

DANGEROUS GOODS PANEL (DGP)
NINETEENTH MEETING
Montreal, 27 October to 7 November 2003

COMMENTS FROM AVSEC PANEL MEMBERS AND OBSERVERS

(Presented by the Secretary)

1. INTRODUCTION

1.1 AVSEC Panel members and observers were invited to review DGP/19-WP/37 and to answer the questions which were contained in Attachment C. The following comments have been received and are presented for information.

2. COMMENTS FROM AVSEC PANEL MEMBERS AND OBSERVERS

2.1 U. Haldimann, Switzerland

I believe that ICAO will rapidly have to produce a document concerning security of dangerous goods. Since Annex 17 will not be ready for an amendment in short time, I am in favour of a two step approach, meaning that in a first step Annex 18 and the Technical Instructions will be amended with cross-reference to Annex 17 in order to cover the subject as soon as possible; in a second step, such regulations will be introduced in Annex 17, as far as appropriate.

2.2 J. Haidar, Jordan

We all understand the urgency of this issue. Therefore; I am inclined to second Urs Haldiman's position, provided that we carefully examine the permanent inclusion of any references on Dangerous Goods into Annex 17. Any such move should be carefully calculated after proper and enough deliberation by the Panel.

2.3 S. Gerber, IATA

IATA's opinion I think concurs with most that we have seen so far.

Our view is that currently Annex 17 and the ICAO Security Manual do not specifically address dangerous goods from the perspective of shippers and other cargo operators, only passengers and their baggage. Shipper and cargo operators are part of the UN material.

We feel that there is an opportunity to bring the UN material in via the ICAO Technical Instructions for the Safe Transport of Dangerous Goods (TI) now while the 'deficiencies' of Annex 17 and the ICAO Security Manual are addressed. Eventually the material can be moved from Annex 18 to Annex 17/Security Manual.

This is also the view of IATA Dangerous Goods representatives who are Members of the ICAO Dangerous Goods Panel and have represented these views at those meetings as well.

2.4 **F. Durinckx, Belgium**

From this side, full support for several other members and observers point of view:

Provided the AVSEC Panel can move quickly, this is a unique opportunity to include security Standards and Recommended Practices with regard to dangerous goods in Annex 17. I think it is in all of our interest to maintain an (one) overall security concept monitored insofar as possible by one group (the AVSEC Panel) and included in one single document (Annex 17 - supported by State letter/Security Manual). As was so often the case in the past, nothing prevents the panel from involving/consulting other groups from other disciplines in its activities but the AVSEC Panel should take the lead in this respect. Spreading security requirements over different annexes (and panels/groups) is in my opinion weakening the concept provided - once again - we can move quickly.

2.5 **P. Reiss, IFALPA**

Reviewing the various comments that I have received thus far, I would second Urs Haldimann's suggestion of a two-step approach for the reasons that he states.

While dangerous goods do stand alone in some ways, clearly the security thereof is rather of a hybrid of areas addressable in both Annex 17 and Annex 18. However, it would seem that the emphasis on the security of dangerous goods should be addressed, where an *aviation security* threat, primarily in Annex 17. As there are issues of the security of dangerous goods that are not *primarily* of an aviation security threat nature, but of a safety nature and an economic nature, it would make sense to include *some* aspects of the security thereof in Annex 18. I would suggest, however, that where we are addressing the *AVSEC* aspects of the security of DG's, we address it in Annex 17, particularly as Annex 17 focuses on the *misuse* of - more than on the theft of - items, etc.

I would suggest that the addressing of an issue in two separate Annexes can make good sense - such as the addressing of inadmissibles and deportees in both Annex 9 and Annex 17. Our goals being very parallel in DG and AVSEC as regards the security of DG's, it would seem that some dual addressing and cross-reference may be appropriate, both now and in the future.

I received an interesting response from a colleague, which I will pass on to follow up my comments. "The only difficulty that I see about incorporating dangerous goods into Annex 17 is the fact that Annex 17 (in paragraph 4.5, Measures relating to cargo, mail and other goods) only addresses cargo for carriage on passenger flights. Perhaps an additional paragraph would be needed in Chapter 4 to encompass non-passenger carrying flights."

2.6 **T. Joy, New Zealand**

Urs Haldimann's suggestion is supported by New Zealand.

2.7 **L. Arellano Bolio, Mexico**

In our opinion, we can be coincident with points raised by Urs Haldimann taking into account that the Annex 18 technical group revise the document, and as soon as possible be included by the AVSEC group of expert in order to revise the Annex 17 and the inclusion as an Appendix in the Security Manual.

2.8 J. Mendel, Germany

From my perspective we should be very careful not to overload Annex 17 with non-security items. As the transport of dangerous goods is mainly a safety issue it should be incorporated into other annexes such as Annex 18 but not into Annex 17. I would therefore reject the request to expand Annex 17 to require cargo operators of cargo aircraft carrying dangerous goods to apply the specific UN security requirements (Question 3). I do not expect any difficulties if the UN requirements were to be incorporated into Annex 18 (Question 4). I do not see any potential for overlap or conflict if the requirements were to be incorporated into another Annex but Annex 17 (Question 5). Question 1 (inclusion of shippers into Annex 17) is not precise enough to be answered.

2.9 L. Gallagher, INTERPOL

I would just say that I fully support Urs Haldimann's suggestion and Peter Reiss' position of a two-step approach for the reasons stated.

2.10 J. Marriott, Canada

The documents forwarded to you by the ICAO Secretariat dealing with the interaction between AVSEC and Dangerous Goods merit your attention. I would urge you to consider them carefully and respond to the Secretariat's request views.

You will note, I am sure, that the matters raised touch on fundamental questions of roles and responsibilities, the mandate of both AVSEC and DG Panels, and have possible implications for how the security aspects of transportation of dangerous goods may be dealt with by your administration.

For my part, at this time I am undecided as to whether Annex 17 or Annex 18 is the appropriate "home" for the UN security requirements. I believe strongly, however, that the AVSEC Panel should, at the very least, discuss whether Annex 17 is the appropriate Annex for the ultimate disposition of the UN requirements before final decisions are made. While the time delay between the upcoming Dangerous Goods Panel and the next AVSEC Panel may be problematic for ICAO in addressing the UN requirements, due process should be followed in order to provide both the Council and the Secretariat with considered advice on the final disposition. This delay could generate pressure for interim action, such as an amendment to Annex 18 and the Technical Instructions while consideration is given to the matter in the context of Annex 17 by the AVSEC Panel. For discussion purposes if nothing else, another option for interim action (not reflected in any of the DG Panel papers) would be for the Secretariat to issue the UN requirements by State Letter and urge compliance while regulatory action by ICAO is in development.

2.11 J. Marriott, Transport Canada

1. a) Can Annex 17 be expanded to include shippers?

Yes, Annex 17 can be expanded to include shippers. Indeed, the definition of "Regulated Agent" can be interpreted as implying that they are already included; it reads:

“Regulated Agent. An agent, freight forwarder **or any other entity** who conducts business with an operator and provides security controls that are accepted or required by the appropriate authority in respect of cargo, courier and express parcels or mail.” (emphasis added)

AVSECP members may wish to propose an interpretation of this definition to clarify its inclusion of shippers, add specific reference to shippers to the definition, or expand Annex 17’s application to shippers through some other means.

1. b) What would be the implications of such an expansion?

Expansion of Annex 17 to include shippers would help promote aviation security by ensuring that provisions aimed at addressing security threats involving shippers (e.g., cargo security & dangerous goods provisions) capture them appropriately and adequately. It would also provide for a more complete supply-chain security model to be applied to air cargo.

Also, in the context of adopting the UN recommendations on the security of dangerous goods in transport, expansion of Annex 17 to include shippers would:

- enhance aviation security by ensuring that those with expertise and experience in transportation security are responsible for guiding the national implementation and oversight of the UN recommendations;
- be efficient since Annex 17 already addresses many of the issues contained in the UN recommendations;
- maintain the clarity of the existing ICAO regime by ensuring security elements remain largely in one instrument (i.e., Annex 17); and
- be appropriate as the UN recommendations are concerned with the security of dangerous goods, not the properties or safe handling of those goods.

2. a) Can Annex 17 be expanded to require cargo operators of cargo aircraft carrying dangerous goods to apply the specific UN security requirements?

Yes, Annex 17 can be expanded to require cargo operators of cargo aircraft carrying dangerous goods to apply the specific UN security requirements. Annex 17 could likewise be expanded to ensure cargo operators of cargo aircraft (and cargo-only air services) are subject to security controls similar to those in place for passenger flights and appropriate to the risk associated with such cargo-only operations. The key question, however, is *should* Annex 17 be expanded in this manner. This is a matter for the AVSEC Panel to address.

2. b) What would be the implications of such an expansion?

Expansion of Annex 17 to require cargo operators of cargo aircraft carrying dangerous goods to apply the specific UN security requirements would, consistent with the objectives of those recommendations, enhance aviation security by ensuring that the security of dangerous cargo is maintained regardless of the nature of the air service. This is especially important since it is understood that a significant portion of dangerous goods transported by air is likely carried on cargo aircraft rather than passenger aircraft. Balanced against this, is the potential for significant operational and economic impacts on cargo aircraft services.

Also, as noted in the answer to question 1 b), above, expansion of the Annex 17 in this way would:

- enhance aviation security since those with the relevant expertise and experience in transportation security be responsible for guiding the national implementation and oversight of the UN recommendations;
- be efficient since Annex 17 already addresses many of the issues contained in the UN recommendations;
- maintain the clarity of the existing ICAO regime by ensuring security elements remain largely in one instrument (i.e., Annex 17); and
- be appropriate as the UN recommendations are concerned with the security of dangerous goods, not the properties or safe handling of those goods.

3. If the UN security requirements were to be incorporated into Annex 18 and/or the *Technical Instructions for the Safe Transport of Dangerous Goods by Air*, do you anticipate any problems?

If done as an interim step (i.e., before ultimately transferring them to Annex 17) to ensure the UN recommendations become part of the ICAO regime in a timely manner, incorporating the UN recommendations into Annex 18, should not be problematic.

Incorporating the UN recommendations into Annex 18 permanently, however, would be problematic for the following reasons:

- as the UN recommendations concern the security of dangerous goods, rather than their properties or safe-handling, it would be inappropriate for those without security expertise to be responsible for guiding the national implementation and oversight of the UN recommendations;
- dividing up ICAO's security provisions between multiple annexes will harm aviation security by making them more difficult to find, track and understand and therefore less likely to be implemented correctly or complied with fully;
- as many of the provisions in the UN recommendations are already contained in Annex 17, incorporating them into Annex 18 would be redundant and thus needlessly complicated; and
- incorporating the UN recommendations into Annex 18 would also complicate implementation at the national level since many states manage security and safety (including the safe-handling of dangerous goods) separately.

4. Do you see a potential for overlap and conflict? If yes, please describe and make suggestions as to how this could be resolved or minimized.

While it is desirable that ICAO's security provisions and dangerous goods/safety provisions be kept discrete, the cross-jurisdictional nature of the UN recommendations on the security of dangerous goods in transport means that some overlap is inevitable. Also, some degree of overlap may be useful at both the ICAO and national levels to ensure appropriate coordination and the continuing involvement of those with aviation security and dangerous goods expertise.

Approaches to minimizing this overlap include the following:

a) during the interim period when the UN recommendations are incorporated into Annex 18 and its associated Technical Instructions:

- include a statement clarifying the intention to transfer the sections re: security of dangerous goods to Annex 17; and
- cross-reference the aspects of the dangerous goods security provisions to their equivalents in Annex 17 or the Security Manual, where applicable.

b) after the appropriate elements UN recommendations are transferred from Annex 18 to Annex 17 (as was done previously for specifications appearing in Chapter 9 of Annex 9 – *Facilitation* (Seventh Edition) in 1977-78):

- include a statement confirming that the dangerous goods security provisions in Annex 17 apply in combination with the safety related provisions contained in Annex 18 (e.g, definitions);
- cross-reference the aspects of the dangerous goods security provisions to their equivalents in Annex 18 or the Technical Instructions (if any); and
- include cross-references to the aspects of the dangerous goods security provisions which have not been transferred from Annex 18 or the Technical Instructions (if any).

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