

INTERNATIONAL CIVIL AVIATION ORGANIZATION

**INTERNATIONAL CONFERENCE
ON AIR LAW**

**(Convention on the Marking of Plastic Explosives
for the Purpose of Detection)**

Montreal, 12 February – 1 March 1991

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PART I

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ICAO

International Civil Aviation Organization

**SUB-COMMITTEE ON THE PREPARATION
OF A NEW LEGAL INSTRUMENT
REGARDING THE MARKING OF
EXPLOSIVES FOR DETECTABILITY**

Montreal, January 1990

REPORT

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SUB-COMMITTEE FOR THE PREPARATION OF A NEW LEGAL
INSTRUMENT REGARDING THE MARKING OF EXPLOSIVES
FOR DETECTABILITY

(Montreal, 9 - 19 January 1990)

REPORT

PART I

INTRODUCTION

Background information

1. On 30 January 1989, the Council considered the Report of the Chairman of the Committee on Unlawful Interference entitled "Reports on acts of unlawful interference in 1988 (PAN AM 103 incident)". As a result of its discussions, the Council agreed that the President of the Council, in consultation with the Secretary General, would take immediate steps to establish an Ad Hoc Group of Specialists on the Detection of Explosives which would report directly to the Council. The Ad Hoc Group met at Montreal from 6 to 10 March 1989. The Council referred the report of the Group to the Committee on Unlawful Interference for review; it was considered on 3 and 19 May 1989. The Committee also subsequently considered a proposal for the development of a new legal instrument regarding the marking of explosives for detectability presented by the United Kingdom and Czechoslovakia.

1.1 It will be recalled that Operative Clause 9 of the Resolution adopted by the Council on 16 February 1989 "urges member States to expedite, in the light of Assembly Resolution A26-7, App. C research and development on detection of explosives and on security equipment, to continue to exchange such information and to consider how to achieve an international regime for the marking of explosives for the purposes of detection". Furthermore, on 14 June 1989, the United Nations Security Council adopted unanimously Resolution 635 which "urges ICAO to intensify its work aimed at preventing all acts of terrorism against international civil aviation, and in particular its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection". On 29 June 1989, the Council considered the Report by the Chairman of the Committee on Unlawful Interference on the Report of the Ad Hoc Group of Specialists on the detection of explosives and decided to include in the General Work Programme of the Legal Committee with the highest and overriding priority, the subject: "Preparation of a new legal instrument regarding the marking of explosives for detectability". The Council also decided to seek the endorsement of the 27th Session of the Assembly with respect to this subject and to inform the United Nations and other related organizations of the ICAO action.

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ICAO Assembly - 27th Session

2. At the 27th Session of the Assembly (September-October 1989), the Delegations of Czechoslovakia and the United Kingdom presented to the Executive Committee paper A27-WP/115, EX/37 which contained a draft Resolution on the marking of plastic and sheet explosives for the purpose of detection; the Executive Committee recommended to the Plenary the adoption of that Resolution. Resolution A27-8 was adopted unanimously by the Assembly and its last Resolving Clause called upon the Council "to convene a meeting of the Legal Committee, if possible in the first half of 1990, to prepare a draft international instrument for this purpose, with a view to its adoption at a diplomatic conference as soon as practicable thereafter in accordance with the ICAO procedures set out in Assembly Resolution A7-6."

Action by the Council

3. At the fourth meeting of its 128th Session on 15 November 1989, the Council of ICAO approved the General Work Programme of the Legal Committee and decided to convene the special Sub-Committee of the Legal Committee at Montreal from 9 to 19 January 1990, to implement Resolution A27-8 which, inter alia, calls upon the Council to convene a meeting of the Legal Committee to prepare a draft instrument regarding the marking of explosives for detectability.

Composition of the Sub-Committee

4. Acting under Rule 12 b) of the Rules of Procedure of the Legal Committee, the Chairman of the Legal Committee established a special Sub-Committee and decided to appoint legal experts of the following States to serve as members of the Sub-Committee: Argentina; China; Côte d'Ivoire; Czechoslovakia; Egypt; France; Germany, Federal Republic of; India; Japan; Mauritius; Mexico; Saudi Arabia; Spain; Sweden; Union of Soviet Socialist Republics; United States and Venezuela. All the States were represented in the Sub-Committee, with the exception of China, Egypt and India; however, China and India were represented by Observers. The Chairman of the Legal Committee appointed Canada as a member of the Sub-Committee.

4.1 Furthermore, the Representatives of the following States were ex-officio members of the Sub-Committee under Rule 13(c): Italy (Chairman), United Republic of Tanzania (First Vice-Chairman), Venezuela (Second Vice-Chairman), Hungary (Third Vice-Chairman), Pakistan (Fourth Vice-Chairman) and United Kingdom (past Chairman); the First, Second and Third Vice-Chairmen did not participate in the Sub-Committee.

4.2 In accordance with Rule 17, the Chairman of the Legal Committee appointed a Rapporteur, Mr. A.W.G. Kean, CBE (United Kingdom), who presented his Report in September 1989 and attended the meeting of the Sub-Committee.

4.3 A list of members of the Sub-Committee and observers is shown in Appendix A hereto.

4.4 Under Rule 24 of the Rules of Procedure of the Legal Committee the Sub-Committee invited Observers from the United Nations, International Maritime Organization (IMO), International Air Transport Association (IATA), International Federation of Air Line Pilots Associations (IFALPA) and International Criminal Police Organization (ICPO). The Sub-Committee also agreed that all Contracting States can participate as observers in the Session.

Terms of reference of the Sub-Committee

5. The terms of reference of the Sub-Committee as defined by the Council are as follows: to study, in the light of the Council decision of 29 June 1989 and Assembly Resolution A27-8 as well as in the light of the Rapporteur's Report, the subject of a draft instrument relating to the marking of explosives for detectability, and to prepare a draft instrument for further consideration by the 27th Session of the Legal Committee. The Sub-Committee duly noted its terms of reference and agreed that its essential task was not only to analyze the basic principles but in particular to prepare a draft text of an instrument to facilitate the work of the Legal Committee.

Meetings of the Sub-Committee

6. The Sub-Committee met at Montreal and held seventeen meetings between 9 and 19 January 1990. All meetings were held in closed session (Rule 21 of the Rules of Procedure of the Legal Committee).

6.1 In his capacity as Chairman of the Legal Committee, Dr. A. Sciolla Lagrange (Italy) opened the Session and outlined the importance of the task assigned to the Sub-Committee to respond to the political will of the international community to prepare the new legal instrument regarding the marking of explosives for detectability. He then invited the President of the Council, Dr. Assad Kotaite, to address the opening meeting.

6.2 The President of the Council recalled that the 27th Session of the Assembly had adopted unanimously Resolution A27-8 in which it endorsed the decision of the Council that the preparation of a new legal instrument regarding the marking of explosives for detectability should have the highest and overriding priority in the work programme of the Legal Committee. This had received a strong endorsement from the UN Security Council which adopted on 14 June 1989 Resolution 635 urging ICAO to devise an international regime for the marking of explosives for the purpose of detection; furthermore, the General Assembly of the United Nations, in December 1989, adopted Resolution 44/29 noting the ongoing work of ICAO on this subject. He also informed the Sub-Committee of his discussions with the Secretary-General of the United Nations during which Mr. Perez de Cuellar expressed full endorsement for the plan of action adopted in ICAO. He expressed the wish that the work undertaken by the Sub-Committee would successfully respond to the will of the international community.

6.3 At its second meeting on 9 January 1990, the Sub-Committee unanimously elected as its Chairman Mr. C. de la Verpillière (France) and as Vice-Chairman Mr. V. Poonoosamy (Mauritius).

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PART I

6.4 The Secretary of the Session was Dr. M. Milde, Director of the Legal Bureau. Dr. M. Pourcelet, Principal Legal Officer, acted as his Deputy. The Assistant Secretaries were Mr. G.M. Kakkar, Legal Officer, and Mr. J.V. Augustin, Assistant Legal Officer of the Organization; other officials of the Organization also provided services for the Sub-Committee.

Documentation

7. A list of documents presented to the Sub-Committee is found in Appendix B hereto.

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PART II

DISCUSSIONS OF THE SUB-COMMITTEE

Rapporteur's Report

8. The Rapporteur of the Legal Committee, Mr. A.W.G. Kean, CBE (United Kingdom) presented his report, the text of which forms an integral part of this Report of the Sub-Committee (Appendix C hereto). He believed that the "new legal instrument" should be a new Convention and not an amendment to the Chicago Convention or a new or amended Annex to that Convention. He proposed the establishment of an Explosives Technical Commission (ETC) which would specify in a Schedule the explosives to which the Convention would apply and the measures to be taken to make them detectable. States would have the right to file differences to any provision in the Schedule. Although the ETC could be appointed by the Council of ICAO, some other authority could well assume this function. The Rapporteur proposed the definition of an international offence, namely, for any person without lawful excuse a) to manufacture, prepare or pack any specified explosive without its corresponding additive; or b) being a person who knows or ought to know that the explosive does not contain the required additive, to sell, exchange or donate it or carry it or cause it to be carried in any means of transport. States would be required to prohibit the import or export of unmarked explosives. Attempt and complicity were also referred to in the draft. A scheme similar to that found in The Hague Convention (1970) and the Montreal Convention (1971) relating to the taking into custody, jurisdiction, prosecution and extradition of offenders or alleged offenders could be followed in this instance. He felt that the provisions of these Conventions widely accepted by States should be inserted in the draft instrument. As to the application of the proposed Convention to explosives in the possession of the military or police authorities, he was of the opinion that, in any event, any such possession was likely to be authorized and lawful. Referring to the status of existing explosives, the Rapporteur suggested a deadline to allow such explosives to be used without the additives.

8.1 The members of the Sub-Committee congratulated the Rapporteur for his excellent report and for the draft text which would provide an inspiring basis for further consideration.

Other introductory proposals

9. A possible alternative approach was proposed by the United Kingdom; that proposal was based on the assumption that all States closely regulate and monitor all matters related to the manufacture, possession, transport etc. of explosives and for that reason the new instrument might be simpler; it would only stipulate the obligation of each Party to take necessary measures to prevent the manufacture in its territory of explosives defined in Schedule I unless they are marked with a detection agent defined in Schedule II. Each Party would also be obliged to take measures to ensure that such defined

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explosives which have not been properly marked shall not be bought, sold, exchanged, donated or received by way of gift; Parties shall also prevent the import and export of such unmarked explosives. The proposal of the United Kingdom did not contain penal provisions as they were considered to be unnecessary and undesirable; it was believed that the definition of an international offence would complicate the preparation of a new instrument and delay its entry into force and that it would be for the Parties to define in their domestic law any specific offences and penalties.

10. A comprehensive draft Convention was presented by the Federal Republic of Germany and it elaborated on the text presented by the Rapporteur. The draft highlighted the basic obligation of the Parties to require that specific explosives be marked with defined substances or mechanisms in order to facilitate or enable their detection and contained detailed penal provisions, but the Delegation emphasized that it was prepared to reconsider the need for a definition of an international offence and provisions on jurisdiction in the light of further discussions.

11. The United States of America presented a list of possible elements for a draft Convention with Annexes forming an integral part of the Convention; the scope of the proposed Convention would oblige the Parties to mark all plastic and sheet explosives manufactured in their territories in accordance with the procedures described in the Annexes to permit detection of the presence of any such explosives; Parties would not permit import or export of unmarked explosives and after an agreed period the possession of such unmarked explosives would be prohibited for any purposes whatsoever. The proposed elements did not include penal provisions of international character.

12. The Delegation of Argentina presented a list of subjects to be examined under the terms of reference of the Sub-Committee.

General discussion

13. During the period of general discussion, the following opinions were expressed by one or more members of the Sub-Committee.

13.1 ICAO mandate: The Sub-Committee noted UN Security Council Resolution 635 of 14 June 1989 and UN General Assembly Resolution 44/29 of December 1989, in particular its clause 12. These Resolutions were interpreted as an explicit mandate to ICAO to devise an international regime for the marking of plastic or sheet explosives for the purpose of detection; such a regime should not be limited to the scope of international civil aviation but should have general applicability and be acceptable to other international organizations. Consequently, the Sub-Committee and later the Legal Committee should proceed with their work on this subject from a wide perspective not restricted to problems of aviation security or problems of transportation.

13.1.1 The Sub-Committee agreed that the work on this subject could be properly handled within the constitutional framework of the International Civil Aviation Organization and of its Legal Committee; a diplomatic conference for

the eventual adoption of a new instrument could be properly convened by the Council of ICAO under the terms of ICAO Assembly Resolution A7-6 (Procedure for Approval of Draft Conventions). The Sub-Committee also believed that the Legal Committee should consider recommending to the ICAO Council that the United Nations, the International Maritime Organization and other specialized agencies of the United Nations system be invited to participate in the work of the diplomatic conference. The Sub-Committee agreed that there would be no obstacle, within the constitutional framework of the Convention on International Civil Aviation, if the Council of ICAO were to accept specific functions which the new instrument may confer on it.

13.2 Need for the new instrument: All Members and Observers agreed that there was need for the preparation of a new instrument which should be effective and capable of entering into force on a wide basis as early as practicable. It was noted that the new instrument will be only a part of the overall preventive actions for the protection of general security, including aviation security. Plastic or sheet explosives have been identified as the instrument of criminal acts which led to the total destruction of two civil aircraft and the death of all on board in the recent past; it was only logical that the initiative to address this problem come from ICAO, but the proposed solution should not be limited to aviation security. It was also noted that the new instrument would be effective with respect to explosives legitimately manufactured or traded; no such effect could be expected with respect to explosives which may be produced by clandestine laboratories serving criminal interests and the domestic law enforcement machinery of States will have to be alert to suppress such unlawful activity.

13.3 Scope of the new instrument: During the general discussion the Sub-Committee considered various approaches to the problem of the scope of the new instrument. There was agreement that the new instrument should primarily deal with the marking of plastic and sheet explosives at the production level to make the detection of their presence easier and more effective with the use of the available technology. Some Members preferred a wider scope of the new instrument which would also define a new offence subject to universal jurisdiction or extradition along the lines of the provisions of The Hague (1970) and Montreal (1971) Conventions to which at present 142 and 143 States are Parties, respectively.

Specific questions considered

14. Form of the new instrument: The Sub-Committee noted that, in theory, the new instrument could be prepared in the form of an amendment to an existing convention (e.g. the Chicago Convention), a supplementary protocol to an existing convention (e.g. Montreal Convention of 1971), a new Annex to the Chicago Convention or amendment of an existing Annex. Having considered all such possibilities, the Sub-Committee agreed that the new instrument should be prepared in the form of an independent, self-standing new Convention open to participation by all States.

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15. Definition of explosives: The Sub-Committee considered whether there was need to define with great detail the type of explosives to which the new instrument would apply. The Sub-Committee noted that the Ad Hoc Group of Specialists on the Detection of Explosives established by the President of the ICAO Council pursuant to the Council decision of 30 January 1989, targeted plastic explosives as their primary objective, defining them as:

"those flexible/malleable explosives containing a binder material and formulated with one or more high explosive ingredients having very low vapour pressures" (e.g. RDX PETN (pentride) HMX).

The Sub-Committee agreed that the specific definition will have to be prepared by the technical experts of the Ad Hoc Group in consultation with States well in advance of the diplomatic conference. The Sub-Committee also cautioned that any technical definition of the explosives must be wide enough to accommodate future technical developments in the field of explosives; preference was expressed for a generic description of the explosives covered by the new instrument as those producing very low vapour pressure and requiring an enhancing vapour agent of an additive for their detection in the process of the gas analysis methods.

16. Explosives Technical Commission: The Sub-Committee agreed that the new instrument should provide for the existence of an Explosives Technical Commission (ETC) composed of experts in the field of explosives and their detection. The task of the ETC would be to study the technical developments and make recommendations for the amendment and updating of the technical Annexes to the new instrument with respect to the new types of explosives to be covered and the processes for their marking for detectability. The ETC could consist of fifteen (15) experts nominated by States Parties to the Convention and appointed by the Council of ICAO according to a procedure similar to that applicable to the appointment of members of the Air Navigation Commission (ANC); the composition of the ETC should safeguard proper representation of the expertise available to the major manufacturing States in the field of explosives and detection devices. To the extent possible, adequate representation of the major areas of the world should also be ensured. Another view recorded in the Sub-Committee was that there was no pressing need to establish a permanent body under the new instrument; the developments would be monitored by all States and the Council of ICAO could periodically as need requires convene an Ad Hoc Group of Experts to advise on the need and method of updating the new instrument. All Members agreed that, in any case, the ETC or other body would have only advisory functions.

17. Link of the new instrument with ICAO: The Sub-Committee considered in great detail the question whether ICAO can perform any specific functions with respect not only to the preparation of the new instrument (see 13.1.1 above) but whether it can provide the institutional mechanism relevant for the functioning of the new instrument. Due to its practically universal character, its experience in the legal and technical field in problems relating to the

prevention and suppression of unlawful acts of violence, and its internal organization, ICAO can provide a forum particularly well adapted for consideration of preventive security measures transcending the field of aviation and reflecting the political will of States. The Sub-Committee agreed that the constitutional framework of the Convention on International Civil Aviation would not pose any obstacle to ICAO assuming specific functions under the new instrument. A view was expressed that it would be preferable to use the existing mechanism of ICAO rather than contemplate the creation of a new mechanism with separate secretariat services and considerable additional costs for States.

18. Legal status of the Annexes of the new instrument: The Sub-Committee agreed that the technical Annexes describing the required marking of such explosives and possibly defining the explosives to which the new instrument would apply must be prepared by the technical experts of the Ad Hoc Group in consultation with States and sent by the Council of ICAO to States as part of the final draft to be presented for consideration by the diplomatic conference. The Annexes would be adopted by the conference at the same time as the Convention and would have the same legal force for States. Some original proposals contemplated that the Annexes could be later amended by the decision of a representative body (ETC, Council) and that States would have the right to file a difference against the new provisions along the lines of the procedure under Article 38 of the Convention on International Civil Aviation which permits States to file a difference against Standards adopted by the Council of ICAO. The Sub-Committee agreed that the analogy with the procedure with respect to ICAO Standards would not be suitable for the new instrument and that it was indispensable that the provisions of the Annexes be applied uniformly and universally by all Parties. Thus the Sub-Committee agreed that the Annexes should have the force of law (unlike the ICAO Standards).

19. Amendment of the Annexes: The Sub-Committee recognized that the technical Annexes of the new instrument may require review from time to time to keep abreast with the technological developments. The following three proposals were presented for consideration with respect to the procedure for the amendment of the Annexes:

- (a) the proposal for an amendment would be prepared by a body of technical experts (ETC) and adopted by the Council of ICAO; thereafter it would be binding for all Parties;
- (b) the Annexes should be amended by a conference which would take its decision by two-thirds majority followed by acceptance or ratification if required under domestic constitutional provisions; the new instrument may provide for periodic revision by a conference; the formal expression of the sovereign will of States is essential for any amendments;

- (c) the proposal would be prepared by a body of technical experts (ETC) and sent to States for comments; if no objection is received, the amendment would be applicable; in case of any objections, a diplomatic conference would be convened.

None of these proposals obtained full support and the Member of the United Kingdom presented, after informal consultations, the following compromise proposal:

The proposal for an amendment would be prepared by a technical body (ETC) which would send its report through the ICAO Secretary General to the ICAO Council; the Council would circulate the proposal to States for comments to be received within a specified period (say, 90 days). If any State raises an objection to the proposed amendment, the Council would refer the matter back to the technical body for reconsideration; if there are no objections or if the objections are satisfied on further reconsideration, the amendment would enter into force in a specified period of time; if there are objections which cannot be satisfied, the Council would convene a diplomatic conference to consider the proposed amendment.

While it was proposed to proceed to a preferential indicative vote on the different proposals, the Sub-Committee preferred to maintain its informal procedure in search of a consensus. The problem of amendments of the Annexes was referred to the Drafting Group with instructions to draft a solution or alternative solutions.

20. Obligations of States under the new instrument: The Sub-Committee recognized that the character and scope of the international obligations to be assumed by States under the new instrument was the central problem of the draft. Subject to further specific drafting the Sub-Committee agreed that the fundamental undertaking of States under the new instrument would be to require within their jurisdictions that all explosives covered by the new instrument and which are manufactured or the subject of any transaction in their territories are marked as prescribed in the instrument. This obligation would also apply to substances imported or exported. There was considerable discussion whether the new instrument should specifically provide that States are obliged to adopt criminal legislation to implement their international obligations in the field of domestic jurisdiction; a considerable majority of the Sub-Committee agreed that there was no need for such a clause and that the new instrument should be as simple as possible and leave full latitude to States in the fulfilment of their international obligations. Some Members favoured a possible inclusion of a clause according to which States would be obliged to inform the depositary of their laws and regulations which give effect to the new instrument and the depositary would communicate such information periodically to all States Parties.

21. Penal provisions (international offence): The original drafts presented by the Rapporteur and by the Federal Republic of Germany contemplated the definition of an "offence" in the new instrument and an obligation of

States to make punishable by adequate penalties any unlawful conduct in violation of the laws and regulations relating to the requirement that all specified explosives must be marked by an additive to facilitate their detection; the proposal was accompanied by detailed provisions on jurisdiction and extradition modelled on the text of The Hague (1970) and Montreal (1971) Conventions. Some Members of the Sub-Committee and one Observer from an international organization favoured this approach. A great majority of the Sub-Committee agreed that the new instrument should not contain any penal provisions. The arguments of the great majority were that the centre of gravity of the new instrument was in the field of regulatory prevention of possible unlawful activities and the fundamental obligation of States should be to require the addition of a marking agent to specified explosives. The new instrument should not deal with specific criminal activity (e.g. actual use of unmarked explosives) which is addressed in other existing instruments; the manufacturing of explosives is essentially a lawful activity (although strictly regulated, monitored and supervised by State authorities); explosives are not inherently unlawful and have legitimate uses, and it would be extremely difficult to find an internationally acceptable definition of an offence suitable for all specific domestic situations. It was believed that the drafting of penal provisions - which in any case are not of central importance to the new instrument - would be cumbersome, time-consuming and divisive and would very likely considerably diminish the chances of the new instrument entering into force at an early date. In conclusion, the great majority of the Sub-Committee agreed that the inclusion of penal provisions was neither necessary nor desirable. The minority view was that the inclusion of the penal provisions would highlight the determination of States to take forceful action against individuals violating the purpose of the new instrument.

22. Explosives in the possession of military, police or customs authorities: The Sub-Committee considered whether, by analogy with Article 3(a) and (b) of the Convention on International Civil Aviation, the new instrument should provide an exception with respect to explosives in the possession of military, police, customs or other "State" authorities. The Sub-Committee agreed that Article 3 of the Chicago Convention had no relevance whatsoever in the context of the preparation of a new instrument on the marking of explosives; the Sub-Committee believed that all explosives manufactured, imported or exported must be subject to the marking requirement without any exception whatsoever, since otherwise the very purpose of the new instrument would be seriously jeopardized.

23. Existing stockpile of unmarked explosives: The Sub-Committee noted that at the time of entry into force of the new instrument large stockpiles of unmarked explosives may exist. It noted the technical expert opinion that there was no suitable and reliable method available to mark the existing explosives after their manufacture and packaging for storage. Although some Members would have preferred a clause in the new instrument that upon its entry into force for a State that State would be obliged to destroy the existing

stock of unmarked explosives or eliminate them over a specific period of time (3 - 5 years), the Sub-Committee noted that such a provision would place an extremely heavy economic burden on States and would very likely delay the entry into force of the new instrument. The Sub-Committee agreed to propose a clause that each Party shall exercise strict control of any remaining unmarked stock to prevent its diversion for unlawful purposes.

24. Other problems: The Sub-Committee agreed that the Preamble to the new instrument should not be drafted at this stage. The Final Clauses could contain provisions encouraging exchange of information and other co-operation between States, a clause on the settlement of differences, entry into force, and the depositary functions. These issues could be addressed by the Legal Committee.

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PART III

DECISIONS AND CONCLUSIONS

Draft text

25. During the detailed discussions reported on in Part II of this Report the Sub-Committee reached an agreement on fundamental principles for the new instrument. The task of drafting was referred to a Drafting Group composed of Members from Czechoslovakia, Federal Republic of Germany, Mauritius, Union of Soviet Socialist Republics, United Kingdom and United States.

25.1 The Drafting Group met on 12 January 1990 under the chairmanship of Mr. V. Poonoosamy (Mauritius) and prepared for further consideration by the Sub-Committee six (6) draft Articles reflecting the decisions of the Sub-Committee as well as an alternative solution for the process of amendment of the Annex. The text was further reviewed by the Sub-Committee and the resulting text is presented in Appendix D to this Report.

25.2 During the progress of review of the text prepared by the Drafting Group the Sub-Committee took the following further decisions which are either included in the draft text in Appendix D to this Report or recorded in this Report below for further consideration by the Legal Committee.

25.2.1 Name of the Convention: The Sub-Committee agreed that the name of the proposed Convention should clearly express its basic purpose as referred to in paragraph 15 above.

25.2.2 Definition of the explosives: The Sub-Committee noted an expert opinion that the expression "sheet explosives" used in the United Nations and ICAO Resolutions and decisions is not technically correct; the opinion was that the expression "sheet" explosives referred only to the physical shape of the explosive but not necessarily to its physical and chemical properties which would require marking for the purposes of detection; pending further decision the Sub-Committee agreed to keep the expression "sheet" in square brackets in the draft text.

25.2.2.1 The Sub-Committee considered, with respect to definitions of "explosives", "marking of explosives" and "detection agent", two divergent proposals. One proposal was that the definitions of these terms should be included in a separate Article I of the draft Convention and thus be a part of the main body of the Convention. The other view was that the definitions should be included in the technical Annex; that Annex would be an integral part of the Convention but could be made amenable to a more flexible process of amendment in the light of technological developments. Since no consensus has been reached on these two divergent proposals, both alternatives are

included in square brackets in Appendix D of this Report for further consideration by the Legal Committee. One Delegation wished to record in the Report a possible compromise which was supported by two other delegations according to which Alternative A would contain general definitions only, whereas the technical details would be deleted from these definitions and referred to in the Annex.

25.2.3 "State Party": The Sub-Committee discussed whether the proposed Convention should refer to "Contracting State", "Party" or "State Party"; it agreed that in conformity with the Vienna Convention on the Law of Treaties and the recent drafting practice both in the United Nations and in ICAO the reference should be to "State Party".

25.2.4 Obligation of States: The Drafting Group proposed to formulate the obligation of States in Articles II and III by a phrase: "Each State Party shall prohibit ...". Some Members believed that the text should read: "Each State Party shall take such measures as may be necessary to prohibit ..."; since consensus on these formulations has not been reached, both alternatives are retained in the draft in square brackets for further consideration by the Legal Committee.

25.2.5 Export and import: The Sub-Committee agreed that the expressions "export" and "import" used by the Drafting Group could be too restrictive and may require a specific definition; the Sub-Committee agreed to use in the draft text reference to "the movement into or out of its territory"; furthermore, to cover any unlawful trading or transfers of unmarked explosives within the territory of a State, the Sub-Committee agreed to refer to "any kind of transactions involving such explosives".

25.2.6 Existing stockpile of unmarked explosives: In conformity with the decision of the Sub-Committee (paragraph 23 above), the Drafting Group formulated the obligation of States with respect to existing stockpiles as "strict control over such unmarked explosives ..."; some Members preferred that this obligation should be made more specific and expressly refer to control over possession of or transactions involving such unmarked explosives; furthermore, the Sub-Committee agreed to include into the draft the rationale for such control, namely, "to prevent their use or diversion for purposes inconsistent with the objectives of this Convention".

25.2.7 Role of the ICAO Council: Although the Sub-Committee agreed (see paragraph 17 above) that the Council of ICAO could, if so decided by the diplomatic conference, assume specific functions under the new Convention, the references to the Council of ICAO in Articles IV, V and VI are kept in square brackets.

25.2.8 Role of other international organizations: The Sub-Committee agreed to record its view that the United Nations, specialized agencies, the IAEA and other organizations should be encouraged to participate with observer status in

the deliberations of the Explosives Technical Commission. All recommendations of the Commission should be communicated to such international organizations for information and comments. A view was also expressed that in the appointment of the Commission the Council should act in consultation with other international organizations and this matter should be further explored. The Sub-Committee also wished to record in the Report for possible further consideration by the Legal Committee the view that international organizations should be requested to provide information relevant for the review of technical developments to be performed by the Commission under the terms of Article V.

25.2.9 Composition of the Commission: The Sub-Committee agreed that the Explosives Technical Commission should be composed of experts in matters relating to the manufacture or detection of explosives. Many Members of the Sub-Committee wished to stipulate expressly that a substantial proportion of the members of the Commission should be appointed from States which are major manufacturers of plastic explosives or detection devices; other Members believed that the proper representation of all regions of the world must not be jeopardized and that an explicit emphasis on the manufacturing States should not be included in the draft Convention. Finally, the Sub-Committee decided to qualify, in Article IV paragraph 2 the expression "experts" by the words "having direct and substantial experience". Some delegations expressed reservations about the desirability of including the words "and substantial".

25.2.10 Rules of Procedure of the Commission: The Sub-Committee discussed whether the draft Convention should stipulate that in matters of substance the Commission shall decide by two-thirds majority; this point was not considered important by some Members of the Sub-Committee since the Commission would adopt only recommendations. One view was that by analogy with the Constitution of the ICAO Legal Committee the Commission's Rules of Procedure may be subject to approval by the ICAO Council in matters affecting relations of the Commission with other bodies of the Organization, with States or other organizations. The Sub-Committee discussed at length whether the Commission should adopt its own Rules of Procedure, by what majority such Rules should be adopted and whether they should be subject to approval by another body, e.g., the Council of ICAO. As a result of its deliberations, the Sub-Committee agreed (by an indicative vote of 12 against 6) not to include in the Draft Convention any specific provision on the Rules of Procedure. It was believed that the procedural matters could be solved by an appropriate body after the entry into force of the new Convention; if the operation of the Convention were to be placed under the auspices of the International Civil Aviation Organization, there would be ample analogies of existing Rules of Procedure, directives, etc., which could be made applicable to the Explosives Technical Commission, either by an explicit decision or, in the absence of such decision, such Rules may be used for guidance on all matters of procedure.

25.2.11 Finances and services: Several Members of the Sub-Committee wished to record their view that it was essential to consider in due course (at the Legal Committee or diplomatic conference) the problems of costs which the operations of the Commission will involve and the secretariat services for the Commission. Some other Members were of the view that there would be no such

problem in practice since the detection of explosives was an item of overriding priority on the regular programme of ICAO and the costs and services of the meetings of the Commission would be treated in the same way as the current Ad Hoc Group of Specialists on the Detection of Explosives, that is, as part of the ongoing programme of aviation security. The Sub-Committee was aware that the problem of finances and services would require further clarification and precision with a view to either deciding that the operation of the new Convention should be integrated in the programme and budget of one organization (e.g. ICAO) or whether separate international arrangements would have to be made.

25.2.12 Co-operation between the Commission and States: With respect to the work of the Commission on the review of technical developments (Article V, paragraph 1) some Members of the Sub-Committee wished to record their view that further consideration by the Legal Committee was necessary to safeguard full co-operation of States and international organizations to provide the appropriate input for the work of the Commission; it was believed that it might be desirable to draft a special provision concerning such type of co-operation.

25.2.13 Amendments of the Convention and of the Annex: The Sub-Committee referred this matter to the Drafting Group following an extensive discussion (see paragraph 19 above). The Drafting Group presented two alternative solutions: A) This alternative provided for the convening of a diplomatic conference to consider proposed amendments to the Annex unless a specified number of States Parties notify their objection to the convening of such a conference within a period of [x] days after the circulation of the proposed amendment. B) This alternative proposed a flexible method for the amendment of the Annex: If the proposed amendment has not been rejected by one or more States within a specified time after the circulation of the proposed amendment, it would be deemed to have been accepted and would enter into force in a specified time thereafter. This alternative also provided for consultations between the State objecting to the proposed amendment and the Commission; in case such consultations were unsuccessful, the Council would convene a diplomatic conference if one or more States maintain their objections to the proposed amendment.

25.2.13.1 A separate proposal was presented by the Member of the United States of America. That proposal provided for a special procedure for the amendment of the Convention itself and a special procedure for the amendment of the Annex.

25.2.13.2 After a lengthy discussion, the majority of the Sub-Committee agreed that there was no need to stipulate in the Convention specific provisions on the amendments of the Convention; the general international law of treaties would apply for such amendments and it was noted that several international conventions adopted under the auspices of ICAO had no provisions on amendment although one of them has been amended by a supplementary protocol.

25.2.13.3 There was a clear majority favouring the second alternative prepared by the Drafting Group which would permit a flexible and less formal amendment

of the technical Annex if such a proposal has not been rejected by any State or by a very limited number of States within a specified period of time. This solution is embodied in Article VI of the draft in Appendix D.

25.2.13.4 The Sub-Committee noted that the change in technology of the marking agents may require a sufficient lead time for practical implementation and believed that the entry into force of an amendment should be specified accordingly.

25.2.13.5 The proposed article also provides, in paragraph 2, for consultations between any States Party objecting to the proposed amendments to the Annex and the Commission. In paragraph 3, the draft provides for the convening of a diplomatic conference if, after consultation with the Commission, one or more Parties maintains their objection. Several Members of the Sub-Committee were of the view that the number of States referred to in paragraphs 1 and 3 of draft Article VI should be as low as possible and some Members felt strongly that one single State should have the power to cause the convening of a diplomatic conference to adopt any amendments. These views were supported by the argument that there was need for stability and uniformity in the regime for the marking of explosives.

25.2.13.6 Some Members noted that there was need to specify procedural provisions for the diplomatic conference convened for the amendment of an annex. In a working paper presented by the United States, such provisions should stipulate the majority required for the adoption of a decision and that the decisions of such a conference should be binding on all States Parties regardless of their acceptance of such amendments. Some members noted that the approach set forth in this working paper could provide a basis for discussions on this issue. Another view was that there was no need for such provisions in the new instrument and that an eventual diplomatic conference would decide on such matters within its sovereign prerogatives.

Conclusions

26. The Sub-Committee completed its work under the terms of reference formulated by the Council. The substantive deliberations and conclusions of the Sub-Committee are set forth in paragraphs 8 - 25 of this Report and the draft text is presented in Appendix D. There is no need for another session of the Sub-Committee.

27. In accordance with the procedure approved by the 16th Session of the Legal Committee in 1967 "each Sub-Committee established ... to study a draft convention should, as far as practicable, include in its report an assessment of the measure of agreement reached and capable of being reached between States upon the problems under consideration, together with an expression of opinion whether the subject is ripe for study by the Legal Committee". The Sub-Committee is pleased to report that most of its decisions were adopted by consensus and only some by a clear and convincing majority. Consequently, it

was felt that the subject was ripe for consideration by the 27th Session of the Legal Committee which is to meet at Montreal from 27 March to 12 April 1990.

28. The Sub-Committee wishes to advise the Council of ICAO that in its opinion the work of the Ad Hoc Group of Specialists on the Detection of Explosives must progress as quickly as possible in order to produce generally acceptable results before a diplomatic conference for the adoption of the new instrument can be convened. Without a technical definition of the explosives which should be marked and of the acceptable marking agent or agents, the preparation of the new instrument cannot be completed.

29. The Sub-Committee expressed its profound gratitude to Mr. A.W.G. Kean, CBE (United Kingdom) for his inspiring work as Rapporteur of the Legal Committee and for his valuable contribution to the Session of the Sub-Committee.

30. The Observer of the IMO informed the Sub-Committee that the IMO Legal Committee, in September 1989, expressed its willingness to consider any proposal from ICAO on legal aspects of the marking of explosives for detectability. The IMO Legal Committee session will next be held from 2 to 6 April 1990 and it would be informed of the developments since its last session, in particular of the results of the ICAO Special Legal Sub-Committee on the preparation of a new legal instrument for the marking of explosives for detectability. Furthermore, the IMO Maritime Safety Committee would consider the technical implications of ICAO's work on this subject at its 58th Session to be held from 21 to 25 May 1990.

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APPENDIX A

LIST OF PARTICIPANTS

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van Wijk, A.A.

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APPENDIX B

LIST OF DOCUMENTS

LC/SC-MEX-WP/	1 (REVISED)	Introductory Note
	2	Report of the Rapporteur on the subject of the preparation of a new legal instrument regarding the marking of explosives for detectability
	3	Note by the United Kingdom
	4	Comments submitted by the Federal Republic of Germany
	5	UN General Assembly Resolution 44/29 of December 1989
	6	Draft list of subjects to be considered by the Meeting of Legal Experts (presented by Argentina)
	7	Possible elements of a Convention for tagging plastic and sheet explosives (presented by the United States of America)
	8	Draft Report - Part I
	8 <u>ADDENDUM 1</u>	Draft Report - Parts II and III
	8 <u>ADDENDUM 2</u>	Draft Report - Part III
	8 <u>ADDENDUM 3</u>	Draft Report - Draft Appendix D to the Report Draft text prepared by the Sub-Committee (Articles I - IV)
	8 <u>ADDENDUM 4</u>	Draft Report - Draft Appendix D to the Report Draft text prepared by the Sub-Committee (Article VI)
	8 <u>ADDENDUM 5</u>	Draft Report - Part III
	9	Text prepared by the Drafting Group
	10	Proposed Article VI (presented by the United States of America)

APPENDIX C

REPORT OF THE RAPPORTEUR ON THE SUBJECT OF THE PREPARATION OF A NEW LEGAL
INSTRUMENT REGARDING THE MARKING OF EXPLOSIVES FOR DETECTABILITY

(A.W.G. Kean, CBE)

1. The purpose of this report is to study the "preparation of a new legal instrument regarding the marking of explosives for detectability". A rough draft is attached as a basis for discussion.

2. There is to be "a new legal instrument", which is understood to mean a new Convention, free-standing in the sense that it would not take the form of an amendment to the Chicago Convention or of a new or amended Annex to that Convention. Indeed, anything dependent upon the Chicago Convention is unlikely to be acceptable to IMO and other organizations concerned with terrorism in fields other than civil aviation, whose interests must be borne in mind in the preparation of a draft instrument. With those interests in mind, your rapporteur recommends that consideration should be given to inviting IMO and other appropriate bodies to send observers to participate in the work of the ICAO Legal Committee from an early stage.

3. The scheme of the new Convention could be as follows:

- (a) Establishment of an Explosives Technical Commission (ETC) whose function would be to specify (i) the explosives to which the Convention is to apply and (ii) the measures to be taken to make them detectable.

- (b) Creation of new international offences, consisting of failing to take those measures or of countering their effect.
- (c) Provisions relating to criminal law, including prosecution and extradition.
- (d) An undertaking by each Contracting State to use its best endeavours to prevent the import into and export from its territory of explosives specified by the ETC but not complying with the measures specified by the ETC to make them detectable, and to seize any such explosives found in its territory.

4. The Explosives Technical Commission (ETC) is dealt with in Article 1 of the attached draft. It could consist of a small group of technical experts in the field of explosives, nominated by the Council of ICAO.

4.1 The function of the ETC would be to specify (i) the explosives to which the Convention is to apply and (ii) the substances to be added for enabling them to be more easily detected.

4.2 In order to keep abreast of technical developments, both in the concealing and detection of explosives, the ETC will be

required to keep the technical specifications up to date by revising them, if necessary, from time to time.

5. By an "international offence" is meant an offence over which any State can exercise jurisdiction if it has the alleged offender in its custody, the classic example being maritime piracy. This principle has been extended to hijacking and other offences against the safety of aircraft by the Hague Convention of 1970, the Montreal Convention of 1971 and the Montreal Protocol of 1988. It seems clearly desirable to extend it also to the new offences contemplated by the proposed Convention.

5.1 Another element of an international offence is that every State is obliged to take steps to prevent it being committed, and to collaborate with other States in doing so. A provision to this effect, modelled on Article 10.1 of the Montreal Convention of 1971, appears in the attached draft as Article 2(6).

5.2 The substance of the new offences will depend very much on the technical specifications to be produced by the ETC. The reasons for this are two: technical studies have not yet been finalized, so that technical specifications could not be set out in the Convention even if it was thought desirable to do so; secondly, to set them out in the Convention would freeze them until the Convention could be amended (inevitably a

lengthy process involving ratification by Contracting States), whereas it will be necessary for the specifications to be quickly variable so as to keep abreast of any relevant technical developments.

5.3 The adoption and amendment of a Technical Schedule by the ETC would not require decisions of the Council of ICAO. For delegation of legislative power in purely technical matters to a body of technical experts, there is an established precedent in the Standard contained in paragraph 2.1.1 of Annex 18 to the Chicago Convention, which reads as follows:-

Each Contracting State shall take the necessary measures to achieve compliance with the detailed provisions contained in the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc. 9284-AN/905), approved, issued and amended in accordance with the procedure established by the ICAO Council.

This Standard, being part of an Annex to the Chicago Convention, ceases to bind a State which has filed a difference against it in pursuance of Article 38 of that Convention. It is proposed to enable States parties to the new Convention to file a difference against any provision of a Technical Schedule, thereby safeguarding the sovereignty of States and,

it is hoped, making the delegation of power to the ETC acceptable. This provision will be found in Article 1(5) of the attached draft, and is modelled on Article 38 of the Chicago Convention.

5.4 It will be observed that a positive act of acceptance of the Technical Schedule by the States is not required, but that the Technical Schedule, as from time to time amended, will be binding on each State unless and until it files a difference against the particular provision which it finds unacceptable. To require a positive act of acceptance would be to introduce a serious risk of delay.

5.5 It will also be observed that a difference can be filed only against a provision or provisions of the Technical Schedule, and not against the provisions of the Convention itself. This, again, follows the model of the Chicago Convention.

6. The provisions for criminal law, which include prosecution and extradition, appear in Articles 3 to 7 of the attached draft, which closely follow the provisions of the Hague Hijacking Convention of 1970 and the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971. They have given rise to no difficulty and it would seem unwise to re-open them or attempt to improve on them

now. This line was adopted, after due consideration, in the Montreal Protocol of 1988, which added a new offence to the 1971 Convention without interfering in any way with the existing provisions of that Convention relating to such matters as prosecution and extradition.

7. Article 8 would require Contracting States to do their best to prevent the import or export of explosives which do not include the required additive, and to seize any such explosives which may be found in their territory.

8. Article 9 provides that the Convention is not to apply to explosives in the possession of the military, police or customs authorities of a Contracting State. This is modelled on the usual exclusion provision of the Chicago and other civil aviation Conventions, which provide that the Convention does not apply to aircraft used in military, police or customs service. It appears in square brackets because your rapporteur has no instructions on the point. It is also for consideration whether the exclusion should extend to explosives in the possession of the military, police and customs authorities of non-Contracting States.

9. Your rapporteur wishes to express his thanks to the Director and other members of the Legal Bureau of ICAO for the assistance they have given him in his study of this subject.

ROUGH DRAFT OF PROPOSED CONVENTION

Article 1

(1) There shall be established a body to be known as the Explosives Technical Commission (ETC) consisting of [five] members appointed by the Council of the International Civil Aviation Organisation.

(2) The persons so appointed shall all be expert in matters relating to explosives, and shall hold and vacate office in accordance with the instrument appointing them.

(3) It shall be the function of the ETC to prepare, keep up to date and make available to the Council of ICAO a Technical Schedule to this Convention which shall specify -

(i) the explosives to which the Schedule applies and

(ii) the substance or substances which are to be added to the explosives in order to render them detectable.

(4) The ETC shall make its decisions by a vote of not less than [two-thirds] of its members [present at the meeting at which the decision is made.]

(5) The validity of any proceedings of the ETC shall not be affected by any vacancy among its members or by any defect in the appointment of a member.

(6) The ETC shall communicate its decisions to the Council of ICAO, as soon as possible and the Council of ICAO shall cause those decisions to be communicated as soon as possible to each Contracting State.

(7) Each Contracting State shall make available in its territory the decisions of the ETC.

(8) Any Contracting State which finds it impracticable to give effect to any provision of the Technical Schedule may give notice accordingly to the Council of ICAO, and shall not be obliged to give effect to that provision after the notice has been received and not withdrawn.

(9) The Council of ICAO shall inform all Contracting States of any notices or withdrawal of notices it may receive under the preceding paragraph.

Article 2

(1) It shall be an offence for any person without lawful excuse -

(a) to manufacture, prepare or pack any explosive unless it contains such substance or substances as may be specified in the Technical Schedule in relation to that explosive, as that Schedule may from time to time be amended; or

(b) being a person who knows or ought to know that the explosive does not contain the substance or substances specified in the Technical Schedule in relation to that explosive, or contains some other substance which renders the explosive less detectable, to sell, exchange or donate it or carry it or cause it to be carried in any aircraft, ship or other means of transport, whether or not in international carriage.

(2) A person also commits an offence if he -

(a) attempts to commit either of the offences mentioned in paragraph (1) of this Article; or

(b) is an accomplice of a person who commits or attempts to commit such an offence.

(3) Each Contracting State undertakes to make the offences mentioned in this Article punishable by severe penalties.

(4) Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases:-

(a) when the offence is alleged to have been committed in its territory;

(b) when the offence is alleged to have been committed by one or more of its nationals;

(c) when the alleged offender is present in its territory and it does not extradite him.

(5) This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

(6) Contracting States shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences mentioned in this Article.

Article 3

(1) Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

(2) Such State shall immediately make a preliminary enquiry into the facts.

(3) Any person in custody pursuant to paragraph (1) of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

(4) When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the State of nationality of the detained person, and if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph (2) of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 4

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution.

Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 5

(1) The offences shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

(2) If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

(3) Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

(4) The offences shall be treated for the purpose of extradition between Contracting States as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 2 paragraph (4).

Article 6

(1) Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences mentioned in Article 2. The law of the State requested shall apply in all cases.

(2) The provisions of paragraph (1) of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 7

Each Contracting State shall in accordance with its national law report to the Council of ICAS as promptly as possible any relevant information in its possession concerning:

(a) the circumstances of the offence, being an offence mentioned in Article 2;

(b) the measures taken in relation to the offender or the alleged offender, and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 8

Each Contracting State undertakes to use its best endeavours to prevent the import into or export from its territory of any explosive in respect of which there is reason to believe the relevant requirements specified in the Technical Schedule have not been complied with, and to seize any such explosives found in its territory.

Article 9

[Nothing in this Convention shall apply to explosives in the possession of the military, customs or police authorities [of a Contracting State.]]

[Formal clauses to be prepared later.]

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APPENDIX D

DRAFT TEXT PREPARED BY THE SUB-COMMITTEE

DRAFT CONVENTION ON THE MARKING OF [PLASTIC AND SHEET] EXPLOSIVES
FOR THE PURPOSE OF DETECTION

[PREAMBLE]

[

ALTERNATIVE A

ARTICLE I

For the purposes of this Convention:

1. "Explosives" means those malleable or flexible explosives containing a binder material and formulated with one or more individual high explosive substances having very low vapour pressures (RDX, PETN, HMX and others).
2. "Marking of Explosives" means introducing into an explosive an additional component which vaporizes, rendering the explosive detectable by gas analysis methods.
3. "Detection agent" means a substance having sufficient vapour pressure, which is introduced into an explosive as an additional component to render it detectable by gas analysis methods.

ARTICLE IA

Each State Party shall [prohibit] [take such measures as may be necessary to prohibit] the manufacture in its territory of explosives unless they are marked [with a detection agent] in accordance with the Annex to this Convention, [so as to ensure their detectability].

]

[

ALTERNATIVE B

ARTICLE I

Each State Party to this Convention shall [prohibit] [take such measures as may be necessary to prohibit] the manufacture in its territory of the types of explosives defined in the Annex to this Convention, [commonly known as plastic and sheet explosives] unless they are marked with a detection agent specified in the Annex, [so as to ensure their detectability].

]

ARTICLE II

Each State Party shall [prohibit] [take such measures as may be necessary to prohibit] the movement into or out of its territory of explosives which are not marked in conformity with Article I as well as any transaction involving such explosives within its territory unless such transaction is authorized by national law consistent with the objectives of this Convention.

ARTICLE III

Each State Party shall exercise strict control over [the possession of or transactions involving] such unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

ARTICLE IV

1. There shall be established an Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of [fifteen] members appointed [by the Council of the International Civil Aviation Organization] from among persons nominated by States parties to this Convention.
2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of explosives.
3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.
4. The Commission shall normally hold an annual session [at the Headquarters of the International Civil Aviation Organization]. Additional sessions may be held, if necessary.

ARTICLE V

1. The Commission shall review technical developments relating to the manufacture, marking and detection of explosives.
2. The Commission, [through the Council of the International Civil Aviation Organization] shall report its findings to the States parties and International Organizations concerned.
3. The Commission [through the Council of the International Civil Aviation Organization] may propose to the States parties amendments to the Annex to this Convention. The Commission shall endeavour to take its decisions on the proposals for amendments by consensus. [In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members].

ARTICLE VI

1. If the proposed amendment(s) [has] [have] not been rejected by [any State Party] [x States Parties] within [x] days after the proposed amendment(s) [has] [have] been circulated, it shall be deemed to have been accepted and shall enter into force [x] days thereafter.
2. [The Council of the International Civil Aviation Organization] shall invite any State Party which objects to the proposed amendment(s) to the Annex to this Convention to consult with the Commission.
3. [The Council of the International Civil Aviation Organization] shall convene a diplomatic conference if, after consultation with the Commission, [a State Party] [x States Parties] maintain(s) [its] [their] objection.

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ICAO

International Civil Aviation Organization

LEGAL COMMITTEE 27TH SESSION

Montreal, 27 March — 12 April 1990

Report

Published by authority of the Secretary General

1990

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LETTER OF TRANSMITTAL

To: President of the Council
From: Chairman of the Legal Committee

I have the honour to submit, in accordance with Rule 46 of the Rules of Procedure of the Legal Committee, the Report of the 27th Session of the Legal Committee.


S. M. Anwar
Chairman

Montreal, 12 April 1990

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LEGAL COMMITTEE - 27TH SESSION

(Montreal, 27 March - 12 April 1990)

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Organization of the Meeting

LEGAL COMMITTEE - 27TH SESSION

REPORT
ON THE WORK OF THE LEGAL COMMITTEE
DURING ITS 27TH SESSION

Montreal, 27 March - 12 April 1990

Place and Duration

1. The 27th Session of the Legal Committee was held at Montreal from 27 March to 12 April 1990. Dr. A. Sciolla Lagrange (Italy), Chairman of the Legal Committee, presided over the First to the Sixteenth Meetings; thereafter, Mr. S.M. Anwar (Pakistan), Vice-Chairman of the Legal Committee, presided over the remainder of the Session.

Opening Address

2. The President of the Council, Dr. Assad Kotaite, welcomed Delegates to the 27th Session of the Committee and reminded them that following the PAN AM Flight 103 disaster in December 1988, the Council in June 1989 included the subject of the marking of explosives for detectability in the work programme of the Committee with the highest and overriding priority. He recalled that the 27th Session of the Assembly in Resolution A27-8 called upon the Council to convene a meeting of the Legal Committee to prepare a draft international instrument on the subject, and that a Legal Sub-Committee which met in Montreal from 9 to 19 January 1990 had drafted a text for the consideration of the Committee. He pointed out that this work being undertaken by ICAO had retained the attention of the entire United Nations System (as reflected by United Nations Security Council Resolution 635 and General Assembly Resolution 44/29) and the international community as a whole. In conclusion, the President said that the Council expected that during this Session the Committee would finalize a draft instrument ripe for presentation to a diplomatic conference to be convened in the near future, and that he hoped that the Committee would also find the time to address the other items which are on its work programme.

2.1 The Secretary General, Dr. S.S. Sidhu, welcomed the Delegations and recalled that over the years outstanding leading experts of Contracting States had participated in the work of the Legal Committee whose achievements in the field of codification of international law were a matter of considerable pride and satisfaction for the Organization. He stressed the importance of the task assigned to the Committee in light of the United Nations Resolutions in 1989 and Assembly Resolution A27-8.

Agenda and Working Arrangements

3. The final agenda of the Session adopted at the First Meeting is presented in Attachment A hereto.

Organization of the Meeting

4. The documents and working papers considered by the Committee are listed by agenda items in Attachment B to this Report.

5. The action taken by the Committee in respect of each item is reported on separately in the Report. The material is arranged according to the numerical sequence of the agenda items considered by the Committee.

Meetings

6. The Committee held 23 Meetings; all Meetings were held in open session.

7. The Secretary of the Committee was Dr. M. Milde, Director of the Legal Bureau of ICAO, the Deputy Secretary was Dr. M. Pourcelet, Principal Legal Officer, and Assistant Secretaries were Mr. G.M. Kakkar, Legal Officer, and Mr. J.V. Augustin, Associate Legal Officer; other officials of the Organization also provided services for the Committee.

Representation of States and International Organizations

8. Sixty-seven Contracting States, 1 non-Contracting State and 5 international organizations were represented at this Session of the Legal Committee. The names of the representatives and observers appear in Attachment C to this Report.

Records of Proceedings

9. The Committee decided that in application of Rule 45 of its Rules of Procedure, the minutes of the 27th Session need not be prepared; this decision was taken to respond in a constructive manner to the current financial situation of the Organization.

Report on Agenda Item 2

Agenda Item 2: Report of the Secretariat

2:1 The Committee noted LC/27-WP/2 presented by the Secretariat. The purpose of that paper was to draw the attention of the Committee to the events and activities in the legal field of ICAO since the 26th Session of the Committee held in 1987.

2:2 The Committee noted that the work programme of the Legal Committee had been reviewed and amended by the ICAO Council on 29 June 1988 and on 3 March 1989 to include, in particular, two new subjects, namely: "Institutional and legal aspects of the Future Air Navigation Systems" and "Legal aspects of the global air-ground communications". Furthermore, on 29 June 1989, the Council, having considered the Report by the Chairman of the Committee on Unlawful Interference on the Report of the Ad Hoc Group of Specialists on the Detection of Explosives, decided to include in the General Work Programme of the Legal Committee, with the highest and overriding priority, the subject: "Preparation of a new legal instrument regarding the marking of explosives for detectability".

2:3 The Committee noted that the 27th Session of the Assembly added to the work programme of the Legal Committee the item: "Action to expedite ratification of Montreal Protocols Nos. 3 and 4 of the 'Warsaw System'" and deleted from the work programme the item: "Preparation of a draft instrument on the interception of civil aircraft".

2:4 The Committee also noted the actions taken by the Chairman of the Legal Committee in light of the Council decision and Assembly Resolution A27-8, in particular the convening of the special Sub-Committee on the Preparation of a New Legal Instrument Regarding the Marking of Explosives for Detectability, and the appointment, under the Rules of Procedure of the Legal Committee, of a Rapporteur, Mr. A.W.G. Kean, CBE (United Kingdom). Mr. Kean prepared a report on the above-mentioned subject, which served as the basis for the consideration of the Sub-Committee that met at Montreal from 9 - 19 January 1990.

2:5 In addition, the Committee took note of the decision of the 27th Session of the Assembly that the Secretary General should continue to monitor the work of the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) and should bring to the attention of the Council appropriate subjects requiring study by the Legal Committee without duplicating the work of UNCOPUOS.

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Report on Agenda Item 3

Agenda Item 3: Preparation of a new legal instrument regarding the marking of explosives for detectability

A. Historical background

3:1 On 30 January 1989, the Council considered the Report of the Chairman of the Committee on Unlawful Interference entitled "Reports on acts of unlawful interference in 1988 (PAN AM 103 incident)" and decided to establish an Ad Hoc Group of Specialists on the Detection of Explosives. The Council, on 16 February 1989, adopted a Resolution which "urges member States to expedite, in the light of Assembly Resolution A26-7, App. C research and development on detection of explosives and on security equipment, to continue to exchange such information and to consider how to achieve an international regime for the marking of explosives for the purposes of detection". The Ad Hoc Group met at Montreal from 6 to 10 March 1989 and the Council referred its Report to the Committee on Unlawful Interference for review in May 1989. The Committee also subsequently considered a proposal for the development of a new legal instrument regarding the marking of explosives for detectability presented by the United Kingdom and Czechoslovakia. Furthermore, on 14 June 1989, the United Nations Security Council adopted unanimously Resolution 635 which "urges ICAO to intensify its work aimed at preventing all acts of terrorism against international civil aviation, and in particular its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection". On 29 June 1989, the Council considered the Report by the Chairman of the Committee on Unlawful Interference on the Report of the Ad Hoc Group of Specialists on the Detection of Explosives and decided to include in the General Work Programme of the Legal Committee with the highest and overriding priority, the subject: "Preparation of a new legal instrument regarding the marking of explosives for detectability". The Council also decided to seek the endorsement of the 27th Session of the Assembly with respect to this subject and to inform the United Nations and other related organizations of the ICAO action.

3:2 In accordance with Rule 17 of the Rules of Procedure of the Legal Committee, the Chairman of the Legal Committee appointed a Rapporteur (Mr. A.W.G. Kean, CBE, United Kingdom).

3:3 During the 27th Session of the Assembly (September - October 1989), the Delegations of Czechoslovakia and the United Kingdom presented to the Executive Committee paper A27-WP/115, EX/37 which contained a draft Resolution on the marking of plastic and sheet explosives for the purpose of detection; the Executive Committee recommended to the Plenary the adoption of that Resolution. Resolution A27-8 was adopted unanimously by the Assembly and its last Resolving Clause called upon the Council "to convene a meeting of the Legal Committee, if possible in the first half of 1990, to prepare a draft international instrument for this purpose, with a view to its adoption at a diplomatic conference as soon as practicable thereafter in accordance with the ICAO procedures set out in Assembly Resolution A7-6". When reviewing the work programme of the Legal Committee, the Legal Commission agreed that the highest

Report on Agenda Item 3

priority should be accorded to the subject: "Preparation of a new legal instrument regarding the marking of explosives for detectability".

Action of the Council

3:4 During its 128th Session, on 15 November 1989, the Council of ICAO approved the General Work Programme of the Legal Committee and decided to convene, from 9 to 19 January 1990, a special Sub-Committee of the Legal Committee, the terms of reference of which were: "To study in the light of the Council decision of 29 June 1989 and Assembly Resolution A27-8, as well as in the light of the Rapporteur's Report, the subject of a draft instrument relating to the marking of explosives for detectability, and to prepare a draft instrument for further consideration by the 27th Session of the Legal Committee". The Council also decided to convene the 27th Session of the Legal Committee from 27 March to 12 April 1990 with this subject as the main agenda item.

United Nations General Assembly Resolution 44/29

3:5 On 4 December 1989, the UN General Assembly adopted Resolution 44/29 which, inter alia, "Urges the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection".

Special Sub-Committee of the Legal Committee

3:6 The Sub-Committee considered the subject on the basis of the Rapporteur's Report. As a result of its deliberations, the Sub-Committee prepared a draft text for consideration by the Legal Committee. The Sub-Committee concluded that in view of the unanimously expressed political will of States in Resolution A27-8, in the light of the full support given by the United Nations and by the ICAO Council to this initiative, and in the light of the work achieved by it, the subject was ripe for consideration by the 27th Session of the Legal Committee. During its 129th Session, on 25 January 1990, the Council noted the Report of the special Sub-Committee.

B. Report of the Special Sub-Committee

3:7 Mr. C. de la Verpillière (France), in his capacity as Chairman of the special Sub-Committee, introduced the Report of the Sub-Committee (LC/SC-MEX). The Report of the Rapporteur, Mr. A.W.G. Kean, constituted the basis for the discussions of the Sub-Committee which addressed the following issues: form of the new instrument, definition of explosives, the status of the Explosives Technical Commission (ETC), legal status of the Annexes to the new instrument and amendments thereto, obligations of States, penal provisions, explosives in the possession of military, police or customs authorities, and existing stockpiles of unmarked explosives.

3:8 With respect to the overall format of the instrument, he stated that although some Delegations favoured an instrument containing penal provisions on jurisdiction, prosecution, penalties and extradition modelled on the texts of

Report on Agenda Item 3

The Hague (1970) and Montreal (1971) Conventions, an overwhelming majority did not agree with the inclusion of penal provisions and favoured an instrument which would impose obligations on States only with respect to the marking of explosives. He pointed out that the Sub-Committee agreed that the new instrument should apply to the explosives in the possession of military and police authorities. There was also agreement on the establishment of a system to monitor and control existing stocks of explosives. He further indicated that it was agreed that there was a need for the establishment of a technical body composed of experts whose task would be to update the technical Annexes; the majority of the Sub-Committee was of the view that the ICAO Council could play an important role in the implementation of the new system by, inter alia, appointing the experts and participating in the amendment procedure to the Convention and its Annexes. However, he informed the Committee that the Sub-Committee did not reach any clear conclusion on two specific issues, namely, the location of the definitions in the instrument and the procedure for amendment to the Convention and its Annexes; some members were of the view that the definition of explosives should be contained in the Convention with the understanding that the Convention and its Annexes could be amended only by a diplomatic conference, while other members expressed preference for the definitions being placed in the Annexes which could be amended on the basis of proposals formulated by the Explosives Technical Commission pursuant to a procedure that would involve the ICAO Council. He drew attention to some provisions in the draft instrument which were left in square brackets for further consideration by the Legal Committee. Finally, he recalled the excellent climate of co-operation which prevailed among the members of the Sub-Committee in the preparation of the draft instrument.

C. General discussion

3:9 During the general discussion, the following views were expressed by one or more Delegations:

- All Delegations praised the Rapporteur's Report and commended the Sub-Committee for its work which constituted an excellent basis for the deliberations of the Committee.
- The Observer from the United Nations recalled United Nations Security Council Resolution 635 and General Assembly Resolution 44/29 which condemned all acts, methods and forms of unlawful interference. He stated that the United Nations General Assembly, Security Council and the Secretary-General strongly support the intensification of the work of ICAO and follow closely the preparation of the draft instrument on the marking of explosives for detectability. He noted that the broad consensus already achieved at the level of the Legal Sub-Committee was encouraging and it was hoped that the results of the present exercise would be submitted to a diplomatic conference in the very near future.
- The Observer from IMO informed the Committee that the IMO Legal Committee which met from 2 to 6 April 1990 had considered the work undertaken by ICAO on the marking of explosives for detection. The IMO Legal Committee decided to recommend to the IMO Council that the IMO should actively

Report on Agenda Item 3

participate in the work undertaken by ICAO for a diplomatic conference. The Committee also recommended that the IMO be associated with the diplomatic conference in an appropriate way, in consultation with the Secretariat of ICAO, and should have a suitable institutional role in the work following the diplomatic conference. The Observer finally expressed the full support of the IMO for the work of ICAO on the marking of explosives for detection purposes.

- Three Delegations and one Observer expressed the view that the instrument should contain penal provisions and should establish a new international offence subject to universal jurisdiction and extradition.
- One Delegation believed that it was necessary to include provisions regarding arbitration in case of disputes between two or more States concerning the interpretation or application of the Convention.
- Several Delegations stated that the terms of reference of the Legal Committee were contained in United Nations Security Council Resolution 635, United Nations General Assembly Resolution 44/29 and in Assembly Resolution A27-8 which limited the scope of the proposed Convention to the marking of plastic or sheet explosives.
- Some Delegations indicated that some additional matters needed to be addressed by the Committee, in particular the necessity to clarify the procedure for amendment of the Annexes, the question of co-operation and exchange of information between States Parties, the financial aspect of the new machinery to be established, the need for Rules of Procedure for the proposed Explosives Technical Commission and the possible involvement of the ICAO Council.
- Six Delegations believed that further careful consideration should be given to a solution to the problem of existing stocks of unmarked explosives.
- Four Delegations believed that it was desirable to have a simple and concise Convention coupled with a flexible mechanism for amendment of the Annexes.
- One Delegation was of the opinion that some essential components had been left out of the draft prepared by the Sub-Committee since the Convention, to be a viable tool, should contain, inter alia, safeguards against violations and means of inspection and verification; additional elements had to be addressed, in particular the means and target dates for destruction of existing stocks, the establishment of an efficient mode for centralised reporting of the manufacture, sale and transfer of explosives, and a mechanism for exchange of information regarding suspected violations.
- Several Delegations stressed the need to agree on a specific target date for the destruction of unmarked explosives.

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- Several Delegations were of the view that the definition of explosives should be contained in the technical Annexes since the definition might require in the future some refinements and amendments in the light of technical developments.
- One Delegation suggested the inclusion of a provision according to which a State found guilty of flagrant negligence in implementing this instrument should be liable to pay damages to any third party who incurs any loss as a result.
- One Delegation pointed out that while the "objectives" of the Convention were specifically referred to in Article II of the draft prepared by the Sub-Committee, these objectives remained to be defined.
- The Observer from IFALPA stated that the lawful sphere of activities of explosive manufacturing States should not be the target of the present instrument and penal provisions should be developed to apply to those individuals whose activities are unlawful, and that ICAO should take the difficult road to an effective system and not be satisfied with an easy but less effective solution.
- The Observer from IATA recalled the measures adopted by his Organization in the past to improve the security of international civil aviation. He stressed that the ICAO action on the marking of explosives for detectability had the full support of IATA, which was prepared to assist and co-operate with ICAO to face the challenge of terrorism. He expressed the hope that the obligations under the proposed instrument would prove to be effective and suggested that the Annexes thereto should be amenable to a flexible amendment procedure.

D. Organization of Work

3:10 In accordance with Rule 28A of the Rules of Procedure of the Legal Committee, it was agreed that the Committee would take as the basis of its discussion the draft text prepared by the Sub-Committee. The Chairman of the Legal Committee listed certain specific issues to be considered by the Committee:

- General Concept of the Proposed Instrument

3:11 The discussion focused on the question whether the new instrument should contain penal provisions. Some Delegations expressed the opinion that although the manufacturing of and dealing in explosives is essentially a legitimate activity, illicit use of explosives for specific criminal acts called for specific penal provisions in the instrument. They believed that such an approach was necessary to make the instrument more effective as a deterrent for those contemplating unlawful activities. On the other hand, many other Delegations were of the view that the illicit use of explosives against civil aviation was already subject to penal provisions under The Hague and Montreal Conventions; in view of the objective of the instrument, the

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regulatory as opposed to the "criminal sanction" approach was to be preferred. Furthermore, it was recalled that the mandate of the Committee as set out in the United Nations Resolutions and the ICAO Assembly Resolution was to prepare an instrument on the marking of explosives for detectability, and the introduction of penal provisions would depart from the main objective of the instrument. It was also mentioned that such provisions might delay the entry into force of the Convention. It was pointed out that the manufacture and possession of explosives were not inherently unlawful, and that the new instrument under consideration was different in nature from the issues and protected interests dealt with in the Montreal and The Hague Conventions. In conclusion, the great majority of the Committee agreed that the inclusion of penal provisions was neither necessary nor desirable and it was decided that the Committee would work on this basis.

- Definition of Explosives

3:12 The Committee considered the question of the definition of explosives on the basis of Alternatives A and B of draft Article I prepared by the Sub-Committee. Alternative A would spell out the broad definitions in the body of the Convention, while Alternative B referred the definitions to an Annex to the Convention. For convenience of reference the text of both Alternatives is reproduced below:

Text prepared by the Sub-Committee

"

ALTERNATIVE A

ARTICLE I

For the purposes of this Convention:

1. "Explosives" means those malleable or flexible explosives containing a binder material and formulated with one or more individual high explosive substances having very low vapour pressures (RDX, PETN, HMX and others).
2. "Marking of Explosives" means introducing into an explosive an additional component which vaporizes, rendering the explosive detectable by gas analysis methods.
3. "Detection agent" means a substance having sufficient vapour pressure, which is introduced into an explosive as an additional component to render it detectable by gas analysis methods.

ARTICLE IA

Each State Party shall [prohibit] [take such measures as may be necessary to prohibit] the manufacture in its territory of explosives unless they are marked [with a detection agent] in accordance with the Annex to this Convention, [so as to ensure their detectability].

"

Report on Agenda Item 3

ALTERNATIVE B

ARTICLE I

Each State Party to this Convention shall [prohibit] [take such measures as may be necessary to prohibit] the manufacture in its territory of the types of explosives defined in the Annex to this Convention, [commonly known as plastic and sheet explosives] unless they are marked with a detection agent specified in the Annex, [so as to ensure their detectability].

"

3:13 In addition, one Delegation presented LC/27-WP/3-2 which contained a further alternative to those prepared by the Sub-Committee. The definitions in this paper referred to explosives defined as "Explosives Blasting" in the "Recommendations on the Transport of Dangerous Goods" of the United Nations (UN Document ST/SG/AC 10/1/Rev.6, paragraph 4.8) as far as they are formulated with one or more explosive substances having very low vapour pressures.

3:14 There was a lengthy discussion regarding the need for a definition of explosives, and in the affirmative whether it should be formulated in the body of the Convention or in the Annexes. A clear majority of the Committee expressed the opinion that a broad definition of explosives in generic terms should be inserted in the Convention and a more detailed specification of the explosives should be placed in the Annex. It was felt that since at present a precise definition of the explosives to which the Convention would apply was not yet available, it would be premature to attempt to draft a definition. A view was expressed that a general reference to types of explosives defined in the Annex to the Convention as expressed in Alternative B of Article I was preferable to any definition in general terms in the Convention. Many Delegations preferred also to have the detailed technical definitions in the Annexes since it was believed that the amendment procedure for the Annexes would be simpler than that for the Convention, and that this would facilitate the updating of the definitions of the explosives to be covered; for the same reason some Delegations advocated a similar approach in relation to the marking agent or substance. The question was also raised whether a definition should encompass explosives other than plastic or sheet explosives.

3:15 One Delegation suggested some amendments to Alternative A of draft Article I prepared by the Sub-Committee, in particular the deletion in paragraph 2 of the words "which vaporizes" and in paragraph 3, at the end of the sentence, the words "by gas analysis methods". Some other Delegations agreed with this suggestion and believed that the scope of the new instrument should not preclude the use of different detection techniques.

3:16 As a result of its discussions, the Committee agreed that the text of the Convention should contain a general definition of explosives which should be autonomous without reference to other documents. The general definition should be clarified by details in the Annexes. As to the question whether the general definition should deal exclusively with plastic or sheet explosives or encompass other explosives which are difficult to detect, the Committee agreed

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that due to the lack of sufficient technical information at this stage, it was not in a position to take a definite decision on this matter; it noted that the diplomatic conference would deal with this matter in light of the further work to be undertaken by the Ad Hoc Group of Specialists on the Detection of Explosives which is to meet at Montreal from 19 to 21 June 1990.

- Amendment to the Annexes

3:17 The Committee addressed the question of amendments to the Annexes on the basis of draft Article VI prepared by the Sub-Committee. For convenience of reference the text of draft Article VI is reproduced below.

Text prepared by the Sub-Committee

"

ARTICLE VI

1. If the proposed amendment(s) [has] [have] not been rejected by [any State Party] [x States Parties] within [x] days after the proposed amendment(s) [has] [have] been circulated, it shall be deemed to have been accepted and shall enter into force [x] days thereafter.

2. [The Council of the International Civil Aviation Organization] shall invite any State Party which objects to the proposed amendment(s) to the Annex to this Convention to consult with the Commission.

3. [The Council of the International Civil Aviation Organization] shall convene a diplomatic conference if, after consultation with the Commission, [a State Party] [x States Parties] maintain(s) [its] [their] objection.

"

3:18 There was an overwhelming majority in favour of a procedure for amending the Annexes which would be separate and distinct from that applicable in the case of amendments to the Convention; the great majority of the Delegations believed that the procedure should be simple and flexible in view of the fact that the technical Annexes might have to be amended from time to time to take into account technological developments. It was also mentioned that the procedure to be adopted should be workable and effective so as to ensure wide acceptance by all States of the obligations under the Convention. The view was also expressed that the requirements for simplicity and flexibility should be balanced against a practical concern for stability, and the mechanism for amending the Annexes should not be too easy since it appeared that it would not be necessary or economically feasible to update the detection agent too often.

3:19 One Delegation, supported by some other Delegations, suggested that the procedure for the amendment of the Annexes to the Chicago Convention or a similar procedure could be followed in this instance; the Council of ICAO could be given the power to amend the Annexes and the procedure set out in Article 90 of the Chicago Convention could apply mutatis mutandis. Several Delegations believed that the technical Annexes to the proposed instrument were different

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in nature from the Annexes to the Chicago Convention adopted by the ICAO Council which were not an integral part of the Chicago Convention and States are free to file differences under Article 38 of the Chicago Convention; amendments to the technical Annexes should preserve the uniformity of the detection techniques.

3:20 One Delegation drew the attention of the Committee to the procedure for the revision of Annexes to Protocol I of 8 June 1977 to the Geneva Conventions of 12 August 1949, which calls for a periodic revision and updating of the Red Cross regulations at intervals of not less than four years. It was suggested that such a regularized or institutionalized method of amending the Annexes might be considered.

3:21 A proposal was presented by the Delegation of the United States in LC/27-WP/3-5 which read as follows:

"Insert in Article VI of the draft Convention the following new paragraph:

3. [The Council of the International Civil Aviation Organization] shall convene a diplomatic conference for the purpose of considering whether to amend the Annex [an Annex] if, after consultation with the Commission, five States Parties maintain their objection.

a. A diplomatic conference of States Parties convened pursuant to this Article shall have the capacity to amend the Annex [an Annex] if no fewer than half of the States Parties are in attendance.

b. In taking decisions to amend the Annex [an Annex] at such a diplomatic conference, the States Parties shall make every effort to reach agreement by consensus. If all such efforts at consensus have been exhausted and no agreement reached, the conference may, as a last resort, nevertheless amend the Annex [an Annex] by a two-thirds vote of the States Parties present and voting.

c. Any amendment to the Annex [an Annex] approved by such a diplomatic conference in accordance with the preceding paragraph shall be binding on all States Parties and shall be communicated forthwith to the States Parties by the Council of the International Civil Aviation Organization. Unless otherwise provided by the diplomatic conference in its decision to amend the Annex [an Annex], any such amendment to the Annex [an Annex] shall enter into force on the expiry of six months from the date of such communication by the Council."

3:22 Many Delegations commented on LC/27-WP/3-5 and believed that it was a useful complement to Article VI prepared by the Sub-Committee. Reservations were, however, expressed in respect of the automatic adoption of the amendment notwithstanding the opposition of less than five States, and concerning the amendment of the Annexes by a two-thirds vote of the States Parties at the diplomatic conference in case no consensus could be reached, if such amendment would be binding on all States Parties. Many Delegations pointed out that any procedure for amending the Annex which might bind States Parties to provisions

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to which they have not agreed or, even more, to provisions they are opposed to, could make it difficult for many States - due to considerations in respect of their sovereignty - to ratify the instrument in its entirety. Nevertheless, the attention of the Committee was drawn by one Delegation to the Montreal Protocol on Substances that Deplete the Ozone Layer of 1987, which contained a provision whereby Parties would be bound to amendments even in cases where such Parties did not agree to the said amendments. In addition, reference was made to two international instruments (the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973 and the International Convention for the Prevention of Pollution from Ships of 1973); these provide for comment and consultation on proposed amendments to the Annexes which are then deemed to be accepted by all States Parties if no objection (or objection by less than a specified number of States Parties) is received within a specific period of time after the proposed amendments are communicated to States. The amendments then enter into force at the expiration of a further period for all Parties except those that have indicated in a positive way, within that time, that they do not accept the amendments.

3:23 Regarding the number of States whose continued objection to a proposed amendment might call for the convening of a diplomatic conference, one Delegation expressed a preference that the required number of States should be stated in terms of a proportion of the total number of States Parties.

3:24 Some Delegations believed that the procedure for amendment of the Annexes was closely linked to their nature and content which might affect the Convention as a whole and, consequently, this matter should be left to the diplomatic conference for decision, since the conference would have the necessary information from the Ad Hoc Group of Specialists on the Detection of Explosives.

3:25 Some Delegations were of the opinion that the consultation procedure envisaged in Article VI prepared by the special Sub-Committee should be further refined to ensure that the convening of a diplomatic conference would be required in rare circumstances only.

3:26 A view was expressed that amendments to the technical Annexes might be of a different nature, some being merely minor technical amendments, such as updating, other of more substantial nature; the Explosives Technical Commission could review the technical developments under Article V of the proposed instrument in order to update, if necessary, the Annexes and then report to States. However, in case of substantive amendment, the procedure currently discussed could be used.

3:27 As a result of the discussions on Article VI prepared by the Sub-Committee and the proposal contained in LC/27-WP/3-5, there was a consensus in the Committee on the principle of uniformity of the regime in that it was desirable to avoid a situation whereby the amendment procedure would result in a multiplicity of regimes. However, there was no consensus on the methods or means to achieve that result. It was therefore felt that, at this stage, the matter should be referred to the Drafting Committee for further consideration.

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- Existing Stockpile of Unmarked Explosives

3:28 The Committee considered this subject on the basis of Article III of the text prepared by the Sub-Committee:

"

ARTICLE III

Each State Party shall exercise strict control over [the possession of or transactions involving] such unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

"

3:29 However, at the onset of the discussion on this subject, some Delegations believed that there was a link between the provisions of Article III and those of Article II which read as follows:

"

ARTICLE II

Each State Party shall [prohibit] [take such measures as may be necessary to prohibit] the movement into or out of its territory of explosives which are not marked in conformity with Article I as well as any transaction involving such explosives within its territory unless such transaction is authorized by national law consistent with the objectives of this Convention.

"

3:30 Some Delegations expressed the view that the present draft of Article II was ambiguous and needed to be clarified since the reference to transactions involving such explosives within the territory of a State Party could encompass the existing stockpiles of unmarked explosives. Some Delegations were of the opinion that Article II concerned explosives manufactured after the entry into force of the Convention, as distinct from Article III which dealt with the stockpiles of unmarked explosives existing at the time of the entry into force of the instrument; other Delegations believed that Article II concerned both existing and future stocks. In this connection, one Delegation expressed some doubts as to the motivation for the reservation expressed at the end of Article II and suggested its deletion, to be replaced by the words "unless such transactions in these explosives are authorized to ensure their destruction". Some Delegations expressed a different view, and believed that this proposal was not acceptable for economic and ecological reasons since it would involve major financial expenditures and create an impact on the environment; it would also have a negative effect on the ratification process of the instrument.

3:31 Some Delegations stated that some States had substantial and vital responsibilities extending beyond their respective national territories which

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might require the movement of explosives; in order to satisfy this concern, it was essential that the language used in the Sub-Committee's draft of Article II be retained and perhaps clarified to take into account these operational requirements.

3:32 Several Delegations agreed with the substance of Article II as drafted by the Sub-Committee although it called for refinement; it was suggested by one Delegation that the words "consistent with the objectives of this Convention" be replaced by "consistent with the provisions of this Convention". Furthermore, that Delegation believed that Article II should clearly distinguish between movement of explosives into and out of the territory of a State and any transaction taking place within that State, in order to remove the present ambiguity from the text.

3:33 One Delegation suggested that in order to cover the situation of a State with non-contiguous territory, the expression "import and export" should be used instead of "movement into or out of"; it was pointed out by another Delegation that this matter was thoroughly discussed by the Sub-Committee which believed that the terms "import and export" were too restrictive and required a definition.

3:34 Two Delegations proposed that a provision should be included in the Convention which would provide for destruction of the existing stock of unmarked explosives within a specified period of time after the entry into force of the Convention.

3:35 One Delegation expressed the view that the import and export of explosives manufactured before the entry into force of the Convention should be prohibited; strict control should be exercised over domestic transactions in these explosives. The import and export of all unmarked explosives manufactured after the entry into force of the Convention should be absolutely prohibited; however, it might be necessary to move unmarked explosives from the point of manufacture to another destination within the same territory for marking purposes: the reservation in the last part of Article II was meant to cover this situation.

3:36 The Delegation of the Federal Republic of Germany, supported by another Delegation, drew the Committee's attention to its proposal (contained in LC/27-WP/3-2) which sought to supplement Article IA of the Sub-Committee by adding the following: "This does not apply to explosives used only in military ammunitions (i.e. shells, bombs or rockets)". Some other Delegations believed that the explosives referred to in that proposal were different in nature from those envisaged by the new instrument and that fact could more appropriately be reflected in the scientific definition of "explosives" to be contained in the Annex. The Convention itself, therefore, would contain no exemption from the marking requirement for explosives used for military purposes.

- Explosives Technical Commission

3:37 The Committee considered this subject on the basis of Article IV of the text prepared by the Sub-Committee:

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"

ARTICLE IV

1. There shall be established an Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of [fifteen] members appointed [by the Council of the International Civil Aviation Organization] from among persons nominated by States parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. The Commission shall normally hold an annual session [at the Headquarters of the International Civil Aviation Organization]. Additional sessions may be held, if necessary.

"

3:38 Many Delegations believed that the ICAO Council was the organ best suited, and had the capacity within its present constitutional framework, to discharge the functions entrusted to it under Article IV of the instrument, in consultation with other organizations such as the International Maritime Organization (IMO).

3:39 Some Delegations expressed some reservations regarding the competence of the ICAO Council in matters outside the scope of its exclusive jurisdiction and believed that a distinction should be made between policy functions to be dealt with by another forum - such as regular meetings of State Parties to the Convention - and administrative functions which could be vested in the ICAO Council.

3:40 Some Delegations raised the question as to whether Members of the ICAO Council who are not parties to the new instrument could assume functions such as the election of candidates to the Explosives Technical Commission.

3:41 Some other Delegations were of the view that the ICAO Council could not perform functions which were not specifically assigned to it under the provisions of the Chicago Convention, in particular Articles 54 and 55, and that the performance of any such functions might require an amendment of the Chicago Convention. Other Delegations maintained that it was a primary duty of the Council under Article 54 to implement decisions of the Assembly and that the matters relating to aviation security constituted a firm priority in the mandatory functions of the Council.

3:42 With respect to the criteria and principles concerning the appointment of the members of the Commission, some Delegations believed that the appointment should be based primarily on the competence of the candidates nominated by States. While maintaining the criteria of competence, others were of the view that the election of the candidates should aim at a wide

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geographical representation. Some Delegations suggested that paragraph 2 of Article IV be replaced by the following: "The members of the Commission shall have suitable qualifications and experience in matters relating to the manufacture or detection of explosives." this wording would be in line with the time-tested wording of Article 56 of the Chicago Convention with respect to the Air Navigation Commission.

3:43 Other Delegates believed that the expertise of the members of the ETC was crucial for the effectiveness of the Convention's system. However, some Delegations were willing to consider, possibly in paragraph 1 of Article IV, mentioning the need to appoint the members of the ETC on a "wide geographical basis" or to ensure "that all major geographical areas of the world" are represented. Other Delegations, while supporting the principle of competence, believed that the composition of the ETC should reflect some balance between producer States and user States of explosives and of detection equipment. One Delegation stated its belief that introduction of any geographical element into the criteria for appointment could seriously threaten the technical character of the Commission, and urged that no such language be added to the draft Convention.

3:44 These concerns were referred to the Drafting Committee. The Committee also noted that in its practical exercise of functions the Council of ICAO has always respected the need to have all bodies appointed on a broad representative basis. Some Delegations voiced their expectation that the Ad Hoc Group of Specialists would function as an interim ETC until the Convention comes into force, and perhaps for some limited time thereafter. It was suggested that the recommendation for the Ad Hoc Group acting in this capacity could be dealt with in the Final Clauses or by a statement to that effect in the Final Act.

- Functions of the ETC (Article V)

3:45 There was broad agreement with Article V as drafted by the Sub-Committee. For convenience of reference the text of Article V is reproduced below:

"

Article V

1. The Commission shall review technical developments relating to the manufacture, marking and detection of explosives.
2. The Commission, [through the Council of the International Civil Aviation Organization] shall report its findings to the States parties and International Organizations concerned.
3. The Commission [through the Council of the International Civil Aviation Organization] may propose to the States parties amendments to the Annex to this Convention. The Commission shall endeavour to take its decisions on the proposals for amendments by consensus. [In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members].

"

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3:46 There was a widely accepted view that the function of the Commission should be more clearly defined and that its functions should not be only to "review" the technical developments but to "evaluate" them. Furthermore, it was believed that the function of the Commission should refer not only to the problems of marking and detection of explosives but also to the definition of explosives and their classification, as well as to the evaluation of the different detection systems and detection technology. One view was that paragraph 1 of Article V need not refer to "manufacture".

3:47 Two Delegations wished to add to paragraph 1 of Article V the concept that the ETC should prepare recommendations for the amendment of the Annex to the Convention with respect to explosives, their marking and techniques of detection. One Delegation also believed that paragraph 2 of Article V should be more specific with respect to the frequency and periodicity of the reports to be presented by the ETC.

3:48 The subjects listed in paragraphs 3:46 and 3:47 above were referred to the Drafting Committee.

- Financing of the operation of the Convention

3:49 The Committee noted that the Sub-Committee left open the question of the financing of the system (see paragraph 25.2.11 of the Sub-Committee's Report). Many Delegates supported the idea that the expenses of the ETC and of the diplomatic conferences should be financed from the regular budget of ICAO since matters of security were an indispensable and priority task of the work programme of the Organization. Other views were expressed that a separate ad hoc fund may have to be established for the financing of what will be essentially a self-standing Convention.

3:50 The Committee noted the statement of the Secretary concerning the widely varying costs of meetings convened by the Council of ICAO as well as the correlation between the timing of the meetings and their place and the amount of the budget required; it also noted that some recent multilateral agreements dealt with the question of expenses in the final act of the diplomatic conference which adopted such conventions (e.g., the United Nations Convention on the Law of the Sea of 1982 which, in the Final Act, assigns the cost of the Preparatory Commission on the Sea-Bed Authority to the regular budget of the United Nations, subject to the decision of the General Assembly); other conventions (such as the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988) also did not deal with financial matters in the body of the Convention but in a resolution adopted by the diplomatic conference.

3:51 The Committee decided not to draft any provisions concerning financial questions but to mention the subject specifically in this Report to enable further consideration in the Council of ICAO and a final decision by the diplomatic conference. It was also noted that the Council of ICAO would be in the best position as the authority to convene the ETC and a diplomatic conference at suitable times and places which would be conducive to maximum

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economy. Some Delegates believed that this function should be spelled out in Article V.

- Exchange of information

3:52 Several Delegations supported the idea that the draft text of the Convention should contain specific provisions relating to the obligation of States to submit and exchange information on their national legislation to implement the provisions of the Convention as well as information on their practical procedures, practices, judicial decisions, technical developments, manufacture of unmarked explosives, etc. as they relate to the implementation of the Convention.

3:53 The Committee accepted this proposal and requested the Drafting Committee to elaborate a suitable clause on this subject.

- Final Clauses of the Convention

3:54 The Sub-Committee did not elaborate draft Final Clauses and specifically left this matter for a further decision by the Legal Committee (see paragraph 24 of the Report of the Sub-Committee). The Delegation of the Federal Republic of Germany presented in LC/27-WP/3-2 an integral text of a draft Convention, including Final Clauses; the Final Clauses were based on the Convention on the Physical Protection of Nuclear Material of 1979 and on the Tokyo Convention of 1963.

3:55 The Committee recognized that the drafting of the Final Clauses was traditionally the task of the diplomatic conference. Consequently, the Committee agreed not to draft any specific final clauses at this stage but noted the proposal presented by the Federal Republic of Germany and the comments made by different Delegations thereon.

3:56 The discussion centred in particular on the problem of the entry into force of the new Convention. All Delegations agreed that the Convention should require a high number of ratifications by States (for instance 35) to ensure the efficiency of the Convention on a large scale. Many Delegations believed that the efficiency of the Convention would be safeguarded only if a significant number of the producing States were to be among those required to bring the new Convention into force. One Delegation suggested that a requirement for ratification by five producer States might be appropriate. Analogies with other conventions were mentioned, e.g. the Montreal Protocol on Substances that Deplete the Ozone Layer of 1987 and the Guatemala City Protocol of 1971. Other Delegations believed that the new Convention would be more efficient if it were brought into force by the ratification of the producing States, consuming States, as well as States possessing a large quantity of unmarked explosives. The Committee recognized the practical difficulty in defining a "producing" or a "consuming" State in view of the absence of any available statistics on the quantum of production or consumption of the explosives in question. Reference, however, was made by one Delegation to the ICAO questionnaire to producer States and the possibility that producer States could simply declare themselves as such at the time of depositing their

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instrument of ratification as two possible methods of identifying producer States.

3:57 Two Delegations believed that, contrary to the proposal of the Federal Republic of Germany, the new Convention should permit reservations. Other Delegations believed that the requirement for uniformity and universality of the regime of the marking of explosives warranted that reservations should not be admissible.

3:58 One Delegation believed that the machinery for the settlement of differences by arbitration should not be triggered by the request of one of the Parties but both of the Parties to the dispute should make such a request.

3:59 One Delegation believed that the Convention should contain specific provisions on its amendment; other Delegations maintained that the general international law of treaties as formulated in Article 77 of the Vienna Convention on the Law of Treaties of 1969 would solve any problems in that respect.

- Preamble of the Convention

3:60 The Sub-Committee did not draft a Preamble to the new instrument (see paragraph 24 of the Sub-Committee's Report).

3.61 The Delegations of Czechoslovakia and of the United Kingdom presented to the Committee a proposal for the text of a Preamble in LC/27-WP/3-4 which read as follows:

"

Draft Convention on the Marking of Plastic and Sheet Explosives
for the Purpose of Detection

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of acts of terrorism for international security;

CONCERNED that plastic and sheet explosives can be used with little risk of detection for unlawful acts, including inter alia acts of unlawful interference with international civil aviation and shipping;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic and sheet explosives are neither manufactured nor traded unless they are duly marked,

HAVE AGREED AS FOLLOWS:

"

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3.62 The Committee supported the draft set forth above and believed that it reflected the mandate given to the Committee by the Assembly and the Council of ICAO as well as by the United Nations General Assembly and Security Council.

3.63 One Delegation suggested, supported by other Delegations, that the preamble should specifically refer to the resolutions of the Security Council, UN General Assembly and the ICAO Assembly and it was agreed that a suitable clause should be drafted by the Drafting Committee.

3.64 Several Delegations pointed out that the text of the proposal required improvement in the Spanish version and this task was also referred to the Drafting Committee.

3.65 One Delegation wished to record its view that the use of the word "terrorism" was unprecedented in legal instruments since this term was not yet legally defined.

3.66 One Delegation expressed doubts about the expression "shipping" in the third paragraph of the preamble and it was agreed that this matter would be considered by the Drafting Committee.

- Drafting Committee

3:67 At its Tenth Meeting held on 2 April 1990 the Committee agreed to create a Drafting Committee which would undertake the specific drafting of the text of the Convention in the light of the discussions of the Committee. The mandate of the Drafting Committee was left open with the understanding that the Drafting Committee was free to address any new ideas raised during the discussion.

3:68 The Drafting Committee was composed of the following Delegations: Argentina, Australia, Canada, Côte d'Ivoire, Czechoslovakia, Egypt, Federal Republic of Germany, France, India, Islamic Republic of Iran, Japan, Kingdom of the Netherlands, Mauritius, Pakistan, Saudi Arabia, Union of Soviet Socialist Republics, United Kingdom, United States of America and Venezuela.

3:69 The Drafting Committee held seven meetings between 3 and 6 April 1990 under the Chairmanship of Mr. V.J. Poonoosamy (Mauritius). The Committee praised the members of the Drafting Committee and its Chairman for their excellent work on the following draft text which was presented to the Committee on 9 April 1990:

"

DRAFT CONVENTION ON THE MARKING OF PLASTIC AND SHEET EXPLOSIVES
FOR THE PURPOSE OF DETECTION

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of acts of terrorism for international security;

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CONCERNED that plastic and sheet explosives can be used with little risk of detection for unlawful acts including, inter alia, acts of unlawful interference with civil aviation, maritime navigation and other modes of transportation;

RECALLING United Nations Security Council Resolution 635 of June 1989, and United Nations General Assembly Resolution of December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

RECALLING Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic and sheet explosives are duly marked,

HAVE AGREED AS FOLLOWS:

ARTICLE I

For the purposes of this Convention:

1. "Explosives" mean plastic and sheet explosives as described in the Annex to this Convention.
2. "Detection agent" means a substance as described in the Annex to this Convention which is introduced into an explosive to render it detectable.
3. "Mark" means to introduce into an explosive a detection agent in accordance with the Annex to this Convention.

ARTICLE II

Each State Party to this Convention shall take the necessary measures to prevent and prohibit effectively the manufacture in its territory of explosives, unless they are marked.

ARTICLE III

1. Each State Party shall take the necessary measures to prevent and prohibit effectively the movement into or out of its territory of explosives which are not marked.

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2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by military or police authorities of a State Party, of unmarked explosives under its control in accordance with paragraph 1 of Article IV.

ARTICLE IV

1. Each State Party shall exercise strict control over the possession and transfer of possession of such unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

2. Each State Party shall take the necessary measures to ensure that all stocks of unmarked explosives referred to in the preceding paragraph are consumed, destroyed or otherwise disposed of within a period of [15] years in respect of such stocks held by military or police authorities of that State, and within a period of [3] years in respect of other stocks, from the entry into force of this Convention in respect of that State.

3. Each State Party shall ensure the destruction of any unmarked explosives which may be found in its territory and which are not covered in the preceding paragraphs of this Article.

ARTICLE V

1. There shall be established an Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of fifteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. The Commission shall normally hold an annual session at the Headquarters of the International Civil Aviation Organization. Additional sessions may be held, if necessary.

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ARTICLE VI

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.
2. The Commission, through the Council, shall report its findings to the States Parties and International Organizations concerned.
3. The Commission shall endeavour to take its decisions on the proposals for amendments by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Annex to this Convention.

ARTICLE VII

1. Any State Party may, within [90] days from the date of notification of a proposed amendment to the Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.
2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, may propose the amendment to all States Parties for adoption.
3. If a proposed amendment has not been objected to by [1] [x] or more States Parties by means of written notification to the Council within [90] days, it shall be deemed to have been adopted, and shall enter into force [180] days thereafter or after such other period as specified in the proposed amendment.
4. If [1] [x] or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.
- [5. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may convene a conference of all States Parties.]

ARTICLE VIII

States Parties shall periodically inform the Council of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties.

"

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- Discussion of the draft text in the Legal Committee

3:70 The Committee thereafter discussed the draft text presented by the Drafting Committee paragraph by paragraph; the following points were raised during that discussion and amendments were made to the text as indicated:

Title of the Convention

3:71 Several Delegations commented on the proposed title of the Convention and a view was expressed that the reference to "sheet" explosives was not correct from the technical point of view although the term had been used in the resolutions of the Security Council, UN General Assembly, ICAO Council and ICAO Assembly. It was believed that the term "sheet" referred only to the form or shape of an explosive but not to its chemical or physical properties and thus might be misleading in the interpretation of the Convention. Many Delegations would have preferred to delete the term "sheet" throughout the text of the proposed draft but they deferred to the view of other Delegations who believed that this matter should be left open for the opinion of the Ad Hoc Group of Specialists on the Detection of Explosives. Consequently, the Committee agreed that throughout the text the expression "and sheet" would be left in square brackets except when quoting the relevant United Nations Resolution and ICAO Assembly Resolution A27-8.

Preamble

3:72 One Delegation reiterated its view that in the first clause of the Preamble the word "terrorism" was a term never before used in aviation security conventions and that the term was not yet legally defined.

3:73 Some Delegations expressed doubts whether, in the second clause of the Preamble, the term "maritime navigation" was the proper term co-extensive with "civil aviation"; however, the Committee noted that this term was in full harmony with the title of the IMO-sponsored 1988 Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. Further, one Delegation expressed the view that reference should be made to "international civil aviation" instead of "civil aviation" since in the Resolutions of the UN Security Council and the UN General Assembly on this subject, the word "international" had been used.

3:74 In the third clause of the Preamble the Committee agreed to insert more specific reference to the date of the UN Security Council Resolution 635 and to the number and date of the UN General Assembly Resolution.

3:75 In the fourth preambular clause, some Delegations believed that a descriptive clause should be included to indicate the contents of ICAO Assembly Resolution A27-8; it was agreed to add, at the end of the clause, the following: "which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection".

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3:76 The Committee also noted that the first clause required alignment in the French version and that Spanish corrections were to be introduced in the third and fifth clauses.

Article I

3:77 A view was expressed that Article I should be more specific on the question whether there will be one or more Annexes to the Convention. This problem was noted with the understanding that its final solution would depend on the work of the technical experts in the Ad Hoc Group of Specialists on the Detection of Explosives.

3:78 One Delegation believed that Article I containing definitions should be preceded by what is presently in Article II, namely, the statement of the obligations of States. Other Delegations believed that it was customary that in the drafting of a text the definitions were placed at the very beginning; another Delegation, however, pointed out that the Convention on International Civil Aviation, for instance, contained definitions only in the last provision.

3:79 The Committee wished to record that the definitions were drafted only in a tentative way and would be subject to improvement by the diplomatic conference in the light of the work of the technical experts.

3:80 One Delegation raised a question whether, in the third paragraph, the expression "mark" would not better read "to mark" to clearly indicate that that word is a verb; another Delegation questioned the expression "in accordance with the Annex" in that paragraph and believed that it would be better to refer to "in accordance with the procedure outlined in the Annex"; again, the Committee believed that this question can be clarified only in the light of the views of the technical experts.

Article II

3:81 Some Delegations suggested the reversal of the order of the words "to prevent and prohibit effectively" so as to read "to prohibit and prevent effectively". Some other Delegations suggested the insertion of the word "unmarked" between the words "territory of" and the word "explosives" and the deletion of the words "unless they are marked" at the end of the sentence. One Delegation pointed out that the words "in its territory" should be deleted from that paragraph since this expression might be construed as meaning that a State Party could manufacture unmarked explosives outside its territory. However, another Delegation mentioned that such a deletion could be interpreted to allow some States to extend their national laws extraterritorially in a manner inconsistent with international law. As a result of its deliberations, the Committee agreed on the following text of Article II: "Each State Party to this Convention shall take the necessary measures to prohibit and prevent effectively the manufacture in its territory of unmarked explosives".

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Article III

3:82 In paragraph 1 of Article III, the Committee agreed to align the text with that of the preceding Article. Also, some corrections of editorial nature will have to be made in the Spanish and French versions of this paragraph.

3:83 With regard to paragraph 2 of Article III, two Delegations believed that the movement of unmarked explosives should not be restricted only to military or police authorities of a State Party but to other authorities, but the Committee did not agree to that suggestion. Another Delegation proposed adding the words "for their own use" after the words "State Party". After further discussion, it was agreed to keep these words in square brackets. Some Delegations preferred to use the phrase "for purposes consistent with the objectives of this Convention" so as to avoid what was perceived to be a double negative; however, the Committee decided to retain the wording prepared by the Drafting Committee. One Delegation suggested that this paragraph should refer to movements of unmarked explosives provided that these movements take place between States Parties, but this view was not accepted by the Committee. The text of Article III as adopted by the Committee is as follows:

"

1. Each State Party shall take the necessary measures to prohibit and prevent effectively the movement into or out of its territory of unmarked explosives.
2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by military or police authorities of a State Party [for their own use], of unmarked explosives under its control in accordance with paragraph 1 of Article IV. "

Article IV

3:84 Some Delegations suggested that the first paragraph of this Article should be aligned with the wording of the previous Articles so as to read: "Each State Party shall take the necessary measures to...", and the Committee agreed to this suggestion. There was a discussion regarding the word "strict", and some Delegations proposed that this word be replaced by "effective"; as a compromise solution, the Committee agreed that the phrase should read "exercise strict and effective control". One Delegation proposed that reference should be made to "the illegal use or application" in the penultimate line of this paragraph in lieu of the words "diversion or use", but this suggestion was not retained by the Committee.

3:85 With respect to paragraph 2 of Article IV, three Delegations expressed some concern about the periods of years (15 and 3 years respectively) within which stocks of unmarked explosives should be consumed, destroyed or otherwise disposed of; they believed that, in view of the nature of the explosives referred to in this paragraph, the final decision regarding the period of years should be taken by the diplomatic conference following the result of the work of the Ad Hoc Group of Specialists on Explosives.

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3:86 Some Delegations reiterated their statements during the general debate that it was impossible to foresee at the present time any specific target date for the destruction of the existing stocks of unmarked explosives. They emphasized the economic and ecological reasons which made such destruction difficult, including the considerable economic losses as well as the harmful effect of the toxic substances on the environment in case of burning or destruction by explosion. Other Delegations believed that Article IV, paragraph 2 made reference to other methods of disposal of such explosives, and not only to destruction; such unmarked explosives could be either consumed or otherwise neutralized or disposed of.

3:87 As a result of its deliberations, the Committee agreed to leave paragraph 2 of Article IV in square brackets to permit further consideration at the diplomatic conference, in particular in light of opinions which may be obtained from the technical experts.

3:88 With respect to paragraph 3 of Article IV, the Committee agreed to align the first phrase on paragraph 1 by inserting the words "take the necessary measures to"; furthermore, the Committee agreed to delete the word "any" before the expression "unmarked explosives" since such an expression was not used in previous texts and might lead to difficulties in interpretation. Finally, with respect to this paragraph, the Committee agreed to replace the word "found" by "discovered".

3:89 As a result of the deliberations of the Committee, the text of Article IV was established as follows:

"

ARTICLE IV

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of such unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

[2. Each State Party shall take the necessary measures to ensure that all stocks of unmarked explosives referred to in the preceding paragraph are consumed, destroyed or otherwise disposed of within a period of [15] years in respect of such stocks held by military or police authorities of that State, and within a period of [3] years in respect of other stocks, from the entry into force of this Convention in respect of that State.]

3. Each State Party shall take the necessary measures to ensure the destruction of unmarked explosives which may be discovered in its territory and which are not covered in the preceding paragraphs of this Article.

"

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Article V

3:90 In the discussion of the text of Article V presented by the Drafting Committee, views were expressed that this Article should be more specific with respect to the functions of the Council of ICAO; it was proposed that the Council should specifically be entitled to appoint the President of the Commission and that it should adopt the Rules of Procedure of the Commission and that this matter should be mentioned in the body of the Convention itself. A contrary view was expressed by other Delegations who believed that the Commission should either develop its own Rules of Procedure or could use the Rules of Procedure applicable to other standing bodies of the Council; such Rules would also govern the subject of the appointment of the President or Chairman of the Commission.

3:91 There was also a proposal that in paragraph 1 of Article V there could be a positive statement that the Explosives Technical Commission is established by the Convention; it was proposed that the beginning of paragraph 1 should read: "There is established by this Convention..."; this proposal was adopted.

3:92 Several Delegations believed that the Council of ICAO should appoint the members of the Commission after consultation with other international organizations concerned. Other Delegations believed that the process of consultation would be too difficult to describe and preferred not to change the text but record this idea in the Report.

3:93 Several other Delegations reiterated their view expressed during the general discussion and stated their continuing concern that the qualifications of the experts should be described along the lines of the time-tested provisions of Article 56 of the Chicago Convention, which refers to the appointment of the members of the Air Navigation Commission; that provision refers to "suitable qualifications and experience" and was preferred by some members to the qualifications set forth in paragraph 2 of Article V. The Committee agreed to record these views in the Report.

3:94 One Delegation believed that there should be a provision for other international organizations concerned to appoint Observers to participate in the work of the Commission.

3:95 As a result of its deliberations, the Committee re-drafted paragraph 1 of Article V as follows:

"1. There is established by this Convention an Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of fifteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention."

3:96 Paragraphs 2, 3 and 4 were retained in the version prepared by the Drafting Committee. However, it was agreed that in paragraph 3, a correction will be made in the French language version to make it clear that the members of the Commission "serve" for a period of three years.

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Article VI

3:97 With respect to paragraph 1 of Article VI, one Delegation wished to add the expression "or research in explosives" at the end of that paragraph; the Committee did not accept this proposal since it was not considered part of "technical developments" to be evaluated by the Commission.

3:98 After considerable discussion, the Committee agreed to re-draft paragraph 3 of Article VI to clarify that the Commission was expected to make recommendations to the Council on amendments to the Annex to the Convention. Furthermore, it was agreed that a separate paragraph (new paragraph 4) would refer to the function of the Council to propose amendments to the Annex.

3:99 As a result of its deliberations, paragraphs 1 and 2 were left unchanged and paragraph 3 was replaced by the following two paragraphs:

"3. Whenever necessary, the Commission shall make recommendations to the Council on amendments to the Annex to this Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus, the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Annex to this Convention. "

Article VII

3:100 The Committee recognized that the provisions of Article VII on the amendments of the provisions of the Annex posed one of the most difficult problems encountered in the deliberations of the Committee. The concern for the respect of the States' sovereignty had to be reconciled with the recognized interest to have a uniform world-wide system for the marking of explosives for the purpose of detection. The Committee recognized that the Drafting Committee made its best effort to develop a procedure of thorough consultation and reconciliation on different views at different stages and in different bodies. It was believed that this solution was well adapted to balance the different interests and represented a compromise solution emphasizing the consultative process conducive to general consensus.

3:101 The Committee recognized that in respect of the consultative process, there might be a need for a conference of all States Parties as foreseen in paragraph 5; some Delegations would have preferred to keep paragraph 5 in the text without square brackets to emphasize that the door was not to be closed to such a possibility. One Delegation believed that paragraph 5 was incomplete without specific provisions on how any decision of a diplomatic conference would be adopted and how they would enter into force. Another Delegation suggested to add at the end of paragraph 5 the words "if it considers the amendment vital for safety and security".

3:102 One Delegation pointed out that in paragraph 2, reference should not be made to "views" but rather to "comments and objections". Another Delegation commented that in paragraph 3 the details for notification and entry into force

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should not be specific in any rigid terms; the decision should be left in each particular case to the Explosives Technical Commission to assess the length of time required for the introduction of new specifications for the marking of explosives.

3:103 The Committee agreed that the different comments made on Article VII should be recorded in the Report for possible future consideration at the diplomatic conference. However, the Committee was convinced that the drafting of Article VII reflected as much as possible the different conflicting concerns and decided not to introduce any change in Article VII as drafted by the Drafting Committee for further consideration at the diplomatic conference.

Article VIII

3:104 The Committee recognized that the Drafting Committee reflected in this provision the concerns expressed during the general debate. However, one Delegation wished to record in the Report that this provision could be enhanced to provide also for close co-operation and co-ordination between States Parties to the Convention on all matters relating to the marking and detection of explosives; furthermore, the Convention could provide for the ICAO Council to actively collect and request information which could serve as the basis for deliberations by the Explosives Technical Commission. Two Delegations believed that the Convention should spell out clearly that the information should be provided by States "in accordance with their national legislation". Another Delegation believed that the Convention should provide expressly that all such information shall be communicated by the Council not only to States Parties but also to the Explosives Technical Commission.

3:105 The Committee agreed to record the comments in the Report but decided to leave the text of Article VIII unchanged as drafted by the Drafting Committee.

CONCLUSION

3:106 The Committee was of the view that it has completed its work on the preparation of a draft instrument on the marking of explosives for the purpose of detection under the terms of reference given to it by the Council, as well as by Assembly Resolution A27-8.

3:107 The text adopted by the Committee is presented in the Appendix to this part of the Report dealing with Agenda Item 3. The Committee considers this draft to be "a final draft" under the terms of Assembly Resolution A7-6 and transmits it to the Council for further action under that Assembly Resolution.

3:108 While the Committee believed that it has completed its work on the draft Convention, it wishes to bring to the attention of the Council that an international conference for the consideration of this draft should not be convened before the Ad Hoc Group of Specialists on the Detection of Explosives develops a draft Annex containing precise definitions of the explosives as well as the methods and processes for the marking of such explosives for the purpose of detection.

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3:109 The Committee also noted the statement of one technical expert on the current and future work of the Ad Hoc Group of Specialists on the Detection of Explosives. It was noted that the Third Meeting of that Group will be held from 19 to 21 June 1990 and its basic aim will be to reduce the number of the five candidate additives singled out for further testing during the Second Meeting of the Group. A serious concern was expressed that in one meeting the Group may not be capable of taking a final decision on one single preferred additive or on a minimal number of such additives and that there would be need for at least one additional meeting of the Group prior to the diplomatic conference; it was also believed that it was unrealistic to convene the Group for a short duration of three days when there is a large number of questions to be addressed.

3:110 The Committee endorsed the conclusions of the expert that it would be most useful to address some specific questions to the Group of Specialists and to obtain from it specific clarifications and recommendations on several technical issues which were raised during the 27th Session of the Legal Committee. In this context, the Committee recommends to the Council that the following specific questions be included in the terms of reference of the Group of Specialists and should be answered by the Group:

1. Recommendations on the use of the term "sheet explosives" in the title and in the body of the text of the draft Convention.
2. Preparation of the general definition of the terms to be included in the Convention and technical definitions to be included in the Annex.
3. Consideration of questions connected with "consumption", "destruction" or "other disposal" of explosives, as well as the technical and economic aspects thereof.
4. The necessity to mark explosives designed to be moulded (e.g., in shells, bombs, rockets or other containers) and not stored separately.
5. Technical views on the deadlines for the entry into force of amendments of the Annex contemplated in Article VII of the draft Convention.
6. Recommendations on the composition of the Explosives Technical Commission consisting of suitably qualified experts.

3:111 The Committee also noted that the work of the Ad Hoc Group of Specialists still required some time not only to select the appropriate marking agent but also to develop the Annex to this Convention. The hope was expressed by the Committee that the Council will take the necessary action to create conditions to expedite the work of the Ad Hoc Group of Specialists so that the Convention could be adopted by a diplomatic conference as early as possible in the calendar year 1991.

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APPENDIX

TEXT APPROVED BY THE LEGAL COMMITTEE

DRAFT CONVENTION ON THE MARKING OF PLASTIC [AND SHEET] EXPLOSIVES
FOR THE PURPOSE OF DETECTION

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of acts of terrorism for international security;

CONCERNED that plastic [and sheet] explosives can be used with little risk of detection for unlawful acts including, inter alia, acts of unlawful interference with civil aviation, maritime navigation and other modes of transportation;

RECALLING United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

RECALLING Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic [and sheet] explosives are duly marked,

HAVE AGREED AS FOLLOWS:

ARTICLE I

For the purposes of this Convention:

1. "Explosives" mean plastic [and sheet] explosives as described in the Annex to this Convention.
2. "Detection agent" means a substance as described in the Annex to this Convention which is introduced into an explosive to render it detectable.
3. "Mark" means to introduce into an explosive a detection agent in accordance with the Annex to this Convention.

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ARTICLE II

Each State Party to this Convention shall take the necessary measures to prohibit and prevent effectively the manufacture in its territory of unmarked explosives.

ARTICLE III

1. Each State Party shall take the necessary measures to prohibit and prevent effectively the movement into or out of its territory of unmarked explosives.

2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by military or police authorities of a State Party [for their own use], of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article IV.

ARTICLE IV

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of such unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

[2. Each State Party shall take the necessary measures to ensure that all stocks of unmarked explosives referred to in the preceding paragraph are consumed, destroyed or otherwise disposed of within a period of [15] years in respect of such stocks held by military or police authorities of that State, and within a period of [3] years in respect of other stocks, from the entry into force of this Convention in respect of that State.]

3. Each State Party shall take the necessary measures to ensure the destruction of unmarked explosives which may be discovered in its territory and which are not covered in the preceding paragraphs of this Article.

ARTICLE V

1. There is established by this Convention an Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of fifteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

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3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. The Commission shall normally hold an annual session at the Headquarters of the International Civil Aviation Organization. Additional sessions may be held, if necessary.

ARTICLE VI

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and International Organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Annex to the Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Annex to this Convention.

ARTICLE VII

1. Any State Party may, within [90] days from the date of notification of a proposed amendment to the Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, may propose the amendment to all States Parties for adoption.

3. If a proposed amendment has not been objected to by [1] [x] or more States Parties by means of written notification to the Council within [90] days, it shall be deemed to have been adopted, and shall enter into force [180] days thereafter or after such other period as specified in the proposed amendment.

4. If [1] [x] or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.

[5. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may convene a conference of all States Parties.]

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ARTICLE VIII

States Parties shall periodically inform the Council of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties.

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Report on Agenda Item 4

Agenda Item 4: Review of the General Work Programme of the Committee

4:1 In accordance with Rule 8 of its Rules of Procedure, the Committee proceeded to the review of its General Work Programme. It noted that the work programme was recently reviewed by the Legal Commission of the 27th Session of the ICAO Assembly and thereafter approved at the Fourth Meeting of the 128th Session of the Council on 15 November 1989.

4:2 The General Work Programme so approved contained the following items in the order of priority indicated:

- 1) Preparation of a new legal instrument regarding the marking of explosives for detectability;
- 2) Action to expedite ratification of Montreal Protocols Nos. 3 and 4 of the "Warsaw System";
- 3) Legal aspects of the global air-ground communications;
- 4) Institutional and legal aspects of the Future Air Navigation Systems;
- 5) United Nations Convention on the Law of the Sea - Implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments;
- 6) Liability of air traffic control agencies;
- 7) Study of the instruments of the "Warsaw System".

4:3 The Representative of Peru informed the Committee that he would be presenting, together with some other Delegations, a purely informative paper on the legal aspects relating to the role of ICAO in the suppression of drug abuse and illicit trafficking. That paper would be presented in the context of this agenda item but no discussion thereon was expected.

4:4 During the discussion the Committee expressed the view that there was no need to change the General Work Programme at this time since it had been the subject of recent discussions by the 27th Session of the Assembly and the 128th Session of the Council.

4:5 However, the Committee agreed that item 1): "Preparation of a new legal instrument regarding the marking of explosives for detectability" may now be removed from the work programme since the current session of the Legal Committee completed the work on this subject and no further action by the Legal Committee is expected.

4:6 Although some Delegations believed that several items on the General Work Programme were inactive and that it was unlikely that the Legal Committee would address them in the foreseeable future, the Committee agreed to leave all items on the work programme since no other body in ICAO could possibly address them.

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4:7 The Committee noted that action on the present item 2): "Action to expedite ratification of Montreal Protocols Nos. 3 and 4 of the 'Warsaw System'" has in fact been completed by the decision of the 129th Session of the Council and by the decision of the current session of the Committee; however, this subject was retained on the General Work Programme with the understanding that a report on the action taken by the Secretariat and by States should be presented to the 28th Session of the Legal Committee.

4:8 Several Delegations expressed concern that the Legal Committee was not being convened frequently enough to effectively address the vast scope of problems contained in the General Work Programme. The Committee decided that this concern should be brought to the attention of the Council.

4:9 Consequently, in the light of the discussion, the Committee established, subject to approval by the Council, the following General Work Programme:

- 1) Action to expedite ratification of Montreal Protocols Nos. 3 and 4 of the "Warsaw System";
- 2) Legal aspects of the global air-ground communications;
- 3) Institutional and legal aspects of the Future Air Navigation Systems;
- 4) United Nations Convention on the Law of the Sea - Implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments;
- 5) Liability of air traffic control agencies;
- 6) Study of the instruments of the "Warsaw System".

Report on Agenda Item 5

Agenda Item 5: Action to expedite ratification of Montreal
Protocols Nos. 3 and 4

5:1 The Committee noted the deliberations and conclusions of the Legal Commission of the 27th Session of the Assembly which had expressed concern about the slow progress of ratification of Additional Protocol No. 3 and Montreal Protocol No. 4 for the amendment of the "Warsaw System"; the Legal Commission agreed to include in the General Work Programme of the Legal Committee as priority No. 2 the subject: "Action to expedite ratification of Montreal Protocols Nos. 3 and 4 of the 'Warsaw System'". Assembly Resolution A27-3 "urges all Contracting States which so far have not done so to ratify the other international air law instruments, in particular the Montreal Protocols Nos. 3 and 4 of 1975".

5:2 The Committee also noted that at the 128th Session on 15 November 1989 the Council approved the General Work Programme of the Legal Committee which included this item as priority No. 2; furthermore, during its 129th Session on 28 February and 2 March 1990 the Council considered specific proposals to expedite the ratification of these Protocols.

5:3 The Committee noted with appreciation document LC/27-WP/5 presented by the Secretariat which outlined the history of attempts to modernize the "Warsaw System" as well as the present complexity of the different components of that system. The Committee also noted the action agreed to by the Council as representing a realistic programme to help expedite the entry into force of the two Protocols:

- (a) The Secretary General should prepare, before the end of 1990, a circular setting out in clear terms a summary of the provisions of the "Warsaw System", its rationale, and the reasons why the 1975 Protocols should be ratified.
- (b) The Secretary General should request from States which have ratified one or both of the Protocols to provide copies of their implementing legislation; these would be made available, upon request, to States which are considering ratification.
- (c) The Secretary General should provide, upon request, copies of instruments of ratification which could serve as a model for States which encounter difficulty in their ratification process.
- (d) Regional offices and staff members on mission to States not party to the Protocols should be directed to lay particular stress on the desirability of ratification of the Protocols and provide necessary clarification.

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- (e) Interested States which have ratified these Protocols should be encouraged to hold seminars and workshops to expedite ratification by other States. Furthermore, in accordance with Resolution A27-3, the Secretary General should, where practicable, take measures regarding the organization of and the participation in workshops and seminars aimed at furthering the process of ratification of the 1975 Protocols.

5:4 The Delegations of the Kingdom of the Netherlands, Sweden, Switzerland, Togo and Poland presented to the Committee LC/27-WP/5-1 which outlined in greater detail the need to ratify Montreal Protocols Nos. 3 and 4 as well as the concerted action by interested States which might help to expedite the process of ratification. The basic proposal of this submission was to form a "workshop" of States which have ratified the Montreal Protocols or are interested in doing so within a reasonable time. Participation in this workshop would be open to any State which is interested in working with other States toward achieving the entry into force of those instruments. It was recalled that a similar informal workshop had been created in relation to Article 83 bis of the Chicago Convention and met with considerable success.

5:5 This proposal was supported by numerous Delegations who declared their willingness to participate in the workshop and to offer any feasible assistance.

5:6 Several Delegations believed that it was also essential to find the true reasons why some States have not so far ratified these documents; they believed that it would be advisable to prepare a detailed questionnaire requesting States to outline their particular difficulties with the ratification of these instruments.

5:7 As a result of its deliberations, the Committee noted with appreciation the action taken by the Council of ICAO to expedite ratification of Additional Protocol No. 3 and Montreal Protocol No. 4 of 1975 and welcomed the initiative and effort of the group of States willing to establish a workshop to assist in the expediting of ratification of the two Protocols. With respect to the proposed questionnaire, the Committee believed that this initiative should be noted and may be implemented by the Council as part of its action to implement Assembly Resolution A27-3.

Report on Agenda Item 6

Agenda Item 6: Legal aspects of the global air-ground communications

6:1 This subject was included in the General Work Programme of the Legal Committee by the Council at the 16th Meeting of its 124th Session held on 29 June 1988. The initiative for the study of this subject came from the Third Meeting of the FANS Committee, which identified as an institutional aspect requiring early consideration by ICAO the "radio transmissions from aircraft for purposes other than safety of air navigation, e.g. for aeronautical passenger communications or for aeronautical administrative communications". The FANS Committee adopted Recommendation 6/1 on the "enabling of non-safety air-ground communications on a global basis" and requested that ICAO study, as a matter of urgency, implications of Article 30(a) and (b) of the Convention on International Civil Aviation (Chicago, 1944) with a view to enabling, on a global basis, non-safety air-ground communications.

6:2 The Secretariat prepared a study in LC/27-WP/6-1 which was presented to the Committee. The basic conclusions of that study were that every State has the complete and exclusive sovereign right to regulate its telecommunications. There is no "freedom" in the field of telecommunications which would automatically permit anybody, within a sovereign territory of a State, to operate a wireless transmitter or any other means of telecommunication. Many States retain complete State monopoly on all forms of telecommunications, or at least exercise a strong regulatory supervision of such activities; the interests and functions of States in this field are dictated partly by concerns for security and partly by the interest to retain the economic benefits generated by the telecommunications.

6:3 The Convention on International Civil Aviation restates this general rule of international law in Article 30. According to that provision, the use of radio transmitting apparatus in the territory of the Contracting State whose territory is overflowed must be in accordance with the regulations prescribed by that State. Furthermore, Article 30(b) prescribes that the radio transmitting apparatus may be used only by members of the flight crew who are provided with a special licence for that purpose.

6:4 The study of the Secretariat concluded that Article 30(b) did not present an obstacle to the introduction of passenger communications because such passengers would not be involved in the "operation" of the transmission systems which would remain under the control of a flight crew or would be regulated by automatic communication devices.

6:5 Attention was drawn to the experience of INMARSAT which, on 16 October 1985, reached an International Agreement on the Use of INMARSAT Ship Earth Stations within the Territorial Sea and Ports. The problem dealt with in that Agreement is closely analogical to that faced by air-ground communications.

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6:6 As possible solutions to the presently existing legal obstacles to the global introduction of air-ground communications from aircraft in flight over a foreign territory, the Secretariat study suggested the following:

a) Amendment of Article 30 of the Convention on International Civil Aviation:

This solution appeared very difficult since any amendment of the Convention would at present require ratification by 108 (or even 109) States. At best, this would be an extremely time-consuming process;

b) New multilateral Convention:

It was believed that such a Convention could encompass the basic principles of the International Agreement on the Use of INMARSAT Ship Earth Stations within the Territorial Sea and Ports and would provide to the Parties thereto the right for the aircraft of their registry to initiate administrative communications and passenger communications while in the airspace of any other Party; the instrument could outline the conditions and limitations to which such communications would be subject;

c) Bilateral agreements:

States in their bilateral relations could conclude agreements stipulating the conditions under which such communications would be permitted; such agreements could be either in the form of special instruments or they could be included as a separate clause in the agreements on air services. The Legal Committee could facilitate the conclusion of such bilateral agreements by drafting a model clause or model agreement for the guidance of States in this field;

d) Unilateral action:

The purpose of enabling global non-safety air-ground communications could be achieved also by unilateral decisions of States specifically authorizing such a type of communication under specified conditions either for the aircraft of all States or on the basis of reciprocity.

6:7 The Secretariat study also emphasized the technical elements which had to be observed to co-ordinate the competing demands for the limited electromagnetic spectrum reserved for this type of communications. In accordance with the Radio Regulations of the ITU the relevant priorities would have to be preserved for distress calls and similar types of priority calls.

6:8 The study by the Secretariat contained a summary of replies to a questionnaire from thirty Contracting States and two international organizations. An analysis of these replies confirmed that there were

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legal obstacles to the introduction of global non-safety air-ground communications but that most States were willing to consider measures to facilitate such communications. With respect to the specific method, many States showed preference for a new multilateral agreement although most of the States would not object to a bilateral solution. Most States also believed that Article 30(b) of the Convention on International Civil Aviation did not constitute an obstacle to the introduction of such communications.

6:9 In a wide discussion, all Delegations praised the Secretariat study as a good starting-point for further considerations. Several Delegations considered this subject to be urgent in nature and requiring early action to ensure that ICAO would be in the vanguard of technical and legal developments relating to international civil aviation. Most Delegations expressed the view that there was no pressing legal need for an amendment of Article 30 of the Convention on International Civil Aviation and believed that this solution in any case would be difficult to achieve and very time-consuming.

6:10 Many Delegations believed that the study done at the level of the Secretariat followed by the work of a Rapporteur could expedite the analysis of the problem and single-out the most acceptable solutions for final decision by the Legal Committee.

6:11 The Committee agreed that this subject deserved the urgent priority allocated to it by the Council and by the Assembly and that any solution would depend on an effective, concerted international action. Some Delegations did not wish to be committed at this stage to any particular solution and believed that the different approaches need not be mutually exclusive. Only after the fundamental principles of a solution are drafted would it be possible to decide whether such principles should be embodied in a bilateral agreement, in a new multilateral instrument or in an amendment to the Convention on International Civil Aviation.

6:12 Some Delegations emphasized the need for caution because the subject contained considerable technical and economic elements, the implications of which must be considered in depth. One Delegation emphasized the need for a possible amendment to the Chicago Convention.

6:13 At the conclusion of the debate on this subject, the Committee agreed that this subject was important and urgent in nature. ICAO should be the initiator of any solutions and it would be advisable, after further study by the Secretariat, to appoint a Rapporteur who would report his conclusions to a Sub-Committee. Some Delegations proposed the name of Mr. B. Buchmüller (Switzerland) as a Rapporteur on this subject; it was agreed that the Rapporteur would be appointed in due course by the new Chairman of the Legal Committee pursuant to Rule 17 of the Rules of Procedure of the Legal Committee.

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Report on Agenda Item 7

Agenda Item 7: Institutional and legal aspects of the Future Air Navigation Systems

7:1 This subject was included in the General Work Programme of the Legal Committee by the Council at the 16th Meeting of its 124th Session held on 29 June 1988. The Committee considered this subject on the basis of the information contained in LC/27-WP/7 presented by the Secretariat. In November 1983, the Council established the Special Committee on Future Air Navigation Systems (FANS), whose terms of reference were "to study technical, operational, institutional and economic questions including cost/benefit effects, relating to the future potential air navigation systems; to identify and assess new concepts and new technology, including satellite technology, which may have future benefits for the development of international civil aviation including the likely implications they would have for users and providers of such systems; and to make recommendations thereon for an overall long term projection for the co-ordinated evolutionary development of air navigation for international civil aviation over a period of the order of twenty-five years. The Committee should avoid duplication of effort and its work should be co-ordinated with that of existing groups in the Organization."

7:2 The FANS Committee held four meetings between 1984 and 1988, during which the attention of the Committee focused, inter alia, on an evaluation of the present Communication, Navigation and Surveillance Systems (CNS). During its Third and Fourth Meetings (3 - 21 November 1986 and 2 - 20 May 1988), the FANS Committee considered the institutional aspects regarding communications and surveillance applications and believed that ICAO was the only appropriate body to establish technical standards for international aeronautical communications and surveillance services.

7:3 LC/27-WP/7 indicated that the introduction of Future Air Navigation Systems would depend not only on the development and availability of new technology but, to a large extent, on the level of co-operative effort of States and their consensus to put the new systems into practical use under specified legal conditions and that, in view of the nature of the services contemplated, it would appear that the conclusion of arrangements or agreements on a regional or even global scale might be an advisable solution.

7:4 It was further pointed out that in its consideration of institutional and management aspects, the FANS Committee agreed that for economic and technical reasons, satellite systems would require institutional and management arrangements. In that respect, Chapter XV of the Chicago Convention laid down certain basic principles for joint support services and joint financing schemes.

7:5 The Committee considered the future course of action which was mentioned in paragraph 5 of LC/27-WP/7, in particular:

Report on Agenda Item 7

- a) whether a rapporteur should be appointed under Rule 17 of the Rules of Procedure of the Legal Committee; and
- b) whether a Sub-Committee should be created under Rule 12 of those Rules and be charged with the study of this subject.

7:6 All Delegations supported the appointment of a Rapporteur to study the subject: "Institutional and legal aspects of the Future Air Navigation Systems". Some other Delegations approved the course of action outlined in paragraph 5 in its entirety.

7:7 One Delegation expressed the view that the Council or Assembly of ICAO should give a more specific mandate to the Legal Committee as to the framework and direction within which this subject should be considered.

7:8 The Committee agreed that any study to be undertaken on this subject should be co-ordinated with the continuing work following up on the work of the Special Committee on Future Air Navigation Systems. Furthermore, the Committee agreed that the subject was important and urgent enough to justify an early appointment of a Rapporteur.

Report on Agenda Item 8

Agenda Item 8: Election of the Chairman and Vice-Chairmen of the Committee

8:1 In conformity with Rule 6 of its Rules of Procedure, the Committee proceeded to the election of the Chairman and of the First, Second, Third and Fourth Vice-Chairmen.

8:2 The following candidates were proposed for the positions of Chairman and Vice-Chairmen:

Chairman: Mr. S.M. Anwar (Pakistan)

- nominated by the Delegation of the United States of America and seconded by the Delegations of Japan, Argentina and Islamic Republic of Iran.

First Vice-Chairman: Mr. J. Garland (Peru)

- Nominated by the Delegation of Tunisia and seconded by the Delegations of Poland, Egypt and Venezuela.

Second Vice-Chairman: Mr. C. de la Verpillière (France)

- Nominated by the Delegation of Kenya and seconded by the Delegation of Venezuela.

Third Vice-Chairman: Mr. S.R. Tahou (Côte d'Ivoire)

- Nominated by the Delegation of the United Kingdom and seconded by the Delegations of Czechoslovakia, Nigeria and Ghana.

Fourth Vice-Chairman: Mr. J. Capek (Czechoslovakia)

- Nominated by the Delegation of the Union of Soviet Socialist Republics and seconded by the Delegations of Brazil, Nigeria, Ghana and Guinea.

8:3 All officers named above were elected unanimously.

8:4 The officers so elected shall hold office from the end of the 27th Session until the end of the 29th Session of the Committee, as specified in Rule 6 of the Rules of Procedure of the Legal Committee.

8:5 The Committee expressed its warm gratitude to Dr. A. Sciolla Lagrange who was the Chairman of the Legal Committee during its 26th and 27th Sessions. The Secretary of the Committee emphasized that Dr. Sciolla Lagrange had served seven years as Chairman of the Committee - the longest term of office in the history of the Committee. During that period he saw the completion of major studies relating to the United Nations Convention on the Law of the Sea,

Report on Agenda Item 8

Liability of Air Traffic Control Agencies as well as the study, adoption and entry into force of the 1988 Supplementary Protocol to the Montreal Convention of 1971; again, he witnessed the initiative for the new legal instrument regarding the marking of explosives for detectability, its evolution in the special Sub-Committee and the final drafting work done by the 27th Session of the Legal Committee. On behalf of the Secretary General, the Secretary of the Committee wished Dr. Alberto Sciolla Lagrange

"QUOD BONUM FELIX FAUSTUM FORTUNATUMQUE SIT!"

Report on Agenda Item 9

Agenda Item 9: Date, place and agenda of the 28th Session of the Legal Committee

9:1 In accordance with Rule 1 of the Committee's Rules of Procedure, "the Committee shall normally hold an annual session. Additional sessions may be held, if necessary". Under Rule 3, "the sessions of the Committee shall be convened at such times and places as may be directed or approved by the Council".

9:2 The Committee believed that after consideration of the General Work Programme of the Legal Committee and after the diplomatic conference on the new instrument for the marking of explosives for the purposes of detectability the Council would be in the best position to determine the suitable date, place and agenda of the 28th Session of the Legal Committee.

9:3 The Committee expressed the view that its sessions should be held with more regularity and frequency, in particular in light of the large scope of tasks of an urgent nature which are contained in its General Work Programme.

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Attachment A

AGENDA

FOR THE 27TH SESSION OF THE LEGAL COMMITTEE

- Item 1: Adoption of the Final Agenda of the Session
- Item 2: Report of the Secretariat
- Item 3: Preparation of a new legal instrument regarding the marking of explosives for detectability
- Item 4: Review of the General Work Programme of the Legal Committee
- Item 5: Action to expedite ratification of Montreal Protocols Nos. 3 and 4
- Item 6: Legal aspects of the global air-ground communications
- Item 7: Institutional and legal aspects of the Future Air Navigation Systems
- Item 8: Election of the Chairman and Vice-Chairmen of the Committee
- Item 9: Date, place and agenda of the 28th Session of the Legal Committee
- Item 10: Report on work done at the Session

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LIST OF DOCUMENTS

<u>Working Paper</u>	<u>Subject</u>
LC/27-WP/1	Provisional Agenda
2	Report of the Secretariat
3	Preparation of a new legal instrument regarding the marking of explosives for detectability - Introductory note
3-1	Comments by International Federation of Air Line Pilots Associations (IFALPA)
3-2	Working Paper submitted by the Federal Republic of Germany
3-3	Comments by Argentina
3-4	Proposal by Czechoslovakia and the United Kingdom (Preamble)
3-5	Proposal by the United States - Procedures for amending the Annex[es] to the Convention at a Diplomatic Conference
3-6	Draft text presented by the Chairman of the Drafting Committee
4	Review of the General Work Programme of the Committee
4-1	Information paper on the Legal aspects of ICAO's role in the control of the illicit trafficking of drugs by air submitted by Peru and co-sponsored by Colombia, Costa Rica, Ecuador, Jamaica, United States and Venezuela
5	Action to expedite ratification of Montreal Protocols Nos. 3 and 4 - Introductory note
5-1	Working Paper submitted by the Kingdom of the Netherlands, Sweden, Switzerland, Togo and Poland
6	Legal aspects of the global air-ground communications - Introductory note
6-1	Secretariat study on "Legal aspects of the global air-ground communications"

Working Paper

Subject

LC/27-WP/7	Institutional and legal aspects of the Future Air Navigation Systems - Introductory note
8	Note on the election of the Chairman and Vice-Chairmen of the Committee
9	Date, place and agenda of the 28th Session of the Legal Committee
10	Draft Report on the work of the Legal Committee during its 27th Session (Introduction, Agenda Items 2 and 3)
ADD.	Addendum to paragraph 3:9 of LC/27-WP/10
10-1	Draft Report (Agenda Item 3)
10-2	Draft Report (Agenda Item 3)
ADD. 1	Appendix to be inserted at end of LC/27-WP/10-2
ADD. 2	New material to be inserted after paragraph 3:108 of LC/27-WP/10-2
10-3	Draft Report (Agenda Items 5, 6 and 9)
10-4	Draft Report (Agenda Item 8)
10-5	Draft Report (Agenda Items 4 and 7)



Doc 9556-LC/187
Erratum
(English only)

LEGAL COMMITTEE - 27TH SESSION

Montreal, 27 March - 12 April 1990

ERRATUM

The following corrections should be made to Appendix C, List of Participants, of the Report of the 27th Session of the Legal Committee:

Austria: the name of the participant should read: "Froeschl, S."

Cuba: the name of the first participant should read:
"Casado Bajuelo, M.L."
the second name listed should read: "Viñas Valdès, N."

Indonesia: delete the comma after the name "Suryanto"

United States: please add the name "LeCroy, J." after "Catlett, J.M."

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Attachment C

LIST OF PARTICIPANTS

ALGERIA:	Benamara, S.
ANGOLA:	Feliciano, J. de A. Dos Santos, G.F.
ARGENTINA:	Perucchi, H.A. Besaccia, D.R. Garcia Ghirelli, J. Maffeis, C.A.
AUSTRALIA:	Horner, P.M.B. Weeden, B.C. Frazer, M.H.
AUSTRIA:	Freoschl, S.
BRAZIL:	Pinheiro Jr., C. Cunha-Ananias, A.
BULGARIA:	Batchvarov, L.T. Jivkov, C.G.
BURUNDI:	Kanonko, P.
CANADA:	Stockfish, B. Duguay, G. Lauzon, G.H.T. Renaud, C. Vidricaire, M. Whiteman, H.H. Cartwright, N.S.
CHILE:	Gaete, R. Zurob, R. Brantes, H.I. Lennon, L.
CHINA:	Li, K.
COLOMBIA:	Rengifo Valencia, N. Jaramillo Roncancio, C. Perdomo Andrade, F.
COSTA RICA:	Viquez Jara, C. Mesén, B. Alfaro, V.H. Romero Royo, M.

CÔTE D'IVOIRE:	Kacou, J. Tahou, S.R.
CUBA:	Casado Bajueio, M.L. Vinas Valdèr, N.
CZECHOSLOVAKIA:	Capek, J. Zbiralova, J.
DEMOCRATIC YEMEN:	Abdulkader, M.
ECUADOR:	Roman, C. Donoso, L. Panchig, J. Saenz, C.
EGYPT:	Abulmagd, A. Kameel, W.Z.
ETHIOPIA:	Gebreegziabher Elias, Y.
FINLAND:	Metsälampi, V.-M.
FRANCE:	de la Verpillière, C. Bugnet, J.-C. Chapelle, M.-A. Legal, H. Veillard, A.
GABON:	Biyo'o-Ndong, F.
GERMANY, FEDERAL REPUBLIC OF	Graumann, H. Frietsch, E.A. Gärtner, U.
GHANA;	Koranteng, J.O.
GREECE:	Constantis, G. Caramitsos-Tziras, D.
GUINEA:	Thiam, S.O.
INDIA:	Pattanayak, V. Maheshwari, R.K.
INDONESIA:	Boediman, A. Martono, K. Suryanto, Partanto, W. Ritonga, D.A. Baqo, E.

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IRAN, ISLAMIC REPUBLIC OF:	Golrounia, A.A. Manzari, A.
IRAQ:	Taha, I. Ali, M.
ISRAEL:	Baker, A. Lehavi, A.
ITALY:	Sciolla Lagrange, A. Stea-Antonini, G. Palma, C. Ferrari-Bravo, L. Chiavarelli, E. Riccio, S. Rinaldi Baccelli, G.
JAMAICA:	Rattray, K.O.
JAPAN:	Mukai, M. Fujita, T. Fujino, T. Hiragochi, H. Takaoka, S. Isozaki, Y. Miyoshi, S.
KENYA:	Kabuga, W.K.
KUWAIT:	Sakr, M.M. Al-Mershed, B.N.
LIBYAN ARAB JAMAHIRIYA:	Ghaddah, M.R. Escander, M. Wafa, M.
MADAGASCAR:	Rakoto-Razafindrazato, B.M.
MARSHALL ISLANDS:	Kendall, W. Coerper, M.
MAURITIUS:	Poonoosamy, V.
MEXICO:	Medina U., E. Carvajal, M.O. de
MOROCCO:	Qaddouri, M.J. Benjelloun, A.

NETHERLANDS, KINGDOM OF THE:	van Dam, R.D. van Schelle, A.C.H. Aberson, E.E. van Lieshout, J.W.M.
NIGERIA:	Eniojukan, D.O.
NORWAY:	Nordeng, T.
PAKISTAN:	Yunis, M. Anwar, S.M. Qureshi, E.A.
PARAGUAY:	Le Gris, C.
PERU:	Garland, J. Ferradas Platas, J. Pacheco Crespo, G. Ramirez, C.M.
PHILIPPINES:	Diaz, R.
POLAND:	Berezowski, M.A. Zylicz, M. Jabronski, L.
PORTUGAL:	Jeronimo da Silva, P.T.
REPUBLIC OF KOREA:	Lee, S.Y.
SAUDI ARABIA:	Al-Ghamdi, S. Rajkhan, S.
SENEGAL:	Diop, C.M.
SPAIN:	Adrover, L.
SWEDEN:	Wahlberg, L. Fredholm, N.O.U. Brusén, V.M. Einerth, B.
SWITZERLAND:	Buchmüller, B.
TUNISIA:	el Hicheri, A.
TURKEY:	Dogan, U.
UNION OF SOVIET SOCIALIST REPUBLICS:	Sharkov, Y.M. Ryjenkov, B. Mezentsev, A. Smirnov, S.

Attachment C

UNITED KINGDOM:	Neal, F.A. Kean, A.W.G. Glover, A.F. Wood, C.T.
UNITED REPUBLIC OF TANZANIA:	Mpinga-Mgana, C.V. Mwakisu, B.K.
UNITED STATES:	Borek, T.A. Harris, R. Howie, I.E. Novak, G.D. Catlett, J.M. Malotky, L.
VENEZUELA:	Vera Barrios, L.E. Yepez, R. Manrique, M.
ZAIRE:	Mbeka, M. Ngandu, W.

OBSERVERS

GERMAN DEMOCRATIC REPUBLIC (THE):	Henkes, K. Damm, G. Mudrack, J.
UNITED NATIONS:	Zacklin, R.
INTERNATIONAL MARITIME ORGANIZATION (IMO):	Blanco-Bazan, A.
INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA):	Larose, H. Weber, L.J.
INTERNATIONAL FEDERATION OF AIR LINE PILOTS ASSOCIATIONS (IFALPA):	van Wijk, A.A.
INTERNATIONAL LAW ASSOCIATION (ILA):	Magdelénat, J.-L.

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PART II

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International Conference on Air Law

(Montreal, 12 February - 1 March 1991)

Provisional Agenda

1. Opening of the Conference by the President of the ICAO Council
 2. Adoption of the Agenda
 3. Adoption of the Rules of Procedure
 4. Establishment of the Credentials Committee
 5. Election of the President of the Conference
 6. Election of the Vice-Presidents of the Conference
 7. Report of the Credentials Committee
 8. Organization of work:
 - a) Procedure for consideration of the draft Convention on the marking of explosives for detectability;
 - b) Establishment of the Commission of the Whole and Committees as necessary.
 9. Consideration of the draft Convention
 10. Adoption of the Convention and of any Resolutions
 11. Adoption of the Final Act of the Conference
 12. Signature:
 - of the Final Act
 - of the Convention
-

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25/7/90

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

PROVISIONAL RULES OF PROCEDURE

Rule 1 (Composition of the Conference)

- (1) The Conference shall be composed of the Representatives of the States invited by the Council of ICAO to attend the Conference.
- (2) Representatives may be accompanied by alternates and advisers.
- (3) International organizations invited by the Council of ICAO to attend the Conference may be represented by observers.

Rule 2 (Credentials and Credentials Committee)

- (1) The credentials of Representatives of the States, their alternates and advisers and of observers shall be submitted to the Secretary General if possible not later than twenty-four hours after the opening of the Conference. The credentials shall be issued either by the Head of the State or Government, or by the Minister for Foreign Affairs. No person shall be the Representative of more than one State.
- (2) A credentials Committee shall be established at the beginning of the Conference. It shall consist of five members representing five States nominated by the President of the Conference.
- (3) The Credentials Committee shall elect its own Chairman and shall examine the credentials of Delegates and report to the Conference without delay.

Rule 3 (Eligibility for participation in meetings)

Any members of a Delegation shall be entitled, pending the presentation of a report by the Credentials Committee and Conference action thereon, to attend meetings and to participate in them, subject, however, to the limits set forth in these Rules. The Conference may bar from any further part in its activities any member of a Delegation whose credentials it finds to be insufficient.

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Rule 4 (Officers)

- (1) The Conference shall elect its President. Until such election, the President of the ICAO Council or, in his absence, his nominee, shall act as President of the Conference.
- (2) The Conference shall elect four Vice-Presidents and the Chairman of the Commissions referred to in Rule 5.
- (3) The Conference shall have a Secretary General who shall be the Secretary General of the International Civil Aviation Organization or his nominee.

Rule 5 (Commissions, Committees and Working Groups)

- (1) The Conference shall establish such Commissions open to all delegations or Committees of limited membership as it may consider to be necessary or desirable.
- (2) A Commission or a Committee shall establish such Working Groups as it may consider to be necessary or desirable. Each Committee or Working Group shall elect its own Chairman.

Rule 6 (Public and private meetings)

Meetings of the Conference shall be held in public unless the Conference decides that any of its meetings shall be held in private. Meetings of the Commissions, Committees and Working Groups shall not be open to the public except by decision of the Commissions, Committees or Working Groups concerned.

Rule 7 (Participation of observers)

- (1) Observers may participate without vote in the deliberations of the Conference, when its meetings are not held in private. With respect to private meetings, individual observers may be invited by the Conference to attend and to be heard.
- (2) Observers may attend and be heard by the Commissions, Committees and Working Groups if invited by the body concerned.

Rule 8 (Quorum)

- (1) A majority of the States represented at the Conference and whose Representatives have not notified the Secretary General of their departure shall constitute a quorum.
- (2) The Conference shall determine the quorum for the Commissions and Committees if, in any case, it is considered necessary that a quorum be established for such bodies.

Rule 9 (Powers of the presiding Officer)

The presiding Officer of the Conference, a Commission, a Committee or a Working Group shall declare the opening and closing of each meeting, direct the discussion, ensure observance of these rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order and subject to these Rules, shall have complete control of the proceedings of the body concerned and over the maintenance of order at its meetings.

Rule 10 (Speakers)

- (1) The presiding Officer shall call upon speakers in the order in which they have expressed their desire to speak; he may call a speaker to order if his observations are not relevant to the subject under discussion.
- (2) Generally, no delegation should be called to speak a second time on any question except for clarification, until all other delegations desiring to speak have had an opportunity to do so.
- (3) At meetings of the Conference, the Chairman of a Commission or a Committee may be accorded precedence for the purpose of explaining the conclusions arrived at by the body concerned. In Commission or Committee meetings, a similar precedence may be given to the Chairman of a Working Group.

Rule 11 (Points of Order)

During the discussion on any matter, and notwithstanding the provisions of Rule 10, a Representative of a State may at any time raise a point of order, and the point of order shall be immediately decided by the presiding officer. Any Representative of a State may appeal against the ruling of the presiding officer and any discussion on the point of order shall be governed by the procedure stated in Rule 14. The ruling of the presiding officer shall stand unless over-ruled by a majority of votes cast. A Representative of a State speaking on a point of order may speak only on this point, and may not speak on the substance of the matter under discussion before the point was raised.

Rule 12 (Time limit of Speeches)

A presiding Officer may limit the time allowed to each speaker, unless the body concerned decides otherwise.

Rule 13 (Motions and Amendments)

- (1) A motion or amendment shall not be discussed until it has been seconded. Motions and amendments may be presented and seconded only by Representatives of States. However, observers may make a motion or amendment provided that such motion or amendment must be seconded by the Representatives of two States.

(2) A motion shall not be withdrawn when an amendment to the motion is under discussion or has been adopted.

Rule 14 (Procedural Motions)

Subject to the provisions of Rule 13(1) any Representative of a State may move at any time the suspension or adjournment of the meeting, the adjournment of the debate on any question, the deferment of discussion of an item, or the closure of the debate on an item. After such a motion has been made and explained by its proposer, only one speaker shall normally be allowed to speak in opposition to it, and no further speeches shall be made in its support before a vote is taken. Additional speeches on such motion may be allowed at the discretion of the presiding officer, who shall decide the priority of recognition.

Rule 15 (Order of Procedural Motions)

The following motions shall have priority over all other motions, and shall be taken in the following orders:

- (a) to suspend the meeting;
- (b) to adjourn the meeting;
- (c) to adjourn the debate on an item;
- (d) to defer the debate on an item;
- (e) for closure of the debate on an item.

Rule 16 (Reconsideration of Proposals)

Permission to speak on a motion to reopen a debate already completed by a vote on a given question shall normally be accorded only to the proposer and to one speaker in opposition, after which it shall be immediately put to vote. Additional speeches on such a motion may be allowed at the discretion of the presiding Officer, who shall decide the priority of recognition. Speeches on a motion to reopen shall be limited in content to matters bearing directly on the justification for reopening. Such reopening shall require a two-thirds majority of the representatives present and voting.

Rule 17 (Discussions in Working Groups)

Working Groups shall conduct their deliberations informally and Rules 11, 12, 13, 14, 15 and 16 shall not apply to them.

Rule 18 (Voting Rights)

(1) Each State duly represented at the Conference shall have one vote at meetings of the Conference.

(2) Each State represented in a Commission, Committee or Working Group shall have one vote at meetings of such bodies.

(3) Observers shall not be entitled to vote.

Rule 19 (Voting of presiding Officer)

Subject to the provisions of Rule 18, the presiding Officer of the Conference, Commission, Committee or Working Group shall have the right to vote on behalf of his State.

Rule 20 (Majority required)

(1) Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the Representatives present and voting.

(2) Decisions of the Conference on matters of procedure shall be taken by a majority of the Representatives present and voting.

(3) If the question arises whether a matter is one of procedure or of substance, the presiding Officer shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the presiding Officer's ruling shall stand unless the appeal is approved by a majority of the Representatives present and voting.

(4) For the purpose of these rules, the phrase "Representatives present and voting" means Representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

Rule 21 (Method of Voting)

Voting shall normally be by voice, by show of hands, or by standing. In meetings of the Conference there shall be a roll-call if requested by the Representatives of two States. The vote or abstention of each State participating in a roll-call shall be recorded in the minutes.

Rule 22 (Division of Motions)

On request of any Representative of a State and unless the Conference decides otherwise, parts of a motion shall be voted on separately. The resulting motion shall then be put to a final vote in its entirety.

Rule 23 (Voting on Amendments)

Any amendment to a motion shall be voted on before vote is taken on the motion. When two or more amendments are moved to a motion, the vote should be taken on them in their order of remoteness from the original motion,

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commencing with the most remote. The presiding Officer shall determine whether a proposed amendment is so related to the motion as to constitute a proper amendment thereto, or whether it must be considered as an alternative or substitute motion.

Rule 24 (Voting on Alternative or Substitute Motions)

Alternative or substitute motions, shall, unless the meeting otherwise decides, be put to vote in the order in which they are presented, and after the disposal of the original motion to which they are alternative or in substitution. The presiding Officer shall decide whether it is necessary to put such alternative or substitute motions to vote in the light of the vote on the original motions and any amendments thereto. This ruling may be reversed by a majority of votes cast.

Rule 25 (Tie vote)

In the event of a tie vote, a second vote on the motion concerned shall be taken at the next meeting, unless the Conference, Commission, Committee or Working Group decides that such second vote be taken during the meeting at which the tie vote took place. Unless there is a majority in favour of the motion on this second vote, it shall be considered lost.

Rule 26 (Proceedings of Commissions, Committees and Working Groups)

Subject to the provisions of Rule 17 the provisions contained in Rules 10 to 25 above shall be applicable, *mutatis mutandis*, to the proceedings of Commissions, Committees and Working Groups, except that decisions of such bodies shall be taken by a majority of the representatives present and voting, but not in the case of a reconsideration of proposals or amendments in which the majority required shall be that established by Rule 16.

Rule 27 (Languages)

- (1) Documents of the Conference shall be prepared and circulated in the English, French, Russian and Spanish languages.
- (2) The English, French, Russian and Spanish languages shall be used in the deliberations of the Conference, Commissions, Committees and Working Groups. Speeches made in any of the four languages shall be interpreted into the other three languages, except where such interpretation is dispensed with by unanimous consent.
- (3) Any representative may make a speech in a language other than the official languages. In this case he shall himself provide for interpretation into one of the working languages. Interpretation into the other working languages by the interpreters of the Secretariat may be based on the interpretation given in the first working language.

Rule 28 (Records of Proceedings)

- (1) Minutes of the meetings of the Conference shall be prepared by the Secretariat and approved by the Conference.
- (2) Proceedings of Commissions, Committees and Working Groups shall be recorded in such form as the body concerned may decide.

Rule 29 (Amendment of the Rules of Procedure)

These Rules may be amended, or any portion of the rules may be suspended, at any time by a decision of the Conference taken by a majority vote of the Representatives present and voting.

Rule 30 (Representative of a State - Definition)

In these Rules, except Rule 1, the expression "Representative of a State" shall be deemed to include any member of the delegation of a State.

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INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

DRAFT CONVENTION ON THE MARKING OF PLASTIC [AND SHEET] EXPLOSIVES
FOR THE PURPOSE OF DETECTION

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of acts of terrorism for international security;

CONCERNED that plastic [and sheet] explosives can be used with little risk of detection for unlawful acts including, inter alia, acts of unlawful interference with civil aviation, maritime navigation and other modes of transportation;

RECALLING United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

RECALLING Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic [and sheet] explosives are duly marked,

HAVE AGREED AS FOLLOWS:

ARTICLE I

For the purposes of this Convention:

1. "Explosives" mean plastic [and sheet] explosives as described in the Annex to this Convention.
2. "Detection agent" means a substance as described in the Annex to this Convention which is introduced into an explosive to render it detectable.
3. "Mark" means to introduce into an explosive a detection agent in accordance with the Annex to this Convention.

ARTICLE II

Each State Party to this Convention shall take the necessary measures to prohibit and prevent effectively the manufacture in its territory of unmarked explosives.

ARTICLE III

1. Each State Party shall take the necessary measures to prohibit and prevent effectively the movement into or out of its territory of unmarked explosives.

2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by military or police authorities of a State Party [for their own use], of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article IV.

ARTICLE IV

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of such unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

[2. Each State Party shall take the necessary measures to ensure that all stocks of unmarked explosives referred to in the preceding paragraph are consumed, destroyed or otherwise disposed of within a period of [15] years in respect of such stocks held by military or police authorities of that State, and within a period of [3] years in respect of other stocks, from the entry into force of this Convention in respect of that State.]

3. Each State Party shall take the necessary measures to ensure the destruction of unmarked explosives which may be discovered in its territory and which are not covered in the preceding paragraphs of this Article.

ARTICLE V

1. There is established by this Convention an Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of fifteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. The Commission shall normally hold an annual session at the Headquarters of the International Civil Aviation Organization. Additional sessions may be held, if necessary.

ARTICLE VI

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and International Organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Annex to the Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Annex to this Convention.

ARTICLE VII

1. Any State Party may, within [90] days from the date of notification of a proposed amendment to the Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, may propose the amendment to all States Parties for adoption.

3. If a proposed amendment has not been objected to by [1] [x] or more States Parties by means of written notification to the Council within [90] days, it shall be deemed to have been adopted, and shall enter into force [180] days thereafter or after such other period as specified in the proposed amendment.

4. If [1] [x] or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.

[5. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may convene a conference of all States Parties.]

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ARTICLE VIII

States Parties shall periodically inform the Council of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties.



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

DRAFT TECHNICAL ANNEX

I. Part 1 - Description of plastic explosives

- a) The explosives referred to in this Annex are those explosive products, commonly known as "plastic" or "sheet" explosives, that:
- 1) are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10^{-4} Pa at a temperature of 25°C;
 - 2) are formulated with a binder material and possibly other materials including any other explosives; and
 - 3) are, as a mixture, malleable or flexible at normal room temperature.

The high explosives referred to in a) 1) would include, but are not restricted to, cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN), and cyclotrimethylenetrinitramine (RDX).

- b) The following materials, even though meeting the definition of explosive as defined in Part 1 a), should be exempted from the requirement to be marked as long as they continue to be used for their designated purpose. [If that use ceases, then the material must be either marked or destroyed.]
- 1) [propellant explosives];
 - 2) limited quantities of explosives manufactured solely for the purposes of duly authorized research, development and testing of new or modified explosives;
 - 3) limited quantities of explosives used for training in explosive detection and/or to develop and test explosive detection equipment;
 - 4) limited quantities of explosives necessary for the provision of forensic science services;
 - [5) explosives destined to be, and incorporated, under due authorization into military explosive devices in the country of manufacture of the explosive. These devices would include, but are not restricted to, shells, projectiles, mines, missiles, rockets, shaped charges, grenades or perforators. This exemption will apply only for the initial

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REVISED

[three] years after the coming into force of the Convention. Devices produced during this period will be considered to be existing stocks under the provisions of article IV, paragraph 2 of the Convention.]

II. Part 2 - Detection agents to be used to enhance the detectability of plastic (or sheet) explosives by vapour detection means

- a) the detection agent(s) shall be one or more of the following shown below:

Chemical name	Molecular formula	Molecular weight
1) Ethylene glycol dinitrate (EGDN)	$C_2H_4(NO_3)_2$	152
2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB)	$C_6H_{12}(NO_2)_2$	176
3) para-Mononitrotoluene (p-MNT)	$C_7H_7NO_2$	137
4) ortho-Mononitrotoluene (o-MNT)	$C_7H_7NO_2$	137

- b) The detection agent shall be introduced into an explosive in such a manner as to be homogeneously distributed in the finished product. The minimum concentration of the detection agent in the finished explosive product at the time of manufacture shall be:

- 1) EGDN - 0.2% by mass;
- 2) DMNB - 0.1% by mass;
- 3) p-MNT - 0.5% by mass; and
- 4) o-MNT - 0.5% by mass.

Any plastic [or sheet] explosive which, as a result of its normal formulation, contains any of the designated detection agents at or above the required minimum concentration level shall be deemed to be marked.

Explanatory note

Plastic [and sheet]

The working group suggests that this problem is not really a technical issue but represents the differences in the use of technical terminology in the different languages, and as such, there is no unique solution. Technically, there is no question that the target materials for the Convention are plastic explosives and sheet explosives that meet all three parts of the definition suggested for the Annex.

- a) In English, the consensus is that the term "plastic" is the umbrella description and that "sheet" is a subset of the plastic explosives. As such, the Convention title and Article 1 should include "plastic" only, and the Annex Part 1 a) 1) should indicate that the "sheet" materials are included as a subset.
 - b) In French, the consensus is that "plastique" and "feuille" are two distinct terms, and one is not a subset of the other. Therefore, in French "plastique" is not considered sufficient, and "feuille" needs to be present as well as to cover all the targeted materials.
 - c) Further discussions should be undertaken to determine if similar differences exist in the Spanish terminology.
 - d) In Russian, the term "plastic" is a general concept, whereas "sheet" refers exclusively to the form given to the explosives. Therefore, it would not be justified to include the term "sheet" in the title and Article 1 of the Convention. It could be specified in the Annex that "sheet" materials are included as a subset of the general concept "plastic".
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INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

Comments of Argentina

With respect to the international Draft Convention on explosives detection prepared by the Legal Committee during the 27th Session, this can serve as a basis for the final drafting of a document by the Conference on Air Law to be held in Montreal in February - March 1991. As such, the Argentine Republic supports the drafting of a self-standing convention laying down obligations for States parties aimed at establishing regulations for the detection of plastic or sheet explosives by means of a marking system agreed upon by the participating States.

The objective sought is to prevent explosives from being used in an illegal way contrary to the purposes of the Convention, by strengthening the security of air, maritime and land transport and discouraging possible perpetrators from the fraudulent use thereof.

On this basis the Argentine Republic will support at the International Conference a solution which attempts to promote such objectives and purposes, being of the opinion that the clauses contained in the Preamble and the eight draft articles are acceptable.

However, Argentina reiterates the view expressed by its delegate in the Subcommittee last January and at the 27th Session of the Legal Committee, to the effect that clauses be introduced classifying acts which violate the provisions of the Convention as international offenses, and establishing that perpetrators are to be pursued and brought to judgement.

Although these proposals did not obtain a majority in the two meetings mentioned above, Argentina believes them to be indispensable and wishes the scope of that proposal to be clearly recorded in the Minutes of the Conference.

Another matter which must be delved into more deeply, mainly in the meeting deliberations and also, if necessary, in the text of the Convention, is the legal nature of the Annex, which notwithstanding the content of Doc 9556-LC/187, has not been fully determined to date. The text to be approved would benefit thereby as diverse interpretations concerning its scope would be avoided.

Finally, the above-mentioned text would also be improved if the powers of the Explosives Technical Commission established under Article V were defined more fully and in greater detail. Without laying down rules for the Commission, this would eliminate future discussions, dissension or perhaps simply doubts about the extent of its powers.



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF IATA

1. As indicated during the 27th Session of the ICAO Legal Committee, IATA welcomes the initiative taken by ICAO to develop a Convention on the marking of plastic (and sheet) explosives for the purpose of detection, and fully supports the efforts made to arrive at a text which will provide for a pragmatic and effective solution.
2. The debates in the various bodies of ICAO on this matter have shown that a broad consensus exists among the international community on the desirability of effective action to mark explosives, in particular plastic explosives, which may be misused for terrorist activities and sabotage against civil aviation. The airline industry takes the view that such effective action would significantly reduce the risks to which civil aviation, the flying public and the public at large are exposed today, and would provide a desirable degree of protection.
3. The text of the draft Convention, developed by the ICAO Legal Committee, goes a long way towards attaining these objectives. The industry therefore generally supports the text.
4. In line with the international community's overall objective to reduce the exposure of civil aviation to terrorist activities and sabotage, we respectfully submit that the scope of the draft Convention which is presently limited to plastic (and sheet) explosives only, may be too narrow to have the desired effectiveness. If adopted in its present form, it would not cover other types of explosives which may also be used for terrorist activities and sabotage. If the narrow scope of the Convention would make it relatively easy to escape detection by using other types of explosives, its purpose of providing effective protection may not be achieved. Serious consideration should therefore be given to broadening the scope of the draft Convention beyond plastic (and sheet) explosives, so as to include all industrially manufactured (civilian and military) explosives.
5. The draft Annex to the Convention should, in the industry's view, also be extended so as to permit the marking of all industrially manufactured explosives. The application of vapor tagging should, at least, be extended to all commercially produced explosives which may not at present be detected by vapor techniques.

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6. Furthermore, the limitation of marking methods to vapor-tagging techniques, as set out in the present draft Annex, should be reviewed. Other marking methods may prove to be equally or more effective, cost-efficient, and appropriate and should a priori not be excluded.

7. Also, it is submitted that the exclusion of propellants or explosives which are under due authorization permanently incorporated into military or commercial devices, presently foreseen in the Annex, may represent a significant risk. Misuse, theft or other action relating to these devices could present an easy way to procure explosives which are not subject to detection. The industry would therefore urge that consideration be given to removing the above exclusion from the draft Annex.



MEX Doc No. 7
15/11/90

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

Comments by the United Kingdom

A. Title

The United Kingdom accepts reference to both "plastic and sheet" explosives. The United Kingdom understands that the current discussions about this issue revolve around linguistic differences in various languages. The United Kingdom further understands that in Russian "sheet" is subsumed into "plastic", whereas in French the two terms indicate separate substances. If that is the case, the duplication in Russian would not be harmful, whereas inclusion of both terms would, as we understand it, be necessary in the French text and would maintain consistency of language with UNSCR 635 and ICAO Assembly Resolution A27-8. Whatever decision is finally taken, it will need to be reflected throughout the text of the Convention and Annex.

B. Preamble

"Such unlawful acts" in the fifth preambular paragraph is detached from its reference in the second preambular paragraph. The United Kingdom suggests that the fifth paragraph be moved ahead of paragraphs three and four; or, alternatively, that paragraphs three and four be moved ahead of paragraph two.

C. Article I

1. If the Annex to the Convention ultimately contains separate "Parts", as presently drafted, the United Kingdom suggests that it would be helpful if there were a reference to the relevant Part of the Annex in each of the paragraphs of Article I.

2. The word "mark" as in Article I,3 is not used elsewhere in the text. The United Kingdom suggests that this could be remedied by replacing the paragraph with the following: "'Unmarked explosives' means explosives into which there has not been introduced a detection agent in accordance with the Annex to this Convention".

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D. Article III

The United Kingdom reserves its position concerning the phrase "for their own use" in Article III,2.

E. Article IV

1. The United Kingdom can accept the periods for the phasing out of stocks of unmarked explosives as proposed in Article IV,2.

2. The United Kingdom suggests that the phrase "for purposes not inconsistent with the objectives of this Convention" be inserted after "otherwise disposed of" in Article IV,2.

3. The United Kingdom suggests that this paragraph be redrafted to read "Each State Party shall take the necessary measures to ensure the destruction as soon as possible of unmarked explosives which may be discovered in its territory and to which the preceding paragraphs of this Article do not apply."

F. Article V

1. The United Kingdom suggests the addition of two additional paragraphs to this Article, as follows:

"The Commission shall determine its organisation and rules of procedure."

"Any vacancy on the Commission shall be filled by the Council as soon as possible and the person appointed shall hold office for the unexpired portion of his predecessor's term."

2. The United Kingdom would welcome consideration being given to the continuation of the Ad Hoc Group of Experts until such time as the Convention comes into force and the Explosives Technical Commission is established.

G. Article VII

1. The United Kingdom can accept the square bracketed passages in paragraphs one and five. The United Kingdom is continuing to consider its position regarding the square bracketed passages in *paragraphs* three and four.

2. The United Kingdom notes that Article VII,1 refers to the "comments" of States Parties, whereas Article VII,2 refers to their "views". The United Kingdom suggests that the same word be used in both paragraphs.

H. Technical Annex

1. The United Kingdom suggests that the opening sentence of Part 1(a) should be redrafted to read "The explosives referred to in Article I of this Convention are".

2. The United Kingdom suggests the insertion of the phrase "at a temperature of" before "25°C" in Part 1(a)(1).

3. The United Kingdom wonders whether all after "binder material" in Part 1(a)(2) is strictly necessary and would welcome the further views of the Ad Hoc Group of Experts.

4. The United Kingdom wonders whether in Part 1(a)(3) it might be better to identify a specific temperature since "normal room temperature" is likely to be different in different parts of the world. The United Kingdom would welcome the further views of the Ad Hoc Group of Experts.

5. The United Kingdom notes that the exclusion of explosives in military equipment in Part 1(b) could mean that there would continue to be a need for manufacture of unmarked explosives for incorporation into such equipment. The United Kingdom hopes that the Ad Hoc Group of Experts could reflect further on this. The United Kingdom would welcome the views of other States on this point.

6. The United Kingdom also notes that in Part 1(b) the references to "due authorisation" are not part of the "description of plastic explosives" which appears in the heading of Part 1, since the description remains the same whether or not authorisation is received. The United Kingdom suggests that the Ad Hoc group of Experts be invited to consider whether an alternative means of formulating their intention (whether authorisation according to the law of the place where the explosives are kept for the time being or of the place where they were manufactured) can be found.

7. The United Kingdom notes that Part 2(b) does not fall under the heading "Description of the Detection Agent" and suggests that this part should form a new "Part 3" with a suitable heading.

8. The use of "added" in Part 2(b) does not square with the use of "introduced" in the main body of the Convention (eg in Article I,2). The usage needs to be standardised.

9. The United Kingdom reserves its position on Part 2(c) pending further discussion by the Ad Group of Experts. The United Kingdom notes, however, that the Convention as presently structured does not require States to ensure that monitoring of explosives takes place in accordance with a methodology set out in a Part of the Annex to the Convention.



MEX Doc No. 7
15/11/90
ADDENDUM
5/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

Comments by the United Kingdom

ADDENDUM

In MEX Doc No 7 the United Kingdom commented inter alia on Part 1 of the draft technical Annex circulated as MEX Doc No 4 Revised. Following further detailed examination and for ease of reference the United Kingdom has prepared a revised Part 1 of the Technical Annex incorporating both its earlier comments and the results of its subsequent consideration.

The United Kingdom also wishes to present for the consideration of the Conference some proposed amendments to the Draft Convention which are largely consequential to the above proposed changes to Part 1 of the Annex; and a draft Conference Record relating to the linguistic definition of the terms "plastic and sheet explosives".

ANNEX

PART 1: Description of plastic and sheet explosive

(1) Subject to paragraph (2) the plastic or sheet explosives which are explosives for the purposes of this Convention are those explosive products that -

- (a) are commonly known as plastic or sheet explosives,
- (b) are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10^{-4} Pa at a temperature of 25°C,
- (c) are formulated with a binder material, and
- (d) are, as a mixture, malleable or flexible at [normal room temperature].

(2) Notwithstanding anything in paragraph (1), the plastic or sheet explosives described in paragraph (3) are not explosives for the purposes of this Convention provided that -

- (a) they are used or held for the purpose of being used for the purposes there described,
- (b) necessary measures are taken by any State party concerned to exercise strict and effective control over their possession and transfer, and
- (c) in the case of that explosive described in paragraph (3)(d), not more than [3] years have elapsed since the coming into force of the Convention in respect of the State party concerned.

(3) The plastic or sheet explosives referred to in paragraph (2) and the purposes for which they may be used or may be held are those plastic or sheet explosives which -

- (a) are manufactured in small or limited laboratory quantities solely for the purpose of use in duly authorised research, development or testing of new or modified explosives, in the territory of the State of manufacture,
- (b) are manufactured or held in small or limited laboratory quantities solely for the purpose of use in duly authorised training in explosive detection and/or development or testing of explosive detection equipment,
- (c) are manufactured or held in small or limited laboratory quantities solely for the purpose of use in duly authorised forensic science services, or
- (d) are incorporated or intended to be incorporated, under due authorisation, into military explosive devices in the territory of the State of manufacture of the explosives.

(4) In this Part -

"duly authorised" and "due authorisation" comprise activities that are permitted according to the law of the State party concerned,

"explosive devices" include shells, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators,

"high explosives" include cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX).

CONFERENCE RECORD

(1) Whilst the Convention makes provision in relation to both plastic and sheet explosive, it does so against the background that whilst in the French language the terms are distinct from each other, the same is not true in the English and Russian languages where the reference to sheet explosive is either merely a subset of plastic explosive or a reference to the form of the explosive. The inclusion of both terms in the Convention does not convey any alteration in the meaning given to these expressions in those latter languages.

(2) Propellant explosive is not included in the list of explosive devices specified in paragraph (4) of Part 1 of the Annex to the Convention because it is not commonly known as plastic or sheet explosive and consequently fails the test in Part 1(1)(a) of the Annex to be an explosive for the purposes of the Convention.

ADDENDUM

FURTHER CONVENTION AMENDMENTS

Article I

We suggest the following revise:-

"For the purposes of this Convention:

- (1) "Explosives" means the plastic or sheet explosives which are described in Part 1 of the Annex to the Convention as being explosives for the purposes of this Convention.
- (2) "Detection agent" means any one of the substances described in Part 2 of the Annex to this Convention.
- (3) "Unmarked explosive" means explosive into which there has not been introduced a detection agent in the manner and to the level described in Part 2 of the Annex to this Convention, other than explosive whose natural formulation includes any of the detection agents to at least the minimum concentration level specified for that agent in that Part."

Article IV

We suggest that in paragraph (1) in line 2 the word "such" is deleted.

We suggest the addition of a new paragraph (4) as follows:-

- "(4) For the purposes of paragraph (2) of this Article any plastic or sheet explosive that becomes an explosive for the purposes of this Convention by reason only of the expiry of a number of years specified in Part 1 of the Annex to this Convention, and is then an unmarked explosive, shall be deemed to be part of the stocks of unmarked explosives of the State party concerned."
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MEX Doc No. 7
15/11/90
ADDENDUM NO. 2
18/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

Comments by the United Kingdom

ADDENDUM NO. 2

PART 2: Description of detection agents and the manner and level of introduction

The substances which are detection agents for the purposes of this Convention are those substances set out in the following Table. In each case, the introduction of the substance into an explosive shall be done in such a manner as to achieve homogenous distribution in the finished product. The minimum level of concentration of any detection agent in the finished product at the time of manufacture shall be as shown in the said Table.

TABLE

Name of detection agent	Molecular formula	Molecular weight	Minimum concentration
Ethylene glycol dinitrate	$C_2H_4(NO_3)_2$	152	0.2% by mass
2, 3-Dimethyl-2, 3-dinitrobutane	$C_6H_{12}(NO_2)_2$	176	0.1% by mass
para-Mononitrotoluene	$C_7H_7NO_2$	137	0.5% by mass
ortho-Mononitrotoluene	$C_7H_7NO_2$	137	0.5% by mass

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INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF GERMANY

In Article VII, para 3 (and 4) the current draft Convention provides objections by [1] [x] or more States Parties with regard to a proposed amendment to the Annex.

Article VII has been formulated with the objective to gain, as far as possible, a comprehensive application and common acceptance of the Convention by States. This can be achieved if the objection raised by one single State prevents entry into force of any amendment proposal.

Article VII, para 4 shall apply in that case. Only then will it be possible, considering the overall objective, that a State cannot be bound against its will in this most sensitive matter. If there is no other solution possible, the State raising objections would have to cancel its adherence to the Convention.

I also have serious reservations about para 5 in Article VII. Another conference of all States Parties must under no circumstances lead to a situation where several different conventions with different parties are developed and take effect.

MEX Doc No. 8

Furthermore, it should be reviewed whether the 180-day period specified in Article VII, para 3, is sufficient. An amendment to the Annex will have legislative effects since the facts of penal provisions depend on the substances etc. listed in the Annex. A period of only 180 days for the implementation of an amendment to the Annex by national legislation is too short.

Even if a German ratification of the Convention should contain an authorization to issue a regulation to enforce an amendment to the Annex, in practice there would not be sufficient time to do so. The period should therefore be extended in order to avoid from the start unnecessary objections for this reason.

Therefore, a regulation should be provided for stating that the entry into force may be prolonged for six months for States which intend to adopt an amendment but have to fulfil constitutional requirements to do so.

Such a formulation could read as follows:

"The period shall be prolonged for an additional period of six months and the date of entry into force of the amendment postponed accordingly, if, in exceptional cases, any State Party before the expiring of the period informs the Depositary that, although it intends to accept the proposal, the constitutional requirements for such an acceptance are not yet fulfilled in its State."



MEX Doc No. 9
15/11/90

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF THE UNITED STATES

Pursuant to a July 25, 1990 request by ICAO Secretary General S.S. Sidhu, the following represents the observations and comments of the United States of America on the Draft Convention on the Marking of Plastic [and Sheet] Explosives for the Purpose of Detection. MEX Doc No.2.

GENERAL OBSERVATIONS

In recent years, the United States has strongly endorsed international efforts to ensure that plastic and sheet explosives could be made detectable for pre-board screening at airports and other facilities. Throughout, the United States has believed that an international agreement on this subject should contain, at minimum: (1) a legally binding commitment of each State Party to require that all plastic or sheet explosives developed, produced, or manufactured in its territory would be marked in accordance with the procedures and using the substances agreed upon and incorporated into an annex to the convention; and (2) the obligation of each State Party not to permit the import or export of unmarked plastic and sheet explosives.

In this context, the United States is pleased to express its strong support for the draft Convention produced by the Legal Committee. The United States firmly believes that this text provides an excellent basis for the work of a diplomatic conference, proposed to take place from February 12 to March 1, 1991.

With particular regard to the scheduling of the diplomatic conference, the United States notes that the ICAO Ad Hoc Group of Experts is due to have its final session in November of this year. At that meeting, it is expected that the Group will reach agreement on the substance or substances to be listed in the Annex to the Convention. The United States is of the view that such agreement will be an essential precondition to the work of the proposed diplomatic conference.

SPECIFIC COMMENTS

Article III

Article III(2) provides that the obligation of a State Party to prohibit and prevent effectively the movement of unmarked explosives into or out of its territory "shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by military or police authorities of a State Party [for their own use]. . . ."

During the Legal Committee Session, the United States delegation expressed its concern that the bracketed language, "for their own use," could unduly restrict appropriate transport of unmarked explosives that would be fully consistent with the purposes of the Convention. One obvious example would be the transport of unmarked explosives by one State Party for the use of another country's military authorities, in the course of a military assistance program or in the exercise of collective security measures.

The United States believes that the bracketed language can be deleted without undermining the effectiveness of the Convention in any way, as there will remain an explicit requirement that the movements of unmarked explosives by military or police authorities be "for purposes not inconsistent with the objectives of this Convention. . . ."

ARTICLE IV

As reflected in Paragraphs 3:85 - 3:87 of the Legal Committee's Report (Doc 9556-LC/187), Article IV, paragraph 2 was the subject of lengthy discussion at the ICAO Legal Committee. In those discussions, some delegations believed that the destruction period for unmarked explosives should be much shorter. Others believed that the destruction period, particularly the fifteen year destruction requirement for military or police stocks, was not sufficiently long.

The United States believes that the language proposed by the Legal Committee represents an appropriate balance which ensures the eventual destruction of all unmarked plastic explosives while avoiding unduly burdensome requirements on States Parties and their nationals. Unlike commercial entities, which have commercial reasons for not holding large inventories of production inputs such as plastic explosives, military and police authorities typically stockpile plastic

explosives for long periods of time. A destruction period for military or police stocks of less than fifteen years would be costly for many States and would serve little purpose, as States Parties are obliged under Article IV(1) to exercise strict and effective control over the possession and transfer of unmarked explosives so as to prevent their diversion or use for purposes inconsistent with the objectives of the Convention. Accordingly, the United States would oppose a reduction of the fifteen year destruction period.

In contrast, a shorter destruction period for private stocks of unmarked plastic explosives is necessary to best protect against the improper diversion of such stocks. In recommending a three year destruction period for such stocks, the Legal Committee properly protected this interest in a way that gives business entities a reasonable period to use or otherwise properly dispose of their inventories of unmarked plastic explosives. The United States strongly supports the balance struck by the Legal Committee.

ARTICLES VI and VII: AMENDING THE ANNEX OF THE CONVENTION

As recognized by the Legal Committee, one of the most difficult issues it faced was the development of appropriate procedures for amending the Convention's technical Annex. Doc 9556-LC/187, paragraph 3:100. The challenge is to create a mechanism which is flexible enough to keep pace with advances in technology yet sufficiently comprehensive to ensure that all States Parties at all times are obliged to comply with a single set of technical requirements. As an essential purpose of the convention is to enable the detection of plastic and sheet explosives by virtue of the presence in them of a very limited number of chemical compounds listed in the technical Annex, amendments to that Annex must apply automatically to all States Parties.

Balancing against the need for a uniformly applied Annex is the general reluctance of States to be bound to specific obligations to which they have not explicitly consented. While States Parties will always have the right to denounce this Convention, the importance of having as many States as possible adhere to the Convention and to remain States Parties suggests the desirability of an amendment process which is sensitive to States' concerns.

The United States believes that Articles VI and VII strike an appropriate balance between these two interests. As it noted at the Legal Committee, however, Articles VI and VII fail to identify how a diplomatic conference would amend the annex, should a State Party or small number of States Parties continue

to object to an amendment under paragraphs three and four of Article VII. The problem is significant. It cannot, moreover, satisfactorily be resolved merely through recourse to ordinary principles of treaty law.

Article 40(4) of the Vienna Convention on the Law of Treaties, which reflects customary international law on this point, provides that unless a multilateral treaty provides otherwise, an "amending agreement does not bind any State already a party to a treaty which does not become a party to the amending agreement." Thus, absent a specific provision to the contrary in this Convention, the current text would not meet the objective of ensuring that all States Parties have identical obligations under the technical Annex of the Convention.

For this reason, the United States believes that the Convention should not be silent with respect to the procedures to be adopted by a diplomatic conference to amend the Annex. To assist the work of the Diplomatic Conference, the United States has attached a position paper on this subject which contains draft language that would appear as a new Article VII, paragraph five, sub-paragraphs a, b, and c. The United States believes that the procedure set forth in that paper would ensure universal application of amendments to the Annex while fostering consensual decision making at a diplomatic conference.

FINAL CLAUSES

In keeping with ordinary practice, the Legal Committee left the development of the Convention's final clauses to the Diplomatic Conference. As noted in paragraph 3:56 of the Legal Committee Report, participants discussed provisions for the entry into force of the Convention and "agreed that the Convention should require a high number of ratifications by States (for instance 35) to ensure the efficiency of the convention on a large scale." At that time, the United States delegation suggested that, in light of the special obligations the convention imposes on States in which plastic explosives are produced, the convention should not enter into force until a reasonable number (perhaps five) of such producer states had ratified it. This requirement would also better ensure that marked plastic explosives are in production prior to the entry into force of the Convention.

To describe this approach more fully and to assist the forthcoming diplomatic conference on this and other appropriate subjects for treatment in the final clauses, the United States has attached a second position paper that suggests language for final clauses to the Convention. The provisions are modeled in large part on Legal Committee Working Paper LC/27-WP/3-2 presented by the Federal Republic of Germany.

TECHNICAL ANNEX

The Draft Technical Annex adopted at the June 18 - 23 meeting of the Ad Hoc Group of Specialists includes bracketed language (Part I, paragraph b) on certain limited applications of plastic explosives that would not be subject to marking under the Convention. This section was placed in brackets after some members of the Ad Hoc Group objected that the issue of exclusions was beyond the scope of the terms of reference of the Specialists. The United States believes this issue is one on which an opinion of the Specialists would be valuable, and that inclusion of certain excludables is necessary to ensure acceptance of the Convention by many of the States which produce plastic explosives. Regardless of the recommendation of the Ad Hoc Group, the Diplomatic Conference will address this issue.

A provision for exclusion from application of the Convention as set forth in paragraph (b), is necessary to allow for authorized research and development of new plastic explosives. As new explosives are developed, formulations will need to be tested extensively, with and without the marking agent(s) identified in this Convention. The United States believes that strict control provisions over the explosives and the materials involved would be sufficient to control them and prevent their unlawful use.

The U.S. also supports adopting bracketed language in paragraph (b) which would exclude plastic explosives which are incorporated into military devices such as shells, projectiles, mines and missiles. Care must be shown, however, to insure that this exception does not undermine the general effectiveness of the Marking Convention.

Enclosures:

U.S. Position Paper: Procedures for Amending the Annex of the Convention at a Diplomatic Conference.

U.S. Position Paper: Final Clauses.

UNITED STATES POSITION PAPER:
PROCEDURES FOR AMENDING THE ANNEX
OF THE CONVENTION AT A DIPLOMATIC CONFERENCE

ARTICLE VII

5. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may convene a diplomatic conference of all States Parties.

a. A conference convened pursuant to this Article shall have the capacity to amend the Annex if no fewer than one-half of the States Parties are in attendance.

b. In taking decisions to amend the Annex at such a conference, the States Parties in attendance shall make every effort to reach agreement by consensus. If all such efforts at consensus have been exhausted and no agreement reached, the conference may, as a last resort, nevertheless amend the Annex by a two-thirds majority vote of the States Parties in attendance.

c. Any amendment to the Annex adopted by such a diplomatic conference in accordance with the preceding paragraph shall be binding on all States Parties and shall be communicated forthwith to the States Parties by the ICAO Council. Unless otherwise provided by the conference in its decision to amend the Annex, any such amendment to the Annex shall enter into force one year after its communication to States Parties.

UNITED STATES POSITION PAPER: FINAL CLAUSES

ARTICLE I

4. "Producer State" means any State Party to this Convention in whose territory plastic explosives are produced.

ARTICLE IX

1. This Convention shall be open for signature by all States at the Headquarters of the International Civil Aviation Organization in Montreal.
2. This Convention is subject to ratification, acceptance, or approval by the signatory States.
3. After its entry into force, this Convention will be open for accession by all States.
4. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization. In depositing its instrument of ratification, acceptance, approval, or accession, each State shall give notice whether or not it is a producer State. At any time thereafter, a State shall, by diplomatic note, inform the International Civil Aviation Organization of any change in its status with respect to whether it is a producer State.

ARTICLE X

1. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, or approval with the depositary, provided that no fewer than five such States have given notice pursuant to Article IX(4) that they are producer States. Should thirty-five instruments of ratification be deposited prior to the deposit of such instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the fifth producer State's instrument of ratification, acceptance, or approval.

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2. This Convention shall enter into force with respect to each State ratifying, accepting, approving, or acceding to the Convention after the date on which the Convention shall have entered into force, on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval, or accession.

ARTICLE XI

The depositary shall promptly notify all signatories and States Parties of:

1. each signature of this Convention;
2. each deposit of an instrument of ratification, acceptance, approval, or accession, giving special reference to whether the State has identified itself as a producer State;
3. any change in the status of a State Party as a producer State;
4. the entry into force of this Convention;
5. the entry into force of any amendment to this Convention or its Annex;
6. any denunciation made under Article XII; and
7. any declaration made under Article XIII.

ARTICLE XII

1. Any State Party may denounce this Convention by written notification addressed to the President of the Council of the International Civil Aviation Organization.
2. Denunciation shall take effect one year after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

ARTICLE XIII

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting State shall not be bound by the preceding paragraph with respect to any Contracting State having made such a declaration.
3. Any Contracting State having made a declaration in accordance with the preceding paragraph may at any time withdraw that declaration by notification to the International Civil Aviation Organization.

ARTICLE XIV

No reservations may be made to this Convention.

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INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF MALAYSIA

. . . .

2. We have studied the Draft Convention and its Annex on the Marking of Plastic (and Sheet) Explosives for the Purpose of Detection and support the objective of marking such explosives for the purpose of detection to prevent unlawful acts.

3. We believe that the Draft Convention and its Annex are not intended to extend coverage on the usage of unmarked explosives for defence and military purposes. It is within the context of defence and military usage of such explosives that we would like to submit our comments as follows:

- (i) The high explosives referred to in the Draft Convention are commonly used in various types of military devices. They are used in either their pure form or in ratio with another high explosive or plasticizer. When the explosives are used in their pure form, the military devices are known to have a prolonged storage life. However, with the introduction of the detection agent or markings we are of the opinion that storage life or life span of the devices would be shortened significantly.
- (ii) Some of the chemicals suggested for use as detection agent are known to be hazardous to health and would require specialized or extra cautious handling.
- (iii) The inclusion of the detection agents in the explosives would cause the explosives to become unstable, thus causing storage problems. The unstable condition may also cause adverse effects.

- (iv) Part 1(b) of the draft Annex to the Convention excludes from marking plastic explosives permanently incorporated into military devices in the country of manufacture of the explosive. Whereas, paragraph 2 of Article IV of the draft convention requires all military stocks of unmarked explosives to be disposed of within a period of 15 years. The two provisions appear to be in conflict.

4. Therefore we would like to propose the following amendments to the draft Convention and draft Annex for your consideration:

- (a) Paragraph 2 of Article IV of the draft Convention

Each State Party to this Convention shall take the necessary measures to prohibit and prevent effectively the manufacture in its territory of unmarked explosives, except, when unmarked explosives are authorized for permanent incorporation into military devices.

- (b) Paragraph Part 1(b) of the draft Annex to the Convention

Plastic explosives as referred to in (a) do not include propellants or explosives which are under due authorization permanently incorporated into military (or commercial) devices in the country of manufacture of the explosives or explosives that are manufactured for export to countries that intend to incorporate the explosives into military (or commercial) devices.
(Also.....)

5. Malaysia would be represented at the International Conference on Air Law (Montreal, 12 February - 1 March 1991). Malaysia would also like ICAO to consider our nominees for the Explosive Technical Commission. Our nominees whose details will be forwarded later are experts who have had direct experience in matters relating to research and detection of explosives.

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INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF SWITZERLAND

1. Date of the Diplomatic Conference

In July, the Council took the decision not to definitively fix February 1991 as the date of the planned Diplomatic Conference. This decision proved to be a wise one. Unless a definition both of the explosives to be encompassed and of the detection agent or agents to be prescribed is unanimously adopted by the Ad Hoc Group of Specialists at their meeting in November, we propose that the Council postpone the Diplomatic Conference to a later date, for the following reasons.

- It is our understanding that a Diplomatic Conference to be held in February 1991 would exclude any extension of the Convention to explosives other than plastic or sheet explosives. In fact, at that stage, the extent of the experts' preparatory work would scarcely allow for such an extension.
- According to the procedure for the approval of draft conventions (Assembly Resolution A7-6), the opening date of the Diplomatic Conference must be not less than six months after the date of transmission of the draft to States. With the work of the Ad Hoc Group of Specialists still unfinished, this principle would not be respected in the essential matter of the description of the additive or additives.
- The idea of proceeding by stages and developing at a later date a second convention broader in scope than the one to be adopted in February, does not appear to us to be satisfactory. Its implementation would inevitably lead to a variety of systems, with troublesome consequences. Furthermore, in all probability, it would delay the ratification process for the first convention from the outset.

Our proposal aims to present the plenipotentiaries attending the Diplomatic Conference with the following choices:

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- Either the adoption of a convention limited to plastic or sheet explosives in accordance with the ICAO Assembly, Security Council and UN Assembly resolutions;
- Or the adoption of a convention which would be broader in scope and would therefore be a more effective weapon against terrorism.

To enable the Diplomatic Conference to select one or the other of these options, we believe that additional work by the Ad Hoc Group will be required. In our view, the Council is authorized to convene the necessary meetings for that purpose. Finally, we are convinced that in the long run, the proposed procedure will not in any way hinder the struggle against terrorism but will in fact expedite it.

2. Comments on the Legal Committee's draft convention

At this stage we shall confine ourselves to the following comments:

- Article I: As may be seen from our comments in paragraph 1, we strongly feel that the development of a convention broader in scope than the Legal Committee's draft should not yet be excluded at this stage.
- Article III, paragraph 2: We favour retention of the words "for their own use" shown in parentheses.
- Article IV: We are in favour of retaining paragraph 2, but with some flexibility as regards the time limit to be established.
- Article VII: Switzerland is among those States which are able to accept a solution permitting amendment of the Annex by a qualified majority of States Parties (second parenthesis in paragraph 3). In addition, we are in favour of deleting paragraph 5.

Lastly, we would like to emphasize that we fully support the decision to omit any penal provisions.

3. Switzerland plans to participate in the Diplomatic Conference, whether it is held in February or later.



MEX Doc No. 12
21/11/90

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

Comments of Chile

Preamble: No comments. It is felt that the Preamble provides the historical background and the reasons underlying the Convention.

Article I: The definitions currently show a lack of precision which might hinder adoption of the instrument prepared by the Legal Committee, since the Annex drawn up by the experts allows for the possible appearance of other types of explosives than those referred to, and the same is true for detection agents. It is considered that the definitions in the draft are of a provisional nature and that it will be possible to improve them in the course of the Diplomatic Conference.

Article II: The Article essentially imposes a fundamental undertaking, on the international jurisdictional level, to ensure that all explosives contemplated in the instrument are marked. The obligation is administrative in nature, so that the requirement operates basically in the domain of possible unlawful activities, and this is supported by Chile. It is considered unnecessary to adopt penal laws or to define unlawful behaviours in this area, thus creating categories of offense and resulting in the establishment of penal sanctions.

Article III: No comments.

Article IV: Chile approves of the fact that paragraph 2 of Article IV was left in square brackets, to allow for more detailed study at the Diplomatic Conference, in view of the provisional nature of the current guidelines proposed by the technical experts.

Article V: It is important that the Technical Commission be created by the Convention itself and that appointments to it be made by the Council.

Articles VI and VII: No comments.

Articles III and IV require the adoption by States of regulations to forbid or prevent the movement into or out of their territory of unmarked explosives and to exercise control over the possession and transfer, prior to the coming into force of the Convention, of such explosives which may be located in their territory, as well as over the destruction of such explosives. These regulations will have an administrative character in some respects and will involve legal proceedings as regards the requirement to destroy the residue of the explosives referred to under the conditions established, by which property rights are affected.

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Annex: In view of the fact that it will be supplemented next November, no comments are proposed with regard to the Annex.

Notwithstanding the foregoing considerations, the Government of Chile reserves the right to make further comments during the Diplomatic Conference.



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS ON DRAFT CONVENTION ON THE MARKING OF
PLASTIC (AND SHEET) EXPLOSIVES FOR THE PURPOSE OF
DETECTION WITH ANNEX

(Presented by Finland, Iceland, Norway and Sweden)

General

At present, the Convention includes only plastic (and sheet) explosives. We do not consider this to be the right time to include all explosives in the Convention. We, therefore, for the moment, support a limitation to plastic explosives. We however wish already at this time to draw the attention to this problem and to suggest that ICAO at a later stage continue the work on the Convention to include all kinds of explosives that may be dangerous to civil aviation.

Comments

We propose that "[and sheet]" shall be deleted at all relevant places in the document.

The reason for deleting "sheet" is that it only describes the shape of the explosives, which is not relevant in this Convention.

We also suggest that "plastic" shall be deleted at all relevant places in the Convention. The reason for this can be found above under "General". We think that in the future it is reasonable to extend the Convention to include all explosives as mentioned above and that this can be done by changing the definition in the Annex, see Article I paragraph 1. For the moment we accept the limitation given in the Annex to plastic explosives.

Article III

In article III paragraph 2 we propose that "[for their own use]" be deleted. The reason is that police authorities have to take care of explosives which are e.g. illegally used.

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In article III paragraph 2 we also suggest a small editorial change. The last words should read.... with Article IV paragraph 1.

Article IV

Article IV paragraph 2 deals with the problem of unmarked explosives. The period of 3 years for "civil explosives" is acceptable. We suggest, therefore, that the brackets be deleted.

A period of 15 years for "military explosives" could, on the other hand, cause many problems. We believe that a strict time-limit for the destruction of unmarked explosives could involve problems of a technical, economic, and ecological nature, as well as certain safety hazards. And due to these reasons we also believe that it will be difficult to obtain a broad acceptance of the Convention, if such a strict limit were to be laid down in the Convention. We are, on the other hand, very much aware of the importance of progress in this vital matter.

One solution could be to express the spirit and intention of the convention as follows.....or otherwise disposed of as soon as possible and preferably within a period of (15) years in respect of such stocks held by military or police authorities of that State, taking due account of safety, economical, ecological and technical considerations.

We also suggest that after the word "consumed" on line 3 the word "marked" should be added.

Article IV paragraph 3 should form an article of its own.

Article V

In article V paragraph 2, we suggest to add the word "documented" after "having" in order to get a highly qualified group.

Article VI

In Article VI paragraph 3, we suggest to delete the last sentence. We think that these questions are of such great importance that the Commission must try very hard to reach recommendations by consensus. We would also like to see a sentence added to the paragraph 1 as follows: "For this purpose it may request, through the Council, information from States Parties to this Convention."

Article VII

In Article VII we suggest to delete all brackets.

Annex

At present we do not wish to go into details of the Annex or make comments on it as this part of the document will be revised at the ad hoc-meeting in November.

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MEX Doc No. 14
21/11/90

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF CZECHOSLOVAKIA

The following comments are made with respect to the Draft Annex of the Convention:

1. In the first paragraph of Part 1 b) the use of the expression "permanently" deserves further consideration since it is not unequivocal and calls for a practically unrealistic compliance with a condition without limitation in time. It would appear more suitable to delete this expression.
2. In Part 1 b) in the first paragraph the last sentence (in brackets) should be maintained.
3. Add a new third paragraph to Part 1 b) as follows:

"In case that the plastic explosives are taken out from the products mentioned in both paragraphs of Part 1 b), these explosives shall not be used for other purpose without subsequent marking."

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MEX Doc No. 15
23/11/90

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF IFALPA

Draft Convention on the Marking of Plastic (and Sheet) Explosives
for the Purpose of Detection/International Conference on Air Law,
Montreal, 12 February - 1 March 1991

IFALPA has closely followed the developments on the above-mentioned item during the meeting of the Legal Sub-Committee in January 1990 and thereafter at the 27th Session of the Legal Committee; on both occasions this Federation expressed its concern at the direction in which ICAO appeared to be moving.

This concern was related to the wish of the Committee not to include in the draft instrument the "Penal Provisions" as originally proposed by the Rapporteur Mr. A.W.G. Kean (United Kingdom) and thus not to create an "international offence" in the sense that States would be obliged to make punishable by adequate penalties any unlawful conduct in violation of the laws and regulations relating to the requirement that all specified explosives must be marked by an additive to facilitate their detection.

Instead, the ICAO Legal Committee adopted, in its Draft Text of the proposed new instrument, rather weak language to the effect that each State shall (take such measures as may be necessary to) prohibit the manufacture in its territory of unmarked explosives. The arguments for this rather restricted approach to this matter, as outlined in the report of the ICAO Legal Committee, are, in the view of this Federation, not altogether convincing.

Indeed, it would appear to IFALPA that the Sub-Committee has not been inspired by the spirit of international co-operation and political good-will, not to mention the general feelings of sadness and indignation, which prevailed in the world community after the destruction of a Pan Am 747 over Lockerbie on 21 December 1988. Furthermore, these strong sentiments were reflected at length in the resolution 44/29 adopted by the United Nations in December 1989 in which ICAO was urged to "intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purposes of detection".

IFALPA remains strongly convinced that the creation of an international offence in the area of marking of explosives for detectability, along the lines of the existing Hague (1970) and Montreal (1971) Conventions would be necessary in order to prevent another Lockerbie tragedy. In connection therewith this Federation submits that many of the objections of States raised against the inclusion of penal provisions in the new draft instrument could be met if the new offence was drafted along similar lines to the language of the Hague and Montreal Conventions, as follows:-

"Any person commits an offence if he unlawfully and intentionally manufactures, prepares, packs or possesses any...(unmarked explosive)...etc."

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Moreover, IFALPA firmly agrees that the lawful sphere of activities of explosive manufacturing States should not be the target of the present Instrument and thus believes that a provision along the above lines would allow States both the discretion to establish their own criteria of lawfulness and the freedom to regulate the legal environment for unmarked explosives in their territory.

With regard to the suggestion that the inclusion of such penal provisions in the proposed Convention might diminish the chances of it entering into force at an early date, it should perhaps be recalled that the 1971 Montreal Convention on Sabotage was the result of extremely long deliberations and that some States initially found it difficult to accept the compromises reached at the Air Law Conference of that year. As time progressed, however, the 1971 Montreal Convention gained rapid recognition and following its almost universal adoption its penal provisions have now been incorporated into the national legislations of many ICAO States. In this connection, IFALPA believes that, in the field of unmarked explosives, ICAO should take the difficult road to an effective system and not be satisfied with an easy but less effective solution.

In conclusion, therefore, IFALPA respectfully but strongly requests the forthcoming International Conference on Air Law to reconsider the position adopted by the 27th Session of the ICAO Legal Committee and to live up to the expectations of the airline pilots of the world in their endeavours to prevent another aviation tragedy caused by unmarked explosives.



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF MAURITIUS

. . .

2.. Our comments on the draft Convention and Annex, attached to your abovementioned letter, are as follows :

Title and Definition of Explosives
(and sheet)

Since this is a purely technical matter we would wish to reserve our position on this question until we have had an opportunity to consider the conclusions of the Ad Hoc Group of Specialists on the Detection of Explosives which is to meet from 26 to 30 November 1990.

Article 3 Paragraph 2
(for their own use)

Since this paragraph is already made subject to "the objectives of the Convention" we would not insist on the inclusion of the bracketed words.

Article 4 Paragraph 2

This paragraph only refers to existing stocks of unmarked explosives and, in the light of States obligation to exercise strict and effective control over them, we would not insist on the obligation to destroy save, perhaps, in respect of stocks not held by military or police authorities.

Article 7 Paragraph 1
(90 days)

Agreed.

Article 7 Paragraph 3
(90 days) and (180 days)

Agreed.

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Article 7 Paragraph 3 & 4

Taking account of the sovereignty of States and in order to promote the universality of a unified system, we would recommend that the objection of only one State should be sufficient to block the deeming provision and cause the reference of any proposed amendment to the Commission.

Article 7 Paragraph 5

For reasons set out above we consider that the convening of a Diplomatic Conference in these circumstances would be an ineffective and expensive way to secure confirmation of a State's objection to a proposed amendment.



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF CANADA

There is every reason to be pleased with the considerable progress made, at the 27th Session of the Legal Committee, towards the development of a draft Convention on the Marking of Plastic (and Sheet) Explosives for the Purpose of Detection.

The Diplomatic Conference could make further progress and reconsider and possibly improve the draft text in several ways.

As far as the scope of the new instrument is concerned, one important consideration is the fact that the project represents a unique opportunity which may not be repeated shortly, to establish an international regime for the protection of civil aviation, transportation generally, and the world at large, from the danger presented by explosives placed on board of aircraft and elsewhere. At this stage the main threat consists of plastic explosives, and Canada supports the view that the initial application of the Convention should be strictly limited to these explosives only. As confirmed by specialists, however, other types of dangerous explosives can be used, particularly if measures taken to control plastic explosives should prove effective. Even before the entry into force of the instrument currently being developed, a pressing need might be identified and might be universally supported, for widening the scope of the international regime now being developed. For these reasons, it is strongly recommended that the potential scope of the new instrument not be restricted at the outset, so that the instrument could be expanded at a later date to cover not only "plastic (sheet)" explosives, but any other explosives which, after careful consideration by states, may be specified in the Annex. To implement this suggestion, the title and the preambular and other clauses should be amended to refer to explosives in general, while the Annex would be restricted initially to plastic (or sheet) explosives. This proposal could be accommodated without jeopardizing the stability of the Convention, provided strict Annex amending procedures were retained.

Secondly, in conformity with the views expressed in the Ad Hoc Group of Experts, there should be exemptions from the application of proposed Articles II and III for the full range of sealed devices (propellants or explosives permanently incorporated into military or commercial devices) as well as for explosives produced during a duly authorized research and development process (even if not necessarily in "small" or "limited" quantities). The

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explosives thus exempted should be subject to strict and effective controls along the lines of the proposed provisions of Article IV, paragraph 1. It may be necessary in this context to consider whether authority for exemptions which the draft Annex provides for, needs to be somehow established in the Convention proper.

With respect to Article IV, paragraph 2, the removal of brackets is recommended, without, at this stage, making proposals as to the specific time periods. The reference to stocks of unmarked explosives "consumed, destroyed or otherwise disposed of" does not cover the possibility of subsequent "marking" of explosives. This text should refer to explosives "marked, consumed, destroyed or rendered unusable as explosives".

The performance of the duties of the Explosives Technical Commission, as described in the Legal Committee Draft is likely to require the Commission to seek the views of the Contracting States as to any relevant information on technical developments relating to the manufacture, marking and detection of explosives. The consultation process would have to be elaborated upon either in the instrument itself, or in a resolution adopted by the Diplomatic Conference. This would enhance the role of the Commission as an effective focal point for an exchange of information and multilateral cooperation. The Diplomatic Conference should make this clear. Finally, given the period of time which may elapse before the new instrument enters into force, it is proposed that the Diplomatic Conference invite the ICAO Council to keep in existence the current Ad Hoc Group of Specialists with a mandate not only to examine new developments in the field but also to provide assistance to states in the process of ratifications. The Group of Specialists could in this way contribute to the early entry into force of the instrument.



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

CONVENTION ON THE MARKING OF PLASTIC AND SHEET EXPLOSIVES
FOR THE PURPOSE OF DETECTION

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of unlawful acts directed against international civil aviation;

CONCERNED that plastic and sheet explosives can be used with little risk of detection for unlawful acts including, inter alia, acts of unlawful interference with civil aviation;

RECALLING United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic and sheet explosives for the purpose of detection;

RECALLING Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic and sheet explosives for detection;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic and sheet explosives are duly marked,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

For the purposes of this Convention:

1. "Explosives" mean plastic and sheet explosives as described in the Annex to this Convention.
2. "Detection agent" means a substance as described in the Annex to this Convention which is introduced into an explosive to render it detectable.
3. "Mark" means to introduce into an explosive a detection agent in accordance with the Annex to this Convention.

ARTICLE II

Each State Party to this Convention shall take the necessary measures to control effectively the manufacture and use in its territory of unmarked explosives.

ARTICLE III

1. Each State Party shall take the necessary measures to prohibit and prevent effectively the movement into or out of its territory of unmarked explosives.

2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by military or police authorities of a State Party for their own use, of unmarked explosives under its control in accordance with Article IV.

ARTICLE IV

Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of such unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

ARTICLE V

1. There is established by this Convention an Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of fifteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Members of this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. The Commission shall normally hold an annual session at the Headquarters of the International Civil Aviation Organization. Additional sessions may be held, if necessary.

ARTICLE VI

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.
2. The Commission, through the Council, shall report its findings to the States Parties and International Organizations concerned.
3. Whenever necessary, the Commission shall make recommendations to the Council on amendments to the Annex to the Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.
4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Annex to this Convention.

ARTICLE VII

1. Any State Party may, within 90 days from the date of notification of a proposed amendment to the Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.
2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, may propose the amendment to all States Parties for adoption.
3. Whenever necessary, the Commission shall make recommendations to the Council on amendments to the Annex to the Convention. If a proposed amendment has not been objected to by any State Party by means of written notification to the Council within 90 days, it shall be deemed to have been adopted, and shall enter into force 180 days thereafter or after such other period as specified in the proposed amendment.
4. If any State Party has objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.
5. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may convene a conference of all States Parties.

ARTICLE VIII

States Parties shall periodically inform the Council of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties.

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INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF ITALY

Article II: Add the following phrase to the word "manufacture":
"even with recovery materials".

Annex: Replace in Part 1, paragraph a), sub-paragraph 1, the words "are formulated with one or more high explosive substances" by "have, as their main explosive components, one or more high explosive substances".

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MEX Doc No. 20
19/12/90

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF AUSTRALIA

From the aviation security perspective, the promulgation of a legal instrument for the marking of explosives would be a positive step in efforts to counter terrorist acts against civil aviation. The drafting and adoption of such an instrument is therefore strongly supported by Australia. Australia's comments on the draft Convention and Annex are provide below.

PREAMBLE

It is considered that the scope of the convention is adequate in encompassing plastic and sheet explosives. While we would see no difficulty in having other explosives made more detectable by a marking system, we would not wish to see extension of the Convention jeopardise its acceptance. It is essential to have the Convention accepted by producing States without delay

2. Inclusion of the reference to sheet explosives in the second and sixth paragraphs of the Preamble (and elsewhere in the text of the draft Convention) has the advantage that it shows clearly that the Convention is a response to the resolutions referred to in the third and fourth paragraphs. However, sheet explosives are only one form of plastic explosives and it would be quite sufficient if they were mentioned only in the Annex, with the Convention using only the generic expression. However, the issue is not one over which the settling of the draft Convention should be delayed.

3. The sixth paragraph refers to "such acts" while the fifth refers to "such unlawful acts". It would be a little clearer if the sixth paragraph used the same expression as the fifth.

ARTICLE I

4. It appears that the function of the passage "in accordance with the Annex to this Convention" in the definition of the word "mark" is to qualify the word "introduce". However, because of its placement, it can be taken to qualify the word "agent". The definition would be clearer if the passage were moved to immediately after "introduce".

ARTICLE III

5. It would be desirable for the words in square brackets in the second paragraph to be retained so as to restrict the exceptions to the application of the Convention.

6. The expression "the objectives of this Convention" appears in the second paragraph (and in the first paragraph of Article IV). It is not clear what these objectives are, although presumably they may be inferred from the Preamble.

ARTICLE IV

7. In view of the threat posed to civil aviation from explosive devices, we would urge the speediest possible destruction of all existing stocks of unmarked explosives as called for under Article IV

8. Retention of the second paragraph is supported because of the example which the government of a State Party should be setting its people in these matters and because unmarked explosives may always be stolen, however strict the exercise of control over them. The imposition of a relatively short period in which stocks held by persons other than military or police authorities are to be disposed of is supported because the risk of theft by terrorists or their suppliers is likely to be greater. We interpret the paragraph as not preventing military or police authorities from purchasing stocks of unmarked explosives from other people in the country who are disposing of them in accordance with the paragraph.

ARTICLE V:

9. The establishment of an Explosives Technical Commission, the members of whom are to be appointed by the Council of ICAO, is supported. We consider that this is an essential means of ensuring that the Convention is able to provide effective scope for future developments

in explosives technology and detection agents. The wording " experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives." would appear to ensure that the ETC has an appropriate level of expertise available to it, without diminishing its effectiveness..

ARTICLE VI

10.. It is not clear what are "the International Organizations concerned" referred to in the second paragraph. We assume that, for example, the International Maritime Organization is included.

11. The procedure for inviting comment by States Parties on draft amendments to the Annex could be seen as unnecessarily restrictive. Since the Commission can only make recommendations for draft amendments to the Council by consensus or on a two-thirds majority vote, it could be argued that the Council should have an obligation, as opposed to a discretion, to propose those draft amendments to States Parties for comment.

ARTICLE VII

12. This Article raises the most difficult problem in the whole Convention, namely, how to provide for self-executing amendments of the Annex in the light of new technology without either provoking denunciation of the Convention by States Parties which are opposed to the amendments, or allowing a small number of States Parties to hold up the adoption of appropriate amendments.

13. In our view, it would defeat the whole purpose of the provision for self-executing amendments if it could be frustrated by one State Party, as one of the alternative texts in paragraph 3 provides. Ideally, it would be more appropriate if the number of objecting States referred to in paragraph 3 was a proportion of the States Parties at the particular time since the number of States Parties which will be parties at the time an amendment is proposed is unknown and may vary widely when different amendments are proposed. However, if there were difficulties in having paragraph 3 amended so that a proportion of States Parties, rather than a fixed number, were specified, we would favour raising the threshold to, say, 5 or 10 State Parties. Depending on the number of States that must accede to the Convention before it is to enter into force, such a number may represent a large number of States Parties when the Convention first enters into force.

14. Paragraph 5 should be retained in the Convention so that, with 2 methods by which amendments can be adopted, a circular process of proposing amendments and referring them for reconsideration by the Commission after objections are made under paragraph 3 may be stopped by the convening of a conference. If paragraph 5 is retained, the number or proportion of States Parties referred to in paragraph 3 could reasonably be lower than it would be otherwise since an objection will mean, not the rejection of the proposal, but the ultimate convening of a conference on the proposal.

15. We note that the Annex essentially defines "plastic explosives" for the purposes of the Convention, and specifies the detection agents that may be used. It is difficult to see what amendments might be made to the Annex which would be so objectionable to some States Parties as to provoke their denunciation of the Convention. Nevertheless, should such an amendment arise, it might help to dissuade States Parties who are bitterly opposed to an amendment from exercising their option of denouncing the Convention if the Convention provided for changes to be made by Protocol, rather than by amendments to the Annex itself. If amendment by Protocol is not considered desirable, it would nonetheless be useful if the Convention contained a mechanism which would mean that a State Party not wishing to be bound by an amendment to the Annex adopted by a conference convened in accordance with paragraph 5 did not have to denounce the Convention as a whole.

ARTICLE VIII

16. It is not clear what is meant by "periodically". For example, does it mean at specified intervals and, if so, are they set by the Council or by States Parties?

ANNEX

17. The reference in the fourth-last line of paragraph (a) in Part 1 to "high explosives" should be to "high explosive substances" to pick up the reference to those substances in paragraph (a)(1).

18. Clarification should be made of the word "devices" in the first paragraph of Part 1 (b) to establish what it refers to. In addition the second paragraph could include "rockets, prepared or shaped charges,..."

19. We assume that what is meant by the expression "marking agent" in the last line of paragraph (b) of Part 2 is "detection agent", but in any case, it would be less confusing if the whole expression "of the pure detection (marking) agent" were omitted. At present, it can be read as saying that the concentration of the detection agent is to be x per cent by weight of itself.

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MEX Doc No. 21
28/1/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

DRAFT FINAL CLAUSES OF THE CONVENTION

(Presented by the Secretariat)

In conformity with the established practice, the 27th Session of the Legal Committee refrained from drafting the final clauses of the draft Convention and reserved this task for the Conference itself.

To facilitate the consideration of this task by the Conference, this paper presents a checklist of the issues which are normally addressed in the final clauses of multilateral conventions, as well as a general draft of such clauses. This paper takes into account in particular the drafting practice adopted in the Tokyo Convention of 1963, The Hague Convention of 1970, the Montreal Convention of 1971, and the Montreal Supplementary Protocol of 1988.

List of subjects to be addressed in the final clauses:

- 1) Settlement of disputes on the interpretation and application of the Convention
- 2) Permissible reservations, if any
- 3) Date and place of the opening for signature and subsequent signatures
- 4) Determination which States may sign the Convention
- 5) Requirement of ratification, acceptance, approval, or adherence
- 6) Designation of the depositary or depositaries
- 7) Registration of the Convention with the United Nations and with ICAO
- 8) Denunciation of the Convention
- 9) Amendment of the Convention
- 10) Notices to be given by the depositary or depositaries
- 11) Closing paragraph describing the authentic languages, the number of the originals and the date of signature.

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CONVENTION ON THE MARKING OF PLASTIC [AND SHEET]
EXPLOSIVES FOR THE PURPOSE OF DETECTION

DRAFT FINAL CLAUSES

ARTICLE IX

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.
3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to [the] [a] Depositary.

ARTICLE X

Except as provided in Article IX no reservation may be made to this Convention.

ARTICLE XI

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 11 March the Convention shall be open to all States [members of the United Nations or any of the Specialized Agencies]

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for signature [in London, Moscow and Washington and] at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the [Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America or the] International Civil Aviation Organization, which [are] [is] hereby designated the Depositary[y][ies].

3. As soon as [] States have deposited their instruments of ratification or accession, this Convention shall enter into force between them on the [.....th] day after the date of the deposit of the [.....th] instrument of ratification or accession [on the condition, however, that at least [.....] States which have ratified or acceded to this Convention, declare that they are producers of the explosives defined in this Convention. If at the time of deposit of the [.....th] instrument of ratification or accession, this condition has not been fulfilled, the Convention shall not come into force until the [.....th] day after this condition shall have been satisfied].

4. For other States, this Convention shall enter into force [] days following the date of deposit of their instruments of ratification or accession.

5. The [Depositary] [Depositaries] shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, or other notices.

6. As soon as this Convention comes into force, it shall be registered by the [Depositary] [Depositaries] pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

ARTICLE XII

1. Any Contracting State may denounce this Convention by written notification to [the] [a] Depositary.

2. Denunciation shall take effect [.....] months following the date on which notification is received by [the] [a] Depositary.

ARTICLE XIII

[1. Any proposal for the amendment of this Convention shall be communicated to the Council of the International Civil Aviation Organization which will decide, in accordance with its procedures, on the convening of an international conference of States entitled to become party to this Convention.

2. The decisions of an international conference referred to in paragraph 1 of this Article shall be taken by the vote of two-thirds of the States present and voting, unless by the same majority the conference decides to apply a different rule.

3. Any amending agreement shall become binding between States which ratify or accede to such amending agreement.]

[Note: a provision on amendment of the Convention does not appear strictly necessary. The Tokyo Convention of 1963, The Hague Convention of 1970, the Montreal Convention of 1971, and the Montreal Protocol of 1988 do not contain any provision on their amendment. The above draft only paraphrases the general law of treaties as reflected in Articles 39, 40 and 9.2 of the Vienna Convention on the Law of Treaties of 1969.]

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in [one] [four] original[s], drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic language.

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MEX Doc No. 22
11/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

Comments on the draft Convention on the Marking of
Plastic Explosives for the Purpose of Detection

STOCKS OF UNMARKED PLASTIC EXPLOSIVES

(Presented by the USSR)

1. Historical background

1.1 The draft Convention proposes a regime (Article IV, paragraph 2), under which all stocks of unmarked explosives falling under the scope of the Convention must be "consumed, destroyed or otherwise disposed of" within a certain set period of time from the entry into force of the Convention. At the same time the draft Technical Annex (Part 1, paragraph b)) provides for a three-year exemption for the marking of explosives destined for the manufacture of ammunition.

1.2 At the 27th Session of the Legal Committee, several Delegations expressed the view that the destruction of unmarked stocks was impossible for reasons of a technical, ecological and economic nature. Other Delegations spoke in favour of the mandatory destruction of such stocks. Various views were also expressed with respect to the time limit to be set for destruction.

1.3 Given the technical nature of the differing views which emerged, this question was sent for consideration by the Ad Hoc Group of Specialists on the Detection of Explosives. However, this Group did not succeed in reaching a common viewpoint and developing agreed proposals.

1.4 The response of States to the draft Convention and to the draft Technical Annex show that divergences in position on these matters continue to exist.

2. Technical substantiation and consequences

The following considerations merit attention.

(3 pages)

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2.1 There are no problems at all concerning the short-term utilization of plastic explosives produced for commercial purposes, since the extent of their use is relatively small and substantial stocks are not created.

2.2 The situation is completely different with existing stocks of plastic explosives produced for military purposes.

Firstly, this concerns explosives intended for blasting, the marking of which from the technical point of view is practically impossible. These "unmarked" explosives constitute a relatively small proportion of existing stocks (estimated at 10% - 15%). They must be taken under the strict control of the State without setting any time limits for their consumption.

Secondly, the most difficult problem is that of the destruction (or consumption) of existing stocks of unmarked explosives found in ammunition or combat functional devices.

An important factor is that, when ammunition is designed, no provision is usually made for the possibility of its disassembly and the removal of its internals, including the explosive, for re-use with the necessary guarantees of operational reliability and safety. Therefore, the extraction of an explosive from ammunition is equivalent to its destruction. Thus, such an approach essentially places on the agenda the question of the complete destruction of ammunition in the possession of a country which incorporates plastic explosives. This relates to the problem of disarmament.

2.3 In addition, industry at present is not ready for work to be done on a mass scale on the extraction of plastic explosives. Existing production which manufactured this ammunition cannot be used for such purposes. What will be required will be the development of the corresponding technologies and the creation of new specialized production involving qualified personnel. A significant amount of time and huge expenditures, which are not equal to the task in hand, will be required to carry out this work.

2.4 Even if one assumes that these explosives will be extracted from ammunition, the problem of their destruction will arise. Industry at present does not possess sufficiently reliable technologies for the destruction of plastic explosives in large amounts with the necessary guarantees of personnel safety and environmental protection. When explosives of this type are blown up or burned up, a considerable amount of toxic substances (nitrogen oxides and cyanic compounds) is released and they must be completely trapped and neutralized. Estimated expenditures for the development, design and construction of facilities having the necessary ecological protection are so great that it would be impracticable to count on the readiness of States to solve this problem.

3. Conclusion

Thus, the destruction of unmarked plastic explosives intended for military purposes will create insuperable problems for countries possessing stocks of such explosives.

In the event that the force of the Convention is extended to other types of explosives and similar approaches are used with respect to the unmarked stocks thereof, even more difficult problems will arise which will create considerable obstacles for many States to become parties to the Convention.

Given these conditions it appears sufficient to establish a regime of strict control on the part of States over the consumption of stocks of unmarked explosives and at this stage not to make provision in the Convention for the destruction of plastic explosives intended for military purposes.

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MEX Doc. No. 23
14/02/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF GERMANY

The German Delegation would like to propose the following amendments to the draft Convention for your consideration :

- 1) Paragraph 1 of Article V of the draft Convention - new
sentence 2 -

"A person nominated by a two-thirds majority of States Parties to this Convention shall be appointed by the Council; for the rest the provisions of sentence 2 shall not affect the provisions of sentence 1".

Motivations:

Under Article V the power of appointing ETC members is not going to be transferred to a body consisting of Parties to the Convention; on the contrary, it is intended that the ICAO Council be given this responsibility. This would not be a solution without problems. It cannot be ruled out that the Parties of the new Convention may not in fact be members of the Council. For this reason we should consider giving the Parties to this new Convention a greater chance of exerting influence on the appointment of ETC members. The Council should be bound by a proposal submitted by a majority of Parties of the new Convention and should be liable to appoint the person thus proposed as a member of the ETC.

- 2) Paragraph 4 of Article VI of the draft Convention - new
sentence 2 -

"The Council shall, on the recommendation of the Commission, accepted by consensus, or on the recommendation of the Commission, accepted by a two-thirds majority and endorsed formally and in writing by a two-thirds majority of the States Parties, propose to States Parties such an amendment".

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Motivations:

Article VI provides that the Council may propose amendments to the States Parties of the new Convention on the basis of an ETC recommendation. The provisions also allow the Council to leave an ETC recommendation unheeded where the ETC has adopted the recommendation unanimously. It would even be possible for the Council to dispense with proposing an amendment against the wishes of the States Parties to the new Convention. This would also be a solution with problems. We should stipulate that the Council must act by passing on a unanimous ETC recommendation as an amendment; and the same would have to apply where a majority of the States Parties have endorsed a recommendation emanating from the ETC with only the prescribed majority and then apply for it to be proposed as an amendment.

3. Article VII, Paragraph 2, new sentence 3 :

"The Council shall propose such an amendment provided that the States Parties to the Convention request it at this stage of the proceedings with a two-thirds majority, formally and in writing".

Additional comments

The German Delegation considers it advisable to give more emphasis to the position of the States Parties to the Convention in their relationship to the ICAO Council. In the end this would also provide a certain relief to the Council in the context of its activity with regard to the Convention.

Finally, the German Delegation takes the liberty to point out that the activity of the ICAO Council "on behalf of a third party" should also be sanctioned in the framework of the Convention on International Civil Aviation by an Assembly Resolution.



MEX Doc No. 24
14/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF GERMANY AND THE UNITED KINGDOM

The following addition to Article VII is submitted as a proposal to meet concerns expressed by certain States regarding the operation of Articles VI and VII as drafted in MEX Doc. No. 3.

"(6) No amendment to the Annex to this Convention may provide for the deletion of a detection agent from Part 2 thereof nor any increase in the minimum concentration level specified for such an agent except by consensus of the States Parties."

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MEX Doc No. 25
14/2/91

INTERNATIONAL CONFERENCE ON AIR LAW
(Montreal, 12 February-1 March 1991)

COMMENTS OF CANADA

In order to address the need to provide for an effective regime with respect to the control of existing stocks of explosives, while at the same time recognizing the need to take into account economic and ecological concerns associated with the destruction of military explosives, the Canadian Delegation proposes the following amendments to the Convention and Annex:

Article I

Include a definition of "duly authorized military devices" as follows:

"duly authorized military devices "include shells, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military purposes according to the Law of the State party concerned.

Rationale

The need to be able to distinguish between explosives held by the military which are incorporated in military devices and represent an enormous problem in terms of destruction, and those which are not incorporated and represent a much more serious risk in security terms.

Article IV

Amend Article IV as follows:

Paragraph 1:

Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of such unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

Paragraph 2:

Each State party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 held by other than police or military authorities are consumed, destroyed, marked or otherwise disposed of for purposes not inconsistent with the objectives of this Convention, within a period of [3] years from the entry into force of this Convention in respect of that State.

Paragraph 3:

Each State party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 held by police or military authorities that are not incorporated as an integral part of duly authorized military devices are consumed, destroyed, marked or otherwise disposed of for purposes not inconsistent with this Convention, within a period of [10] years from the entry into force of this Convention in respect of that State.

Paragraph 4:

Each State Party shall take the necessary measures to ensure the destruction of unmarked explosives which may be discovered in its territory, and which are not covered in the preceding paragraphs of this Article, other than stocks of unmarked explosives held by police or military authorities incorporated as an integral part of duly authorized military explosives devices at the date of the entry into force of this Convention in respect of that State Party.

Rationale

Paragraph 1 is unchanged from the current draft text.

Paragraph 2 would require the destruction of "commercial" stocks within three (3) years, consistent with the wording of the relevant portion of paragraph 2 of the current draft text. It also incorporates the suggestion of Japan that the phrase "or otherwise disposed of" could benefit from clarification.

Paragraph 3 would require the destruction of "freestanding" (i.e., unincorporated) military or police stocks within 10 years, consistent with the wording of the relevant portion of paragraph 2 of the current draft text, but shortening the period to 10 years because of the perceived lesser problem and greater security risk with this class of military explosives. It also incorporates the suggestion of Japan as per the previous paragraph.

Paragraph 4 is consistent with the requirement in paragraph 3 of the current draft text to destroy other explosives, but exempts incorporated military explosives from that requirement in recognition of the practical problems identified by a number of States.

The Article therefore does not require a State party to destroy existing stocks of explosives incorporated as an integral part of duly authorized military devices. Such devices would, of necessity, be subject to the strict and effective control provisions of paragraph 1.

Annex

Amend paragraph 1(b)(5) of the current draft Annex to the Convention to read:

- ▶ explosives that are intended to be and, within 3 years of the coming into force of this Convention in respect of a State Party to this Convention, are incorporated as an integral part of duly authorized military devices in the territory of that State.

Rationale

This respects the views expressed in the Ad Hoc Group of Experts and by some delegations that States are prepared to mark explosives incorporated in military devices within 3 years of the coming into force of the Convention with respect to a State.

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MEX Doc No. 26
15/2/91

INTERNATIONAL CONFERENCE ON AIR LAW
(Montreal, 12 February - 1 March 1991)

COMMENTS OF CANADA

The Ad Hoc Group of Specialists on the Detection of Explosives recommended at their Fourth meeting that the term "manufacture" as used in Article II of the Convention, be understood to include any recycling or reworking which produces explosive products which meet the definition of plastic or sheet explosives. Canada supports this point, as it is required to address control of existing stocks of explosives that may have their original purpose or form altered.

In order to accommodate this point, however, the term manufacture will have to be defined in Article I.

Accordingly, Canada suggests that the following definition be included in Article I:

"Manufacture" includes to make, produce, fabricate, reprocess, recycle or rework materials so as to produce explosives.

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MEX Doc No. 27
15/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF ARGENTINA, BRAZIL, CHILE AND COSTA RICA

This proposal is based on the working paper presented by Germany at the 27th Session of the Legal Committee (LC/27-WP/3-2); on Chapter III of the Guatemala Protocol of 8 March 1971; on Chapter VII of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963; on the Protocol for the Suppression of Unlawful Acts of Violence at Airports (Montreal, 1988); on the comments of the United States, presented at the International Conference on Air Law (MEX Doc No. 9) on the same subject, and on MEX Doc No. 21, presented by the Secretariat.

The following text is proposed:

Final Clauses

ARTICLE IX

1. This Convention shall be open for signature by all States which are Members of the United Nations or of any of its Specialized Agencies, at the Headquarters of the International Civil Aviation Organization and at the Headquarters of the United Nations, until its entry into force.
2. This Convention shall be subject to ratification by the signatory States in accordance with their constitutional procedures.
3. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

ARTICLE X

1. This Convention shall enter into force ninety days after the date of the deposit of the fortieth instrument of ratification, on the condition that it has been ratified by at least five of the States which are producers of plastic and sheet explosives.
2. If at the time of deposit of the fortieth instrument of ratification, this condition has not been fulfilled, the Convention shall not come into force until ninety days after the day on which it shall have been satisfied.

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3. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of its Specialized Agencies.

The accession of a State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect ninety days after the date of such deposit.

4. As soon as this Convention comes into force it shall be registered with the Secretary-General of the United Nations by the International Civil Aviation Organization.

ARTICLE XI

The International Civil Aviation Organization shall give notice to all States Members of the United Nations or of its Specialized Agencies:

- a) of each signature of this Convention and date thereof;
- b) of the deposit of any instrument of ratification or accession and the date thereof, notifying whether the ratifying or acceding State qualifies as a producer State;
- c) of the date on which this Convention comes into force in accordance with the provisions of Article X, paragraph 1;
- d) any reservations made by States and of their withdrawal according to the provisions of Article XIII;
- e) of the entry into force of any amendment to the Annex to this Convention; and
- f) of the denunciations declared in accordance with Article XII.

ARTICLE XII

1. Contracting States may denounce this Convention by written notification to the International Civil Aviation Organization.

2. Such denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of such notification.

ARTICLE XIII

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.

3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the International Civil Aviation Organization.

4. Except as provided in paragraph 2 of this Article, no reservation may be made to this Convention.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

Done at Montreal on the day of of the year One Thousand Nine Hundred and Ninety-one, in four originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

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MEX Doc No. 28
15/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

(Presented by the Federal Republic of Germany)

In complementing MEX Doc. No.24 the German Delegation considers it essential to treat the regulations of Article VII, paras. 3 and 4 separately since the practical consequences of amendments of the Annex may vary a great deal.

- a) On the one hand, parts of the Annex could be rescinded by an amendment.
 - aa) For the individual State this would change the basis on which its decision to ratify had been taken. It may be that a State considers for instance only one of the marking substances contained in the original annex as suitable since according to its national legislation the other substances are deemed to be either too poisonous, not suitable for mass production or too expensive. An elimination of this particular marking substance would then jeopardize, if not exclude, the further membership of this State in the Convention.
 - bb) The same must apply if an originally accepted marking substance is replaced by another.

For this reason an amendment designed to eliminate parts of the Annex should require unanimous consent.

- b) On the other hand, the Annex could be supplemented by an amendment. This applies both to Part 1 (description of plastic explosives) as well as to Part 2 (detection agents).
 - aa) Should a substantial change in the description of explosive substances be intended, this could again affect the basis on which a State had decided to sign or ratify.

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For instance, a plastic explosive for which so far tagging had not been compulsory, could become subject to such tagging. However, the national legislation of one or the other State Party might not allow tagging with the proposed substances. Under the present wording the State would still be bound by this amendment. The only way to avoid having to implement the amendment nationally would be to withdraw completely from the Convention.

For this reason, also the amendment of Part 1 of the Annex should require unanimous consent.

- bb) Adding further marking substances in Part 2 would entail considerably fewer problems although it would also affect the State Party. However, the individual State is not obliged to use all the tagging substances simultaneously. The only stipulation is that it must use at least one substance of Part 2. In spite of the newly incorporated substance it can still make its selection from the list of the original substances which formed the basis for its decision to become a party to the Convention in the first place.

For this reason, unanimity does not seem a prerequisite. In this case the objection clause - i.e. objection by more than one State - could remain.

In the view of the German Delegation this situation permits two solutions provided that the concerned State is not to be forced to withdraw entirely from the Convention.

- a) Detailed "split" solution :

Article VII, para. 3 new :

"If a proposed amendment, aiming at eliminating parts of Part 1 or 2 of the Annex or at supplementing Part 1, has not been objected to by one or more States Parties by means of a notification in writing to the Council within 90 days it shall be deemed to have been adopted, and shall enter into force 180 days thereafter or after such other period as specified in the proposed amendment.

For the rest, an amendment enters into force for all States Parties unless at least five States notify their disapproval."

As a result of these amendments of para. 3 , para. 4 would have to read as follows :

"4.If the proposed amendment has not been adopted in accordance with para. 3 of this Article, the Council shall refer it to the Commission for further consideration."

In connection with the regulation in para. 3 the German Delegation takes the liberty to point out that due to national circumstances as regards deadlines for the entering into force of Article VII, para.3 a supplementary part as sentence 2 has already been proposed (see MEX Doc. No. 8, page 2). This proposal is hereby reiterated.

b) General solution

Following Article 38 of the Convention on International Civil Aviation a kind of "opting-out" clause could be added. This type of clause is also applied in other international conventions (see for instance Article 2, para. 7 of the Convention on psychotropic substances, 1971). The following wording is suggested :

"Any State which finds it impracticable to comply in all respects with any such amendment, or to bring its own regulations or practices into full accord with the objectives of the Convention or which deems it necessary to adopt regulations or practices differing in any particular respect from the amended annex but within the objectives of the Convention, shall notify the International Civil Aviation Organization immediately of the differences between its own practice and that established by the amendment. In such a case the Council shall immediately notify all other States".

In addition, the German Delegation holds the view that care must be taken that a withdrawal from the Convention by a State becomes effective before an amendment enters into force which was decided upon against the wishes of that State.

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MEX Doc No 29

18/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF QATAR

1) In essence, the draft convention consists in adding special substances to plastic explosives used in all States parties to that Convention, so that it may be possible to detect these explosives by means of special devices that would be sensitive to the added substances, and consequently, to explosives if the latter are used in unlawful acts, or if they are hidden in the airframe or elsewhere. This draft represents a useful means to curb international terrorist acts.

2) In regard to paragraph 2) of Article IV of the document, which states that "Each State Party shall take the necessary measures to ensure that all stocks of unmarked explosives... are consumed, destroyed or otherwise disposed of within a period of [15] years in respect of such stocks held by military or police authorities of that State, and within a period of [3] years in respect of other stocks, from the entry into force of this Convention in respect of that State, we think it is possible to shorten that period to four years for stocks held by military authority and to two years for other stocks, in order to confer maximum efficiency to the Convention.

3) The adherence of a State to the Convention will allow the acquisition of information about untradable explosives which may be discovered in the territory of that State, according to paragraph 3) of Article IV. This is considered to be of great benefit, as most of the information concerning those explosives is usually privileged information.

4) As regards paragraph b) of the Draft Technical Annex, which states that plastic explosives, produced in small or limited quantities by Government Research Laboratories "for the purposes of duly authorized research, development and testing of new or modified explosives" shall be disposed of, we consider that these quantities should be limited to a specific number of kilograms, with specification of a maximum, and that they should not be left in general terms as in that paragraph, because it is possible that some of it might be misappropriated to be used in unlawful acts that require but a small quantity of such explosives.

5) We suggest that one or more representatives of the Ministry of Interior should participate in the delegation assigned to attend the Meeting, as authorized advisors, in order to keep the Ministry of Interior informed of the developments.



MEX Doc No.30
18/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF MEXICO

With respect to the draft of Article VII, paragraph 3, it should be pointed out that in terms in which it is presently drafted intrinsically imply the tacit acceptance of Governments which may not be in agreement with proposed amendments to the Annex. That is to say that if the established number of objections is not met by the indicated date, the amendment shall come into general force even for States which may have objected.

This is contrary to law, at least under the Mexican constitutional system, since every Convention or act concluded by the Executive Power which implies an international commitment on the part of the Government of Mexico, must be approved by the Chamber of Senators of the Honorable Congress of the Union, as established by the Political Constitution of the United Mexican States.

Moreover, it must be pointed out that on certain occasions this would adversely affect the sovereignty of States to freely reach decisions, since these should not be examined or discussed by the Explosives Technical Commission, as established in paragraph 4 of the Article under discussion.

The consequence of this would be that should States be unwilling or unable to bind themselves to amendments made to the Annex, their only alternative to being forced to comply therewith would be to denounce the Convention, which would seriously prejudice the hoped-for effectiveness of the international instrument.

This Delegation considers that acceptance of an amendment to the Annex should be subject to an expression of consent in the terms established by the Vienna Convention on the Law of Treaties, Article 11.

In the light of the foregoing, the Delegation of Mexico submits for consideration by the members of this Conference, the following draft wording which would safeguard the concern expressed herein:

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3. If the proposal for amendment has not been objected to by [1] [X] or more States Parties by means of written notification to the Council within [90] days, it shall be deemed to have been adopted, and shall enter into force [180] days thereafter for States not having expressly objected to the proposal.

Those States having expressly objected to the proposed amendment, may subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment concerned.

4. Should disappear.



MEX Doc No. 31*
19/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

Texts prepared by the Drafting Committee

ARTICLE I

For the purposes of this Convention:

1. "Explosives" mean plastic and sheet explosives as described in the Annex to this Convention.
2. "Detection agent" means a substance as described in the Annex to this Convention which is introduced into an explosive to render it detectable.
3. "Marking" means introducing into an explosive a detection agent in accordance with the Annex to this Convention.
4. "Manufacture" means any process, including reprocessing, that produces explosives.
5. "Duly authorized military devices" include, but are not restricted to, shells, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.

ARTICLE II

Each State Party shall take the necessary measures to prohibit and effectively prevent the manufacture in its territory of unmarked explosives.

ARTICLE III

1. Each State Party shall take the necessary measures to prohibit and effectively prevent the movement into or out of its territory of unmarked explosives.
2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by military or police authorities of a State Party, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article IV.

* For the purposes of the approval of the draft Convention, this MEX Doc has been translated into the Arabic language

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ARTICLE IV

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article not held by military or police authorities are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of 3 years from the entry into force of this Convention in respect of that State.

3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article held by military or police authorities that are not incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of 15 years from the entry into force of this Convention in respect of that State.

4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein, and which are not referred to in the preceding paragraphs of this Article, other than stocks of unmarked explosives held by military or police authorities incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.

ARTICLE V

1. There is established by this Convention an Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of fifteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. The Commission shall normally hold an annual session at the Headquarters of the International Civil Aviation Organization. Additional sessions may be held, if necessary.

5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

ARTICLE VI

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Annex to the Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Annex to this Convention.

ARTICLE VII

1. Any State Party may, within 90 days from the date of notification of a proposed amendment to the Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, may propose the amendment to all States Parties for adoption.

[Alternative 1]

3. If a proposed amendment has not been objected to by 1 or more States Parties by means of written notification to the Council within 90 days, it shall be deemed to have been adopted, and shall enter into force 180 days thereafter or after such other period as specified in the proposed amendment.

4. If 1 or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.]

MEX Doc No. 31

[Alternative 2

3. If a proposed amendment has not been objected to by [x] or more States Parties by means of written notification to the Council within 90 days, it shall be deemed to have been adopted, and shall enter into force 180 days thereafter or after such other period as specified in the proposed amendment for States not having expressly objected to the proposal.

4. States having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment within [180] days thereafter or after such other period as specified in the amendment.]

ARTICLE VIII

States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties and international organizations concerned.



MEX Doc No. 32
20/2/90

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

COMMENTS OF INDONESIA

The Indonesian Delegation would like to propose the inclusion of the following article or paragraph to the draft Convention for your consideration :

"The Council of ICAO, if deemed necessary, may take the appropriate steps to facilitate the implementation of the objectives of this Convention. The steps taken have to be financially supported by appropriate technical assistance programme or other means and supplemented by the facilitation of the exchange of information resulting from appropriate research and development of marking agents and detection machines".

Motivations:

The aim of this Convention is certainly not just to mark explosives, it is an effort to eliminate the abuse or misuse of explosives. To effectively achieve the aim of the Convention detection equipments have to be operated at transfer or transit points of the transportation networks. The machines have to be manned and maintained adequately and also have to be replaced regularly to keep up with technological innovation. To be fair, efficient and effective, a joint effort is deemed necessary in investing, operating, maintaining and developing this system of detection and a way has to be found on how to fairly distribute its costs.

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MEX Doc No. 33*
21/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

DRAFT FINAL ACT

**of the International Conference on Air Law
held under the auspices of the
International Civil Aviation Organization in February-March 1991**

The Plenipotentiaries at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization met at Montreal from 12 February - 1 March 1991 for the purpose of considering a draft Convention on the Marking of Plastic [and Sheet] Explosives for the Purpose of Detection prepared by the Legal Committee of the International Civil Aviation Organization.

The Governments of the following [] States were represented at the Conference:

[Note: This list is subject to the action on the Report of the Credentials Committee.]

Afghanistan, the Republic of
Algeria, the People's Democratic Republic of
Argentine Republic, the
Australia
Austria, the Republic of
Belgium, the Kingdom of
Belize
Bolivia, the Republic of
Brazil, the Federative Republic of
Bulgaria, the People's Republic of
Byelorussian Soviet Socialist
Republic, the
Canada
Cape Verde, the Republic of
Chile, the Republic of
China, the People's Republic of
Colombia, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of
Cuba, the Republic of
Czech and Slovak Federal Republic, the
Denmark, the Kingdom of

* For the purposes of the approval of the draft Final Act, this MEX Doc has been translated into the Arabic language

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Ecuador, the Republic of
Egypt, the Arab Republic of
Ethiopia, the People's Democratic Republic of
Finland, the Republic of
French Republic, the
Gabonese Republic, the
Germany, the Federal Republic of
Ghana, the Republic of
Guinea, the Republic of
Guinea-Bissau, the Republic of
Hellenic Republic, the
Holy See, the
Honduras, the Republic of
India, the Republic of
Indonesia, the Republic of
Iran, the Islamic Republic of
Israel, the State of
Italian Republic, the
Jamaica
Japan
Kenya, the Republic of
Kuwait, the State of
Lebanese Republic, the
Madagascar, the Democratic Republic of
Mali, the Republic of
Mauritius
Mexican States, the United
Morocco, the Kingdom of
Netherlands, the Kingdom of the
Nigeria, the Federal Republic of
Norway, the Kingdom of
Pakistan, the Islamic Republic of
Paraguay, the Republic of
Peru, the Republic of
Poland, the Republic of
Qatar, the State of
Republic of Korea, the
Romania
Saudi Arabia, the Kingdom of
Senegal, the Republic of
Spain, the Kingdom of
Sweden, the Kingdom of
Swiss Confederation, the
Thailand, the Kingdom of
Togolese Republic, the
Trinidad and Tobago, the Republic of
Tunisia, the Republic of
Turkey, the Republic of
Uganda, the Republic of

Union of Soviet Socialist Republics, the
United Kingdom of Great Britain and
Northern Ireland, the
United Republic of Tanzania, the
United States of America, the
Venezuela, the Republic of
Zaire, the Republic of
Zambia, the Republic of

The following International Organizations were represented by
Observers:

United Nations
International Maritime Organization (IMO)
International Air Transport Association (IATA)
International Federation of Air Line
Pilots' Associations (IFALPA)
Latin American Civil Aviation Commission (LACAC)

The Conference was opened by the President of the Council of the
International Civil Aviation Organization, Dr. Assad Kotaite, and by the
Secretary-General of the United Nations, Dr. Javier Pérez de Cuéllar.

The Conference unanimously elected as President
Dr. K.O. Rattray (Jamaica). It further unanimously elected as Vice-Presidents
Dr. F.A. Cede (Austria), Dr. H.A. Perucchi (Argentina), Mr. M. Mukai (Japan), and
Mr. V. Poonoosamy (Mauritius).

The Secretary General of the Conference was Dr. S.S. Sidhu,
Secretary General of the International Civil Aviation Organization.
Dr. M. Milde, Director of the Legal Bureau of the International Civil Aviation
Organization, was the Executive Secretary of the Conference; he was assisted by
Dr. M. Pourcelet, Principal Legal Officer, Mr. R.D. van Dam, Senior Legal
Officer, Mr. G.M. Kakkar and Mr. J.V. Augustin, Legal Officers of the
Organization and by other officials of the Organization.

The Conference established a Commission of the Whole, whose Chairman
was the President of the Conference, and the following Committees:

CREDENTIALS COMMITTEE

Chairman: Dr. I. Jakubovicz (Brazil)

Members: Czechoslovakia
Ghana
Lebanon
Sweden

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DRAFTING COMMITTEE

Chairman: Mr. V. Poonoosamy (Mauritius)

Members: Argentina
Canada
China
Côte d'Ivoire
Czechoslovakia
Egypt
France
Islamic Republic of Iran
Japan
Pakistan
Saudi Arabia
Union of Soviet Socialist Republics
United Kingdom
United States
Venezuela

Following its deliberations, the Conference adopted [by consensus] the text of a Convention on the Marking of Plastic [and Sheet] Explosives for the Purpose of Detection. The said Convention has been opened for signature at Montreal on this day.

[The Conference furthermore adopted by consensus the following Resolution:]

IN WITNESS WHEREOF the Delegates of States duly authorized thereto have signed this Final Act.

DONE at Montreal on the first day of March of the year One Thousand Nine Hundred and Ninety-one in five authentic texts in the English, French, Russian, Spanish and Arabic languages in a single copy which shall be deposited with the International Civil Aviation Organization and a certified copy of which shall be delivered by the said Organization to each of the Governments represented at the Conference.



MEX Doc No. 34*
21/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

DRAFT RESOLUTION

FOR INCLUSION IN THE FINAL ACT

(CO-SPONSORED BY ARGENTINA, AUSTRALIA, AUSTRIA, CANADA,
CHILE, GERMANY, ITALY, JAPAN, MAURITIUS, SAUDI ARABIA,
UNITED KINGDOM, VENEZUELA)

WHEREAS UNLAWFUL ACTS AGAINST, INTER ALIA, CIVIL AVIATION,
MARITIME NAVIGATION AND OTHER MODES OF TRANSPORTATION OFTEN
INVOLVE THE USE OF EXPLOSIVES AND EXPLOSIVE MATERIALS;

WHEREAS THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF
DETECTION WILL ASSIST STATES IN PREVENTING SUCH ACTS;

AWARE OF THE IMPORTANCE TO ALL STATES OF THE AVAILABILITY OF
SUITABLE DETECTION EQUIPMENT;

CONSCIOUS OF THE DESIRABILITY OF FURTHER WORK IN RELATION TO
THE DETECTION OF EXPLOSIVES OTHER THAN PLASTIC EXPLOSIVES
WHICH MIGHT BE USED FOR UNLAWFUL ACTS;

*

For the purposes of the approval of the draft Resolution,
this MEX doc has been translated into the Arabic language

MEX Doc No. 34

NOTING THE CONTINUING INTEREST OF THE UNITED NATIONS AND IN PARTICULAR OF THE INTERNATIONAL CIVIL AVIATION ORGANISATION AND THE INTERNATIONAL MARITIME ORGANISATION;

THE CONFERENCE

- 1 URGES STATES TO BECOME PARTY TO THE CONVENTION ON THE MARKING OF PLASTIC [AND SHEET] EXPLOSIVES FOR THE PURPOSE OF DETECTION AS SOON AS POSSIBLE;
- 2 CALLS UPON STATES WHO MANUFACTURE PLASTIC EXPLOSIVES TO IMPLEMENT THE MARKING OF SUCH EXPLOSIVES AS SOON AS POSSIBLE, PENDING THE FORMAL ENTRY INTO FORCE OF THE CONVENTION;
- 3 REQUESTS STATES TO CONTINUE TO ENCOURAGE RESEARCH AND DEVELOPMENT INTO IMPROVED AND ECONOMIC EQUIPMENT CAPABLE OF DETECTING ALL THE MARKING AGENTS SPECIFIED IN THE CONVENTION;
- 4 URGES THE INTERNATIONAL COMMUNITY TO CONSIDER INCREASING TECHNICAL, FINANCIAL AND MATERIAL ASSISTANCE TO STATES IN NEED OF SUCH ASSISTANCE IN ORDER TO BE ABLE TO BENEFIT FROM THE ACHIEVEMENT OF THE AIMS AND OBJECTIVES OF THE CONVENTION, IN PARTICULAR THROUGH THE ICAO TECHNICAL ASSISTANCE PROGRAMMES;

5 INVITES THE ICAO COUNCIL:

- TO ASSUME THE FUNCTIONS REFERRED TO IN THE CONVENTION;
- TO MAINTAIN IN EXISTENCE ITS AD HOC GROUP OF SPECIALISTS ON EXPLOSIVES IN ORDER TO ENABLE IT TO CONTINUE STUDIES TO KEEP THE TECHNICAL ANNEX OF THE CONVENTION UP TO DATE, PENDING THE ENTRY INTO FORCE OF THE CONVENTION AND THE FORMATION OF THE EXPLOSIVES TECHNICAL COMMISSION;

6 REQUESTS THE ICAO COUNCIL:

- TO INITIATE, AS A MATTER OF HIGH PRIORITY, STUDIES INTO METHODS OF DETECTING EXPLOSIVES OR EXPLOSIVE MATERIALS, ESPECIALLY INTO THE MARKING OF THOSE EXPLOSIVES OF CONCERN, OTHER THAN PLASTIC EXPLOSIVES, WHOSE DETECTION WOULD BE AIDED BY THE USE OF MARKING AGENTS, WITH A VIEW TO THE EVOLUTION, IF NEEDED, OF AN APPROPRIATE COMPREHENSIVE LEGAL REGIME.

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MEX Doc No. 35*
REVISED
22/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

Texts prepared by the Drafting Committee

DRAFT FINAL CLAUSES

ARTICLE IX

The Annex to this Convention shall form an integral part of this Convention.

ARTICLE X

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

* For the purpose of the approval of the draft Final Clauses, this MEX Doc has been translated into the Arabic language

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REVISED

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

ARTICLE XI

Except as provided in Article X no reservation may be made to this Convention.

ARTICLE XII

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Convention shall be subject to ratification, acceptance or approval by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State.

3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this Article that they are producer States. Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.

5. As soon as this Convention comes into force, it shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

ARTICLE XIII

The Depositary shall promptly notify all signatories and States Parties of:

1. each signature of this Convention and date thereof;
2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;
3. the date of entry into force of this Convention;
4. the date of entry into force of any amendment to this Convention or its Annex;
5. any denunciation made under Article XIV; and
6. any declaration made under paragraph 2 of Article X

ARTICLE XIV

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect six months following the date on which notification is received by the Depositary.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic language.

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MEX Doc No. 36
25/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

TEXT PREPARED BY THE DRAFTING COMMITTEE

DRAFT CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES
FOR THE PURPOSE OF DETECTION

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of acts of terrorism for international security;

EXPRESSING deep concern regarding the increasing trend of terrorist acts aimed at a total destruction of aircraft and other means of transportation;

CONCERNED that plastic explosives can be used with little risk of detection for unlawful acts including, *inter alia*, acts of unlawful interference with civil aviation, maritime navigation and other modes of transportation;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such unlawful acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked;

CONSIDERING United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

BEARING IN MIND Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;

NOTING with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention as well as its willingness to assume functions related to its implementation;

* For the purposes of the approval of the draft Convention, this MEX Doc has been translated into the Arabic language

MEX Doc No. 36

HAVE AGREED AS FOLLOWS:

ARTICLE I

For the purposes of this Convention:

1. "Explosives" mean explosive products, commonly known as "plastic explosives", including explosives in flexible or elastic sheet form, as described in the Annex to this Convention.
2. "Detection agent" means a substance as described in the Annex to this Convention which is introduced into an explosive to render it detectable.
3. "Marking" means introducing into an explosive a detection agent in accordance with the Annex to this Convention.
4. "Manufacture" means any process, including reprocessing, that produces explosives.
5. "Duly authorized military devices" include, but are not restricted to, shells, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.
6. "Producer State" means any State in whose territory explosives are manufactured.

ARTICLE II

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

ARTICLE III

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.
2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article IV.

ARTICLE IV

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article not held by its authorities performing military or police functions are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of this Convention in respect of that State.
3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article held by its authorities performing military or police functions and that are not incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of fifteen years from the entry into force of this Convention in respect of that State.
4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this Article, other than stocks of unmarked explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.

ARTICLE V

1. There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of not less than fifteen nor more than nineteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.
2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.
3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.
4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, and at such places and times as may be directed or approved by the Council.

5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

ARTICLE VI

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Annex to the Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Annex to this Convention.

ARTICLE VII

1. Any State Party may, within ninety days from the date of notification of a proposed amendment to the Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, and taking into account the nature of the amendment and the comments of States, including producer States, may propose the amendment to all States Parties for adoption.

3. If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States not having expressly objected to the proposal.

4. States having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.

5. If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.

6. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may convene a conference of all States Parties.

ARTICLE VIII

1. States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of Article VI.

2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties and international organizations concerned.

ARTICLE IX

The Council of the International Civil Aviation Organization shall, in co-operation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

ARTICLE X

The Annex to this Convention shall form an integral part of this Convention.

ARTICLE XI

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may, at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

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3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

ARTICLE XII

Except as provided in Article XI no reservation may be made to this Convention.

ARTICLE XIII

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accede to it at any time.

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer of explosives.

3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this Article that they are producer States. Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.

5. As soon as this Convention comes into force, it shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

ARTICLE XIV

The Depositary shall promptly notify all signatories and States Parties of:

1. each signature of this Convention and date thereof;
2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;
3. the date of entry into force of this Convention;
4. the date of entry into force of any amendment to this Convention or its Annex;
5. any denunciation made under Article XV; and
6. any declaration made under paragraph 2 of Article XI

ARTICLE XV

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic language.

ANNEX**PART 1:** Description of explosives

- I The explosives referred to in paragraph 1 of Article I of this Convention are those that:
 - a) are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10^{-4} Pa at a temperature of 25°C;
 - b) are formulated with a binder material; and
 - c) are, as a mixture, malleable or flexible at normal room temperature.
- II This Convention shall not apply to explosives in the cases specified below as long as they continue to be held or used for the purposes there specified or remain incorporated as there specified, namely those explosives that:
 - a) are manufactured or held in limited quantities solely for use in duly authorized research, development or testing of new or modified explosives;
 - b) are manufactured or held in limited quantities solely for use in duly authorized training in explosives detection and/or development or testing of explosives detection equipment;
 - c) are manufactured or held in limited quantities solely for duly authorized forensic science purposes; or
 - d) are destined to be and are incorporated as an integral part of duly authorized military devices in the territory of the producer State within three years of the coming into force of this Convention in respect of that State. Such devices produced in this period of three years shall be deemed to be duly authorized military devices within paragraph 4 of Article IV of this Convention.
- III
 - a) Each State Party shall exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph II so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
 - b) Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which no longer fall within the scope of paragraph II a), b) or c) and of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph II d).

IV In this Part:

"duly authorized" in paragraph II a), b) and c) means permitted according to the law and regulations of the State Party concerned; and

"high explosives" include but are not restricted to cyclotetramethylenetetranitramine (HMX) pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX).

PART 2: Detection agents

A detection agent is any one of those substances set out in the following Table. Detection agents described in this Table are intended to be used to enhance the detectability of explosives by vapour detection means. In each case, the introduction of a detection agent into an explosive shall be done in such a manner as to achieve homogenous distribution in the finished product. The minimum concentration of a detection agent in the finished product at the time of manufacture shall be as shown in the said Table.

TABLE

Name of detection agent	Molecular formula	Molecular weight	Minimum concentration
Ethylene glycol dinitrate (EGDN)	$C_2H_4(NO_3)_2$	152	0.2% by mass
2,3-Dimethyl-2,3-dinitrobutane (DMNB)	$C_6H_{12}(NO_2)_2$	176	0.1% by mass
para-Mononitrotoluene (p-MNT)	$C_7H_7NO_2$	137	0.5% by mass
ortho-Mononitrotoluene (o-MNT)	$C_7H_7NO_2$	137	0.5% by mass

Any explosive which, as a result of its normal formulation, contains any of the designated detection agents at or above the required minimum concentration level shall be deemed to be marked.

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25/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

REPORT OF THE CREDENTIALS COMMITTEE

1. At its First Meeting held on 12 February 1991 the Conference established a Credentials Committee and the Delegations of Brazil, Czechoslovakia, Ghana, Lebanon and Sweden were invited to nominate members for this Committee.

2. On 13 February 1991 at 0900 hours there was the First Meeting of the Credentials Committee which was composed as follows:

Dr. I. Jakubovicz (Brazil)
Mr. O. Vodicka (Czechoslovakia)
Group Capt. (Rtd.) J. O. Koranteng (Ghana)
Mr. E. Alam (Lebanon)
Mr. V. M. Brusén (Sweden)

2.1 On the proposal made by the Delegate of Ghana, the Delegate of Brazil was elected Chairman of the Committee.

3. At the Third Meeting of the Plenary of the Conference, the Chairman of the Credentials Committee presented a preliminary report and informed the Conference that as of 13 February 1991 (0900 hours) 67 Delegations had registered for the Conference, and credentials in due and proper form had been submitted by 43 of these Delegations.

4. The Committee recommended to the Conference, in conformity with Rule 3 of the Rules of Procedure, that all the Delegations registered be permitted to participate in the Conference pending receipt of their credentials in due form; the Conference accepted this recommendation.

5. On 25 February 1991 the Credentials Committee met again and examined the credentials issued by the Governments of the following 76 States and found them to be in due and proper form:

Afghanistan, the Republic of
Algeria, the People's Democratic
Republic of
Argentine Republic, the
Australia
Austria, the Republic of
Belgium, the Kingdom of
Bolivia, the Republic of
Brazil, the Federative Republic of
Bulgaria, the People's Republic of
Byelorussian Soviet Socialist
Republic, the
Canada

Cape Verde, the Republic of
Chile, the Republic of
China, the People's Republic of
Colombia, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of
Cuba, the Republic of
Czech and Slovak Federal Republic, the
Denmark, the Kingdom of
Ecuador, the Republic of
Egypt, the Arab Republic of
Ethiopia, the People's Democratic
Republic of

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Finland, the Republic of
French Republic, the
Gabonese Republic, the
Germany, the Federal Republic of
Ghana, the Republic of
Guinea, the Republic of
Guinea-Bissau, the Republic of
Hellenic Republic, the
Holy See, the
Honduras, the Republic of
India, the Republic of
Indonesia, the Republic of
Iran, the Islamic Republic of
Israel, the State of
Italian Republic, the
Jamaica
Japan
Kenya, the Republic of
Kuwait, the State of
Lebanese Republic, the
Madagascar, the Democratic Republic of
Mali, the Republic of
Mauritius
Mexican States, the United
Morocco, the Kingdom of
Netherlands, the Kingdom of the
Nigeria, the Federal Republic of
Norway, the Kingdom of

Pakistan, the Islamic Republic of
Paraguay, the Republic of
Peru, the Republic of
Poland, the Republic of
Republic of Korea, the
Romania
Saudi Arabia, the Kingdom of
Senegal, the Republic of
Spain, the Kingdom of
Sweden, the Kingdom of
Swiss Confederation, the
Thailand, the Kingdom of
Togolese Republic, the
Trinidad and Tobago, the Republic of
Tunisia, the Republic of
Turkey, the Republic of
Uganda, the Republic of
Ukrainian Soviet Socialist
Republic, the
Union of Soviet Socialist Republics, the
United Arab Emirates, the
United Kingdom of Great Britain and
Northern Ireland, the
United Republic of Tanzania, the
United States of America, the
Venezuela, the Republic of
Zambia, the Republic of

5.1 Three additional Delegations have not submitted credentials at this time.

5.2 Furthermore, the following five Observer Delegations have registered and presented proper evidence of accreditation to the Conference:

United Nations (UN)
International Maritime Organization (IMO)
International Air Transport Association (IATA)
International Federation of Air Line Pilots' Associations (IFALPA)
Latin American Civil Aviation Commission (LACAC)



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INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

PROPOSAL BY JAPAN

ARTICLE XVI

Any proposed amendment to this Convention shall be approved by a two-third vote of the States Parties at an international conference. Such amendment shall enter into force in respect of States which have ratified, accepted, approved or acceded to the amendment when two-thirds of the States Parties, including five or more producer States, have deposited their instruments of ratification, acceptance, approval or accession, unless by the same majority the Conference decides to apply a different rule.

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MEX Doc No. 39*
26/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

FINAL ACT

**of the International Conference on Air Law
held under the auspices of the
International Civil Aviation Organization in February-March 1991**

The Plenipotentiaries at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization met at Montreal from 12 February - 1 March 1991 for the purpose of considering a draft Convention on the Marking of Plastic Explosives for the Purpose of Detection prepared by the Legal Committee of the International Civil Aviation Organization.

The Governments of the following 78 States were represented at the Conference:

Afghanistan, the Republic of
Algeria, the People's Democratic Republic of
Argentine Republic, the
Australia
Austria, the Republic of
Belgium, the Kingdom of
Belize
Bolivia, the Republic of
Brazil, the Federative Republic of
Bulgaria, the People's Republic of
Byelorussian Soviet Socialist
Republic, the
Canada
Cape Verde, the Republic of
Chile, the Republic of
China, the People's Republic of
Colombia, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of
Cuba, the Republic of

* For the purposes of the approval of this Final Act, this MEX Doc has been translated into the Arabic language

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Czech and Slovak Federal Republic, the
Denmark, the Kingdom of
Ecuador, the Republic of
Egypt, the Arab Republic of
Ethiopia, the People's Democratic Republic of
Finland, the Republic of
French Republic, the
Gabonese Republic, the
Germany, the Federal Republic of
Ghana, the Republic of
Guinea, the Republic of
Guinea-Bissau, the Republic of
Hellenic Republic, the
Holy See, the
Honduras, the Republic of
India, the Republic of
Indonesia, the Republic of
Iran, the Islamic Republic of
Israel, the State of
Italian Republic, the
Jamaica
Japan
Kenya, the Republic of
Kuwait, the State of
Lebanese Republic, the
Madagascar, the Democratic Republic of
Mali, the Republic of
Mauritius
Mexican States, the United
Morocco, the Kingdom of
Netherlands, the Kingdom of the
Nigeria, the Federal Republic of
Norway, the Kingdom of
Pakistan, the Islamic Republic of
Paraguay, the Republic of
Peru, the Republic of
Poland, the Republic of
Republic of Korea, the
Romania
Saudi Arabia, the Kingdom of
Senegal, the Republic of
Spain, the Kingdom of
Sweden, the Kingdom of
Swiss Confederation, the
Thailand, the Kingdom of
Togolese Republic, the
Trinidad and Tobago, the Republic of
Tunisia, the Republic of
Turkey, the Republic of

Uganda, the Republic of
Ukrainian Soviet Socialist Republic, the
Union of Soviet Socialist Republics, the
United Arab Emirates, the
United Kingdom of Great Britain and
Northern Ireland, the
United Republic of Tanzania, the
United States of America, the
Venezuela, the Republic of
Zaire, the Republic of
Zambia, the Republic of

The following International Organizations were represented by
Observers:

United Nations
International Maritime Organization (IMO)
International Air Transport Association (IATA)
International Federation of Air Line
Pilots' Associations (IFALPA)
African Civil Aviation Commission (AFCAC)
Latin American Civil Aviation Commission (LACAC)

The Conference was opened by the President of the Council of the International Civil Aviation Organization, Dr. Assad Kotaite. The Secretary-General of the United Nations, Mr. Javier Pérez de Cuéllar, addressed the opening meeting of the Conference.

The Conference unanimously elected as President Dr. K.O. Rattray (Jamaica). It further unanimously elected as Vice-Presidents Dr. F.A. Cede (Austria), Dr. H.A. Perucchi (Argentina), Mr. M. Mukai (Japan), and Mr. V. Poonoosamy (Mauritius).

The Secretary General of the Conference was Dr. S.S. Sidhu, Secretary General of the International Civil Aviation Organization. Dr. M. Milde, Director of the Legal Bureau of the International Civil Aviation Organization, was the Executive Secretary of the Conference; he was assisted by Dr. M. Pourcelet, Principal Legal Officer, Mr. R.D. van Dam, Senior Legal Officer, Mr. G.M. Kakkar and Mr. J.V. Augustin, Legal Officers of the Organization and by other officials of the Organization.

The Conference established a Commission of the Whole, whose Chairman was the President of the Conference, and the following Committees:

CREDENTIALS COMMITTEE

Chairman: Dr. I. Jakubovicz (Brazil)

Members: Czechoslovakia
Ghana
Lebanon
Sweden

DRAFTING COMMITTEE

Chairman: Mr. V. Poonoosamy (Mauritius)

Members: Argentina
Canada
China
Côte d'Ivoire
Czechoslovakia
Egypt
France
Islamic Republic of Iran
Japan
Pakistan
Saudi Arabia
Union of Soviet Socialist Republics
United Kingdom
United States
Venezuela

Following its deliberations, the Conference adopted [by consensus] the text of a Convention on the Marking of Plastic Explosives for the Purpose of Detection. The said Convention has been opened for signature at Montreal on this day.

The Conference furthermore adopted by consensus the following Resolution:

WHEREAS unlawful acts against, inter alia, civil aviation, maritime navigation and other modes of transportation often involve the use of explosives and explosive materials;

WHEREAS the marking of plastic explosives for the purpose of detection will assist States in preventing such acts;

NOTING the importance to all States of the availability of suitable means of detection;

RECOGNIZING that the implementation of such means could give rise to difficulties for some States;

CONSCIOUS of the desirability of further work in relation to the detection of explosives other than plastic explosives which might be used for unlawful acts;

NOTING the continuing interest of the United Nations and in particular of the International Civil Aviation Organization and the International Maritime Organization;

THE CONFERENCE:

1. Urges States to become Party to the Convention on the Marking of Plastic Explosives for the Purpose of Detection as soon as possible;
2. Calls upon States which manufacture plastic explosives to implement the marking of such explosives as soon as possible;
3. Requests States to continue to encourage research and development into improved and economic means of detecting all the marking agents specified in the Convention;
4. Urges the international community to consider increasing technical, financial and material assistance to States in need of such assistance in order to be able to benefit from the achievement of the aims and objectives of the Convention, in particular through the technical assistance programmes of the International Civil Aviation Organization;
5. Invites the Council of the International Civil Aviation Organization:
 - a) to assume the functions referred to in the Convention;
 - b) to maintain in existence its Ad Hoc Group of Specialists on the Detection of Explosives in order to enable it to continue studies to keep the Annex to the Convention up to date, pending the entry into force of the Convention and the formation of the International Explosives Technical Commission;
 - c) to respect the principle of equitable geographical representation in the appointment of the members of the International Explosives Technical Commission;

6. Requests the Council of the International Civil Aviation Organization to initiate, as a matter of high priority, studies into methods of detecting explosives or explosive materials, especially into the marking of those explosives of concern, other than plastic explosives, whose detection would be aided by the use of marking agents, with a view to the evolution, if needed, of an appropriate comprehensive legal regime.

IN WITNESS WHEREOF the Delegates of States duly authorized thereto have signed this Final Act.

DONE at Montreal on the first day of March of the year One Thousand Nine Hundred and Ninety-one in five authentic texts in the English, French, Russian, Spanish and Arabic languages in a single copy which shall be deposited with the International Civil Aviation Organization and a certified copy of which shall be delivered by the said Organization to each of the Governments represented at the Conference.



MEX Doc No. 40*
27/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

TEXT ADOPTED BY THE COMMISSION OF THE WHOLE

CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES
FOR THE PURPOSE OF DETECTION

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of acts of terrorism for international security;

EXPRESSING deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets;

CONCERNED that plastic explosives have been used for such terrorist acts;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such unlawful acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked;

CONSIDERING United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

BEARING IN MIND Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;

* For the purposes of the approval of this Convention, this MEX Doc has been translated into the Arabic language

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NOTING with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention as well as its willingness to assume functions related to its implementation;

HAVE AGREED AS FOLLOWS:

ARTICLE I

For the purposes of this Convention:

1. "Explosives" mean explosive products, commonly known as "plastic explosives", including explosives in flexible or elastic sheet form, as described in the Annex to this Convention.
2. "Detection agent" means a substance as described in the Annex to this Convention which is introduced into an explosive to render it detectable.
3. "Marking" means introducing into an explosive a detection agent in accordance with the Annex to this Convention.
4. "Manufacture" means any process, including reprocessing, that produces explosives.
5. "Duly authorized military devices" include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.
6. "Producer State" means any State in whose territory explosives are manufactured.

ARTICLE II

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

ARTICLE III

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.
2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article IV.

ARTICLE IV

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article not held by its authorities performing military or police functions are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of this Convention in respect of that State.

3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article held by its authorities performing military or police functions and that are not incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of fifteen years from the entry into force of this Convention in respect of that State.

4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this Article, other than stocks of unmarked explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.

ARTICLE V

1. There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of not less than fifteen nor more than nineteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, or at such places and times as may be directed or approved by the Council.

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5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

ARTICLE VI

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Annex to this Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Annex to this Convention.

ARTICLE VII

1. Any State Party may, within ninety days from the date of notification of a proposed amendment to the Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, and taking into account the nature of the amendment and the comments of States Parties, including producer States, may propose the amendment to all States Parties for adoption.

3. If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States Parties not having expressly objected thereto.

4. States Parties having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.

5. If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.

6. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may also convene a conference of all States Parties.

ARTICLE VIII

1. States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of Article VI.

2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties and international organizations concerned.

ARTICLE IX

The Council shall, in co-operation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

ARTICLE X

The Annex to this Convention shall form an integral part of this Convention.

ARTICLE XI

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

ARTICLE XII

Except as provided in Article XI no reservation may be made to this Convention.

ARTICLE XIII

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accede to it at any time.

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State.

3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this Article that they are producer States. Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.

5. As soon as this Convention comes into force, it shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

ARTICLE XIV

The Depositary shall promptly notify all signatories and States Parties of:

1. each signature of this Convention and date thereof;
2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;
3. the date of entry into force of this Convention;

4. the date of entry into force of any amendment to this Convention or its Annex;
5. any denunciation made under Article XV; and
6. any declaration made under paragraph 2 of Article XI

ARTICLE XV

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic languages.

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MEX Doc No. 41*
27/2/91

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 12 February - 1 March 1991)

TEXT FOR FINAL APPROVAL

CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES
FOR THE PURPOSE OF DETECTION

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of acts of terrorism for international security;

EXPRESSING deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets;

CONCERNED that plastic explosives have been used for such terrorist acts;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such unlawful acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked;

CONSIDERING United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

BEARING IN MIND Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;

* For the purposes of the approval of this Convention, this MEX Doc has been translated into the Arabic language

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NOTING with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention as well as its willingness to assume functions related to its implementation;

HAVE AGREED AS FOLLOWS:

ARTICLE I

For the purposes of this Convention:

1. "Explosives" mean explosive products, commonly known as "plastic explosives", including explosives in flexible or elastic sheet form, as described in the Technical Annex to this Convention.
2. "Detection agent" means a substance as described in the Technical Annex to this Convention which is introduced into an explosive to render it detectable.
3. "Marking" means introducing into an explosive a detection agent in accordance with the Technical Annex to this Convention.
4. "Manufacture" means any process, including reprocessing, that produces explosives.
5. "Duly authorized military devices" include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.
6. "Producer State" means any State in whose territory explosives are manufactured.

ARTICLE II

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

ARTICLE III

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.
2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article IV.

ARTICLE IV

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article not held by its authorities performing military or police functions are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of this Convention in respect of that State.
3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article held by its authorities performing military or police functions and that are not incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of fifteen years from the entry into force of this Convention in respect of that State.
4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this Article, other than stocks of unmarked explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.
5. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph II of Part 1 of the Technical Annex to this Convention so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
6. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph II d) of Part 1 of the Technical Annex to this Convention and of unmarked explosives which no longer fall within the scope of any other sub-paragraphs of the said paragraph II.

ARTICLE V

1. There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of not less than fifteen nor more than nineteen members appointed by the Council

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of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, or at such places and times as may be directed or approved by the Council.

5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

ARTICLE VI

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Technical Annex to this Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Technical Annex to this Convention.

ARTICLE VII

1. Any State Party may, within ninety days from the date of notification of a proposed amendment to the Technical Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, and taking into account the nature of the amendment and the comments of States Parties, including producer States, may propose the amendment to all States Parties for adoption.

3. If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States Parties not having expressly objected thereto.

4. States Parties having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.

5. If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.

6. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may also convene a conference of all States Parties.

ARTICLE VIII

1. States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of Article VI.

2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties and international organizations concerned.

ARTICLE IX

The Council shall, in co-operation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

ARTICLE X

The Technical Annex to this Convention shall form an integral part of this Convention.

ARTICLE XI

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable

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to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

ARTICLE XII

Except as provided in Article XI no reservation may be made to this Convention.

ARTICLE XIII

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accede to it at any time.

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State.

3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this Article that they are producer States. Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.

5. As soon as this Convention comes into force, it shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations and

pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

ARTICLE XIV

The Depositary shall promptly notify all signatories and States Parties of:

1. each signature of this Convention and date thereof;
2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;
3. the date of entry into force of this Convention;
4. the date of entry into force of any amendment to this Convention or its Technical Annex;
5. any denunciation made under Article XV; and
6. any declaration made under paragraph 2 of Article XI.

ARTICLE XV

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic languages.

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Technical Annex

PART 1: Description of explosives

I The explosives referred to in paragraph 1 of Article I of this Convention are those that:

- a) are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10^{-4} Pa at a temperature of 25°C;
- b) are formulated with a binder material; and
- c) are, as a mixture, malleable or flexible at normal room temperature.

II The following explosives, even though meeting the description of explosives in paragraph I of this Part, shall not be considered to be explosives as long as they continue to be held or used for the purposes specified below or remain incorporated as there specified, namely those explosives that:

- a) are manufactured, or held, in limited quantities solely for use in duly authorized research, development or testing of new or modified explosives;
- b) are manufactured, or held, in limited quantities solely for use in duly authorized training in explosives detection and/or development or testing of explosives detection equipment;
- c) are manufactured, or held, in limited quantities solely for duly authorized forensic science purposes; or
- d) are destined to be and are incorporated as an integral part of duly authorized military devices in the territory of the producer State within three years after the coming into force of this Convention in respect of that State. Such devices produced in this period of three years shall be deemed to be duly authorized military devices within paragraph 4 of Article IV of this Convention.

III In this Part:

"duly authorized" in paragraph II a), b) and c) means permitted according to the laws and regulations of the State Party concerned; and

"high explosives" include but are not restricted to cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX).

PART 2: Detection agents

A detection agent is any one of those substances set out in the following Table. Detection agents described in this Table are intended to be used to enhance the detectability of explosives by vapour detection means. In each case, the introduction of a detection agent into an explosive shall be done in such a manner as to achieve homogeneous distribution in the finished product. The minimum concentration of a detection agent in the finished product at the time of manufacture shall be as shown in the said Table.

TABLE			
Name of detection agent	Molecular formula	Molecular weight	Minimum concentration
Ethylene glycol dinitrate (EGDN)	$C_2H_4(NO_3)_2$	152	0.2% by mass
2,3-Dimethyl-2,3-dinitrobutane (DMNB)	$C_6H_{12}(NO_2)_2$	176	0.1% by mass
para-Mononitrotoluene (p-MNT)	$C_7H_7NO_2$	137	0.5% by mass
ortho-Mononitrotoluene (o-MNT)	$C_7H_7NO_2$	137	0.5% by mass

Any explosive which, as a result of its normal formulation, contains any of the designated detection agents at or above the required minimum concentration level shall be deemed to be marked.

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PART III

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CONVENTION

on the Marking of Plastic Explosives for the Purpose of Detection,
Done at Montreal on 1 March 1991

CONVENTION

sur le marquage des explosifs plastiques et en feuilles aux fins de détection
faite à Montréal le 1^{er} mars 1991

КОНВЕНЦИЯ

о маркировке пластических взрывчатых веществ в целях их обнаружения,
совершенная в Монреале 1 марта 1991 года

CONVENIO

sobre la marcación de explosivos plásticos para los fines de detección
hecho en Montreal el 1^o de marzo de 1991

اتفاقية

بشأن تمييز المتفجرات البلاستيكية بغرض كشفها

حررت في مونتريال في ١ مارس ١٩٩١



1991

INTERNATIONAL CIVIL AVIATION ORGANIZATION
ORGANISATION DE L'AVIATION CIVILE INTERNATIONALE
МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ГРАЖДАНСКОЙ АВИАЦИИ
ORGANIZACIÓN DE AVIACIÓN CIVIL INTERNACIONAL
منظمة الطيران المدني الدولي

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CONVENTION

on the Marking of Plastic Explosives for the Purpose of Detection

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of acts of terrorism for international security;

EXPRESSING deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets;

CONCERNED that plastic explosives have been used for such terrorist acts;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such unlawful acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked;

CONSIDERING United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

BEARING IN MIND Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;

NOTING with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention as well as its willingness to assume functions related to its implementation;

HAVE AGREED AS FOLLOWS:

Article I

For the purposes of this Convention:

1. "Explosives" mean explosive products, commonly known as "plastic explosives", including explosives in flexible or elastic sheet form, as described in the Technical Annex to this Convention.
2. "Detection agent" means a substance as described in the Technical Annex to this Convention which is introduced into an explosive to render it detectable.

3. "Marking" means introducing into an explosive a detection agent in accordance with the Technical Annex to this Convention.
4. "Manufacture" means any process, including reprocessing, that produces explosives.
5. "Duly authorized military devices" include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.
6. "Producer State" means any State in whose territory explosives are manufactured.

Article II

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

Article III

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.

2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article IV.

Article IV

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article not held by its authorities performing military or police functions are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of this Convention in respect of that State.

3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article held by its authorities performing military or police functions and that are not incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of fifteen years from the entry into force of this Convention in respect of that State.

4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this Article, other than stocks of unmarked

explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.

5. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph II of Part 1 of the Technical Annex to this Convention so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

6. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph II d) of Part 1 of the Technical Annex to this Convention and of unmarked explosives which no longer fall within the scope of any other sub-paragraphs of the said paragraph II.

Article V

1. There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of not less than fifteen nor more than nineteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, or at such places and times as may be directed or approved by the Council.

5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

Article VI

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Technical Annex to this Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Technical Annex to this Convention.

Article VII

1. Any State Party may, within ninety days from the date of notification of a proposed amendment to the Technical Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, and taking into account the nature of the amendment and the comments of States Parties, including producer States, may propose the amendment to all States Parties for adoption.

3. If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States Parties not having expressly objected thereto.

4. States Parties having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.

5. If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.

6. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may also convene a conference of all States Parties.

Article VIII

1. States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of Article VI.

2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties and international organizations concerned.

Article IX

The Council shall, in co-operation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

Article X

The Technical Annex to this Convention shall form an integral part of this Convention.

Article XI

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article XII

Except as provided in Article XI no reservation may be made to this Convention.

Article XIII

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accede to it at any time.

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State.

3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this Article that they are producer States. Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.

5. As soon as this Convention comes into force, it shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article XIV

The Depositary shall promptly notify all signatories and States Parties of:

1. each signature of this Convention and date thereof;
2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;
3. the date of entry into force of this Convention;
4. the date of entry into force of any amendment to this Convention or its Technical Annex;
5. any denunciation made under Article XV; and
6. any declaration made under paragraph 2 of Article XI.

Article XV

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic languages.

TECHNICAL ANNEX

PART 1: DESCRIPTION OF EXPLOSIVES

I. The explosives referred to in paragraph 1 of Article I of this Convention are those that:

- a) are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10^{-4} Pa at a temperature of 25°C;
- b) are formulated with a binder material; and
- c) are, as a mixture, malleable or flexible at normal room temperature.

II. The following explosives, even though meeting the description of explosives in paragraph I of this Part, shall not be considered to be explosives as long as they continue to be held or used for the purposes specified below or remain incorporated as there specified, namely those explosives that:

- a) are manufactured, or held, in limited quantities solely for use in duly authorized research, development or testing of new or modified explosives;
- b) are manufactured, or held, in limited quantities solely for use in duly authorized training in explosives detection and/or development or testing of explosives detection equipment;
- c) are manufactured, or held, in limited quantities solely for duly authorized forensic science purposes; or
- d) are destined to be and are incorporated as an integral part of duly authorized military devices in the territory of the producer State within three years after the coming into force of this Convention in respect of that State. Such devices produced in this period of three years shall be deemed to be duly authorized military devices within paragraph 4 of Article IV of this Convention.

III. In this Part:

“duly authorized” in paragraph II a), b) and c) means permitted according to the laws and regulations of the State Party concerned; and

“high explosives” include but are not restricted to cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX).

PART 2: DETECTION AGENTS

A detection agent is any one of those substances set out in the following Table. Detection agents described in this Table are intended to be used to enhance the detectability of explosives by vapour detection means. In each case, the introduction of a detection agent into an explosive shall be done in such a manner as to achieve homogeneous distribution in the finished product. The minimum concentration of a detection agent in the finished product at the time of manufacture shall be as shown in the said Table.

Table

Name of detection agent	Molecular formula	Molecular weight	Minimum concentration
Ethylene glycol dinitrate (EGDN)	$C_2H_4(NO_3)_2$	152	0.2% by mass
2,3-Dimethyl-2,3-dinitrobutane (DMNB)	$C_6H_{12}(NO_2)_2$	176	0.1% by mass
para-Mononitrotoluene (p-MNT)	$C_7H_7NO_2$	137	0.5% by mass
ortho-Mononitrotoluene (o-MNT)	$C_7H_7NO_2$	137	0.5% by mass

Any explosive which, as a result of its normal formulation, contains any of the designated detection agents at or above the required minimum concentration level shall be deemed to be marked.

PART IV

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FINAL ACT

of the International Conference on Air Law
held under the auspices of the
International Civil Aviation Organization in February-March 1991

ACTE FINAL

de la Conférence internationale de droit aérien
tenue sous les auspices de
l'Organisation de l'aviation civile internationale en février - mars 1991

ЗАКЛЮЧИТЕЛЬНЫЙ АКТ

Международной конференции по воздушному праву,
проводившейся под эгидой
Международной организации гражданской авиации в феврале-марте 1991 года

ACTA FINAL

de la Conferencia Internacional de Derecho Aéreo
celebrada en los meses de febrero-marzo de 1991
bajo el patrocinio de la Organización de Aviación Civil Internacional

البيان الختامي

للمؤتمر الدولي لقانون الجو
المعقود تحت رعاية

منظمة الطيران المدني الدولي في فبراير - مارس ١٩٩١



1991

INTERNATIONAL CIVIL AVIATION ORGANIZATION
ORGANISATION DE L'AVIATION CIVILE INTERNATIONALE
МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ГРАЖДАНСКОЙ АВИАЦИИ
ORGANIZACIÓN DE AVIACIÓN CIVIL INTERNACIONAL
منظمة الطيران المدني الدولي

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Legal Bureau
Direction des Affaires juridiques
Юридическое управление
Dirección de Asuntos Jurídicos
الإدارة القانونية
يكاو OACI ИКАО

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FINAL ACT

**of the International Conference on Air Law
held under the auspices of the
International Civil Aviation Organization in February-March 1991**

The Plenipotentiaries at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization met at Montreal from 12 February to 1 March 1991 for the purpose of considering a draft Convention on the Marking of Plastic Explosives for the Purpose of Detection prepared by the Legal Committee of the International Civil Aviation Organization.

The Governments of the following 79 States were represented at the Conference:

Afghanistan, the Republic of
Algeria, the People's Democratic Republic of
Argentine Republic, the
Australia
Austria, the Republic of
Belgium, the Kingdom of
Belize
Bolivia, the Republic of
Brazil, the Federative Republic of
Bulgaria, the People's Republic of
Byelorussian Soviet Socialist Republic, the
Canada
Cape Verde, the Republic of
Chile, the Republic of
China, the People's Republic of
Colombia, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of
Cuba, the Republic of
Czech and Slovak Federal Republic, the
Denmark, the Kingdom of
Ecuador, the Republic of
Egypt, the Arab Republic of
Ethiopia, the People's Democratic Republic of
Finland, the Republic of
French Republic, the
Gabonese Republic, the
Germany, the Federal Republic of
Ghana, the Republic of
Guinea, the Republic of
Guinea-Bissau, the Republic of
Hellenic Republic, the
Holy See, the
Honduras, the Republic of
India, the Republic of
Indonesia, the Republic of

Iran, the Islamic Republic of
Israel, the State of
Italian Republic, the
Jamaica
Japan
Kenya, the Republic of
Kuwait, the State of
Lebanese Republic, the
Madagascar, the Democratic Republic of
Mali, the Republic of
Mauritius
Mexican States, the United
Morocco, the Kingdom of
Netherlands, the Kingdom of the
Nigeria, the Federal Republic of
Norway, the Kingdom of
Pakistan, the Islamic Republic of
Paraguay, the Republic of
Peru, the Republic of
Poland, the Republic of
Qatar, the State of
Republic of Korea, the
Romania
Saudi Arabia, the Kingdom of
Senegal, the Republic of
Spain, the Kingdom of
Sweden, the Kingdom of
Swiss Confederation, the
Thailand, the Kingdom of
Togolese Republic, the
Trinidad and Tobago, the Republic of
Tunisia, the Republic of
Turkey, the Republic of
Uganda, the Republic of
Ukrainian Soviet Socialist Republic, the
Union of Soviet Socialist Republics, the
United Arab Emirates, the
United Kingdom of Great Britain and Northern Ireland, the
United Republic of Tanzania, the
United States of America, the
Venezuela, the Republic of
Zaire, the Republic of
Zambia, the Republic of

The following International Organizations were represented by Observers:

United Nations (UN)
International Maritime Organization (IMO)
International Air Transport Association (IATA)
International Federation of Air Line Pilots' Associations (IFALPA)
African Civil Aviation Commission (AFCAC)
Latin American Civil Aviation Commission (LACAC)

The Conference was opened and addressed by the Secretary-General of the United Nations, Mr. Javier Pérez de Cuéllar, and the President of the Council of the International Civil Aviation Organization, Dr. Assad Kotaite.

The Conference unanimously elected as President Dr. K.O. Rattray (Jamaica). It further unanimously elected as Vice-Presidents Dr. F.A. Cede (Austria), Dr. H.A. Perucchi (Argentina), Mr. M. Mukai (Japan), and Mr. V. Poonoosamy (Mauritius).

The Secretary General of the Conference was Dr. S.S. Sidhu, Secretary General of the International Civil Aviation Organization. Dr. M. Milde, Director of the Legal Bureau of the International Civil Aviation Organization, was the Executive Secretary of the Conference; he was assisted by Dr. M. Pourcelet, Principal Legal Officer, Mr. R.D. van Dam, Senior Legal Officer, Mr. G.M. Kakkar and Mr. J.V. Augustin, Legal Officers of the Organization and by other officials of the Organization.

The Conference established a Commission of the Whole, whose Chairman was the President of the Conference, and the following Committees:

CREDENTIALS COMMITTEE

Chairman: Dr. I. Jakubovicz (Brazil)

Members: Czechoslovakia
Ghana
Lebanon
Sweden

DRAFTING COMMITTEE

Chairman: Mr. V. Poonoosamy (Mauritius)

Members: Argentina
Canada
China
Côte d'Ivoire
Czechoslovakia
Egypt
France
Islamic Republic of Iran
Japan
Pakistan
Saudi Arabia
Union of Soviet Socialist Republics
United Kingdom
United States
Venezuela

Following its deliberations, the Conference adopted by consensus the text of a Convention on the Marking of Plastic Explosives for the Purpose of Detection. The said Convention has been opened for signature at Montreal on this day.

The Conference furthermore adopted by consensus the following Resolution:

WHEREAS unlawful acts against, *inter alia*, civil aviation, maritime navigation and other modes of transportation often involve the use of explosives and explosive materials;

WHEREAS the marking of plastic explosives for the purpose of detection will assist States in preventing such acts;

NOTING the importance to all States of the availability of suitable means of detection;

RECOGNIZING that the implementation of such means could give rise to difficulties for some States;

CONSCIOUS of the desirability of further work in relation to the detection of explosives other than plastic explosives which might be used for unlawful acts;

NOTING the continuing interest of the United Nations and in particular of the International Civil Aviation Organization and the International Maritime Organization;

THE CONFERENCE:

1. Urges States to become Party to the Convention on the Marking of Plastic Explosives for the Purpose of Detection as soon as possible.
2. Calls upon States which manufacture plastic explosives to implement the marking of such explosives as soon as possible.
3. Requests States to continue to encourage research and development into improved and economic means of detecting all the marking agents specified in the Convention.
4. Urges the international community to consider increasing technical, financial and material assistance to States in need of such assistance in order to be able to benefit from the achievement of the aims and objectives of the Convention, in particular through the technical assistance programmes of the International Civil Aviation Organization.
5. Invites the Council of the International Civil Aviation Organization:
 - a) to assume the functions referred to in the Convention;
 - b) to maintain in existence its Ad Hoc Group of Specialists on the Detection of Explosives in order to enable it to continue studies to keep the Technical Annex to the Convention up to date, pending the entry into force of the Convention and the formation of the International Explosives Technical Commission;
 - c) to respect the principle of equitable geographical representation in the appointment of the members of the International Explosives Technical Commission.
6. Requests the Council of the International Civil Aviation Organization to initiate, as a matter of high priority, studies into methods of detecting explosives or explosive materials, especially into the marking of those explosives of concern, other than plastic explosives, whose detection would be aided by the use of marking agents, with a view to the evolution, if needed, of an appropriate comprehensive legal regime.

IN WITNESS WHEREOF the Delegates of States duly authorized thereto have signed this Final Act.

DONE at Montreal on the first day of March of the year One Thousand Nine Hundred and Ninety-one in five authentic texts in the English, French, Russian, Spanish and Arabic languages in a single copy which shall be deposited with the International Civil Aviation Organization and a certified copy of which shall be delivered by the said Organization to each of the Governments represented at the Conference.

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