Bringing Externalisation Home: The International Civil Aviation Organization and “Entry Screening” in Australia

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Globalizations

Bringing Externalisation Home: The International Civil Aviation Organisation and ‘Entry Screening’ in Australia

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Bringing Externalisation Home: The International Civil Aviation Organisation and ‘Entry Screening’ in Australia

This paper examines the previously unexplored question of the role of the International Civil Aviation Organization (‘ICAO’) as a forum for the development and implementation of practices of externalisation, which prevent refugees from reaching state territory and accessing protection, in the civil aviation space. The development of civil air travel has generally facilitated the movement of people within and across national borders, while also providing a mode of mobility for those seeking protection from persecution or other serious harms. Since 1947, the Convention on International Civil Aviation and ICAO have played a key role in the establishment of the modern legal and operational framework of international air travel. One of ICAO’s principal functions is to formulate and adopt Standards and Recommended Practices (‘SARPs’) which have principally focussed on the safety, regularity and efficiency of civil air travel while leaving state obligations under international refugee law largely outside of that structure. The Australian policy of ‘entry screening’ international travellers at Australian airports, whereby people with a protection claim may have their visa cancelled and be removed from the country without full consideration of the claim, serves as a case study. Though the scholarly focus on Australia has predominately been on boat arrivals, entry screening reveals how (1) States have used the reframing afforded by ICAO’s formulation and adoption of SARPs on passenger facilitation to chip away at the observance of the explicitly binding international legal obligations of non-refoulement and non-penalisation in the 1951 Convention on the Status of Refugees and the 1967 Protocol relating to the Status of Refugees; and that (2) the interaction between civil air law and international refugee law implicates important questions of treaty interpretation which has contributed to the entrenchment of externalisation measures.

Keywords: Externalization, International Refugee Law, International Civil Aviation Organization, Treaty Interpretation, Australia

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I. Introduction

The development of civil air travel has facilitated the general movement of people within and across national borders, including for refugees and asylum seekers. Yet, despite the promise that
international civil aviation might ‘create and preserve friendship and understanding among the nations and peoples of the world’, its legal and operational frameworks have provided a transnational forum for States to pursue increasingly restrictive conceptions of ‘legitimate’ travel which do not account for the realities of flight from persecution or other serious harm. The spread of policies throughout the Global North to externalise migration control, as well as the attendant human rights consequences, have been well-documented. However, the overwhelming research focus has been on direct actions taken by States to develop and implement ‘remote control’ and other policies, without fully grappling with less obvious actors siloed within the transnational system by virtue of their technical framing.

This article argues that a more nuanced understanding of the extent of and means through which States have incorporated externalisation measures into transnational legal frameworks requires an analysis of how international legal settings, such as the International Civil Aviation Organization (‘ICAO’), have provided opportunities for discourse contesting and reframing the fundamental refugee law obligations of non-refoulement and non-penalisation found in the 1951 Convention on the Status of Refugees (‘1951 Convention’) and the 1967 Protocol relating to the Status of Refugees (‘1967 Protocol’). Taking Australia’s policy of ‘entry screening’ as case study, this piece argues that: (1) States have used the reframing afforded by ICAO’s formulation and adoption of Standards and Recommended Practices (‘SARPs’) on passenger facilitation to chip away at the observance of the explicitly binding international legal obligations of non-refoulement and non-penalisation; and that (2) the interaction between civil air law and international refugee law implicates important questions of treaty interpretation which has contributed to the spread of externalisation measures.

Part II examines the Convention on International Civil Aviation also known as the ‘Chicago Convention’, and the role of ICAO as a specialised agency of the United Nations, in developing and assisting States in the formulation and implementation of SARPs. Part III evaluates the obligations of non-refoulement and non-penalisation in the 1951 Convention and the 1967

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Protocol⁴, in the context of an apparent conflict with the international civil aviation regime.⁵ This Part examines the role of ICAO as a forum for legal discourse and the development of SARPs that have contributed to the entrenchment of transnational practices of externalisation that are inconsistent with fundamental international refugee law obligations. Part IV examines Australia’s engagement with ICAO and its current policy of ‘entry screening’, where international travellers who raise a protection claim at Australian airports may have their visa cancelled and be removed from Australia without full consideration of the claim. This example illustrates how a State-centric framing of safety, regularity and efficiency concerns in international civil aviation, which positions obligations under international refugee law as discordant or external to civil aviation law, contributes to the entrenchment of externalisation measures that undermine fundamental refugee protections.

2. The Chicago Convention and the International Civil Aviation Organization

On 11 September 1944, the United States invited 55 governments and authorities⁶ to attend an international civil aviation conference to ‘make arrangements for the immediate establishment of provisional world air routes and services’ and ‘set up an interim council to collect, record and study data concerning international aviation and to make recommendations for its improvement.’⁷ The US had previously conducted bilateral exploratory conversations with several governments with a ‘special interest’ in post-war civil aviation⁸ and sought to formalise the contours of such a system. The urgency behind what would become the International Civil Aviation Conference arose from ‘the approaching defeat of Germany, and the consequent liberation of great parts of Europe and Africa from military interruption of traffic’⁹ and the hope that ‘the restorative processes of


⁶ The invitation was extended to ‘(a) all members of the United Nations; (b) nations associated with the United Nations in this war; (c) the European and Asiatic neutral nations, in view of their close relationship to the expansion of air transport which may be expected along with the liberation of Europe. The Danish Minister and Thai Minister in Washington will be invited to attend in their personal capacities.’ Proceedings of the International Civil Aviation Conference, ‘Invitation of the United States of America to the Conference’, vol. 1, part 1 (Chicago, 1 November – 7 December 1944) 13 <https://www.icao.int/ChicagoConference/Pages/proceed.aspx> (‘Proceedings of the Chicago Conference’).

⁷ Ibid 1.

⁸ Ibid.

⁹ Ibid.
prompt communication might be available to assist in returning great areas to processes of peace,10 while bringing the ‘benefits of air transportation’11 to ‘important trade and population areas of the world’.12

Representatives of 54 countries attended the Conference in Chicago, Illinois from 1 November to 7 December 194413 to write ‘a new chapter in the fundamental law of the air’14 in furtherance of ‘a great attempt to build enduring institutions of peace.’15 An acute awareness of the use of airspace as an instrument of aggression during the First World War bolstered the view that the Chicago Conference provided the opportunity to shape post-Second World War air travel as ‘a highway of liberation’.16 The work of the Conference was divided into four parts, including: (1) establishing a permanent multilateral convention and international aeronautic body;17 (2) creating international technical standards and procedures;18 (3) perfecting arrangements for provisional air routes;19 and (4) establishing an interim council to function in international aviation pending ratification of a full convention.20 The work culminated in the conclusion of both the Interim Agreement on International Civil Aviation (‘Interim Agreement’) and the Chicago Convention.21 The Interim Agreement established the Provisional International Civil Aviation Organization, which functioned in the period before the Chicago Convention could take effect and establish the permanent ICAO.22 The Chicago Convention entered into force on 4 April 1947.23

The Preamble to the Chicago Convention reflects the desire that ‘international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.’24 The Convention’s creation of ICAO,25 which subsequently became a specialised agency of the United Nations,26 marked a recognition of the technical and coordination considerations involved in furtherance of this aim.27 ICAO’s constitution, at Article 44 of the Chicago Convention, sets forth the organisation’s aims and objectives, which include to ‘develop the principles and techniques of international air navigation and to foster the planning and development of international air

10 Ibid.
11 Ibid.
12 Ibid.
13 When delegates met in Chicago ‘World War II was far from over. Many came across the Atlantic in converted Lancaster bombers or by ship.’ Assad Kotaite, ‘ICAO and the Development of Air Transport’, Aircraft Engineering (Feb 1980) 18.
14 Proceedings of the Chicago Conference (n 6) 43.
15 Ibid.
16 Proceedings of the Chicago Conference (n 6) 44.
17 Ibid.
18 Ibid.
19 Ibid.
20 Ibid.
21 Ibid 131, 146.
22 Ibid 132.
23 Chicago Convention (n 1).
24 Ibid preamble.
25 ICAO “is made up of an Assembly, a Council, and such other bodies as may be necessary.” Ibid art 43.
26 ICAO Assembly Resolution A1-2, Approval of the Agreement with the United Nations (13 May 1947), ICAO Assembly Resolutions in Force (as of 6 October 2016), Doc 10075, I-49.
27 Chicago Convention (n 1) art 43.
“transport” while ensuring “the safe and orderly growth of international civil aviation throughout the world”. The Chicago Convention further establishes an ICAO Assembly, through which contracting States are represented and take action on a variety of matters including modification of the Chicago Convention, and a permanent Council, responsible to the Assembly, which serves as a governing body and performs numerous mandatory and permissive functions.

Article 37 of the Chicago Convention requires ICAO to adopt and amend “international standards and recommended practices and procedures” dealing with a variety of topics, including customs and immigration procedures. The SARPs are meant to secure “the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.” Article 38 requires States to notify ICAO of any departures from the SARPs in their national civil aviation framework. The “Facilitation Programme” adopts SARPs related to the “efficient execution of control procedures, to expedite clearance and prevent unnecessary delays” for passengers, baggage, and cargo. Numerous provisions of the Chicago Convention provide the foundation for ICAO’s Facilitation Programme, including Article 13 (Entry and Clearance Regulations), Article 22 (Facilitation of Formalities), and Article 23, which requires States “to establish customs and immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended ... pursuant to this Convention.”

The ICAO Council first adopted SARPs on Facilitation on 25 March 1949. Though the SARPs are designated as Annexes to the Chicago Convention, this is done for convenience and the SARPs themselves do not become part of the Convention. The SARPs have been amended numerous times through sessions of the Facilitation Division, which subsequently became the Facilitation (FAL) Panel. The Fifteenth Edition of Annex 9 – Facilitation became effective on 23 October

28 Ibid art 44.
29 Ibid art 43.
30 Ibid art 54. Australia was among the Member States elected to the Provisional ICAO Interim Council in December of 1944 and has been a member of the ICAO Council for more than 70 years. Australian Government, ‘Australia: Candidate for Part I ICAO Council’ (Australia ICAO Council 2019-2022, Election Material).
31 Chicago Convention (n 1) art 37.
32 Ibid art 37.
33 Ibid art 38.
34 ICAO, “FAL/12, Agenda item 1, FAL Programme: Introduction”, Presentation, FAL/12, ICAO (22 March – 2 April 2004) 13.
35 Chicago Convention (n 1) art 13.
36 Ibid art 22.
37 Ibid art 23. Articles 22 and 23 strengthen “[t]he policy with respect to the implementation by States of the Standards and Recommended Practices on Facilitation” and must be read in conjunction with arts 10 (Landing at customs airport), 11 (Applicability of air regulations), 13 (Entry and clearance regulations), 14 (Prevention and spread of disease), 24 (Customs duty), 29 (Documents carried in aircraft), and 35 (Cargo restrictions). Chicago Convention (n 1) Annex 9 (23 Feb 2018) (“Annex 9”) ix.
38 Annex 9 (n 37) ix.
40 Annex 9 (n 37) ix.
In recent years, ICAO’s mission has increasingly focussed on the safety and security aspects of civil aviation, particularly in response to acts of ‘unlawful interference’ with civil air travel. This has to some degree been in response to UN Security Council and UN General Assembly Resolutions. For example, UN Security Council Resolution 2396 ‘urges ICAO to work with its Member State to establish a standard for the collection, use, processing and protection of PNR [Passenger Name Record] data.’ The ICAO Council President viewed the Council’s endorsement of a relevant amendment to Annex 9 as providing ‘not only pivotal technical guidance, but also an important legal mechanism to support the exchange of this data by States.’ Realignment has also impacted the Facilitation Programme. In 2013, the ICAO Assembly established a new Strategic Objective placing Facilitation and Security on equal footing with an aim of ensuring that the provisions of Annex 9 and Annex 17 are ‘compatible with and complimentary to each other.’

The Facilitation Programme now explicitly works to provide States with the ability to maximize the efficiency of border clearance procedures, while ‘maintaining high-quality security and effective law enforcement.’ The portion of Annex 9 most relevant to the present discussion is Chapter Five, which addresses ‘Inadmissible Persons and Deportees’. Chapter Five reflects the

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41 Ibid.
44 See ‘Annex 17 – Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference’, ICAO Security and Facilitation (Web Page) <https://www.icao.int/Security/Pages/default.aspx>: “With the benefit of hindsight, it may seem hard to imagine how the need to address acts of sabotage, unlawful seizure of aircraft and the use of civil aircraft in terrorist attacks (as was the case on 11 September 2001) could have been overlooked by the drafters of the Chicago Convention, ICAO’s founding charter and corner piece for international technical legislation in the field of civil aviation.”
50 Annex 9 (n 37) 5 – 1. Numerous provisions of Annex 9 merit additional study. For example, Recommended Practice 3.33 relating to “Inspection of travel documents” urges States to “consider making arrangements with other Contracting States to permit the positioning of liaison officers at airports in order to assist aircraft operators to establish the validity and authenticity of the travel documents of embarking persons.” (emphasis in original). These “Airport Liaison Officers” “work within the framework of the International Air Transport Association (IATA) Code of Conduct for International Liaison Officers which is available here:
framing of asylum seekers within a number of state-centric ‘challenges’ facing the Facilitation Programme, including ‘illegal migration’, ‘passengers arriving at their destination without documents’, and passengers travelling with either fraudulent documents or genuine documents belonging to others.\textsuperscript{51} ICAO’s approach to asylum seekers has generally subordinated international refugee law obligations to largely non-binding passenger facilitation considerations without sufficiently analysing whether the international refugee law obligations might co-exist, or even be strengthened, in the civil air transport regime.\textsuperscript{52} Part III examines general principles of treaty interpretation and implementation and interrogates how ICAO has served as a forum for legal discourse and the development of SARPs that have facilitated the entrenchment of practices of externalisation that diverge from fundamental international refugee law obligations.

3. Questions of Treaty Interpretation and Overlapping Regimes

International civil aviation law and international refugee law appear to have largely missed one another in terms of in-depth scholarly exploration, with limited exceptions.\textsuperscript{53} This is odd, particularly given the interest of UNHCR in ICAO proceedings and initiatives,\textsuperscript{54} as well as the explosion of scholarly and policy interest in externalisation measures in the context of air travel. On the international civil aviation side, there has been almost no interrogation of the role of international refugee law obligations in the context of passenger facilitation.\textsuperscript{55} However, these limited explorations, as well as the work of UNHCR and ICAO, hint at significant questions of treaty interpretation which arise between two transnational legal regimes that often overlap. Focussing on a limited aspect of these regimes, namely the reception and processing of air travellers seeking international protection, this Part first examines regime overlap before using the rule of treaty interpretation to pinpoint apparent conflicts between ICAO’s interpretation of the


\textsuperscript{52} ICAO’s general lack of engagement with international refugee law in the facilitation context contrasts with the International Maritime Organization’s extensive engagement with such principles in relation to asylum seekers at sea. See eg International Maritime Organization, \textit{Principles Relating to Administrative Procedures for Disembarking Persons Rescued at Sea}, FAL.3/Circ. 194 (22 January 2009); International Maritime Organization, \textit{Measures and Procedures for the Treatment of Persons Rescued at Sea: Facilitation Aspects}, FAL30/9 (24 October 2002).


\textsuperscript{54} See eg, Furio de Angelis, UNHCR Canada, “Cooperation between UNHCR and ICAO for Machine Readable Travel Documents for Refugees and Stateless persons. UNHCR’s view of the global context and challenges ahead”, 8th ICAO MRTD Symposium, Montréal (10 October 2012).

Chicago Convention and the international refugee law obligations of non-refoulement and non-penalisation.

The interaction between the international civil aviation and international refugee law regimes reflects the fragmentation and ‘emergence of specialized and (relatively) autonomous rules or rule-complexes, legal institutions and spheres of legal practice’ in international law. This development of highly specialised fields of law-making and institution-building may lead to ‘conflicts between rules or rule-systems, deviating institutional practices and, possibly, the loss of an overall perspective on the law’. The Vienna Convention on the Law of Treaties (‘VCLT’) sets out the rules of treaty interpretation and codifies customary international law. Although the Chicago Convention, 1951 Convention and 1967 Protocol pre-date the VCLT, rules of the VCLT which reflect customary international law apply as customary law to treaties concluded before the VCLT’s entry into force.

Article 30 of the VCLT addresses conflicts between ‘successive treaties relating to the same subject-matter’, although it is widely acknowledged that when ‘confronted with relations between treaty regimes’ Article 30 presents problems. Therefore, rather than evaluating ‘treaty conflict’ from a structural perspective, this article approaches the analysis from a ‘subject matter’ perspective and takes a view of ‘treaty conflict’ as a situation where two rules or principles suggest different ways of dealing with a problem. As Aust notes, ‘the issue is not so much about whether states can conclude a later treaty, but as to which obligations have priority.’ Where Article 30 does not apply, disputes are ‘resolved through reference to general principles of treaty interpretation’, which include ensuring that subsequent agreements ‘should not frustrate the object and purpose of the original treaty’ and that treaties are interpreted in a way that ‘preserves the rights and obligations under both treaties in a maximal way.’

The ILC instructs that the ‘same subject matter’ criterion seems ‘fulfilled if two different rules or sets of rules are invoked in regard to the same matter’. The Chicago Convention, the 1951

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57 Koskenniemi (n 57) 11.
59 VCLT (n 59) art. 2(1)(a).
62 Koskenniemi (n 57) 138. See also Aust (n 61) 216.
64 Koskenniemi (n 57) 19. See also Borgen (n 64) 573.
65 Aust (n 61) 216.
66 Borgen (n 64) 577.
67 Koskenniemi (n 57) 143.
68 Ibid 18.
Convention and the 1967 Protocol are all invoked to prescribe the treatment of civil air passengers who arrive in a State territory and seek protection.69 Article 13 of the Chicago Convention imposes an obligation requiring compliance with the laws and regulations relating to entry, clearance, immigration, and passports, among other things.70 Meanwhile, the 1951 Convention and 1967 Protocol contain obligations of non-refoulement and non-penalisation, which require States to refrain from removing, rejecting, or penalising asylum seekers for non-compliance with entry, clearance, immigration, and passport requirements. The test of ‘whether the fulfilment of the obligation under one treaty affects the fulfilment of the obligation of another’71 thus appears to be met.

Although the Chicago Convention clearly constitutes a treaty, the Annexes containing the SARPs are not part of the Convention.72 There has been debate regarding the binding, or non-binding nature of the SARPs,73 which becomes relevant when analysing the legal effect of an apparent treaty conflict. Although this article takes the view that the SARPs have the character of ‘soft law’ and are not strictly binding on States,74 the main thrust of the argument is that the explicit treaty obligations of non-refoulement and non-penalisation take priority over the SARPs. While ‘Standard’ and ‘Recommended Practice’ are not defined in the Chicago Convention, the ICAO Council adopted definitions of the terms relating to air transport in 1949.75 A ‘Standard’ is ‘Any specification, the uniform observance of which has been recognized as practicable and as necessary to facilitate and improve some aspect of international air navigation ... and in respect of which non-compliance must be notified’.76 A ‘Recommended Practice’ is ‘Any specification, the observance of which has been recognized as generally practicable and as highly desirable to facilitate and improve some aspect of international air navigation ... and to which Contracting States will endeavour to conform in accordance with the Convention.’77

The principle of non-refoulement is found in international refugee law and human rights law and prohibits States from returning or removing people to places where they may be at risk of persecution or other serious human rights violations. Article 33(1) of the 1951 Convention prohibits the expulsion or return of an asylum seeker or refugee, in any manner whatsoever, to any

69 Chicago Convention (n 1) art 13; 1951 Convention (n 4); 1967 Protocol (n 4).
70 Chicago Convention (n 1) art 13.
71 Koskenniemi, (n 57) 130.
72 Dempsey (n 39) 13.
74 Thomas Buergenthal, Law Making in the ICAO (Syracuse University Press, 1969) 77-78; “Article 38 in effect provides that it is for each Contracting State to decide whether or not to comply with or give effect to an international standard . . . . The same conclusion applies to recommended practices, because they are non-obligatory by definition.” The travaux preparatoires to the Chicago Convention also note “the Annexes are given no compulsory force”. Ruwantissa Abeyratne, “The Legal Effect of ICAO Decisions and Empowerment of ICAO by Contracting States” (2007) 32 Annals of Air & Space Law 517, 520, citing Marjorie Whiteman, Digest of International Law (Washington, DC: GPO, 1963-1973) 404. See also Alvarez (n 74) 223-224.
75 Buergenthal (n 75) 61.
76 Annex 9 (n 37) xi.
77 Ibid.
place ‘where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.’ Article 33 also prohibits state conduct leading to the “return in any manner whatsoever” to an unsafe foreign territory, which includes rejection at the frontier or non-admission to the territory. The term ‘non-refoulement’ has evolved beyond its use in the 1951 Convention to ‘encapsulate the protection obligations that arise in similar, if related contexts’. States are therefore prohibited from returning a refugee to any territory where they may face persecution and to territories where there is a real risk they would face other forms of serious harm. Finally, non-refoulement forms part of customary international law.

The principle of non-penalisation is found in Article 31 of the 1951 Convention. Contracting States are forbidden from imposing ‘penalties, on account of their illegal entry or presence, on refugees…’ The reference in Article 31 to ‘refugees’ has been recognised in international law to include asylum seekers, as refugee status is declaratory in nature. ‘A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition.’ Thus, an individual may be a refugee regardless of whether that refugee status is formally recognised, although State practice means that until it is recognized, a person is unlikely to benefit from the status afforded to a Convention refugee. As Goodwin-Gill observes, the non-penalisation provision ‘would be devoid of all effect unless it also extended, at least over a certain time, to asylum seekers’. The obligations of non-refoulement and non-penalisation are thus

78 See 1951 Convention (n 4) art 33; 1967 Protocol (n 4).
80 Guy S Goodwin-Gill, ‘Non-Refoulement, Temporary Refuge, and the “New” Asylum Seekers’ in David James Cantor and Jean-François Durieux (eds), Refuge from Inhumanity?: War Refugees and International Humanitarian Law (Brill Nijhoff, 2014) 440 (‘Non-Refoulement and Temporary Refugee’).
84 1951 Convention (n 4) art 31.
86 UNHCR Handbook (n 85) 17 [28].
87 Guy S Goodwin-Gill, ‘Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention and Protection’ (Discussion Paper, United Nations High Commissioner for Refugees Global Consultations, October 2001) 8 [27]. A state cannot know whether an asylum seeker is a refugee without a fair and efficient determination. A State that penalises asylum seekers (who may also be refugees), undermines the article 31 prohibition on penalisation of refugees. See also United Nations High Commissioner for Refugees, Global Consultations on International Protection: Asylum Processes (Fair and Efficient Asylum Procedures), UN Doc EC/GC/01/02 (31 May 2001) 2 [5] (‘Global Consultations on Fair and Efficient Asylum Procedures’).
particularly relevant to civil air travel, as they require States to evaluate protection claims made by travellers at airports – including in transit areas – regardless of whether the person has been (or might be) found inadmissible.\textsuperscript{88}

Nothing in the text of the \textit{Chicago Convention} appears to conflict with the obligations of \textit{non-refoulement} and non-penalisation, which (at least in terms of their inclusion in the \textit{1951 Convention} and \textit{1967 Protocol}) post-dated the adoption of the \textit{Chicago Convention}. Yet, Annex 9, Standard 5.4, relating to the removal of inadmissible people, only requires States to ‘consult the aircraft operator on the time frame for removal of the person found inadmissible, in order to allow the aircraft operator a reasonable amount of time during which to effect the person’s removal ...’\textsuperscript{89} The Standard is accompanied by a Note instructing that:

\begin{quote}
‘Note. – Nothing in this provision is to be construed so as to allow the return of a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.’\textsuperscript{90}
\end{quote}

This sole explicit reference in Annex 9 to State obligations vis-à-vis asylum seekers makes clear the extent to which those obligations have been placed outside of – and subordinate to – the international civil aviation framework in three respects.

First, both \textit{non-refoulement} and non-penalisation are explicit treaty obligations, informed by decades of State practice, as opposed to SARPs which are not generally binding on States. A ‘Standard’ reflects a specification which is ‘practicable’ and ‘necessary to facilitate and improve’ and to which ‘non-compliance must be notified’.\textsuperscript{91} Therefore where States find compliance impractical, they need only notify non-compliance. Yet, the reference to \textit{non-refoulement} is minimised by its relegation to a ‘Note’, which lacks regulatory effect.\textsuperscript{92} This minimisation – and omission of the obligation of non-penalisation altogether – suggests a view of these obligations as ancillary considerations.

Second, the language of the Note does not reflect the current state of the evolving understanding of the \textit{non-refoulement} obligation. The meaning of the term ‘\textit{non-refoulement}’ has expanded beyond its use in the \textit{1951 Convention} and \textit{1967 Protocol} to encompass protection obligations which ‘arise in similar, if related contexts’.\textsuperscript{93} Therefore, States are not only prohibited from returning ‘a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened’ on account of a particular ground, States are also ‘prohibited from returning a refugee to any territory . . . where there is a real risk they would face other forms of serious harm.’\textsuperscript{94} Furthermore, states owe complementary protection obligations to people in

\textsuperscript{88} \textit{Legal Considerations regarding Air Arrivals} (n 79) [6].
\textsuperscript{89} Annex 9 (n 37) 5-1.
\textsuperscript{90} Ibid.
\textsuperscript{91} Ibid xi.
\textsuperscript{92} Ibid: Notes ‘give factual information or references ... not constituting part of the Standards’.
\textsuperscript{93} Goodwin-Gill ‘Non-Refoulement and Temporary Refuge’ (n 80) 440.
their territory and subject to their jurisdiction who may not meet the definition of ‘refugee’ but would otherwise suffer significant harm, in line with obligations arising from other international instruments to which they are party. None of these considerations are captured in the SARPs.

Finally, the SARPs status as soft law raises questions as to whether the obligation of non-refoulement should prevail over other obligations within the scope of ICAO’s mandate. Today, the principle of non-refoulement enjoys wide acceptance and forms a part of customary international law. These factors seem to weigh heavily in favour of the primacy of non-refoulement in a hierarchy of obligation. The existence of UN Security Council Resolutions under Chapter VII of the UN Charter, which name ICAO in safety and security efforts, do not change the analysis. The generalised language of the Resolutions does not necessarily lead to direct conflict and indeed, as customary international law and arguably lex specialis, there is certainly a pragmatic argument that the obligations should be interpreted so as not to conflict.

The Chicago Conference resolved that States should be urged to adopt standardised practices in furtherance of ‘safe, expeditious, and easy air navigation’ ‘bearing in mind their present international obligations’. States have increasingly committed themselves to multilateral refugee and human rights obligations since the adoption of the Chicago Convention. Yet, the processes of formulating and adopting SARPs on Facilitation have contributed to an operational and legal framework of civil air travel which positions obligations under international refugee law largely outside of that structure. As Part IV argues, this has allowed States to use the reframing to chip away at the fundamental obligations of non-refoulement and non-penalisation.


95 Executive Committee of the High Commissioner’s Programme, Addendum to the Report of the United Nations High Commissioner for Refugees: Conclusions of the Committee — Non-Refoulement, UN DOC A/32/12 (31 October 1977) (‘Executive Conclusion Non-Refoulement’) 14 [4(c)].


97 See eg SC Res. 1989, UN doc. S/RES/1989 (17 June 2011); SC Res. 2253, UN doc. S/RES/2253 (17 December 2015); SC Res. 2309, UN doc. S/RES/2390 (22 September 2016). Article 103 of the UN Charter directs that State obligations under the Charter ‘shall prevail’ in the event of a conflict between Charter obligations and ‘their obligations under any other international agreement’. As Art 103 refers to ‘obligations under the Charter’, this is accepted to mean that States are also obliged to give priority to the decisions of the Security Council under Chapter VII over other commitments. Rudolf Bernhardt, ‘Article 103’ in Bruno Simma (Ed.), The Charter of the United Nations A Commentary (Oxford University Press, 2002) 1295. See also Koskenniemi, (n 57) 175.


100 Proceedings of the Chicago Conference (n 6) 123.

101 Ibid 124.
4. **Australia’s Engagement with ICAO and the Practice of ‘Entry Screening’ Air Arrivals**

Australia ratified the *Chicago Convention* on 1 March 1947 and incorporated the treaty into domestic law through the *Air Navigation Act 1920*. Australia has made engagement with ICAO a policy and strategic priority, both in terms of aviation safety and facilitation. In addition to maintaining a Permanent Mission to ICAO in Montréal, Australia has been a member of the ICAO Council for over 70 years ‘with the ability to influence the international civil aviation agenda, ICAO’s forward program and standards, as well as the governance of ICAO and the utilization and allocation of its resources.’ This Part explores how Australia’s approach to processing passengers who raise protection claims at airports both reflects and feeds a broader trend within ICAO towards a State-driven law enforcement and risk-management discourse, chipping away at the binding international legal obligations of *non-refoulement* and non-penalisation and contributing to the entrenchment of externalisation policies.

Australia’s implementation of Annex 9 is spread throughout numerous agencies. Though the Department of Infrastructure, Transport, Regional Development and Communications has primary responsibility for administering the *Air Navigation Act 1920* and Australia’s arrangements under the *Chicago Convention*, the Department of Infrastructure, the Department of Home Affairs (‘DHA’), and the Department of Foreign Affairs and Trade (‘DFAT’) share responsibilities under Annex 9. The National Passenger Facilitation Committee (‘NPFC’), chaired by DHA, works ‘to put in place measures enabling Australia to comply with ICAO Standards and Recommended Practices to the maximum extent possible.’ The Department of Infrastructure also engages with DHA and DFAT to coordinate ‘input and arrangements on facilitation-related matters’. Overall, DHA provides ‘coordinated strategy and policy leadership’ in relation to ‘[i]mmigration arrangements to facilitate entry of genuine travellers to Australia while preventing entry of those likely to commit immigration fraud or threaten the national interest.’

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102 *Chicago Convention* (n 1). See also *Air Navigation Act 1920* (Cth) art 3A (approval of ratification).
103 Michael McCormack, *Statement of Expectations for the Board of the Civil Aviation Safety Authority for the Period 15 July 2019 to 30 June 2021* (4 July 2019); Department of Infrastructure, Transport, Cities and Regional Development, Annual Report 2018-19, 95: ‘Key areas of focus for Australia in 2018–19 were aviation safety, air navigation, aviation environment, and aviation security and facilitation.’
105 Memorandum of Understanding of Australia’s Agencies Involved in Civil and Defence Aviation between the Department of Infrastructure, Regional Development and Cities and the Civil Aviation Safety Authority and Airservices Australia and the Department of Home Affairs and Australian Transport Safety Bureau and Australian Maritime Safety Authority and Australian Bureau of Meteorology and the Department of Defence and the Department of Foreign Affairs and Trade in relation to the management of aspects of international activities (2018) 2-3, 8 (‘MOU’).
106 MOU (n 107) 2-3, 8.
107 Ibid 5.
109 MOU (n 107) 5.
110 Ibid 3.
Australia’s current policy of ‘entry screening’ was introduced in November 2018,\(^{111}\) though some version of the entry screening process has been in place at least since March 2013.\(^ {112}\) Entry screening is an accelerated and simplified procedure applied to people who raise a protection claim at an airport, regardless of whether they arrive in Australia with a valid visa.\(^{113}\) The procedure ostensibly aims to ‘understand why someone has travelled to Australia and why they cannot return to their home country, in order to decide whether the traveller should be removed from Australia or allowed to lodge a protection application.’\(^ {114}\) Once a person raises a protection claim, border officials conduct an interview to determine whether the traveller should be allowed to lawfully enter Australia, or whether their visa should be cancelled.\(^ {115}\) Australian officials routinely refuse entry and cancel the valid visas of people who raise protection claims.\(^ {116}\) After visa cancellation, the person is subject to mandatory detention and only then is given a second interview – by an Australian Border Force (‘ABF’) official using a pro forma interview template – to explore the protection claim.\(^ {117}\) The ABF official then forwards the interview information to a ‘Duty Delegate’ in the Humanitarian Affairs branch of the DHA for a determination of whether the person has raised a protection claim that is not considered ‘far-fetched and fanciful’.\(^ {118}\) The Duty Delegate then decides whether the person will be ‘screened in’ and allowed to lodge a temporary protection application, or ‘screened out’ and removed from Australia.\(^ {119}\)

Australia’s entry screening process itself creates the person’s unlawful status and inadmissibility by prioritising the aggressive use of visa cancellation.\(^ {120}\) The process essentially functions as ‘a procedural and functional barrier to accessing a visa process prescribed by legislation.’\(^ {121}\) In earlier iterations, the guidelines specifically stated that a person in immigration clearance could apply for a protection visa.\(^ {122}\) However, over time, the guidelines shifted focus from protection of refugees to creating inadmissible persons through visa cancellation to ostensibly protect the ‘integrity of Australia’s refugee status determination process’.\(^ {123}\) There have been documented instances where

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\(^{111}\) Department of Home Affairs (Cth), *Protection Claims at the Border* (Procedural Instruction, 21 November 2018) (‘Protection Claims at the Border Instruction’).


\(^{114}\) Ibid.

\(^{115}\) Ibid 6 (citations omitted).

\(^{116}\) Ibid 9.

\(^{117}\) Ibid 8.

\(^{118}\) Ibid.

\(^{119}\) Ibid.

\(^{120}\) See Jefferies, et al, ‘Assessing Refugee Protection’ (n 82).

\(^{121}\) Ibid.

\(^{122}\) Department of Immigration and Border Protection (Cth), *Protection Visa Procedures Manual* (PAM3, 1 November 2000) 2.5.1: “A person in immigration clearance may apply for a PV [protection visa].”

\(^{123}\) Department of Immigration and Border Protection (Cth), *Border Screening Detention* (Policy Instruction, 19 April 2010).
entry screening has led to the removal of a person from Australia in violation of the obligation of non-refoulement. The Australian case presents a somewhat extreme example of how the development and interpretation of Standard 5.4 in Annex 9, in a context which does not seriously grapple with conflicting State obligations vis-à-vis asylum seekers and refugees, may lead to penalisation and refoulement.

UNHCR has long perceived that states’ growing use of airport transit zones and inadmissibility combined with entry fictions could prevent people from seeking international protection. The concept of transit zones has no basis in international law which recognises a State’s competence and responsibility over the entirety of its territory. ICAO appears to have largely avoided efforts by UNHCR and actors such as the International Transport Workers’ Federation (‘ITF’), to encourage States to better reconcile their interception and control measures with ‘international law on refugee and asylum rights.’ In 1998, the ITF raised concerns about how people genuinely fleeing harm may not be in a position to obtain the documentation required to leave a country before the ICAO Assembly and urged ICAO to consult with UNHCR. Yet, ITF’s criticism that international law considerations were not sufficiently served by the Note to Standard 5.4 still have not been addressed.

The Australian example demonstrates why ICAO should take a more critical view of the development of SARPs on Facilitation, which provide legal cover for states to engage in the development of mechanisms designed to exclude asylum seekers from fair and efficient protection procedures. Australia’s policy of entry screening has developed over the years in line with the SARPs on inadmissible passengers, which only require consultation between State authorities and the aircraft operator in removing inadmissible passengers and give the choice of country of removal to the aircraft operator without regard to protection concerns. The text of this Standard enables a techno-bureaucratic process where ABF officials may return people seeking international protection to a place they may fear harm. It is telling that Australia has not filed differences with ICAO on its procedures related to Standard 5.4 and highlights how States engage with ICAO as a forum to promote interpretations of international civil aviation law which unnecessarily chip away at the obligations of non-refoulement and non-penalisation.

5. Conclusion

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125 Abeyratne, ‘Extradition and the Airport’ (n 56) 23.
126 United Nations High Commissioner for Refugees, Note on International Protection, UN GAOR, UN Doc A/AC.96/815 (31 August 1993) 6 [14]; Executive Conclusion Non-Refoulement (n 96) 14 [4(c)].
129 Abeyratne, ‘Air Carrier Liability’ (n 54) 675-676.
130 Working Paper 59 (n 129).
131 Annex 9 (n 37) 5.4.
132 Ibid 5.11.
The relative absence of analysis of ICAO in the prevailing literature on externalisation belies the complexity of a transnational legal regime very much shaping, and being shaped by, a variety of actors in a variety of international and local settings. The development of ICAO’s focus on passenger facilitation as intimately tied to questions of security, as evidenced by the Australian example, seems to suggest a broader trend within ICAO towards a state-driven law enforcement and risk-management discourse on inadmissible passengers and security that has allowed States to chip away at the observance of the explicitly binding obligations of *non-refoulement* and non-penalisation. Though SARPs are not strictly binding on States, situating international refugee obligations largely outside of international civil aviation law has allowed States to reframe and entrench policies that contravene their international obligations.
Bringing Externalisation Home: The International Civil Aviation Organisation and ‘Entry Screening’ in Australia

This paper examines the previously unexplored question of the role of the International Civil Aviation Organization (‘ICAO’) as a forum for the development and implementation of practices of externalisation, which prevent refugees from reaching state territory and accessing protection, in the civil aviation space. The development of civil air travel has generally facilitated the movement of people within and across national borders, while also providing a mode of mobility for those seeking protection from persecution or other serious harms. Since 1947, the Convention on International Civil Aviation and ICAO have played a key role in the establishment of the modern legal and operational framework of international air travel. One of ICAO’s principal functions is to formulate and adopt Standards and Recommended Practices (‘SARPs’) which have principally focussed on the safety, regularity and efficiency of civil air travel while leaving state obligations under international refugee law largely outside of that structure. The Australian policy of ‘entry screening’ international travellers at Australian airports, whereby people with a protection claim may have their visa cancelled and be removed from the country without full consideration of the claim, serves as a case study. Though the scholarly focus on Australia has predominately been on boat arrivals, entry screening reveals how (1) States have used the reframing afforded by ICAO’s formulation and adoption of SARPs on passenger facilitation to chip away at the observance of the explicitly binding international legal obligations of non-refoulement and non-penalisation in the 1951 Convention on the Status of Refugees and the 1967 Protocol relating to the Status of Refugees; and that (2) the interaction between civil air law and international refugee law implicates important questions of treaty interpretation which has contributed to the entrenchment of externalisation measures.

Keywords: Externalization, International Refugee Law, International Civil Aviation Organization, Treaty Interpretation, Australia

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I. Introduction

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The development of civil air travel has facilitated the general movement of people within and across national borders, including for refugees and asylum seekers. Yet, despite the promise that international civil aviation might ‘create and preserve friendship and understanding among the nations and peoples of the world’, its legal and operational frameworks have provided a transnational forum for States to pursue increasingly restrictive conceptions of ‘legitimate’ travel which do not account for the realities of flight from persecution or other serious harm. The spread of policies throughout the Global North to externalise migration control, as well as the attendant human rights consequences, have been well-documented. However, the overwhelming research focus has been on direct actions taken by States to develop and implement ‘remote control’ and other policies, without fully grappling with less obvious actors siloed within the transnational system by virtue of their technical framing.

This article argues that a more nuanced understanding of the extent of and means through which States have incorporated externalisation measures into transnational legal frameworks requires an analysis of how international legal settings, such as the International Civil Aviation Organization (‘ICAO’), have provided opportunities for discourse contesting and reframing the fundamental refugee law obligations of non-refoulement and non-penalisation found in the 1951 Convention on the Status of Refugees (‘1951 Convention’ and the 1967 Protocol relating to the Status of Refugees (‘1967 Protocol’). Taking Australia’s policy of ‘entry screening’ as case study, this piece argues that: (1) States have used the reframing afforded by ICAO’s formulation and adoption of Standards and Recommended Practices (‘SARPs’) on passenger facilitation to chip away at the observance of the explicitly binding international legal obligations of non-refoulement and non-penalisation; and that (2) the interaction between civil air law and international refugee law implicates important questions of treaty interpretation which has contributed to the spread of externalisation measures.

Part II examines the Convention on International Civil Aviation also known as the ‘Chicago Convention’, and the role of ICAO as a specialised agency of the United Nations, in developing and assisting States in the formulation and implementation of SARPs. Part III evaluates the obligations of non-refoulement and non-penalisation in the 1951 Convention and the 1967

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This article examines the role of ICAO as a forum for legal discourse and the development of SARPs that have contributed to the entrenchment of transnational practices of externalisation that are inconsistent with fundamental international refugee law obligations. Part IV examines Australia’s engagement with ICAO and its current policy of ‘entry screening’, where international travellers who raise a protection claim at Australian airports may have their visa cancelled and be removed from Australia without full consideration of the claim. This example illustrates how a State-centric framing of safety, regularity and efficiency concerns in international civil aviation, which positions obligations under international refugee law as discordant or external to civil aviation law, contributes to the entrenchment of externalisation measures that undermine fundamental refugee protections.

2. The Chicago Convention and the International Civil Aviation Organization

On 11 September 1944, the United States invited 55 governments and authorities to attend an international civil aviation conference to ‘make arrangements for the immediate establishment of provisional world air routes and services’ and ‘set up an interim council to collect, record and study data concerning international aviation and to make recommendations for its improvement’. The US had previously conducted bilateral exploratory conversations with several governments with a ‘special interest’ in post-war civil aviation and sought to formalise the contours of such a system. The urgency behind what would become the International Civil Aviation Conference arose from ‘the approaching defeat of Germany, and the consequent liberation of great parts of Europe.


6 The invitation was extended to (a) all members of the United Nations; (b) nations associated with the United Nations in this war; (c) the European and Asiatic neutral nations, in view of their close relationship to the expansion of air transport which may be expected along with the liberation of Europe. The Danish Minister and Thai Minister in Washington will be invited to attend in their personal capacities.’ Proceedings of the International Civil Aviation Conference, ‘Invitation of the United States of America to the Conference’, vol. 1, part I (Chicago, 1 November – 7 December 1944) 13 <https://www.icao.int/ChicagoConference/Pages/proceed.aspx> (‘Proceedings of the Chicago Conference’).

7 Ibid 1.

8 Ibid.

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and Africa from military interruption of traffic’\(^9\) and the hope that ‘the restorative processes of prompt communication might be available to assist in returning great areas to processes of peace’,\(^10\) while bringing the ‘benefits of air transportation’\(^11\) to ‘important trade and population areas of the world’.\(^12\)

Representatives of 54 countries attended the Conference in Chicago, Illinois from 1 November to 7 December 1944\(^13\) to write ‘a new chapter in the fundamental law of the air’\(^14\) in furtherance of ‘a great attempt to build enduring institutions of peace’.\(^15\) An acute awareness of the use of airspace as an instrument of aggression during the First World War bolstered the view that the Chicago Conference provided the opportunity to shape post-Second World War air travel as ‘a highway of liberation’.\(^16\) The work of the Conference was divided into four parts, including: (1) establishing a permanent multilateral convention and international aeronautic body;\(^17\) (2) creating international technical standards and procedures;\(^18\) (3) perfecting arrangements for provisional air routes;\(^19\) and (4) establishing an interim council to function in international aviation pending ratification of a full convention.\(^20\) The work culminated in the conclusion of both the *Interim Agreement on International Civil Aviation* (‘*Interim Agreement’*) and the *Chicago Convention*.\(^21\) The *Interim Agreement* established the Provisional International Civil Aviation Organization, which functioned in the period before the *Chicago Convention* could take effect and establish the permanent ICAO.\(^22\) The *Chicago Convention* entered into force on 4 April 1947.\(^23\)

The Preamble to the *Chicago Convention* reflects the desire that ‘international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically’.\(^24\) The Convention’s creation of ICAO,\(^25\) which subsequently became a specialised agency of the United Nations,\(^26\) marked a recognition of the technical and coordination considerations involved in

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9 Ibid.
10 Ibid.
11 Ibid.
12 Ibid.
13 When delegates met in Chicago ‘World War II was far from over. Many came across the Atlantic in converted Lancaster bombers or by ship.’ Assad Kotaite, ‘ICAO and the Development of Air Transport’, *Aircraft Engineering* (Feb 1980) 18.
14 *Proceedings of the Chicago Conference* (n 6) 43.
15 Ibid.
16 *Proceedings of the Chicago Conference* (n 6) 44.
17 Ibid.
18 Ibid.
19 Ibid.
20 Ibid.
21 Ibid 131, 146.
22 Ibid 132.
23 *Chicago Convention* (n 1).
24 Ibid preamble.
25 ICAO “is made up of an Assembly, a Council, and such other bodies as may be necessary.” Ibid art 43.

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furtherance of this aim.\textsuperscript{27} ICAO’s constitution, at Article 44 of the \textit{Chicago Convention}, sets forth the organisation’s aims and objectives, which include to ‘develop the principles and techniques of international air navigation and to foster the planning and development of international air transport’ while ensuring ‘the safe and orderly growth of international civil aviation throughout the world’.\textsuperscript{28} The \textit{Chicago Convention} further establishes an ICAO Assembly, through which contracting States are represented and take action on a variety of matters including modification of the \textit{Chicago Convention},\textsuperscript{29} and a permanent Council, responsible to the Assembly, which serves as a governing body and performs numerous mandatory and permissive functions.\textsuperscript{30}

Article 37 of the \textit{Chicago Convention} requires ICAO to adopt and amend ‘international standards and recommended practices and procedures’ dealing with a variety of topics, including customs and immigration procedures.\textsuperscript{31} The SARPs are meant to secure ‘the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.’\textsuperscript{32} Article 38 requires States to notify ICAO of any departures from the SARPs in their national civil aviation framework.\textsuperscript{33} The ‘Facilitation Programme’ adopts SARPs related to the ‘[e]fficient execution of control procedures, to expedite clearance and prevent unnecessary delays’ for passengers, baggage, and cargo.\textsuperscript{34} Numerous provisions of the \textit{Chicago Convention} provide the foundation for ICAO’s Facilitation Programme, including Article 13 (Entry and Clearance Regulations),\textsuperscript{35} Article 22 (Facilitation of Formalities),\textsuperscript{36} and Article 23, which requires States ‘to establish customs and immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended ... pursuant to this Convention.’\textsuperscript{37}

The ICAO Council first adopted SARPs on Facilitation on 25 March 1949.\textsuperscript{38} Though the SARPs are designated as Annexes to the \textit{Chicago Convention}, this is done for convenience and the SARPs

\begin{itemize}
\item 27 \textit{Chicago Convention} (n 1) art 43.
\item 28 Ibid art 44.
\item 29 Ibid art 43.
\item 30 Ibid art 54. Australia was among the Member States elected to the Provisional ICAO Interim Council in December of 1944 and has been a member of the ICAO Council for more than 70 years. Australian Government, ‘Australia: Candidate for Part I ICAO Council’ (Australia ICAO Council 2019-2022, Election Material).
\item 31 \textit{Chicago Convention} (n 1) art 37.
\item 32 Ibid art 37.
\item 33 Ibid art 38.
\item 34 ICAO, “FAL/12, Agenda item 1, FAL Programme: Introduction”, Presentation, FAL/12, ICAO (22 March – 2 April 2004) 13.
\item 35 \textit{Chicago Convention} (n 1) art 13.
\item 36 Ibid art 22.
\item 37 Ibid art 23. Articles 22 and 23 strengthen “[t]he policy with respect to the implementation by States of the Standards and Recommended Practices on Facilitation” and must be read in conjunction with arts 10 (Landing at customs airport), 11 (Applicability of air regulations), 13 (Entry and clearance regulations), 14 (Prevention and spread of disease), 24 (Customs duty), 29 (Documents carried in aircraft), and 35 (Cargo restrictions). \textit{Chicago Convention} (n 1) Annex 9 (23 Feb 2018) (‘Annex 9’) ix.
\item 38 Annex 9 (n 37) ix.
\end{itemize}

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themselves do not become part of the Convention. The SARPs have been amended numerous times through sessions of the Facilitation Division, which subsequently became the Facilitation (FAL) Panel. The Fifteenth Edition of Annex 9 – Facilitation became effective on 23 October 2017 and became applicable on 23 February 2018. In addition to the Chicago Convention itself, resolutions of the ICAO Assembly, decisions of the Council, and decisions of the Air Transport Committee all contribute to the development and direction of ICAO’s Facilitation Programme and have increasingly steered the Programme towards convergence with the Aviation Security Programme.

In recent years, ICAO’s mission has increasingly focussed on the safety and security aspects of civil aviation, particularly in response to acts of ‘unlawful interference’ with civil air travel. This has to some degree been in response to UN Security Council and UN General Assembly Resolutions. For example, UN Security Council Resolution 2396 ‘urges ICAO to work with its Member State to establish a standard for the collection, use, processing and protection of PNR [Passenger Name Record] data.’ The ICAO Council President viewed the Council’s endorsement of a relevant amendment to Annex 9 as providing ‘not only pivotal technical guidance, but also an important legal mechanism to support the exchange of this data by States.’ This realignment has also impacted the Facilitation Programme. In 2013, the ICAO Assembly established a new Strategic Objective placing Facilitation and Security on equal footing with an aim of ensuring that the provisions of Annex 9 and Annex 17 are ‘compatible with and complimentary to each other’.

The Facilitation Programme now explicitly works to provide States with the ability to maximize the efficiency of border clearance procedures, while ‘maintaining high-quality security and


Annex 9 (n 37) ix.

Ibid.


See ‘Annex 17 – Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference’, ICAO Security and Facilitation (Web Page) <https://www.icao.int/Security/Pages/default.aspx>: “With the benefit of hindsight, it may seem hard to imagine how the need to address acts of sabotage, unlawful seizure of aircraft and the use of civil aircraft in terrorist attacks (as was the case on 11 September 2001) could have been overlooked by the drafters of the Chicago Convention, ICAO’s founding charter and cornerstone for international technical legislation in the field of civil aviation.”


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effective law enforcement."49 The portion of Annex 9 most relevant to the present discussion is Chapter Five, which addresses ‘Inadmissible Persons and Deportees’.50 Chapter Five reflects the framing of asylum seekers within a number of state-centric ‘challenges’ facing the Facilitation Programme, including ‘illegal migration’, ‘passengers arriving at their destination without documents’, and passengers travelling with either fraudulent documents or genuine documents belonging to others.51 ICAO’s approach to asylum seekers has generally subordinated international refugee law obligations to largely non-binding passenger facilitation considerations without sufficiently analysing whether the international refugee law obligations might co-exist, or even be strengthened, in the civil air transport regime.52 Part III examines general principles of treaty interpretation and implementation and interrogates how ICAO has served as a forum for legal discourse and the development of SARPs that have facilitated the entrenchment of practices of externalisation that diverge from fundamental international refugee law obligations.

3. Questions of Treaty Interpretation and Overlapping Regimes

International civil aviation law and international refugee law appear to have largely missed one another in terms of in-depth scholarly exploration, with limited exceptions.53 This is odd, particularly given the interest of UNHCR in ICAO proceedings and initiatives,54 as well as the explosion of scholarly and policy interest in externalisation measures in the context of air travel. On the international civil aviation side, there has been almost no interrogation of the role of international refugee law obligations in the context of passenger facilitation.55 However, these

50 Annex 9 (n 37) 5 – 1. Numerous provisions of Annex 9 merit additional study. For example, Recommended Practice 3.33 relating to “Inspection of travel documents” urges States to “consider making arrangements with other Contracting States to permit the positioning of liaison officers at airports in order to assist aircraft operators to establish the validity and authenticity of the travel documents of embarking persons.” (emphasis in original). These “Airport Liaison Officers” “work within the framework of the International Air Transport Association (IATA) Code of Conduct for International Liaison Officers which is available here: https://www.icao.int/Meetings/FAL12/Documents/FAL 12. WP.040.att. 1.en.pdf.” The author thanks Asher Hirsch for sharing this information.
52 See eg, Furio de Angelis, UNHCR Canada, “Cooperation between UNHCR and ICAO for Machine Readable Travel Documents for Refugees and Stateless persons. UNHCR’s view of the global context and challenges ahead”, 8th ICAO MRTD Symposium, Montréal (10 October 2012). ICAO’s approach to asylum seekers has generally subordinated international refugee law obligations to largely non-binding passenger facilitation considerations without sufficiently analysing whether the international refugee law obligations might co-exist, or even be strengthened, in the civil air transport regime.52 Part III examines general principles of treaty interpretation and implementation and interrogates how ICAO has served as a forum for legal discourse and the development of SARPs that have facilitated the entrenchment of practices of externalisation that diverge from fundamental international refugee law obligations.

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limited explorations, as well as the work of UNHCR and ICAO, hint at significant questions of treaty interpretation which arise between two transnational legal regimes that often overlap. Focussing on a limited aspect of these regimes, namely the reception and processing of air travellers seeking international protection, this Part first examines regime overlap before using the rule of treaty interpretation to pinpoint apparent conflicts between ICAO’s interpretation of the Chicago Convention and the international refugee law obligations of non-refoulement and non-penalisation.

The interaction between the international civil aviation and international refugee law regimes reflects the fragmentation and ‘emergence of specialized and (relatively) autonomous rules or rule-complexes, legal institutions and spheres of legal practice’ in international law. This development of highly specialised fields of law-making and institution-building may lead to ‘conflicts between rules or rule-systems, deviating institutional practices and, possibly, the loss of an overall perspective on the law.’ The Vienna Convention on the Law of Treaties (‘VCLT’) sets out the rules of treaty interpretation and codifies customary international law. Although the Chicago Convention, 1951 Convention and 1967 Protocol pre-date the VCLT, rules of the VCLT which reflect customary international law apply as customary law to treaties concluded before the VCLT’s entry into force.

Article 30 of the VCLT addresses conflicts between ‘successive treaties relating to the same subject-matter’, although it is widely acknowledged that when ‘confronted with relations between treaty regimes’ Article 30 presents problems. Therefore, rather than evaluating ‘treaty conflict’ from a structural perspective, this article approaches the analysis from a ‘subject matter’ perspective and takes a view of ‘treaty conflict’ ‘as a situation where two rules or principles suggest different ways of dealing with a problem.’ As Aust notes, ‘the issue is not so much about whether states can conclude a later treaty, but as to which obligations have priority.’ Where Article 30

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57 Koskenniemi (n 57) 11.


59 VCLT (n 59) art. 2(1)(a).


62 Koskenniemi (n 57) 138. See also Aust (n 61) 216.


64 Koskenniemi (n 57) 19. See also Borgen (n 64) 573.

65 Aust (n 61) 216.

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does not apply, disputes are ‘resolved through reference to general principles of treaty interpretation’, which include ensuring that subsequent agreements ‘should not frustrate the object and purpose of the original treaty’ and that treaties are interpreted in a way that ‘preserves the rights and obligations under both treaties in a maximal way’.67

The ILC instructs that the ‘same subject matter’ criterion seems ‘fulfilled if two different rules or sets of rules are invoked in regard to the same matter’.68 The Chicago Convention, the 1951 Convention and the 1967 Protocol are all invoked to prescribe the treatment of civil air passengers who arrive in a State territory and seek protection.69 Article 13 of the Chicago Convention imposes an obligation requiring compliance with the laws and regulations relating to entry, clearance, immigration, and passports, among other things.70 Meanwhile, the 1951 Convention and 1967 Protocol contain obligations of non-refoulement and non-penalisation, which require States to refrain from removing, rejecting, or penalising asylum seekers for non-compliance with entry, clearance, immigration, and passport requirements. The test of ‘whether the fulfilment of the obligation under one treaty affects the fulfilment of the obligation of another’71 thus appears to be met.

Although the Chicago Convention clearly constitutes a treaty, the Annexes containing the SARPs are not part of the Convention.72 There has been debate regarding the binding, or non-binding nature of the SARPs,73 which becomes relevant when analysing the legal effect of an apparent treaty conflict. Although this article takes the view that the SARPs have the character of ‘soft law’ and are not strictly binding on States,74 the main thrust of the argument is that the explicit treaty obligations of non-refoulement and non-penalisation take priority over the SARPs. While ‘Standard’ and ‘Recommended Practice’ are not defined in the Chicago Convention, the ICAO Council adopted definitions of the terms relating to air transport in 1949.75 A ‘Standard’ is ‘Any specification, the uniform observance of which has been recognized as practicable and as

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66 Borgen (n 64) 577.
67 Koskenniemi (n 57) 143.
68 Ibid 18.
69 Chicago Convention (n 1) art 13; 1951 Convention (n 4); 1967 Protocol (n 4).
70 Chicago Convention (n 1) art 13.
71 Koskenniemi, (n 57) 130.
72 Dempsey (n 39) 13.
74 Thomas Buergenthal, Law Making in the ICAO (Syracuse University Press, 1969) 77-78; “Article 38 in effect provides that it is for each Contracting State to decide whether or not to comply with or give effect to an international standard . . . . The same conclusion applies to recommended practices, because they are non-obligatory by definition.” The travaux preparatoires to the Chicago Convention also note “the Annexes are given no compulsory force”.
76 Buergenthal (n 75) 61.

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necessary to facilitate and improve some aspect of international air navigation ... and in respect of which non-compliance must be notified. A ‘Recommended Practice’ is ‘Any specification, the observance of which has been recognized as generally practicable and as highly desirable to facilitate and improve some aspect of international air navigation ... and to which Contracting States will endeavour to conform in accordance with the Convention.‘

The principle of non-refoulement is found in international refugee law and human rights law and prohibits States from returning or removing people to places where they may be at risk of persecution or other serious human rights violations. Article 33(1) of the 1951 Convention prohibits the expulsion or return of an asylum seeker or refugee, in any manner whatsoever, to any place ‘where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.’ Article 33 also prohibits state conduct leading to the “return in any manner whatsoever” to an unsafe foreign territory, which includes rejection at the frontier or non-admission to the territory. The term ‘non-refoulement’ has evolved beyond its use in the 1951 Convention to ‘encapsulate the protection obligations that arise in similar, if related contexts.’ States are therefore prohibited from returning a refugee to any territory where they may face persecution and to territories where there is a real risk they would face other forms of serious harm. Finally, non-refoulement forms part of customary international law.

The principle of non-penalisation is found in Article 31 of the 1951 Convention. Contracting States are forbidden from imposing ‘penalties, on account of their illegal entry or presence, on refugees...’ The reference in Article 31 to ‘refugees’ has been recognised in international law to include asylum seekers, as refugee status is declaratory in nature. ‘A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition.’

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76 Annex 9 (n 37) xi.
77 Ibid.
78 See 1951 Convention (n 4) art 33; 1967 Protocol (n 4).
80 Guy S Goodwin-Gill, ‘Non-Refoulement, Temporary Refuge, and the “New” Asylum Seekers’ in David James Cantor and Jean-François Durieux (eds), Refuge from Inhumanity?: War Refugees and International Humanitarian Law (Brill Nijhoff, 2014) 440 (‘Non-Refoulement and Temporary Refuge’).
84 1951 Convention (n 4) art 31.

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Thus, an individual may be a refugee regardless of whether that refugee status is formally recognised, although State practice means that until it is recognized, a person is unlikely to benefit from the status afforded to a Convention refugee. As Goodwin-Gill observes, the non-penalisation provision ‘would be devoid of all effect unless it also extended, at least over a certain time, to asylum seekers’. The obligations of non-refoulement and non-penalisation are thus particularly relevant to civil air travel, as they require States to evaluate protection claims made by travellers at airports – including in transit areas – regardless of whether the person has been (or might be) found inadmissible.

Nothing in the text of the Chicago Convention appears to conflict with the obligations of non-refoulement and non-penalisation, which (at least in terms of their inclusion in the 1951 Convention and 1967 Protocol) post-dated the adoption of the Chicago Convention. Yet, Annex 9, Standard 5.4, relating to the removal of inadmissible people, only requires States to ‘consult the aircraft operator on the time frame for removal of the person found inadmissible, in order to allow the aircraft operator a reasonable amount of time during which to effect the person’s removal ...’ The Standard is accompanied by a Note instructing that:

‘Note. – Nothing in this provision is to be construed so as to allow the return of a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.’

This sole explicit reference in Annex 9 to State obligations vis-à-vis asylum seekers makes clear the extent to which those obligations have been placed outside of – and subordinate to – the international civil aviation framework in three respects.

First, both non-refoulement and non-penalisation are explicit treaty obligations, informed by decades of State practice, as opposed to SARPs which are not generally binding on States. A ‘Standard’ reflects a specification which is ‘practicable’ and ‘necessary to facilitate and improve’ and to which ‘non-compliance must be notified’. Therefore where States find compliance impractical, they need only notify non-compliance. Yet, the reference to non-refoulement is

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86 UNHCR Handbook (n 85) 17 [28].

87 Guy S Goodwin-Gill, ‘Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention and Protection’ (Discussion Paper, United Nations High Commissioner for Refugees Global Consultations, October 2001) 8 [27]. A state cannot know whether an asylum seeker is a refugee without a fair and efficient determination. A State that penalises asylum seekers (who may also be refugees), undermines the article 31 prohibition on penalisation of refugees. See also United Nations High Commissioner for Refugees, Global Consultations on International Protection: Asylum Processes (Fair and Efficient Asylum Procedures), UN Doc EC/GC/01/02 (31 May 2001) 2 [5] (‘Global Consultations on Fair and Efficient Asylum Procedures’).

88 Legal Considerations regarding Air Arrivals (n 79) [6].

89 Annex 9 (n 37) 5-1.

90 Ibid.

91 Ibid xi.

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minimised by its relegation to a ‘Note’, which lacks regulatory effect. This minimisation – and omission of the obligation of non-penalisation altogether – suggests a view of these obligations as ancillary considerations.

Second, the language of the Note does not reflect the current state of the evolving understanding of the non-refoulement obligation. The meaning of the term ‘non-refoulement’ has expanded beyond its use in the 1951 Convention and 1967 Protocol to encompass protection obligations which ‘arise in similar, if related contexts’. Therefore, States are not only prohibited from returning ‘a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened’ on account of a particular ground, States are also prohibited from returning a refugee to any territory . . . where there is a real risk they would face other forms of serious harm. Furthermore, states owe complementary protection obligations to people in their territory and subject to their jurisdiction who may not meet the definition of ‘refugee’ but would otherwise suffer significant harm, in line with obligations arising from other international instruments to which they are party. None of these considerations are captured in the SARPs.

Finally, the SARPs’ status as soft law raises questions as to whether the obligation of non-refoulement should prevail over other obligations within the scope of ICAO’s mandate. Today, the principle of non-refoulement enjoys wide acceptance and forms a part of customary international law. These factors seem to weigh heavily in favour of the primacy of non-refoulement in a hierarchy of obligation. The existence of UN Security Council Resolutions under Chapter VII of the UN Charter, which name ICAO in safety and security efforts, do not change the analysis.

92 Ibid: Notes ‘give factual information or references ... not constituting part of the Standards’.
93 Goodwin-Gill ‘Non-Refoulement and Temporary Refuge’ (n 80) 440.
95 Executive Committee of the High Commissioner’s Programme, Addendum to the Report of the United Nations High Commissioner for Refugees: Conclusions of the Committee —Non-Refoulement, UN DOC A/32/12 (31 October 1977) (‘Executive Conclusion Non-Refoulement’) 14 [4(c)].
97 See eg SC Res. 1989, UN doc. S/RES/1989 (17 June 2011); SC Res. 2253, UN doc. S/RES/2253 (17 December 2015); SC Res. 2309, UN doc. S/RES/2390 (22 September 2016). Article 103 of the UN Charter directs that State obligations under the Charter ‘shall prevail’ in the event of a conflict between Charter obligations and ‘their obligations under any other international agreement’. As Art 103 refers to ‘obligations under the Charter’, this is accepted to mean that States are also obliged to give priority to the decisions of the Security Council under Chapter VII over other commitments. Rudolf Bernhardt, ‘Article 103’ in Bruno Simma (Ed.), The Charter of the United Nations A Commentary (Oxford University Press, 2002) 1295. See also Koskenniemi, (n 57) 175.

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The generalised language of the Resolutions does not necessarily lead to direct conflict and indeed, as customary international law and arguably lex specialis, there is certainly a pragmatic argument that the obligations should be interpreted so as not to conflict.

The Chicago Conference resolved that States should be urged to adopt standardised practices in furtherance of ‘safe, expeditious, and easy air navigation’ bearing in mind their present international obligations. States have increasingly committed themselves to multilateral refugee and human rights obligations since the adoption of the Chicago Convention. Yet, the processes of formulating and adopting SARPs on Facilitation have contributed to an operational and legal framework of civil air travel which positions obligations under international refugee law largely outside of that structure. As Part IV argues, this has allowed States to use the reframing to chip away at the fundamental obligations of non-refoulement and non-penalisation.

4. Australia’s Engagement with ICAO and the Practice of ‘Entry Screening’

Air Arrivals

Australia ratified the Chicago Convention on 1 March 1947 and incorporated the treaty into domestic law through the Air Navigation Act 1920. Australia has made engagement with ICAO a policy and strategic priority, both in terms of aviation safety and facilitation. In addition to maintaining a Permanent Mission to ICAO in Montréal, Australia has been a member of the ICAO Council for over 70 years ‘with the ability to influence the international civil aviation agenda, ICAO’s forward program and standards, as well as the governance of ICAO and the utilization and allocation of its resources.’ This Part explores how Australia’s approach to processing passengers who raise protection claims at airports both reflects and feeds a broader trend within ICAO towards a State-driven law enforcement and risk-management discourse, chipping away at the binding international legal obligations of non-refoulement and non-penalisation and contributing to the entrenchment of externalisation policies.

Australia’s implementation of Annex 9 is spread throughout numerous agencies. Though the Department of Infrastructure, Transport, Cities and Regional Development and Communications has primary

100 Proceedings of the Chicago Conference (n 6) 123.
101 Ibid 124.
102 Chicago Convention (n 1). See also Air Navigation Act 1920 (Cth) art 3A (approval of ratification).
103 Michael McCormack, Statement of Expectations for the Board of the Civil Aviation Safety Authority for the Period 15 July 2019 to 30 June 2021 (4 July 2019); Department of Infrastructure, Transport, Cities and Regional Development, Annual Report 2018-19, 95: ‘Key areas of focus for Australia in 2018–19 were aviation safety, air navigation, aviation environment, and aviation security and facilitation.’
105 Memorandum of Understanding of Australia’s Agencies Involved in Civil and Defence Aviation between the Department of Infrastructure, Regional Development and Cities and the Civil Aviation Safety Authority and Airservices Australia and the Department of Home Affairs and Australian Transport Safety Bureau and Australian Maritime Safety Authority and Australian Bureau of Meteorology and the Department of Defence and the Department of Foreign Affairs and Trade in relation to the management of aspects of international activities (2018) 2-3, 8 (‘MOU’).

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responsibility for administering the *Air Navigation Act 1920* and Australia’s arrangements under the *Chicago Convention*, the Department of Infrastructure, the Department of Home Affairs (‘DHA’), and the Department of Foreign Affairs and Trade (‘DFAT’) share responsibilities under Annex 9. The National Passenger Facilitation Committee (‘NPFC’), chaired by DHA, works ‘to put in place measures enabling Australia to comply with ICAO Standards and Recommended Practices to the maximum extent possible.’ The Department of Infrastructure also engages with DHA and DFAT to coordinate ‘input and arrangements on facilitation-related matters’. Overall, DHA provides ‘coordinated strategy and policy leadership’ in relation to ‘[i]mmigration arrangements to facilitate entry of genuine travellers to Australia while preventing entry of those likely to commit immigration fraud or threaten the national interest.’

Australia’s current policy of ‘entry screening’ was introduced in November 2018, though some version of the entry screening process has been in place at least since March 2013. Entry screening is an accelerated and simplified procedure applied to people who raise a protection claim at an airport, regardless of whether they arrive in Australia with a valid visa. The procedure ostensibly aims to ‘understand why someone has travelled to Australia and why they cannot return to their home country, in order to decide whether the traveller should be removed from Australia or allowed to lodge a protection application.’ Once a person raises a protection claim, border officials conduct an interview to determine whether the traveller should be allowed to lawfully enter Australia, or whether their visa should be cancelled. Australian officials routinely refuse entry and cancel the valid visas of people who raise protection claims. After visa cancellation, the person is subject to mandatory detention and only then is given a second interview – by an Australian Border Force (‘ABF’) official using a pro forma interview template – to explore the protection claim. The ABF official then forwards the interview information to a ‘Duty Delegate’ in the Humanitarian Affairs branch of the DHA for a determination of whether the person has...
raised a protection claim that is not considered ‘far-fetched and fanciful’. The Duty Delegate then decides whether the person will be ‘screened in’ and allowed to lodge a temporary protection application, or ‘screened out’ and removed from Australia.

Australia’s entry screening process itself creates the person’s unlawful status and inadmissibility by prioritising the aggressive use of visa cancellation. The process essentially functions as ‘a procedural and functional barrier to accessing a visa process prescribed by legislation.’ In earlier iterations, the guidelines specifically stated that a person in immigration clearance could apply for a protection visa. However, over time, the guidelines shifted focus from protection of refugees to creating inadmissible persons through visa cancellation to ostensibly protect the ‘integrity of Australia’s refugee status determination process’. There have been documented instances where entry screening has led to the removal of a person from Australia in violation of the obligation of non-refoulement. The Australian case presents a somewhat extreme example of how the development and interpretation of Standard 5.4 in Annex 9, in a context which does not seriously grapple with conflicting State obligations vis-à-vis asylum seekers and refugees, may lead to penalisation and refoulement.

UNHCR has long perceived that states’ growing use of airport transit zones and inadmissibility combined with entry fictions could prevent people from seeking international protection. The concept of transit zones has no basis in international law which recognises a State’s competence and responsibility over the entirety of its territory. ICAO appears to have largely avoided efforts by UNHCR and actors such as the International Transport Workers’ Federation (‘ITF’), to encourage States to better reconcile their interception and control measures with ‘international law on refugee and asylum rights.’ In 1998, the ITF raised concerns about how people genuinely fleeing harm may not be in a position to obtain the documentation required to leave a country before the ICAO Assembly and urged ICAO to consult with UNHCR. Yet, ITF’s criticism that international law considerations were not sufficiently served by the Note to Standard 5.4 still have not been addressed.

118 Ibid.
119 Ibid.
121 Ibid.
122 Department of Immigration and Border Protection (Cth), Protection Visa Procedures Manual (PAM3, 1 November 2000) 2.5.1: “A person in immigration clearance may apply for a PV [protection visa].”
123 Department of Immigration and Border Protection (Cth), Border Screening Detention (Policy Instruction, 19 April 2010).
125 Abeyratne, ‘Extradition and the Airport’ (n 56) 23.
126 United Nations High Commissioner for Refugees, Note on International Protection, UN GAOR, UN Doc A/AC.96/815 (31 August 1993) 6 [14]; Executive Conclusion Non-Refoulement (n 96) 14 [4(c)].
129 Abeyratne, ‘Air Carrier Liability’ (n 54) 675-676.
130 Working Paper 59 (n 129).

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The Australian example demonstrates why ICAO should take a more critical view of the development of SARPSC on Facilitation, which provide legal cover for states to engage in the development of mechanisms designed to exclude asylum seekers from fair and efficient protection procedures. Australia’s policy of entry screening has developed over the years in line with the SARPSC on inadmissible passengers, which only require consultation between State authorities and the aircraft operator in removing inadmissible passengers\textsuperscript{131} and give the choice of country of removal to the aircraft operator without regard to protection concerns.\textsuperscript{132} The text of this Standard enables a techno-bureaucratic process where ABF officials may return people seeking international protection to a place they may fear harm. It is telling that Australia has not filed differences with ICAO on its procedures related to Standard 5.4\textsuperscript{133} and highlights how States engage with ICAO as a forum to promote interpretations of international civil aviation law which unnecessarily chip away at the obligations of non-refoulement and non-penalisation.

5. Conclusion

The relative absence of analysis of ICAO in the prevailing literature on externalisation belies the complexity of a transnational legal regime very much shaping, and being shaped by, a variety of actors in a variety of international and local settings. The development of ICAO’s focus on passenger facilitation as intimately tied to questions of security, as evidenced by the Australian example, seems to suggest a broader trend within ICAO towards a state-driven law enforcement and risk-management discourse on inadmissible passengers and security that has allowed States to chip away at the observance of the explicitly binding obligations of non-refoulement and non-penalisation. Though SARPSC are not strictly binding on States, situating international refugee obligations largely outside of international civil aviation law has allowed States to reframe and entrench policies that contravene their international obligations.

\textsuperscript{131} Annex 9 (n 37) 5.4.
\textsuperscript{132} Ibid 5.11.

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