

DANGEROUS GOODS PANEL (DGP)**NINETEENTH MEETING****Montreal, 27 October to 7 November 2003****SECURITY OF DANGEROUS GOODS IN TRANSPORT - ADVICE
FROM THE LEGAL BUREAU**

(Presented by the Secretary)

1. INTRODUCTION

At DGP-WG/03, the issue of the optimal disposition of the UN requirements on security was discussed (DGP/19-WP/12; paragraph 5.1.4 refers). It was agreed that a meeting composed of dangerous goods and security experts should take place (see DGP/19-WP/37) and that legal advice should be sought. The following advice has been received from the Legal Bureau.

2. DISCUSSION

2.1 *Should ICAO incorporate into pertinent documentation the UN Recommendations on the Transport of Dangerous Goods – Model Regulations as recently amended to address security matters (13th edition)?*

2.1.1 ICAO's jurisdiction as regards the safety of international civil aviation is extensive, as it derives mainly from Article 44, in particular paragraphs a) and h) of the *Convention on International Civil Aviation* (Chicago, 1944). It is noted in this respect that the UN Recommendations at issue are intended to cover civil aviation, among other means of transportation, for the sake of safety when dangerous goods are to be carried.

2.1.2 The 33rd Session of the ICAO Assembly in Resolution A33-1 referring *inter alia* to the misuse of civil aircraft as weapons of destruction (Article 4 of the Convention), directed the Council and the Secretary General to urgently address new and emerging threats to civil aviation. It appears from the said UN Recommendations that they aim at addressing, at least partly, such threats.

2.1.3 As a long-standing practice, amendments to the afore-mentioned UN Recommendations 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* (T.I.), following approval by the Council of ICAO.

2.1.4 It should therefore be concluded that it would be appropriate in principle that, following review by the competent ICAO bodies subject to approval by the Council, UN Recommendations be incorporated into the relevant ICAO documents.

2.2 *Adaptation of the UN Recommendations to international civil aviation:*

2.2.1.1 The referenced Recommendations include model regulations which aim at covering all means of transportation for carrying dangerous goods. Accordingly, when incorporating such regulations into its T.I., ICAO has always selected and adapted where 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.

2.2.1.2 Nothing in the UN Recommendations excludes or conditions such an adaptation process.

2.2.2 Therefore, nothing should prevent ICAO and its competent bodies from implementing a similar adaptation process in respect of the 13th edition of the UN Recommendations. Such process could in principle apply to all material concerned, including definitions.

2.3 *Where the UN Recommendations should be placed:*

2.3.1 In principle, the ICAO Council is free to decide in which document and in which format the security rules for the carriage of dangerous goods in international civil aviation should be incorporated. It is nevertheless noted in the documentation provided and from the discussions held at the last DGPWG meeting that two schools of thought exist in this regard: i.e. either in Annex 17 and the Security Manual, or in Annex 18 and the Technical Instructions.

2.3.2 Annex 17 (together with the Security Manual) is specifically dedicated to security matters; it incorporates core matters concerning security of international civil aviation. However, as shown in the Attachment to the Annex, and as referred to in the above-mentioned Assembly Resolution A33-1, resolving clause 7, other Annexes to the Convention, including Annex 18, may well contain security-related provisions, taking into account that cross-references may be used for drawing attention to relevant provisions elsewhere.

2.3.3 The status of the ICAO documents at issue is to be duly considered. Standards in Annexes, which require adoption through the vote of two-thirds of the Council (Article 90 of the Convention), have a conditional binding force to the extent that no related difference is filed by States concerned in accordance with Article 38 of the Convention. ICAO manuals are guidance material only, requiring approval by the Council (simple majority voting - Article 52 of the Convention refers) and do not have any legally binding force as regards Contracting States. T.I. are also subject to approval by the Council under Article 52, but the latter desired to grant them a more stringent effect than guidance material, by referring to them in Annex 18. Paragraph 2.2.1 of Annex 18 therefore specifies that each Contracting State shall take the necessary measures to achieve compliance with the T.I. and any amendments thereto.

2.3.4 It should be noted that, in the past, the UN Recommendations on the Transport of Dangerous Goods have always been placed within the Technical Instructions. There is general knowledge of the latter in the shippers' community which consider them as the traditional ICAO recipient of such UN Recommendations. The link of the subject matter of these Recommendations with the Technical Instructions appears to be stronger than with Annex 17. Furthermore, the T.I. have a shorter cycle of amendments than Annexes to the Convention, which is a procedural advantage in the present case.

2.3.5 It is therefore recommended to place the Recommendations in Annex 18 and the Technical Instructions, with relevant cross references in Annex 17 to the extent appropriate.

3. **ACTION**

3.1 The panel is invited to note the above information and the recommendation contained in 2.3.5.

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