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The Embassies of Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Korea, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and the European Commission present their compliments to the Department of State and **have** the honor to refer **the** Department on behalf of their Governments to a proposed rulemaking of the Federal Aviation Administration, Docket No. FAA-1998-4758. Under the FAA's proposed rule, that agency would require that on flights to the United States the security measures to be followed by non-U.S. airlines at airports in their own homelands must be identical to **the** security measures required of U.S. airlines by the FAA at those same airports.

The Governments, recalling their earlier objections, are of the view **that** the FAA's proposal impermissibly intrudes on **the** territorial sovereignty of their nations. One of the most fundamental principles of international law is that a sovereign state **has** absolute authority to prescribe rules of conduct on its own soil, to **the** exclusion of **the** prescriptions of another state. Consequently, the Governments have the unfettered right to prescribe and enforce security measures at airports in their countries, irrespective of the nationality of particular airlines and the destinations of departing flights.

Most states of the world, recognizing that they all have a mutual and interdependent interest in sound airline and airport security, adhere to the aviation security provisions of the Chicago Convention contained in **Annex 17** to the Convention and promulgated by the International Civil Aviation Organization to which the United States and almost all other nations belong. The Annex clearly establishes that aviation security requirements are the responsibility of the nation in which a particular flight is boarded and inspected prior to takeoff. **The Governments believe that ICAO's** formulation is the only workable one. Total confusion would reign and unnecessary friction would result if at any particular airport (whether in the US or elsewhere) aviation security measures **were dictated for each departing** international flight by the country of first **arrival**.

Moreover, for airports and airlines worldwide the FAA's call for an immutable standard of identity will result in security measures that exceed the current ICAO standards and recommended practices of Annex 17 and that fail to recognize differing levels of aviation security risks around the globe. In the Governments' view, the outcome of this undifferentiated approach to aviation security would be an unjustifiable increase in security costs that would have passed on to airlines (including U.S. airlines) and their customers.

The Governments therefore urge the U.S. authorities to work in a cooperative multilateral **framework with their non-U.S. counterparts to address any perceived need to improve** aviation security standards and practices, through ICAO or otherwise. What is **not** acceptable to the Governments is the FAA's attempt at **unilateral assertion of extraterritorial FAA authority** over security procedures at airports in the Governments' countries.

The Governments would be grateful to receive the views of the United States Government on this issue, and request the State Department to draw to the attention of the Federal Aviation Administration and the Department of Transportation the contents of this Note.

The Embassies avail themselves of this opportunity to renew to the Department of State the assurance of their highest consideration.

Washington, DC
March 24, 1999

