



WORKING PAPER

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

Atlantic City, United States, 4 to 8 April 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 paper provides additional information in relation to “State of Overflight” and the exemption process.

Action by the DGP-WG is in paragraph 2.

REFERENCES

DGP/11-WP/47, DGP/22-WP/100

1. INTRODUCTION

1.1 At DGP/22, the feasibility of requiring the State of Overflight to be a party to issue an exemption was discussed (see DGP/22-WP/100, paragraph 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.

1.2 It should be noted that the Air Navigation Commission (ANC), when reviewing the agenda for the DGP/23 meeting, queried whether appropriate legal consultations on the removal of “State of Oversight” from the exemption process had been carried out. The Commission was informed it was likely there would be a paper on this subject for discussion at the DGP/23 when ICAO’s legal and air traffic management experts would be present.

1.3 To assist the work of the working group, previous discussion at DGP/11 (Montreal, 21 September to 2 October 1987) related to this issue is presented below:

1.2.9 Dangerous goods forbidden for transport by air unless exempted.

1.2.9.1 A lengthy discussion occurred as the result of one member’s proposal to amend the TI to encourage more liberal granting of exemptions for some otherwise

forbidden dangerous goods and to enable such exempted cargo to be transported without obtaining the approval of overflown States.

- 1.2.9.2 The TI currently specify that the concerned States (States of departure, transit, Overflight, and destination) may grant exemptions from the provisions of the instructions provided every effort is made to achieve a level of safety equivalent to that provided by the instructions. Exemptions may be granted either in cases of extreme urgency, when other forms of transport are inappropriate, or when full compliance with the prescribed requirements is contrary to the public interest. All of these conditions are very subjective, and interpretations by States have differed widely. While some States grant exemptions rather freely, there is evidence that shippers who fail to obtain all the necessary exemptions subsequently misrepresent the contents of their packages and ship dangerous goods without proper declarations and precautions.
- 1.2.9.3 The point was made that it would be far better to grant exemptions more readily, thus minimizing instances of undeclared and unknown dangerous cargo aboard aircraft and ensuring that all the necessary precautions and packaging requirements are observed. Other suggested that from the point of view of over-all risk assessment it is often less hazardous to the general public when such goods are shipped by air than when they are shipped by land transport because the over-all exposure of the public to any risk is actually lessened. Further, it was argued that, if the requirement for exemption authorization by overflown States could be eliminated, similar to the manner in which multilateral approvals for certain radioactive materials are dealt with, the exemption process would be greatly simplified.
- 1.2.9.4 Opponents of the proposal pointed out that it would be improper quite probably illegal to place provisions in the TI that would require any State to relinquish a degree of sovereignty over its airspace. Consequently, there was very little support for removing the requirement for obtaining Overflight authorization. Regarding liberalized granting of exemptions, there was considerable sympathy for this position, but most panel members felt this problem could not be solved by changing the provisions of the TI. More appropriately, the matter should be addressed by individual States from a regulatory and diplomatic standpoint. The panel decided not to support this proposal.

2. ACTION BY THE DGP-WG

- 2.1 The DGP-WG is invited to note the discussions at DGP/11 relating to the removal of State of Overflight from the exemption process.
- 2.2 A new paper will be prepared for DGP/23 based on the discussions at DGP-WG/11.

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