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27/8/04

DANGEROUS GOODS PANEL (DGP)

MEETING OF THE WORKING GROUP OF THE WHOLE

Abu Dhabi, 4 to 8 October 2004

Agenda Item 5: Discussion of miscellaneous dangerous goods issues

WORLD CONVENTION OF THE TRANSPORT OF DANGEROUS GOODS

(Presented by the Secretary)

1. INTRODUCTION

1.1 At the twenty-fifth session of the *Sub-Committee of Experts on the Transport of Dangerous Goods* (UNSCOE), a paper was submitted by the expert from Italy on the subject of a world convention on dangerous goods. (See Appendix A). Advice was sought from the ICAO Legal Bureau on any potential implications for ICAO and Annex 18 with respect to this proposed convention. (See Appendix B).

1.2 Due to time constraints, the paper was not discussed but will be discussed at the December 2004 meeting.

1.3 The working group is requested to provide the Secretary with comments for onward transmission to the UNSCOE.

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APPENDIX A

WORLD CONVENTION OF THE TRANSPORT OF DANGEROUS GOODS

Transmitted by the expert of Italy

1. INTRODUCTION

1.1 At the 19th session (2-10 December 1996) the UN Committee of Experts on the Transport of Dangerous Goods adopted the first version of the Model Regulations on the Transport of Dangerous Goods (annexed to the 10th revised edition of the Recommendations on the Transport of Dangerous Goods) in order to facilitate the direct integration of the Model Regulations into all modal, national and international regulations and thereby enhance harmonization, facilitate regular up-dating and result in overall considerable resource savings.

1.2 Looking at the present situation it can be recognized that indeed harmonization among the modal regulations has been largely and successfully progressed.

1.3 On that basis, and in order to further move on the direction of a complete harmonization, it could be appropriate to think in terms of changing the legal status of the Model Regulations into a worldwide Convention.

2. BACKGROUND

2.1 It has to be noted that the idea of a Convention is not a new one.

2.2 The ECOSOC, in Resolution 1973 (LIX), instructed the Committee of Experts on the Transport of Dangerous Goods to study the possibility of drafting an international convention on the transport of dangerous goods by all modes of transport.

2.3 The Committee of Experts discussed the matter at its 9th Session (December 1976), 10th Session (December 1978) and 11th Session (December 1980), on the basis of previous discussion in the Group of Rapporteurs.

2.4 Finally the Committee decided (para 19 of ST/SG/AC.10/5):

> … to give priority to the harmonization of the existing rules and recommendations with the United Nations Recommendations. This would mean declaring that for the time being the convention was not desirable until more conformity between existing rules and the Recommendations had been achieved.

2.5 At the 17th Session (December 1992) of the Committee of Experts on the Transport of Dangerous Goods a proposal from Italy (ST/SG/AC.10/R.354) for a "World Convention on the Transport of Dangerous Goods" was discussed.

2.6 There was some support for the proposal, but the majority of the Committee decided not to adopt such a proposal, feeling that timing was not opportune, that ICAO and IMO should be consulted on the subject, that the Committee should continue to work in a flexible way.

3. PROPOSAL

3.1 Taking care of the level of harmonization achieved, and looking for a more harmonized and timely implementation of amendments throughout all the modes, it is proposed to put on the agenda of the next biennium the subject of a World Convention for the Transport of Dangerous Goods.

3.2 In order to guide the discussion during the next biennium, it is proposed that the Sub-Committee starts now the discussion on the matter, with regard to the following principles:

- agreement on the basic proposal;
- definition of work plan;
- involvement of IMO, ICAO, Joint Meeting ADR/RID/AND, etc.;
- drafting of a resolution for ECOSOC.

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APPENDIX B

WORLD CONVENTION ON THE TRANSPORT OF DANGEROUS GOODS

Comments from ICAO Legal Bureau

1. The UN Recommendations on the Transport of Dangerous Goods include Model Regulations which aim at covering all means of transportation for carrying dangerous goods. As a long-standing practice, amendments to the UN Recommendations, where relevant to international civil aviation, have been regularly incorporated into specific, dedicated ICAO material, i.e. the *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Technical.Instructions), following approval by the Council of ICAO. Accordingly, when incorporating such regulations into its Technical.Instructions, ICAO has always selected and adapted as necessary such recommendations so as to render them applicable to international civil aviation in an appropriate fashion, and to ensure consistency with existing ICAO rules, while maintaining the spirit and intent of the Recommendations. Hence, the shippers' community considers the Technical.Instructions as the traditional civil aviation-related recipient of the UN Recommendations.

2. As recognized in Article I of the *Agreement Between the United Nations and the International Civil Aviation Organization* (entered into force on 13 May 1947), ICAO is the Specialized Agency responsible for international civil aviation. The safety and security of international civil aviation are overriding objectives of the Organization, a principle entrenched in the constitution of ICAO, the *Convention on International Civil Aviation* (Chicago, 1944). Accordingly, ICAO is the global international organization competent for establishing international Standards and Recommended Practices (SARPs) and Procedures covering the technical fields of aviation, including the safe transport of dangerous goods by air as embodied in Annex 18 to the Convention. Such SARPs in Annex 18 are complemented by the Technical.Instructions, to which the Council desired to grant a more stringent effect than guidance material, by referring to them in Annex 18. Paragraph 2.2.1 of Annex 18 specifies that each Contracting State shall take the necessary measures to achieve compliance with the Technical.Instructions and any amendments thereto. Therefore, any endeavour to change the legal status of the Model Regulations should preserve such responsibility of ICAO in the aeronautical field and the regime it has enacted.

3. For the sake of safety, practicality is also to be seriously considered. So far, to the extent that civil aviation was concerned, the UN Recommendations on the Transport of Dangerous Goods have always been placed within the ICAO Technical.Instructions, the status of which allowed a shorter cycle of amendments than the Annexes to the Chicago Convention, which was a procedural advantage. In this respect, it is uncertain that a convention would offer enough flexibility in terms of early reaction and necessary adaptation to changes in the field of transport of dangerous goods, as the amendment of conventions is usually a time-consuming process (although it is sometimes possible to achieve a higher degree of flexibility, such as by incorporating an Annex to the convention with a different amendment procedure). It should be considered whether a convention would offer sufficient added value from the current regime, as the considerable degree of harmonization which has been reached through the Model Regulations might not be improved or even matched through a convention.

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