



NOTA DE ESTUDIO

GRUPO DE EXPERTOS SOBRE MERCANCÍAS PELIGROSAS (DGP)

VIGESIMOTERCERA REUNIÓN

Montreal, 11 - 21 de octubre de 2011

Cuestión 1 del orden del día: **Formulación de propuestas de enmienda del Anexo 18 — *Transporte sin riesgos de mercancías peligrosas por vía aérea, si se consideran necesarias***

**ENMIENDA RELATIVA AL ESTADO DE SOBREVUELO
EN EL PROCESO DE OTORGAMIENTO DE DISPENSAS**

(Nota presentada por la secretaria)

Por falta de recursos, sólo se han traducido el resumen y el apéndice

RESUMEN

En esta nota de estudio se propone enmendar el Anexo 18 para facilitar el proceso de otorgamiento de dispensas en relación con el Estado de sobrevuelo.

Medidas recomendadas al DGP: Se invita al DGP a aprobar la enmienda propuesta que figura en el apéndice de esa nota de estudio.

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.

APÉNDICE

**TEXTO DE LA ENMIENDA 10 DE LAS
NORMAS Y MÉTODOS
RECOMENDADOS INTERNACIONALES**

**TRANSPORTE SIN RIESGOS
DE MERCANCÍAS PELIGROSAS POR VÍA AÉREA**

**ANEXO 18
AL CONVENIO SOBRE AVIACIÓN CIVIL INTERNACIONAL**

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CAPÍTULO 2. CAMPO DE APLICACIÓN

2.1 Campo de aplicación general

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2.1.4 Si no resulta pertinente ninguno de los criterios expuestos para otorgar una dispensa, el Estado de sobrevuelo puede otorgarla basándose exclusivamente en la convicción de que se ha logrado un nivel equivalente de seguridad en el transporte aéreo. El Estado de sobrevuelo responderá a la petición de otorgar una dispensa en un plazo de 30 días. Si no hay respuesta dentro de ese plazo, se considerará que se ha aceptado la petición de otorgamiento de la dispensa.

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— FIN —