



**WORKING PAPER**

**DANGEROUS GOODS PANEL (DGP)**

**TWENTY-SECOND MEETING**

**Montréal, 5 to 16 October 2009**

**Agenda Item 1: Development of proposals, if necessary, for amendments to Annex 18 — *The Safe Transport of Dangerous Goods by Air***

**GUIDANCE ON THE REMOVAL OF STATE OF OVERFLIGHT  
FROM THE EXEMPTION PROCESS**

(Presented by the Secretary)

**SUMMARY**

This paper presents guidance from the ICAO Legal Bureau on whether or not removing State of Overflight from the exemption requirements would be within the purview of the DGP.

**Action by the DGP:** The DGP is invited to note the guidance presented and to consider reinstating State of Overflight in the exemption process.

**1. INTRODUCTION**

1.1 At the last Dangerous Goods Panel (DGP) Working Group of the Whole Meeting (DGP-WG09, Auckland, 4 to 8 May 2009), the issue of removing the State of Overflight from the exemption process was discussed (DGP/22-WP/3, paragraph 3.5.1.3 and Appendix A refers). It was queried whether the issue was within the purview of the DGP. Accordingly, guidance from the Legal Bureau was sought and is presented below.

**GUIDANCE FROM LEGAL BUREAU**

1. Removing the State of overflight from the exemption process under paragraph 2.1 of Annex 18 is being sought, as an operator would not be able, due to 'use of flexible aircraft routings', to 'conclusively identify the State of overflight.
2. Annex 6 — *Operation of Aircraft* prescribes that an operator and its PIC must be aware of laws and regulations to be complied with in any airspace to be traversed during an international flight (see Chapter 3 of Part I, in particular paras 3.1.1 and 3.1.2). The argument of impossible advance identification of States of overflight is therefore inconsistent in this context.

3. As a matter of principle, every State is sovereign over its territory and henceforth fully responsible for applying its laws and regulations to any aircraft traversing its airspace (if consistent with the Convention and non-discriminatory — Article 11 of the Convention refer). The proposal from DGP-WG09 is unclear in this regard: any intent to disallow States of overflight to grant exemptions would not affect their jurisdiction over their airspace, including concerning the implementation of pertinent Annex 18 SARPs.
4. In conclusion: the general principle to be preserved is compliance with SARPS of Annex 18. Exemptions thereto are to be treated as exceptions while seeking further alleviation of Annex 18 implementation would be questionable. In any case, even if no exemption is to be granted by the State of overflight, the latter will keep its jurisdiction over operations in its airspace and be entitled to bar aircraft not complying with Annex 18 and its regulations on cargo restrictions (see also Article 35, paragraph b) of Convention).

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