
COMMITTEE OF EXPERTS ON THE TRANSPORT OF DANGEROUS GOODS AND ON THE GLOBALLY HARMONIZED SYSTEM OF CLASSIFICATION AND LABELLING OF CHEMICALS

Sub-Committee of Experts on the Transport of Dangerous Goods

Twenty-sixth session
Geneva, 29 November-7 December 2004
Item 3 (d) of the agenda

OUTSTANDING ISSUES OR PROPOSALS OF AMENDMENTS TO THE RECOMMENDATIONS ON THE TRANSPORT OF DANGEROUS GOODS

Comments on the World Convention on the Transport of Dangerous Goods

Transmitted by the International Civil Aviation Organization (ICAO)

BACKGROUND

At the twenty-fifth session of the *Sub-Committee of Experts on the Transport of Dangerous Goods*, a paper (ST/SG/AC.10/C.3/2004/32) was submitted by the expert from Italy on the subject of a world convention on dangerous goods. Advice was sought from the ICAO Legal Bureau on any potential implications for ICAO and Annex 18 to the Chicago Convention with respect to this proposed convention; the comments are reproduced below for the information of the Sub-Committee.

COMMENTS FROM THE ICAO LEGAL BUREAU

1. The UN Recommendations on the Transport of Dangerous Goods include Model Regulations which aim at covering all means of transportation for carrying dangerous goods. As a long-standing practice, amendments to the UN Recommendations, where 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* (Technical Instructions), following approval by the Council of ICAO. Accordingly, when incorporating such regulations into its Technical Instructions, ICAO has always selected and adapted as 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. Hence, the shippers' community considers the Technical Instructions as the traditional civil aviation-related recipient of the UN Recommendations.

2. As recognized in Article I of the *Agreement Between the United Nations and the International Civil Aviation Organization* (entered into force on 13 May 1947), ICAO is the Specialized Agency responsible for international civil aviation. The safety and security of international civil aviation are overriding objectives of the Organization, a principle entrenched in the constitution of ICAO, the *Convention on International Civil Aviation* (Chicago, 1944). Accordingly, ICAO is the global international organization competent for establishing international Standards and Recommended Practices (SARPs) and Procedures covering the technical fields of aviation, including the safe transport of dangerous goods by air as embodied in Annex 18 to the Convention. Such SARPs in Annex 18 are complemented by the Technical Instructions, to which the Council desired to grant a more stringent effect than guidance material, by referring to them in Annex 18. Paragraph 2.2.1 of Annex 18 specifies that each Contracting State shall take the necessary measures to achieve compliance with the Technical Instructions and any amendments thereto. Therefore, any endeavour to change the legal status of the Model Regulations should preserve such responsibility of ICAO in the aeronautical field and the regime it has enacted.

3. For the sake of safety, practicality is also to be seriously considered. So far, to the extent that civil aviation was concerned, the UN Recommendations on the Transport of Dangerous Goods have always been placed within the ICAO Technical Instructions, the status of which allowed a shorter cycle of amendments than the Annexes to the Chicago Convention, which was a procedural advantage. In this respect, it is uncertain that a convention would offer enough flexibility in terms of early reaction and necessary adaptation to changes in the field of transport of dangerous goods, as the amendment of conventions is usually a time-consuming process (although it is sometimes possible to achieve a higher degree of flexibility, such as by incorporating an Annex to the convention with a different amendment procedure). It should be considered whether a convention would offer sufficient added value from the current regime, as the considerable degree of harmonization which has been reached through the Model Regulations might not be improved or even matched through a convention.
