



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*

ISSUES RELATED TO OVERFLIGHT

(Presented by the Secretary)

SUMMARY

In follow-up to DGP/22 and the ANC's review of the report of that meeting, this working paper invites DGP-WG/10 to consider the issues related to removing "State of Overflight" from the exemption process.

Action by the DGP-WG is in paragraph 2.

1. INTRODUCTION

1.1 During the review of the DGP/22 report by the Air Navigation Commission (ANC), attention was drawn to the preliminary discussion which had been held on the issue of removal of the State of Overflight from the exemption process. In particular, it was recognized that the "State of Overflight" is a complex issue that is not clearly defined, e.g. when considering en-route alternate aerodromes that fall in a State outside the flight plan route of flight. Other aspects such as unplanned diversions or re-routings were also raised.

1.2 With regard to the issue of removing the State of Overflight from the exemption process, an extract from the report of DGP/22 is provided below for the information of the working group:

1.4 GUIDANCE ON THE REMOVAL OF STATE OF OVERFLIGHT FROM THE EXEMPTION PROCESS (DGP/22 WP/86)

1.4.1.1 At DGP-WG/09, the feasibility of requiring that the State of Overflight be a party to issue an exemption was discussed. It was argued that the use of flexible aircraft routings made it virtually impossible to predict which States a flight may overfly. A proposal to delete the requirement in Annex 18, paragraph 2.1 was therefore proposed. A majority of members supported the principle, recognizing the practical problems which existed. It was questioned, however, whether the issue was within the purview of the DGP; accordingly, advice from the Legal Bureau was sought.

1.4.1.2 Written guidance was provided from the Legal Bureau in DGP/22-WP/86, and an officer from the Legal Bureau (LO/LEB) was present at the meeting to provide further guidance. He raised concern with whether the intent of removing the provision was to avoid the jurisdiction of the State of Overflight. It was clarified that the panel never considered this issue as a means of avoiding sovereign rights and jurisdiction. It was explained that an exemption does not imply straying from the regulations; it provides an alternate means of compliance when faced with circumstances which have not been addressed in the Instructions. Even if the requirements were removed from the State of Overflight, a State would retain its sovereignty.

1.4.1.3 One panel member queried whether a notification of an exemption by the operator to the State of Overflight, which might contain a provision for that State to reject the exemption within a certain time period, would satisfy the requirement. In principle, LO/LEB did not see major obstacles in developing this idea but he would need more details before confirming. Another suggestion was a pre-notification with a general statement by the States concerned confirming whether or not they would allow the exemption. LO/LEB felt that this was a bit more vague. Concern was expressed by some panel members over the concept of assuming approval if no response is received from a pre-notification; a diversion to a State which had not approved an exemption could put a flight crew in jeopardy.

1.4.1.4 It was agreed a small working group would develop text taking into account the guidance received in coordination with the Legal Bureau during the next biennium.

2. **ACTION BY THE DGP-WG**

2.1 The DGP-WG is invited to:

- a) consider the issue of en-route alternate aerodromes, diversions or re-routings; and
- b) consult with appropriate expertise when discussing the original issue, i.e. removing the State of Overflight from the exemption process.

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