance -, even when obeying orders, may be found criminally liable according to international law and many national laws, if in his opinion such order was wrong or criminal. The compliance with superior orders will then serve only as a mitigating factor.

Furthermore, other forms of unlawful interference may occur that do not involve direct action against aircraft (e.g. bomb attack against an ATC facility, terrorist attack, damaging or destruction of air traffic control equipment or air navigation facilities), but also impair the safe operation of flights.

In both cases, the only way to ensure that the principles stated in IFATCA policy (namely the principle that the controller is entitled to achieve the maximum security regarding safeguarding personal life, operational environment and the safety of the aircraft under his control and the principle that the controller shall be granted indemnity for the results of actions taken in obedience to direct orders) will have some practical validity is to seek for agreement as to those principles, for the following reasons.

- Once a controller departs from or infringes the established air traffic rules, that fact can always be submitted to a court in terms of negligence, in the form of non-compliance with existing rules, even if obeying direct orders, unless the exception is clearly defined in a document with legal value (e.g. labour contract).
- It is also frequent that in these types of situations, police authorities, Home Office or even the Government intervene and conduct the whole situation. However, since such authorities are not prepared to understand the technical implications of their intended actions, it is essential that their orders are "filtered" through someone who has the technical expertise and at the same time has a clear position on the chain of command.
- The request for written form is a guarantee that the content of the order won't be object of court controversy; accordingly, such written order should be issued "on the spot" and only when that is not possible should it be issued afterwards.
- The right to be granted relief aims at exempting the controller from any criminal liability without falling under disciplinary action. It must also be made clear that this principle includes the right to refuse relief by someone who has not the appropriate valid ratings or someone other than a controller.
- The need for contingency planning against these kinds of situations is vital not only to protect the controllers and the operational environment but also the aircraft, passengers, crews and ground facilities.

Member Associations shall also urge their Governments to ratify the existing protocols, conventions and treaties on these matters, to make them available to whom it concerns and to refrain from any course of action contrary to those rules:

IFATCA encourages States to enter into bilateral or multilateral agreements on the problems raised by unlawful interference with civil aviation facilities and unlawful seizure of aircraft hoping that an international instrument will be made available through which the States will be given the choice of either complying with its provisions or face the consequences. Such instrument should, in addition, not only proscribe unlawful seizure of aircraft and unlawful interference with civil aviation facilities serving international air traffic, but also treat it as an international crime and as a result, the author of such action as an international criminal. This position has been made known in the past by IFATCA, both to the United Nations Organisation (UNO) and the International Civil Aviation Organisation (ICAO).

Still, the present status is that:

- the existing international agreements concentrate exclusively on security at international airports ignoring the ATC facilities that are not located at international airports, not to mention air navigation aids that are not located at international airports;
- even the existing agreements have not been signed by all States and therefore cannot be used as guidance since they are ineffective in a great number of countries;
- there is absolutely no reference to the action required from the Controller during or after such occurrences;
- several countries have not yet established basic security measures outlined in international conventions, such as the establishment of security areas surrounding airports and air navigation facilities, preventing unauthorised personnel to have access to areas close to parked aircraft or Air Traffic Control premises; establishment of scrutiny points in the airports, with a clear indication of its existence to the general public; imposition upon operators to adopt security measures, especially regarding "carry-on" baggage.

This situation is obviously unsatisfactory and even potentially dangerous, calling for the best effort of the Federation, the Member Associations and individual members in order to achieve substantial improvement in the near future.

Member Associations should seek formal agreement on the conduct of an Air Traffic Controller during situations of unlawful interference and the adoption of contingency procedures during such situations.

IFATCA will undertake, through its Executive Board, to transmit the contents of this policy to the appropriate international organisations, namely the United Nations, ICAO and ILO and also regional organisations who may be concerned with this matter.

IFATCA requests the appropriate international organisations to condemn all actions contrary to the rules established in the Chicago Convention and its Annexes.

IFATCA believes that the UN Security Council is in a position to call for international action against States which default from the objectives of air navigation safety or depart from the established rules, taking such actions as refusal to grant Air Traffic Control service, refusal to grant landing clearance to aircraft object of unlawful interference or deliberately rendering unserviceable air navigation and/or landing aids to such flights. It is also IFATCA's view that such actions may frustrate the criminals and cause them to harm crew and passengers and create unnecessary hazard to other traffic.

IFATCA also encourages national authorities and international bodies to take measures against States which tend to harbour the authors of crimes of unlawful interference with aircraft, including, if needed, the suspension of air services to and from such countries. Where States are reluctant to punish the authors of such crimes, IFATCA supports that extradition should be requested to the State of the aircraft's registry.

IFATCA expects the appropriate international organisations to encourage the establishment of special bodies to deal with these types of situations and strongly recommends national authorities to consult with the organisations involved in civil aviation before implementing measures dealing with this matter in order to ensure that adequate air traffic procedures are carried out and obeyed to.

The Federation's primary task on these issues is to promote standards additional to those stipulated by ICAO and to standardise procedures and phraseology applicable in such situations. The results of such work should be submitted by the Federation and the Member Associations to the appropriate international organisations, national Governments, airspace users and other organisations involved in civil aviation in the best spirit of co-operation.

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