International Civil Aviation Organization

DGP/23-WP/25
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**WORKING PAPER**

# DANGEROUS GOODS PANEL (DGP)

## TWENTY-THIRD MEETING

**Montréal, 11 to 21 October 2011**

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

## STATE OF OVERFLIGHT CONSIDERATIONS IN THE EXEMPTION PROCESS

(Presented by J. McLaughlin)

**SUMMARY**

This paper proposes an approach for the DGP to consider in addressing operators overflying territorial airspace with dangerous goods requiring exemptions.

**Action by the DGP:** The DGP is encouraged to consider the approach described above as discussions continue on requirements applicable to operators overflying a State while transporting dangerous goods under exemptions to the Technical Instructions. If a consensus is developed within the DGP, it is suggested that the Secretary circulate this proposal with the Operations Panel and ICAO legal experts prior to submission to the Air Navigation Commission (ANC).

## 1. INTRODUCTION

1.1 The DGP has had ongoing discussions over the subject of the overflight of States and requirements for operators transporting dangerous goods under exemptions to the Technical Instructions. These discussions have attempted to reconcile State sovereignty interests with feasibility concerns voiced by operators. Discussions at DGP/22 and at the Working Group of the Whole Meeting in Auckland, New Zealand (DGP-WG/09, 4 to 8 May 2009) on "Guidance on the Removal of State of Overflight from the Exemption Process" and "Removal of State of Overflight from Exemption Process" (DGP/22-WP/100, paragraph 1.4 and DGP/22-WP/3, paragraph 3.5.1.3 refer), respectively, offer insights from both perspectives. At DGP-WG/11 (Atlantic City, 4 to 8 April 2011), the Secretary indicated that she would consult with ICAO legal experts and present a new paper on this issue at DGP/23. To allow the DGP

sufficient time to consider the proposal within this paper prior to October, this paper has been submitted prior to review of the Secretary's paper.

1.2 If consistent with the constraints outlined by ICAO legal experts, the DGP may wish to consider a proposal with provisions similar to those outlined in paragraph 1.3. As this issue touches on sovereignty issues agreed to under the Chicago Convention and other (bilateral) diplomatic agreements, a consensus approach is essential. The consensus should be not only amongst DGP members, but with other panels, and ultimately within the ANC.

1.3 One approach intending to acknowledge the interests of both States and operators could be to place the primary responsibility of the exemptions process on States of Origin, transit, and destination. The operator's interaction would be primarily with these States. Once exemptions are issued to the civil operators by the States of Origin, any State in which there will be a landing during transit, and the destination State, operators would then request expedited exemption from States potentially subject to overflight. Overflight States would then be permitted a finite period of time to review the request. In the absence of requests for additional information, clarification, and/or outright denial, overflight permission would be implied.

1.4 As this process evolves over time, issues of concern to overflight States would be identified (to the extent this is not the case already) and could be addressed at the outset by the operator in their requests to States of Origin, transit, and destination. In other words, when an overflight State denies a request on specific grounds, the operator would be able to address these concerns in their initial exemption requests going forward.

1.5 In conversations with air traffic management experts, it appears that concerns that such a policy would limit autonomous aircraft navigation over continental airspace are premature. Established fixed track navigation will likely continue for at least another decade.

1.6 In future discussions, the DGP may wish to consider the prerogatives of States who are not included on a flight plan, but who are considered to be diversion points in case of weather or emergency.

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