



WORKING PAPER

**DANGEROUS GOODS PANEL (DGP)
MEETING OF THE WORKING GROUP OF THE WHOLE**

Abu Dhabi, United Arab Emirates, 7 to 11 November 2010

- Agenda Item 1: Development of proposals, if necessary, for amendments to Annex 18 — *The Safe Transport of Dangerous Goods by Air***
- Agenda Item 2: Development of recommendations for amendments to the *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284) for incorporation in the 2013/2014 Edition**

SECURITY REQUIREMENTS ON “HIGH CONSEQUENCE DANGEROUS GOODS”

(Presented by T.L. Muller)

SUMMARY

This working paper invites the WG to discuss whether the placement of the requirements on “high consequence dangerous goods”, presently contained only in Annex 18 — *The Safe Transport of Dangerous Goods by Air*, the *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284), would be more appropriate placed into Annex 17 — *Security — Safeguarding International Civil Aviation against Acts of Unlawful Interference* and in the *Security Manual for Safeguarding Civil Aviation Against Acts of Unlawful Interference* (Doc 8973). The working group is requested to express their views on this issue.

Action by the DGP-WG is in paragraph 5.

1. INTRODUCTION

1.1 A decision was taken DGP/19 to include the requirements for “high consequence dangerous goods” in Annex 18 and in the Technical Instructions, as at that time it was the most appropriate location in view of the urgency and the absence of useful references to security of cargo aircraft in Annex 17.

1.2 To that regard it would be relevant to investigate the views of the working group on the need to either transfer the requirements to the ICAO security regulatory framework or to maintain as is.

2. BACKGROUND

2.1 Following the terrorist attacks in September 2001, the United Nations Committee of Experts on the Transport of Dangerous Goods (UNCOE) developed text for requirements intended to “minimize theft or misuse of dangerous goods that may endanger persons or property.” The text primarily addressed “high consequence dangerous goods” such as explosives, infectious substances and radioactive material and introduced provisions for training and security plans for shippers, operators and others engaged in the transport of such goods.

2.2 During DGP/19 (Montreal, 27 October to 7 November 2003), the Dangerous Goods Panel considered what the most appropriate location for the text in ICAO requirements would be:

- a) Annex 18 and the Technical Instructions, which is the usual location for material produced by the UNCOE; or
- b) Annex 17 and the associated *Security Manual for Safeguarding Civil Aviation Against Acts of Unlawful Interference* (Doc 8973) (Security Manual), because the UN text relates to matters of security.

2.3 Prior to DGP/ 19, the views of members of the Aviation Security Panel (AVSECP) were sought (DGP/19-IP/3 and IP/5). Of the twelve AVSECP members who responded, one believed Annex 18 was the most appropriate location, three believed it should be in Annex 17 and eight thought that whilst the material could, in the interests of urgency, initially be inserted in Annex 18, this would be an interim measure before the text was ultimately moved to its proper home in Annex 17 (i.e. a two-staged approach).

2.4 DGP/19 agreed by a small majority to add the material to Annex 18 and the Technical Instructions, taking into account the results of the consultation of the AVSEC panel members, based on the following arguments:

- a) advice by the ICAO Legal Bureau to the Air Navigation Commission (ANC) for direct applicability by including the requirement in Annex 18 and THE Technical Instructions, being an enforceable document;
- b) the urgency to establish security requirements and a need for instant implementation by the aviation industry; and
- c) the lack of references in Annex 17 to cargo aircraft and no references to responsibilities of shippers and cargo agencies.

2.5 The security of “high consequence dangerous goods” is of vital importance, particularly in the world today. Since the decision of DGP/19, the ICAO security requirements in Annex 17 and the Security Manual have matured in the area of transport of air cargo, and experiences have been gained in enforcement by associated aviation security oversight at the national level. In that respect, it should be emphasized that the appropriate authority for security in a Member State is often a different department from the competent authority for aviation safety and the supervision of the transport of dangerous goods. During the last AVSECP meeting in March 2010, the panel accepted a proposal that “Each Contracting State **shall** ensure that security controls to be applied to cargo and determined on the basis of a security risk assessment carried out by the relevant national authorities”. This earlier recommendation turned as a consequence of this decision into a Standard. The question is therefore raised whether the applicable

requirements are the responsibility of security experts and if so, whether to consider transferring the provisions related to dangerous goods to Annex 17 and to the Security Manual.

3. **OBJECTIVE**

3.1 The purpose of this working paper is to request the opinion of the working group as to whether there is a need to transfer the requirements on “high consequence dangerous goods”, presently contained only in Annex 18 and the Technical Instructions, into an appropriate location in Annex 17 and the Security Manual, respectively.

4. **ORIGINAL CONSIDERATIONS BY THE DGP**

4.1 The decision taken by DGP/19 to incorporate requirements for “high consequence dangerous goods” in Annex 18 and in the Technical Instructions was taken more than six years ago, being at that time a subject of high urgency. It should be noted that consultation of the views of the AVSECP members indicated that the majority favoured a two-staged approach, where, in the future, ICAO would consider moving the text to Annex 17 and to the Security Manual. The main question is, taking into account the validity of the original arguments, the common practices over the recent years, and the present situation whether, on balance, the appropriate vehicle for inclusion of the UN text is Annex 17 or Annex 18.

4.2 In support of these considerations, attention is drawn to the following original arguments and the reasons why they no longer apply:

- a) The major driving argument to have the requirements included in Annex 18 was the fact that Annex 17 did not address security requirements for cargo aircraft. This argument is no longer valid since the Security Manual now includes detailed requirements for cargo security, in particular the responsibilities of the “known consignor”, and regulated agents on all categories of aircraft and is not limited just to passenger aircraft as was the case in 2003;
- b) Since security of air cargo is presently a subject of high interest, specific attention should be given to harmonizing the terminology of Annex 18 and Annex 17 in order to avoid misinterpretation, in particular where both Annexes address related subjects (i.e. known consignor versus known shipper);
- c) It had been argued that the Technical Instructions were a more enforceable document, but the text in the Technical Instructions is of a recommended status and consequently has no more legal force than if it were to be specified in the Security Manual. Furthermore, it should be noted that the UN text is of such a general nature that the level of possible enforcement is considered to be rather low;
- d) As has been demonstrated by recent ICAO safety oversight audits, the danger in having security text in the Technical instructions is that those CAA inspectors charged with enforcing the dangerous goods requirements in the Technical Instructions have neither the expertise nor the competence/responsibility to answer questions in the area of security;

- e) No public availability of the Security Manual. The restricted availability of the Security Manual will not be an obstacle since the actions to be taken in the area of security training and security plans will be an integral part of the national aviation security program. Security officers and accountable security managers are entitled to access the relevant documentation;
- f) The UN text that would be incorporated in Annex 17 is solely related to the *security* of dangerous goods, as opposed to the *properties* of those goods and all related transport requirements to ensure the safety of the air transport which will remain in Annex 18
- g) ICAO has well-established security provisions in Annex 17 and the associated Security Manual and provides a solid legal framework, unlike some other modes of transport;
- h) ICAO has put in place extensive measures via Annex 17 to prevent acts of unlawful interference and is therefore considered to be the appropriate place to include the requirements for “high consequence dangerous goods”;
- i) The subject of security and associated security oversight by the authorities is considered to be an essential element of safeguarding civil aviation and it is imperative that it is dealt with by specific security experts; As long as the requirements for the security responsibility are located in Annex 18, there might be confusion as to which authority is responsible for security, for example during an ICAO safety or security audit.
- j) ICAO has the appropriate aviation security experts of the Member States nominated as members and advisors in the AVSECP. The DGP, however, has no real expertise in the subject of security;
- k) The UN text relates purely to the security of dangerous goods, thus logically implementation and enforcement would be in conjunction with Annex 17 requirements relating to cargo security (Annex 17, Section 4.6 “Measures relating to cargo” and Section 3.4 “Quality Control”).

5. ACTION BY THE DGP-WG

5.1 The DGP-WG is invited to take note of this paper, discuss the content and decide whether there are convincing arguments to transfer the requirements on “high consequence dangerous goods”, presently contained only in Annex 18 and the Technical Instructions into an appropriate location in Annex 17 and the Security Manual, respectively.

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