



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*

REMOVAL OF STATE OF OVERFLIGHT FROM THE EXEMPTION PROCESS

(Presented by the Secretary)

SUMMARY

This working paper proposes an amendment to Annex 18 which would facilitate the exemption process in relation to the State of Overflight.

Action by the DGP: The DGP is invited to agree to the proposed amendment presented in the appendix to this working paper.

1. INTRODUCTION

1.1 Discussion on the difficulties encountered by shippers or operators when attempting to obtain an exemption from the State of Overflight was first raised at the eleventh meeting of the DGP in 1987 (DGP/11). It was most recently discussed at the Working Group of the Whole Meeting in Auckland (DGP-WG/09, 4 to 8 May 2009, paragraph 3.5.1.3 refers) when it was suggested that it is virtually impossible to predict which States a flight may overfly due to the increasing use of autonomous aircraft navigation with consequential discussions at DGP/22 (DGP/22-WP/100, paragraph 1.4 refers), the DGP Working Group of the Whole Meeting in Abu Dhabi (DGP-WG/10, 7 to 11 November 2010) (DGP/23-WP/3, paragraph 3.1.4 refers) and the DGP Working Group of the Whole Meeting in Atlantic City (DGP-WG/11, 4 to 8 April 2011) (DGP/23-WP/3, paragraph 3.1.1 refers).

1.2 During the various meetings, members have been reminded of the rights of States above their territory as contained in Article 35 b) of the Chicago Convention:

Article 35

Cargo restrictions

- a) No munitions of war or implements of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State. Each State shall determine by regulations what constitutes munitions of war or implements of war for the purposes of this Article, giving due consideration, for the purposes of uniformity, to such recommendations as the International Civil Aviation Organization may from time to time make.
- b) Each contracting State reserves the right, for reasons of public order and safety, to regulate or prohibit the carriage in or above its territory of articles other than those enumerated in paragraph a): provided that no distinction is made in this respect between its national aircraft engaged in international navigation and the aircraft of the other States so engaged; and provided further that no restriction shall be imposed which may interfere with the carriage and use on aircraft of apparatus necessary for the operation or navigation of the aircraft or the safety of the personnel or passengers.

1.3 Recognizing that the retention by a State of sovereignty over its airspace is a fundamental tenet of the Convention whilst at the same time knowing that the State of Overflight might have less interest in the granting of an exemption than the other States concerned, the Secretariat proposes that standard 2.1.4 be amended to allow a State of Overflight a specified time period to consider the request. To aid discussion, a thirty day time period is suggested. However, should the State not respond within this period, acceptance of the request would be deemed to have been granted. Of course, should the State respond, the standard procedure would follow. This would therefore permit any State of Overflight interested in a specific request for an exemption to review that request and thereby not relinquish any degree of sovereignty over its airspace whilst, at the same time, not delay exemption requests simply due to lack of involvement in the process.

APPENDIX

**TEXT OF AMENDMENT 10 TO THE
INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES
THE SAFE TRANSPORT OF DANGEROUS GOODS BY AIR
ANNEX 18
TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION**

...

CHAPTER 2. APPLICABILITY

2.1 General applicability

...

2.1.4 For the State of Overflight, if none of the criteria for granting an exemption are relevant, an exemption may be granted based solely on whether it is believed that an equivalent level of safety in air transport has been achieved. The State of Overflight shall respond to the request to grant an exemption within thirty days. In the absence of a response within that time, the exemption request shall be deemed to have been accepted.

...

— END —