

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

VOLUME I

MINUTES

2002

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PART I

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INTRODUCTION

The International Conference on Air Law which met in Montreal from 12 February to 1 March 1991 was held under the auspices of the International Civil Aviation Organization. Previous International Conferences on Air Law were held, *inter alia*, at Rome (1952), The Hague (1955), Guadalajara (1961), Tokyo (1963), The Hague (1970), Guatemala City (1971), Montreal (1971), Rome (1973), Montreal (1975), Montreal (1978), and Montreal (1988).

The Conference was convened for the purpose of considering, with a view to approval, the texts of the *Draft Convention on the Marking of Plastic [and Sheet] Explosives for the Purpose of Detection* as prepared by the 27th Session of the Legal Committee and the Ad Hoc Group of Specialists on the Detection of Explosives.

HISTORY

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, Appendix 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. This priority was confirmed during the 27th Session of the Assembly (September - October 1989), by Resolution A27-8 which 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". This initiative was endorsed by the United Nations General Assembly Resolution 44/29 of 4 December 1989.

The subject was studied by a Rapporteur appointed by the Chairman of the Legal Committee and by a special Sub-Committee of the Legal Committee which met at Montreal from 9 to 19 January 1990. After a thorough discussion, the Legal Committee at its 27th Session prepared the text of the *Draft Convention on the Marking of Plastic [and Sheet] Explosives for the Purpose of Detection*. As the Legal Committee had not completed the preparation of the draft technical Annex of the draft Convention, the Ad Hoc Group of Specialists on the Detection of Explosives had been convened from 18 to 22 June, and 26 to 30 November 1990 for this purpose.

ACTION BY THE ICAO COUNCIL

Having reviewed the report of the Legal Committee and the Ad Hoc Group of Specialists on the Detection of Explosives held from 18 to 22 June 1990, the Council agreed on 4 July 1990 to convene in Montreal an International Conference on Air Law from 12 February to 1 March 1991, for the purpose of consideration and adoption of the *Draft Convention on the Marking of Plastic [and Sheet] Explosives for the Purpose of Detection*, with the proviso that these dates were subject to confirmation in the light of further technical research and experiments. The Council confirmed on 7 December 1990 the dates of the International Conference, in light of the progress made during the Ad Hoc Group of Specialists on the Detection of Explosives held from 26 to 30 November 1990.

DOCUMENTATION

Volume I of this document contains the Minutes of the Plenary Meetings of the Conference and of the Commission of the Whole.

Volume II contains Preparatory Material and the Documentation of the Conference.

THE CONVENTION, THE FINAL ACT AND THE RESOLUTION

Following its deliberations, the Conference adopted the text of the *Convention on the Marking of Plastic Explosives for the Purpose of Detection*. The Convention, which is set out in Part III of Volume II of this publication, was signed on 1 March 1991 by the following 40 States:

Afghanistan, the Islamic State of	Hellenic Republic, the
Argentine Republic, the	Israel, the State of
Belgium, the Kingdom of	Kuwait, the State of
Belize	Lebanese Republic, the
Bolivia, the Republic of	Madagascar, the Republic of
Brazil, the Federative Republic of	Mali, the Republic of
Byelorussian Socialist Republic	Mauritius, the Republic of
Canada	Mexican States, the United
Chile, the Republic of	Norway, the Kingdom of
Costa Rica, the Republic of	Pakistan, the Islamic Republic of
Côte d'Ivoire, the Republic of	Peru, the Republic of
Czech Republic, the(Czechoslovakia)	Republic of Korea, the
Denmark, the Kingdom of	Senegal, the Republic of
Ecuador, the Republic of	Switzerland
Egypt, the Arab Republic of	Togolese Republic, the
French Republic, the	Ukrainian Soviet Socialist Republic
Gabonese Republic, the	Union of Soviet Socialist Republics
Germany, the Federal Republic of	United Kingdom of Great Britain and Northern
Ghana, the Republic of	Ireland, the
Guinea, the Republic of	United States of America, the
Guinea-Bissau, the Republic of	

The Final Act of the Conference which is set out in part IV of Volume II of this publication, was signed on 1 March 1991 at Montreal by 76 States.

The Conference also adopted by consensus a Resolution which is set out in the Final Act.

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PART II

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LIST OF DELEGATES

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A. K. Amani

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DEMOCRATIC REPUBLIC OF**
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BELGIUM, THE KINGDOM OF
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M. H. Pradi Hoffmann
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INTERNATIONAL CONFERENCE ON AIR LAW

FIRST PLENARY MEETING

(Tuesday, 12 February 1991, at 1145 hours)

Acting President: Dr. A. Kotaite, President of the ICAO Council

AGENDA ITEM NO. 1: OPENING OF THE CONFERENCE

1. The President of the Council of ICAO, on behalf of the Council and the Secretary General, as well as on his own behalf, welcomed to ICAO's Montreal Headquarters, for the opening of this important International Conference on Air Law relating to the marking of plastic explosives for the purpose of detection, Mr. Javier Pérez de Cuéllar, the Secretary-General of the United Nations, Ministers of the Governments of Canada and of the Province of Quebec, the Mayor of Montreal, and the distinguished Delegates and Observers. This was the fourteenth in a series of conferences dedicated to the establishment of multilateral treaties or other instruments of international law. The Organization had been successful in the sphere of unification and codification of international law, with 16 instruments thus far adopted under its auspices. ICAO was honoured that the Secretary-General of the United Nations - despite being heavily taxed by the extremely important and complex problems affecting peace in the Middle East and, indeed, throughout the world - had found it possible to come to Montreal on this occasion. He invited Mr. Javier Pérez de Cuéllar to open the Conference.

2. The Secretary-General of the United Nations thanked the President of the Council for his very kind words of welcome, and addressed the meeting as follows:

"It is for me a pleasure to visit the ICAO Headquarters and to open this important Conference. Practical and lasting work is carried forward by the United Nations system precisely in fora such as this one. While it may seem sometimes that we are working independently of each other, there can in reality be no doubt that we share a common endeavour in the service of the same Charter.

The International Conference on Air Law, organized under the auspices of the International Civil Aviation Organization and with the strong support and encouragement of the United Nations, marks a further important phase in the concerted efforts of the international community of States to forge a safer and more secure world. The significance of the Conference is not, therefore, limited to the safety of aviation - it is much wider. The draft convention on the marking of plastic explosives for the purpose of detection, which is presented for the consideration of the present Conference, once approved, will represent a substantial development of international law relating to the combat against international terrorism.

In analyzing the background to the exercise which is now entering its final phase - and in reviewing the history of the international community's struggle against terrorism in the past years - one key word which comes to mind is the word co-operation. Nothing perhaps activates co-operation like a

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universally shared sense of danger. The threat of terrorism, that spares few countries or individuals, is indeed practically a universal one.

One should not forget that the initiative for preparing the draft convention which is to be considered by this Conference is unfortunately rooted in a human tragedy. The fatal explosion on board the Pan American aircraft over Lockerbie in Scotland on 21 December 1988 made it clear that the existing security arrangements are not adequate - and that additional measures are necessary - in particular, in the field of detection of plastic explosives. Let me use this opportunity, once again, to recall with sympathy those who lost their lives in the tragic event on 21 December 1988, among them a high-ranking official of the United Nations Secretariat.

The response of the international community to that act of terrorism was swift and unanimous. The United Kingdom and Czechoslovakia should be commended for coming forward with a significant joint proposal to promote an international convention on the marking of plastic explosives for detection purposes. In explaining the rationale for the proposal, they argued convincingly at the time for the importance of preventing terrorist acts by limiting the opportunities for terrorist groups and individuals to obtain the means to prosecute their dangerous activities. They established beyond doubt the urgent need for concerted action towards that end. The initiative of the United Kingdom and Czechoslovakia won unanimous support in the Security Council, as expressed in its Resolution 635 adopted on 14 June 1989.

The Resolution called upon all States to co-operate in devising and implementing measures to prevent all acts of terrorism, including those involving explosives. The Security Council also welcomed in that Resolution the work already undertaken by ICAO, and by other international organizations, aimed at preventing and eliminating all acts of terrorism, in particular in the field of aviation security. It urged ICAO to intensify its work on devising an international régime for the marking of plastic explosives for the purpose of detection. The General Assembly of the United Nations reaffirmed this appeal to ICAO in its Resolution 44/29 adopted on 4 December 1989.

Mr. President, we should thank ICAO for creating optimal conditions for a speedy elaboration of the draft convention, and pay tribute to the ICAO Assembly for its decision to convene a diplomatic conference with a view to concluding this important instrument. The progress achieved so far in elaborating the draft convention is encouraging and reflects the strong will of the international community to undertake a new serious effort to combat and prevent acts of international terrorism.

International terrorism, aside from endangering or taking innocent human lives, has a serious negative effect on international relations and may jeopardize the territorial integrity and security of States. It is accordingly no surprise that the United Nations, as an organization whose primary function is the maintenance of international peace and security, should have devoted, during the past twenty years, so much attention and energy to the elimination of acts of international terrorism and of their underlying causes. The Organization is aware of the need to prevent and curb not only direct unlawful uses of force in interstate relations, but also covert forms of violence which

are pursued in an insidious and clandestine fashion and are frequently therefore more difficult to counteract.

To curb such forms of violence, the Organization has, through its principal organs, repeatedly condemned as criminal and unjustifiable all acts, methods and practices of terrorism wherever and by whomever committed, and has called upon all States to fulfil their obligations under international law to refrain from organizing or assisting terrorist acts in other States or from acquiescing in activities in their territory directed towards the commission of such acts.

The Organization has also taken action on another front. It has, in response to specific acts of international terrorism - such as hostage-taking or attacks on diplomats - elaborated international conventions based on the 'no-safe-haven' principle. That principle has become the key element of the body of treaty law built by the organizations of the United Nations family in this area. The common concerns and complementary efforts of the United Nations, ICAO, IMO and other international fora have thus resulted in the development of serious and effective measures to combat the scourge of terrorism.

But life tells us, and the Lockerbie disaster confirms, that the struggle against such phenomena is a continuing process. The draft convention submitted to the consideration of this Conference reflects imagination and determination. Of course, legal instruments cannot be viewed as a panacea for terrorism, but each one helps to build a more secure world.

Let me, in concluding, wish the Conference full success in its efforts to elaborate a convention on marking of plastic explosives for the purpose of detection. Let me also express the hope that all States, in particular those which produce plastic explosives, will become parties to the new instrument and that the convention will enter into force without delay.

The steps that you take here will no doubt pave the way for further concerted international action against an insidious and resourceful foe. Such work will bring real and enduring benefit to men, women and children everywhere."

3. The President of the Council, on behalf of all Delegates and Observers, thanked Mr. Pérez de Cuéllar for his inspirational words. ICAO had, throughout the years, found in the total support it had received from the Secretary-General of the United Nations comfort and energy in pursuing its work, the aim of which was to serve the interests of the international community. The Secretary-General had recalled the events that had culminated in ICAO's becoming the chosen instrument to carry out the preparatory work to develop with maximum speed an international instrument on the marking of explosives. The draft convention to be considered by the Conference, which was the product of thorough study and international consultation, stipulated the basic obligations of States to prohibit and prevent effectively the movement into or out of their territory of unmarked explosives. Its scope was limited to plastic explosives, in harmony with the decisions of the ICAO Council, ICAO Assembly, United Nations Security Council and United Nations General Assembly. It was fully appreciated that the determination of the additives was subject to further technical evolution, experimentation and experience.

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3.1 He earnestly urged States to place their trust in the proposed system of updating the technical annex to the convention, suggesting that if the Conference was to meet the expectations of the international community it would have to settle for a good, practical solution that was now within its reach, and continue the determined effort to improve and update the technical specifications in the light of future experience. He was sure that the Conference would find solutions responsive to the expectations of the international community, thus enhancing the security of civil aviation and other interests in a spirit of co-operation, understanding and unanimity. ICAO would accomplish its mission in the field of security not only by the development of international law but by marshalling the necessary resources to safeguard the security of international civil aviation.

3.2 On behalf of the ICAO Council, he wished the Conference full success in its deliberations.

4. The meeting adjourned at 1220 hours.



INTERNATIONAL CONFERENCE ON AIR LAW

SECOND PLENARY MEETING

(Tuesday, 12 February 1991, at 1600 hours)

Acting President: Dr. A. Kotaite, President of the ICAO Council

AGENDA ITEM 3: ADOPTION OF THE RULES OF PROCEDURE

1. The Conference examined and adopted the Rules of Procedure proposed in MEX Doc No. 2. It noted that, in accordance with a decision of the ICAO Council that had already been notified to States, the authentic texts of the Convention and the Final Act would be produced in the English, French, Russian, Spanish and Arabic languages.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

2. In presenting for the Conference's consideration the Provisional Agenda appearing in MEX Doc No. 1, the Executive Secretary, Dr. Michael Milde (Director, Legal Bureau), noted that it had been approved by the ICAO Council on 4 July 1990 in taking the decision to convene the Conference. It contained the standard items that had appeared on the agendas of all international conferences on air law dating back to 1955.

3. The Conference adopted without comment the Agenda as presented in MEX Doc No. 1.

AGENDA ITEM 4: ESTABLISHMENT OF THE CREDENTIALS COMMITTEE

4. In accordance with Rule 2(2) of the Rules of Procedure, the Conference established a Credentials Committee. The Acting President invited the Delegations of Brazil, Czechoslovakia, Ghana, Lebanon and Sweden to designate a member of their Delegation to sit on the Committee. The Committee would meet on the morning of Wednesday, 13 February and, in accordance with Rule 2(3), elect its Chairman and report to the Conference without delay.

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

General Statements

5. The Delegate of the United States expressed his Government's strong support for the proposed convention and its appreciation of ICAO's vital role in its development. The effort to negotiate the final text of this important new international agreement requiring the introduction into plastic and sheet explosives of special chemical markers was timely, appropriate, and another major step in the attempt by the international community to counter the threat posed to civil aviation by terrorists. His Government considered the success of the Conference imperative, and believed that it could only succeed if it followed the path established by the United Nations Security Council and previous ICAO Council decisions and limited itself to completing its work on the marking of plastic and sheet explosives. If, at a later date, other explosives that posed similar problems of detectability began to be used for acts of aviation sabotage, the

convention now being finalized could be used as a model for both a new convention and appropriate technical annexes applying to those explosives. His Government also believed it important to adopt realistic limits on munitions that might be held in States' inventories at the time this convention entered into force, since to require the premature destruction of carefully controlled military stocks made neither economic nor ecological sense.

5.1 ICAO and its Member States had made great progress in this sphere since 1989. It was now essential to go the final distance and resolve the remaining issues. Although success in that endeavour would not ensure immediate safety from the peril of aviation sabotage, failure to conclude this convention would mean leaving civil aviation vulnerable to future attacks by terrorists and criminals. The Conference's work should serve as a living memorial to those who had perished in bombings of civil aircraft. On behalf of those victims, and to help enhance the safety and security of civil aviation, he wished to assure all Delegations of the commitment of the United States to a successful conclusion of this Diplomatic Conference.

6. The Delegate of the United Kingdom recalled that his Government's concern over the need to make plastic and sheet explosives detectable dated back to an incident at Heathrow Airport in the late 1980s, when security officials manually checking the baggage of outgoing passengers had discovered a small cabin bag with a false bottom that hid sufficient plastic explosives in sheet form to destroy the entire aircraft, had it exploded as planned high above the Austrian Alps. That fairly readily available, efficient, extremely powerful and stable explosive could not only be handled and stored easily and safely but had the very special characteristic of being virtually undetectable by the equipment - and indeed even the animals - normally used at security checkpoints.

6.1 Unhappily, the use of such explosives became commonplace not only in attempts against aircraft but in all manner of terrorist attacks on varying targets throughout the world. As the Secretary-General of the United Nations had underlined in his address, the horrific destruction of PAN AM Flight 103 over Lockerbie on 21 December 1988 had provided the final stimulus for a concerted move to legislate internationally for the marking of plastic and sheet explosives so they might be detectable by security staff. The Governments of the United Kingdom and Czechoslovakia (which had no wish to see the effective plastic explosives manufactured in that country used for illegal purposes) had held detailed consultations early in 1989 and had agreed to seek ICAO's help - not only because international civil aviation was a prime target for acts of unlawful interference, but because ICAO had proved itself over the years to be a non-politically-motivated and efficient body, fully capable of successfully preparing important international conventions aimed at preventing terrorist acts. It had been against the background of an unequivocal and unified expression of political will on the part of ICAO and the United Nations that the mature draft convention to be considered by the present Conference had been developed. That draft was fully in line with the mandate given by ICAO and by the United Nations. While his Delegation felt that some relatively minor drafting changes would be desirable, overall it considered the draft to be a satisfactory document. Its suggested amendments had been circulated in MEX Doc No. 7 and amplified in a revised draft technical annex in an Addendum to that paper. He emphasized that the United Kingdom was not proposing, nor would it support, changes of substance;

its suggestions were aimed solely at improving the legal basis and the language of the draft text prepared so helpfully by the Ad Hoc Group of Specialists on the Detection of Explosives.

6.2 The United Kingdom Delegation had no doubt that the Conference would succeed in its endeavours. It understood the desire of some Delegations to see the scope of the convention expanded to include other types of explosives but, like the Delegate of the United States, would not wish to see the good draft before the Conference delayed or compromised by well-intentioned attempts to expand it beyond its original scope. Because it believed that ICAO could be invited to consider such an expansion in the future, his Delegation would be happy to co-operate in the development of a draft resolution to that effect which the Conference could prepare at the end of its session.

6.3 As the Delegate of the United States had stressed, terrorist acts would no doubt continue even if the Conference succeeded in its work. Indeed, there was a terrible possibility they would even increase in the light of the open encouragement to commit such acts that had been given over the past weeks by the President of Iraq. The United Kingdom Government was, however, confident that a successful Conference would provide a major new defensive weapon in the continuing fight against terrorism, and one that perhaps would become increasingly effective with the passage of time.

7. The Delegate of Canada underlined the importance which his Government attached to the proposed convention. Canada had been a co-sponsor of the 1989 Security Council Resolution urging ICAO to devise an international régime on plastic explosives and had been impressed by its efficiency in producing so quickly a generally acceptable draft as well as by its willingness to play a major role in the on-going administration of the agreement's provisions. Canada intended to play its part to ensure the smooth operation of those functions of the convention taking place in Canada. His Government also appreciated the work of the Ad Hoc Group of Specialists on the Detection of Explosives in providing the Conference with a solid scientific basis for the technical aspects of the convention - in particular, its identification of appropriate additives - and expected the Group to be in a position to assist States in putting into place the necessary regulatory framework to bring the convention into force.

7.1 This convention had a much greater technical dimension than others dealing with transportation security, and it was a tribute to the technical co-operation among States and the co-ordinated efforts between Governments and the industry that the Conference had before it such a widely accepted negotiating draft. Still, some difficult issues remained to be resolved: the ability of the convention to deal with hard-to-detect explosives other than plastic; the control régime for existing stocks of unmarked explosives, including fairly short time limits for their destruction; and the need to agree on a convention that would be subscribed to very widely and in a uniform way. The first mentioned was an important and complicated issue, since it might well relate to the amending formula of the convention and its technical annex, and the Canadian Delegation considered it very important to have a formula that would provide sufficient flexibility for the easy addition of explosives not covered in the original annex that might become serious problems in future.

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7.2 The conclusion of a convention on marking of explosives was not, of course, the end of the exercise. States must also ensure the political will necessary not only to translate effectively the provisions of the convention into national laws and procedures, but also their efficient implementation.

8. The Delegate of Brazil welcomed the draft convention, which represented a further step in the legitimate defense by States against terrorist threats. There were, however, several aspects of the draft that required attention. For example, he suggested that the concept of "marking" (Article I) should be expanded to include a form of identification or tagging that would show where and by whom the explosive was manufactured - something that would be of great importance in establishing liability. There was, he felt, some confusion in Article II between preventing the manufacture of unmarked explosives and preventing their circulation; the Article might better read "... shall take measures to prevent the circulation within its territory of unmarked and unidentified explosives". It also seemed to his Delegation that the effectiveness of the Convention would be greatly reduced if a lengthy period was adopted for phasing out unmarked explosives, and that a single deadline in Article IV of, say, 5 years would be more appropriate and logical. As it was, Article IV.3 made a recommendation but did not establish a deadline, leading to the interpretation that that provision might be adopted within the 15 years mentioned in the preceding paragraph.

8.1 It would be highly desirable if every State entrusted the enforcement of the Convention on its territory to the same internal body, with - he suggested - a body within the armed forces being responsible for the execution of the regulations adopted. It would also be useful if every State were to include in its domestic legislation provisions regarding the measures to be taken pursuant to the Convention, so as to discourage the manufacture of explosives inconsistent therewith. Finally, there was a contradiction between the wording of Article IV.2 and Part I b) of the technical annex, with the former containing a commitment to destroy all the explosives and the latter providing an exception for military explosives.

9. The Delegate of Czechoslovakia said that his Government considered the drafting and adoption of an international legal instrument on the marking of plastic explosives for the purpose of detection to be a very important and positive step in the effort to counter the misuse of such explosives for terrorist purposes. The draft convention in MEX Doc No. 3, along with the comments on it submitted by States, provided an excellent basis for the Conference's work. On specific points that remained unresolved, his Delegation would not wish to see clauses introduced which would classify acts that violated the provisions of the convention as international offences and result in the establishment of penal sanctions. While understanding and agreeing in principle with the desire of some States to widen the scope of the convention to cover all explosives, his Delegation believed that this was a task for the future and that this Conference should concentrate its efforts on developing the best possible instrument covering plastic explosives only. In so far as existing stocks of unmarked explosives were concerned, it felt that a strict limit of 15 years for the disposal of so-called military explosives could create economic and technical difficulties for States and would accordingly support the proposal submitted by Finland, Iceland, Norway and Sweden (MEX Doc No. 13). As for the procedure for

amending the technical annex, while it might be appropriate to set the number of objections at more than one State, it should not be too high (Articles VII.3 and VII.4 refer). Although a State Party would always have the right to denounce the convention if an amendment to the technical annex was totally unacceptable to it, the terms of such denunciation should be in harmony with the terms for the entry into force of the proposed amendment. The draft of the final clauses proposed by the United States in MEX Doc No. 9 was a very useful basis for discussion, and his Delegation shared the view reflected in Article X that, in order for the convention to enter into force, no fewer than five of the ratifying States must be producer States. Finally, his Delegation recognized that certain materials should be exempted from the requirement to be marked [cf. Part I b) of the draft technical annex] but felt strongly that the number of such materials should be kept to an absolute minimum and that those materials must be placed under the strict control of the State.

10. The Delegate of the Union of Soviet Socialist Republics suggested that the draft convention on the marking of plastic explosives for the purpose of detection now before the Conference should be examined within the framework of the overall struggle against acts of unlawful interference and terrorism. Following on the existing international agreements developed by ICAO over the years, it represented a further step in the creation of international legal standards aimed at combatting terrorist acts. As regards the draft itself, his Delegation shared the view that the convention should be limited to the marking of plastic explosives, and that any attempt to broaden its scope to encompass other types of explosives would not only go beyond the Conference's terms of reference but would run the very great risk of jeopardizing the work carried out so far. The international community was expecting speedy and concrete results from the Organization's struggle against acts of terrorism now threatening the safety of international civil aviation, and adoption of the convention under discussion would have great moral and political significance. Obviously work on other problems not reflected in this draft convention would have to continue, and his Delegation would support ICAO's efforts to prepare further new international legal instruments dealing with other aspects of terrorist activities. His Delegation attached great importance to the successful conclusion of this Diplomatic Conference and would do its utmost to ensure that success.

11. The Delegate of Argentina underlined the importance that his Government attached to the adoption of a convention along the lines of that now being considered - an international instrument to supplement existing ones developed earlier by ICAO and aimed at fighting acts of terrorism throughout the world. Unfortunately (in the opinion of his Delegation), the draft contained no provisions dealing with sanctions; rather it relied on States to act in good faith and to give to the convention all the moral and ethical values that it deserved. Although it did not intend to propose an amendment to the draft convention at this Conference, his Government maintained the view expressed by its delegates at the January 1990 meeting of the Special Legal Sub-committee and at the 27th Session of the Legal Committee in March/April 1990, that the convention would be incomplete if it did not include penal provisions and thus did not create as an international offence violation of the laws and regulations relating to the requirement to mark specified explosives for purposes of detection. In this respect the IFALPA submission (MEX Doc No. 15) was particularly relevant.

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11.1 He regretted also that the draft technical annex dealt only with plastic and sheet explosives. Although he recognized that that issue had been duly considered in other ICAO fora and that the draft convention was in accord with the mandate from the United Nations, he did not believe the Conference was prevented from expanding the scope of the convention to include the concepts that had been developed at the meeting of the Special Legal Sub-committee and at the 27th Session of the Legal Committee. Let the Conference deal with and resolve the problem regarding plastic and sheet explosives first, but let it also determine how the convention could be expanded to cover other destructive elements that fell within the framework of this concept of explosives.

11.2 Another important issue to be settled concerned the legal status of the Explosives Technical Commission. In the view of his Delegation, the convention needed to define in greater detail the nature of and limits on the work of that Commission, as well as the consequences of a State Party objecting to an amendment to the technical annex proposed by the Commission. In the meantime, the Ad Hoc Group of Specialists on the Detection of Explosives should continue its work until such time as the convention entered into force and the Commission was established.

11.3 In so far as the question of the scope of States' liability or responsibility was concerned, his Delegation found the approach in the draft convention satisfactory. As regards the materials to be exempted from the requirement to be marked as long as they continued to be used for their designated purpose [Part I b) of the technical annex], his Delegation felt that this also should be subject to the time limitations specified in Article IV.2 of the Convention. Finally, the Argentine Delegation believed that the United Nations or ICAO should maintain a list of all manufacturers of plastic or sheet explosives, including States, and that the Convention should only come into force when ratified by a significant number of States producers of the explosives defined in the convention. This was vital since they were the States on whom obligations were being imposed. To sum up, his Delegation supported the principles and concepts embodied in the draft convention and he was sure that - even with the modifications that were likely to be made in the course of the Conference - Argentina would be in a position to ratify the instrument as finally adopted.

12. The normal hour of adjournment having arrived, discussion was suspended at this point - it being understood that further general statements would be made at the next meeting.

13. The meeting adjourned at 1730 hours.



INTERNATIONAL CONFERENCE ON AIR LAW

THIRD PLENARY MEETING

(Wednesday, 13 February 1991, at 1000 hours)

Acting President: Dr. A. Kotaite, President of the ICAO Council

AGENDA ITEM 7: REPORT OF THE CREDENTIALS COMMITTEE

Preliminary Report of the Committee

1. At the invitation of the Acting President, the Chairman of the Credentials Committee (Dr. I. Jakubovicz, Chief Delegate of Brazil) gave a preliminary report of the Credentials Committee, indicating that as of 0900 hours that day 67 Delegations had registered for the Conference, with credentials in due and proper form having been deposited by 43 Delegations. The Credentials Committee recommended that, pursuant to Rule 3 of the Rules of Procedure and pending receipt of outstanding credentials in due form, all Delegations registered be authorized to participate in the work of the Conference. The Committee's final report would be submitted during the next week. The Conference so approved.

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

General Statements (continued)

2. The Delegate of Cuba, in welcoming this new legal instrument that would co-ordinate efforts of States to enhance the security and safety of air navigation, regretted that action in this regard had not been taken much sooner. The tragedy at Lockerbie that had provided the stimulus for the drafting of the convention now under consideration had not been the first crime of that nature. He recalled that Cuba had been the victim of a crime as shameful and horrendous as the PAN AM tragedy, committed against an aircraft of its national flag carrier, Cuba de Aviación, and resulting in the loss of 73 persons - including Koreans, Guyanese and Cubans - whose lives were also of value. That crime, perpetrated by CIA agents, had involved the use of C-4 plastic explosives that the investigation showed had come from military depots. ICAO was capable at the time only of condemning such an act through a Resolution of the Assembly (Resolution A22-5, still in force), the text of which he read. One of those responsible for that criminal act had been acquitted despite all of the proofs offered by Cuba, and it could not even be hoped that he would be punished by his conscience because such criminals had no conscience. His Delegation believed that the convention should condemn unlawful interference and categorize it as a grave international offence against humanity, and that there should be no boundaries or legal resources that would allow perpetrators of such acts to evade justice.

2.1 Cuba was not a party to any of the multilateral conventions on civil aviation security, such as the Tokyo, The Hague and Montreal Conventions and the Montreal Protocol - believing that bilateral agreements such as those signed with Canada, Mexico, Venezuela and Colombia better allowed for timely measures to be taken to protect not only aviation but also maritime navigation. It would

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nevertheless support the present convention in accordance with those principles. It must be recognized that adoption of such an international instrument would not itself resolve the problem, and that - given the tremendous economic gap that existed between developed and developing countries (that is to say, the majority) - such crimes would go on and people would continue to die if technology for marking of explosives became a business that was out of reach for the poorest States. Just as, if not more, important than the legal instrument under discussion and the technology to be used was the political will of States to achieve rigorous compliance with the first and to make the second available to or attainable by all.

3. The Delegate of Senegal indicated that his Delegation considered the draft convention to be a useful basis for the Conference's work. It generally supported the document, while reserving the right to comment in due course on specific articles. On the issue of the convention's scope, the Senegalese Delegation believed that it should be restricted to the marking of plastic explosives - a step that would be in full accord with the United Nations and ICAO Resolutions. Finally, his Delegation was convinced that the spirit of co-operation and understanding among all Delegations would lead to the adoption by the international community of an instrument that would be universal in nature, and was ready to make its modest contribution to the achievement of that objective.

4. The Delegate of Ethiopia, while regarding the draft convention as an important further step in combatting crimes against civil aviation, emphasized the importance of its subsequent implementation by States. In this regard, the cost of contending with increasingly sophisticated terrorist acts was very high, and the richer nations of the industrialized world should be prepared to offer greater financial and technical assistance to less fortunate States that needed help in order to implement agreed aviation security standards. In addition to legal instruments such as the proposed convention, unrelenting efforts were necessary to root out the sources of terrorism, including massive educational projects to sensitize the public to the total immorality of such acts. Regional stability was also essential, since unstable regions were the breeding grounds of terrorists and the havens in which they operated. As for the draft convention itself, he questioned the need to allow 15 years for the consumption, destruction and disposition of stocks of already available unmarked explosives, and hoped that a shorter period could be agreed upon.

5. The Delegate of Germany, as the representative of a State that had from the outset actively supported the efforts to develop a convention on the marking of plastic explosives, found the draft text before the Conference too narrow in scope. While prepared to work within the mandate given by the United Nations and to collaborate on the basis of the present concept, his Delegation believed that a convention text applicable to explosives in general, coupled with a technical annex dealing specifically with the marking of plastic and sheet explosives, would be more readily adaptable to future developments. His Delegation also had several problem areas on which it would present detailed comments in the course of the discussions, namely, the handling of military stock reserves (Article IV); the composition of the Explosives Technical Commission (Article V); the position of the ICAO Council vis-à-vis the membership of that Commission (Article V); and the procedures for amending the technical annex

(Article VII). Finally, the German Delegation offered its full co-operation with the aim of creating a viable convention text that would be acceptable to all.

6. The Delegate of Japan, noting that the weak link in the chain of preventive measures to combat international terrorism was the inability to detect plastic and sheet explosives, expressed appreciation to the Legal Sub-committee and the Legal Committee for their work in developing the draft convention, as well as to the Secretariat for its speedy and effective preparations for this important Conference. The Japanese Delegation accepted the basic concepts in the draft text, which it considered an appropriate basis for discussion, but saw a need for some drafting changes on which it would comment in detail in the course of the discussions. For the time being, he would limit himself to saying that Japan would not favour the expansion of the convention to cover explosives other than plastic and sheet explosives, since this would inevitably delay adoption and implementation of the work already done. On the matter of the consumption, destruction and disposal of existing stocks of unmarked explosives, Japan believed that a period of at least 20 years was needed in so far as explosives held by military or police authorities were concerned. Because it felt that the technical annex must be as flexible as possible, Japan did not think that an objection by one State should prevent adoption of an amendment to the annex. Since the proposed final clauses had not been considered by the Legal Committee, he trusted that they would be thoroughly discussed by the Conference with a view to developing a text that would be agreeable to all States. Finally, he stressed Japan's sincere hope for the success of the Conference.

7. The Delegate of France, praising the initiative taken by the United Kingdom and Czechoslovakia that had resulted in the convening of this Conference, felt that the draft convention before it conformed fully with the will of all States concerned with the safety of their nationals, and used appropriate means to achieve the desired objective. It was modest in scope, but for that very reason it was a credible and concrete contribution to eliminating or reducing the risk of these crimes being perpetrated against humanity. He thanked Delegates for the flexibility already demonstrated - a flexibility that would be essential to achieve a text that could be quickly and widely accepted and enter into force with the least possible delay, and which his Delegation also was ready to show. He would ask those who felt that the draft was insufficient not to hinder the adoption of a text which could be further refined as technologies and policies advanced. The main points to be resolved related to the destruction of existing stocks, the amendment procedures for the technical annex, and the final clauses which had not been elaborated by the Legal Committee. No doubt there would be improvements to the text in the light of suggestions by States, but nothing should be allowed to jeopardize the balance which his Delegation found in the draft before the Conference.

8. The Observer from the International Maritime Organization, on behalf of the Secretary General of the IMO, expressed appreciation for the invitation to attend the Conference and for the opportunity to make a general statement. As the United Nations agency concerned with the safety of maritime navigation, IMO had recognized and accepted as one of its inescapable responsibilities the maintenance and enhancement of the security and integrity of maritime transport by combatting threats and acts of terrorism. It was against that background that IMO's involvement in and support for ICAO's work in the preparation of the draft

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convention presently before the Conference should be seen. The draft had been carefully studied by IMO's Legal and Maritime Safety Committees, as well as by the Sub-committee for the Carriage of Dangerous Goods and the Facilitation Committee.

8.1 All those bodies, whose views had been endorsed by the IMO Council at its 65th Session in November 1990, had recognized the importance of the proposed instrument and had emphasized the need for IMO to be closely involved in this work and to have a suitable institutional role in the work following the Conference. It had been felt essential that the convention take fully into account the specific requirements of maritime transport, and in this regard IMO participation in the work of the Explosives Technical Commission (if only as an Observer) would be highly desirable. The Sub-committee for the Carriage of Dangerous Goods had not found a need at this stage to consider amendments to the International Maritime Dangerous Goods Code (the IMDG Code) but had instructed the IMO Secretariat to keep it informed of developments so that the matter could be further considered both by the Sub-committee and by the Maritime Safety Committee.

8.2 He warmly congratulated ICAO's Legal Committee, its Sub-Committee and the Ad Hoc Group of Specialists on the Detection of Explosives for their excellent work in preparing the draft convention, which provided a very sound basis for the Conference's deliberations. He was convinced that the Conference would be crowned with success, and said that IMO was ready to assist, co-operate with and support its efforts in any way required.

9. The Delegate of Chile welcomed the draft convention, which was a further step in the on-going struggle against terrorist attacks upon international civil aviation. His Delegation agreed with the approach of the Legal Committee in developing a self-contained document that was independent of the Chicago Convention and its Annexes, and that contained no penal and extradition provisions. Within the framework of its legislation Chile was prepared to support the draft convention, which it hoped would be adopted and enter into force without delay and be followed equally quickly by the development by States of necessary legislation to permit its early implementation. The main outstanding questions related to amendments to the technical annex and the exemptions from marking that should be permitted. On the first, flexibility was essential to permit the technical annex to be adapted as necessary in light of technological developments while at the same time ensuring that such amendments would automatically meet the needs of and apply to all States Parties to the convention. The issue of exemptions was a very sensitive one; the basic principle underlying the convention was the need for standardization of marking methods for explosives and allowing such exemptions might weaken the convention. To sum up, his Delegation would do its utmost to ensure that the draft convention became, with the least possible delay, the universally accepted instrument that the international community had been eagerly awaiting.

10. The Delegate of Indonesia felt that this Conference represented a small but important step in safeguarding society against the unforgivable abuse of explosives. Adoption of the draft convention (possibly with some improvements) would of course be only the first stage of the exercise. It must be followed by early ratification and, once the convention was in force, efforts

must be stepped up so as to provide adequate resources for its implementation. Developing States - faced as they often were with the need to fight famine, disease, ignorance and illiteracy - quite naturally would have a different perspective than developed States on the priority to be allocated from their very limited resources. Transportation was a network whose strength was equal only to its weakest point, and its security required that all States be capable of detecting threats. This could only be achieved if compensation and incentive systems were developed to avoid placing further stresses on the already overburdened resource base of the less fortunate States.

11. The Delegate of Australia observed that the interventions heard so far indicated clearly that there were still differing opinions both on the scope of the draft convention and its specific provisions. The Conference's task was to produce a document that combined the maximum degree of workability and effectiveness with the maximum degree of international support and acceptability - a task that called for compromise on all sides. While his Delegation was prepared to explore the possibility of the convention providing in future for other forms of explosives, it did not wish the successful outcome of the Conference and the subsequent widespread acceptance of its work to be jeopardized. It understood that most other forms of explosives, being detectable by vapour analysis or other means, were less of a threat to aviation security measures. It also felt that the most obvious means of incorporating other explosives would be by using the convention's provisions for amending the technical annex. To attempt to include now other, as yet unspecified, forms of explosives would complicate the task of agreeing on an amending formula that required - or at least encouraged - a universal régime rather than a multiplicity of régimes. The Australian Delegation found the draft generally acceptable, subject of course to the resolution of a number of issues - especially relating to the amending formula and the final clauses.

12. The Delegate of the People's Democratic Republic of Algeria said that his Government supported any steps leading to the development of an international instrument on the marking of explosives, as well as efforts to control the export and import of unmarked explosives. He drew attention to MEX Doc No. 18, which proposed amendments to Articles II, IV.2, IV.3, VII.3 and VII.4, as well as retention of the reference to sheet explosives which Algeria considered much more than a question of semantics. His Government also felt that the technological, practical and financial dimensions of the application in some States of certain provisions of the convention were important and should be taken into account. Finally, he expressed hope for the successful outcome of the Conference.

13. The Delegate of Italy considered the draft convention merely a starting point for the Conference's discussions. It was addressed to States alone, whereas plastic explosives could be easily manufactured by individuals. It took account only of plastic explosives, and even in respect of those the work of explosives experts was far from complete. The Conference must bear these facts of life in mind. His Delegation hoped that in the time that would necessarily elapse before a convention entered into force work would continue in order to give it the substance it now lacked. Italy would willingly contribute technically, legally and politically to that effort.

Third Plenary Meeting

14. The Delegate of the Islamic Republic of Iran, while understanding the concerns of those who wished to limit the draft convention to plastic explosives, said that his Government believed the instrument should be able to be applied to all types of explosives that might jeopardize the safety and security of civil aviation and of other forms of transportation. As drafted, it would not permit the future inclusion of any other type of explosive even if technological developments warranted this. His Delegation would be proposing a text which, while still limiting the convention to plastic explosives, would provide a sufficiently flexible formula to permit the easy addition in future of other explosives that might create similar problems. It also had some concerns about the final clauses and the composition of the Explosives Technical Commission on which it reserved the right to comment in due course.

15. The Delegate of India recalled that on 23 June 1985 an aircraft belonging to India's national carrier had disintegrated over the Atlantic Ocean off the coast of Ireland, with the loss of 329 lives. Subsequent investigation had concluded that the crash had resulted from a bomb placed on board the aircraft. The Court of Inquiry had recommended that ICAO and States undertake an on-going review of established aviation security standards to prevent a recurrence - noting that plastic explosives could be shaped or formed to avoid detection, and that reliance on X-ray machines might give a false sense of security. It was unfortunate that no tangible measures had been taken at the international level to respond to that appeal until after the Lockerbie tragedy. India welcomed the initiatives since taken under the aegis of ICAO to develop a legal instrument to cover the marking of certain types of explosives for the purpose of detection - an effort in which an expert nominated by India to the Ad Hoc Group of Specialists on the Detection of Explosives had participated. His Delegation recognized that this was but a first step in the right direction, and trusted that the world aviation community would not sit back complacently waiting for better detection equipment to be designed.

16. The Delegate of the Kingdom of the Netherlands regretted the need for this Conference, which had its origin in the necessity for the international community to continue to elaborate measures to safeguard on a global basis not only civil aviation but (as the Observer from IMO had underlined) other means of transport as well. His Administration had taken part in the previous stages of developing the draft convention and had supported the approach embodied in the draft now before the Conference. Admittedly some technical and legal points remained to be settled but he was convinced that, with the talent and goodwill available to it, the Conference would be successful and there would be a globally acceptable, pragmatic and effective instrument added to the defenses of the world community against the threats to its peaceful pursuits.

17. The Observer from the International Air Transport Association said that IATA felt that the draft convention developed by the Legal Committee - under which effective action would be taken to mark plastic and sheet explosives that might be misused for terrorist activities and sabotage against civil aviation - went a long way towards significantly reducing the risks to which civil aviation, the flying public and the public at large were exposed. The airline industry accordingly supported the text. It believed that its scope was satisfactory as a starting point, but that the door should be left open possibly to cover at a further stage other types of explosives that were also used for terrorist

activities and sabotage. Furthermore, as regards the draft technical annex, the limitation of marking methods to vapour tagging should be closely examined. Other marking methods might prove equally, or even more, effective and cost efficient, and should a priori not be excluded. With respect to Part I b) 5) of the annex, while IATA would prefer to see that exemption removed completely, it welcomed the new proposal to limit the exemption to a period of three years.

17.1 The Director General of IATA wished to take this opportunity to call on Governments to help restore travellers' confidence. The Gulf Crisis had seriously affected the economies of many countries, and the airline industry was particularly vulnerable to such slowdowns. Airlines had suffered from cost increases and yield declines in the early part of 1990, followed by fuel price and insurance cost increases in the second half of the year. As a result, the financial situation of the industry had declined to the point where 1991 could turn out to be one of the worst in airline history. IATA urged States to do everything they could to maintain the highest possible level of security, with a view to reassuring the public by those measures. Airlines and airport authorities would also play their part in safeguarding the travelling public.

18. The Delegate of the United States referred to the earlier statement by one Delegation, which purported to implicate the United States Government in the perpetration of a despicable act. He categorically rejected both the content and the propriety of the allegations and regretted that the vital work of this Conference had to be burdened by such a nefarious falsehood.

19. The Delegate of Cuba, while claiming to have concrete proof to substantiate his statement, declined to go into details since this was not the appropriate forum.

20. The Delegate of Venezuela understood the frame of mind that had led the Delegate of Cuba to make his original statement, because Latin America and the international community at large had been deeply saddened by the loss of 73 innocent lives in the 1976 tragedy. On the other hand, she felt obliged to state that there was in ICAO's records a communiqué from her Government transmitting the final report by the Attorney General of Venezuela on the Government's handling of this case, which indicated that - in accordance with the Montreal Convention - the perpetrators of that heinous act had been prosecuted and were serving 20-year prison terms in Venezuela.

21. The Acting President said that, while he abhorred all acts of unlawful interference - which to his mind were always despicable and worthy of condemnation - this was not the appropriate forum for discussing specific cases. He appealed to Delegations to refrain from listing or recalling past tragedies (which had all been discussed in appropriate ICAO fora at the time and were the subjects of decisions by the ICAO Council or of Assembly Resolutions) and to focus their attention on the draft convention on marking of plastic explosives. There was a great deal to be done in a very limited period and he counted on the co-operation of all Delegations.

22. The Delegate of Mauritius indicated his Government's support for the draft convention, which it considered a step in the right direction. It was pragmatic and ensured an effective balance between the sovereignty of States

and the global nature of the unified system. Furthermore, it was based on the principle of consensus, which meant that all States would take the same measures. His Delegation would support any proposals aimed at enhancing its effectiveness, provided they recognized the principles of State sovereignty and the need to promote universality of the unified system.

23. The Delegate of Nigeria welcomed the initiatives taken by the Ad Hoc Group of Specialists on the Detection of Explosives, the Legal Sub-Committee and the Legal Committee in developing the draft convention now being considered. The draft was a good start to the ongoing effort to establish a comprehensive universal legal régime aimed at effectively combatting all acts of unlawful interference against civil aviation. Further work would be needed to cover aspects not encompassed in it. Flexibility would be essential if the Conference was to reconcile the various concerns of States, not only as regards the substance but also the drafting. The Conference had an inescapable responsibility to achieve an acceptable legal instrument that could be readily ratified by all Contracting States, and to that end his Delegation wished all participants peaceful and meaningful deliberations.

24. The Delegate of Greece expressed his Government's appreciation to the United Kingdom and Czechoslovakia, whose initiative in proposing and encouraging the preparation of the draft convention had led to the excellent work carried out by the Ad Hoc Group of Specialists on the Detection of Explosives, the Legal Sub-Committee and the Legal Committee. Greece had time and again declared its determination and readiness to join the international community in combatting the scourge of terrorism, and it was in that spirit that his Delegation was participating in this Conference. His Delegation felt that the draft convention covered the main aspects of the problem and could be widely accepted. It recognized the desire expressed by some Delegations to have the scope of the convention broadened, but would support limiting it to plastic explosives (which would be in line with the mandate of the United Nations Security Council and the ICAO Council) in order to achieve the widest possible acceptance.

25. The Delegate of Pakistan thanked ICAO and its Secretariat for the hard work carried out in preparing the excellent draft convention and technical annex now before the Conference. His Delegation shared the view that, in order to facilitate future amendments should the need arise, the convention should be drafted in general terms, with the technical annex being specific. While recognizing that the decision to exclude penal provisions had been motivated by a wish to obtain the widest possible support for the draft convention, his Delegation felt that the Conference should consider including an appropriate general penal clause that would make it obligatory for Contracting States to incorporate in their laws some type of punishment for violations of the convention.

26. The normal hour of adjournment having arrived, the presentation of statements was suspended at this point, to be resumed at the next meeting, and the Conference adjourned at 1230 hours.



INTERNATIONAL CONFERENCE ON AIR LAW

FOURTH PLENARY MEETING

(Wednesday, 13 February 1991, at 1430 hours)

Acting President: Dr. A. Kotaite, President of the ICAO Council

President: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

General Statements (continued)

1. The Delegate of Peru noted the ever-increasing threat to human life and property posed by acts of terrorism involving the use of explosives, not only against civil aviation but (as in his country) against the population at large. That was why Peru considered this Conference to be of the utmost importance. It wished to see the convention adopted and come into force as quickly as possible so that the manufacture and sale of unmarked plastic explosives would be controlled. It was prepared to have the convention limited at this time to plastic explosives in order to ensure a world-wide consensus, but saw a need to extend similar controls to other forms of explosives in future. As the Secretary-General of the United Nations had said, a very broad spirit of co-operation on the part of all States was needed, both to deal with the sensitive issues before the Conference and then to implement the detection procedures finally approved. Only that spirit of co-operation would enable the less developed States to secure the equipment needed to guarantee the security of civil aviation and its passengers.

2. The Delegate of Ghana said that, listening to the statements of previous speakers, his Delegation sensed a need to refine the various articles of the draft convention. One repeated concern that had emerged related to the question whether the draft convention could adequately deal with future acts of terrorism involving the detection of explosives other than plastic or sheet explosives. His Delegation felt that the suggestion by the Delegate of the United Kingdom in his general statement - that the Conference might consider adopting a resolution inviting ICAO to look into a possible future expansion of the scope of the convention to include other types of explosives - represented a reasonable and realistic approach to resolving that issue. The draft convention now under consideration constituted a sound basis for discussion and his Delegation could support it - subject, of course, to any amendments that might be introduced in the course of the discussions.

3. The Delegate of the Kingdom of Saudi Arabia said that his Government appreciated the efforts of the United Nations, the ICAO Council and its subordinate bodies to draw up a legal instrument that would reflect the will and aspirations of the international community. His Delegation had expressed its concern during the Legal Committee's meeting with regard to the stocks of unmarked explosives and to the absence of any penal clause in the draft convention. That concern still existed, but he hoped that it would prove possible for the Conference to reach a consensus (of which his Delegation would be a part) that would enable the international community to rid itself of this

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phenomenon that had such damaging effects on the air transport industry and placed at risk the lives of innocent people throughout the world. With regard to the technical annex and the Explosives Technical Commission, a prudent but flexible approach should be considered, to allow for future improvement of the mechanism and methodology through practical implementation and normal evolution. His Delegation would do its utmost to ensure the success of the Conference.

AGENDA ITEM 5: ELECTION OF THE PRESIDENT OF THE CONFERENCE

4. The Acting President having called for nominations for President of the Conference, the Delegate of France proposed Dr. Kenneth Rattray, Chief Delegate of Jamaica, who was well known to most delegates present. As Solicitor General in Jamaica, Dr. Rattray was the main legal advisor of his Government. He had enjoyed a brilliant career in his own country and, as its representative, had contributed significantly to the success of many United Nations and ICAO meetings - notably the United Nations General Assembly, the Third United Nations Conference on the Law of the Sea, as Vice-Chairman of the ICAO Legal Committee, and as President of the 22nd Session of the ICAO Assembly. He (the Delegate of France) was convinced that, if the Conference accepted his nomination, Dr. Rattray would prove to be very able in conducting the affairs of this complex and sensitive Conference and would lead it to a fruitful conclusion.

5. There being no further nominations, the Acting President declared Dr. Rattray, Chief Delegate of the Jamaican Delegation, President of the Conference and invited him to take the Chair.

6. The President expressed appreciation to the Delegate of France for his very kind words in nominating him, and his gratitude to the Conference for the confidence it had placed in him and the honour it had bestowed on his country in electing him. He pledged his wholehearted co-operation in seeking solutions to the varied and complex problems facing this important Conference. In turn, he asked for the fullest possible co-operation and support of all Delegations to achieve that goal.

6.1 The reality of unmarked and undetectable explosives was a chilling reminder of the vulnerability of the international community to continued exposure to danger, and of the fact that the price of security - whether in the air or on the ground - was eternal vigilance. The Conference was an eloquent testimony of the absolute need for solidarity and co-operation in finding practical solutions which, hopefully, would at least help to make the world a better place in which to live. While but one step, the proposed convention was of paramount importance as a preventive measure in the armoury of protection for the international community. The product of very sustained work within the ICAO Secretariat, the Legal Sub-Committee and the Legal Committee, it reflected the many compromises that had been made in the course of that work. It was drafted in such a way as to permit the Conference to focus its attention in a structured manner.

6.2 The major issues to be resolved related to (a) the scope of the convention (in particular whether it should be confined to plastic and sheet explosives); (b) the obligations of States, especially those related to the prohibition and effective prevention of the manufacture in their territories of

such explosives and of the movement in and out of their territories of unmarked explosives; (c) the exceptions that were being created, and the extent to which they should be created in relation to activities by military or police authorities that were not inconsistent with the purposes and objectives of the convention; (d) the manner of and timing for the disposal of existing stocks; (e) the composition and functions of the Explosives Technical Commission; (f) the role of the technical annex as a flexible instrument to address the continual development of technology and thus meet future needs; (g) the fundamental legal question of how to provide for an amendment to the annex to deal with issues of detectability; and, finally, (h) the final clauses, specifying how the convention would come into force, etc. All of those matters would have to be discussed within the Commission of the Whole and decisions taken on what was to be referred to the Drafting Committee.

6.3 He hoped that by the time the Conference ended it would have demonstrated to the international community that ICAO had the competence to chart a course not only for the protection of international civil aviation but for the fostering of the peace and security of mankind.

AGENDA ITEM 8: ORGANIZATION OF WORK

a) PROCEDURE FOR CONSIDERATION OF THE DRAFT CONVENTION ON THE MARKING OF EXPLOSIVES FOR DETECTABILITY

7. It was agreed that the draft convention in MEX Doc No. 3, together with the draft final clauses in MEX Doc No. 21, should be taken as the basis for discussion; that they should be examined article by article by the Commission of the Whole; and that any proposals for amendment, duly supported in accordance with the Rules of Procedure, should be presented in specific rather than general terms.

b) ESTABLISHMENT OF THE COMMISSION OF THE WHOLE AND COMMITTEES AS NECESSARY

8. The Conference then agreed, in accordance with Rule 5 of the Rules of Procedure, to the establishment of a Commission of the Whole which would be open to all Delegations. The President of the Conference would also be the Chairman of the Commission of the Whole.

9. The meeting adjourned at 1520 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

FIRST MEETING OF THE COMMISSION OF THE WHOLE

(Wednesday, 13 February 1991, at 1530 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

1. The Commission accepted a suggestion by the Delegate of the United Kingdom, supported by the Delegate of Austria, that it begin its examination of the draft in MEX Doc No. 3 with the first substantive article - i.e., Article I - deferring examination of the title (in itself an issue of substance) and the preamble until the substantive articles had been agreed upon.

Article I

2. The Delegate of the Islamic Republic of Iran referred to the wish expressed by certain Delegations to have a convention which, while limited at this time to dealing with plastic and sheet explosives, would lend itself to future expansion to accommodate other types of explosives. One way of achieving that objective would be to delete from the convention itself all references to "plastic [and sheet]", except for the definition in Article I.1. All that would then be required to expand the convention's scope at a later date would be to amend Article I.1. Alternatively, the definition of "explosives" could be transferred to the technical annex.

3. The Delegate of Canada supported the general intent of the Iranian suggestion. If at some future date there should be a number of serious incidents involving explosives other than plastic or sheet explosives, it should be possible to put into place very quickly a legal régime governing those other types. If Article I.1 limited the definition of "explosives" to plastic and sheet explosives, to add other types would necessitate a further, separate convention, or recourse to the amending procedure - either of which would involve long delays while States' ratifications were awaited. Also, depending on the decision ultimately taken with respect to Articles VII.3 and VII.4, the result could be a situation where a number of States were parties only to the original convention while others were parties to the amended convention. Such a situation would obviously be detrimental to aviation and other types of security. He accordingly suggested that the definition of "explosives" be amended to read simply: "'Explosives' mean explosives as described in the annex to this Convention", and that the annex be strictly limited to plastic and sheet explosives. His Delegation would be presenting in due course a specific proposal aimed at streamlining the amending procedure so as to make it possible to include in the annex new types of explosives when there was a broad body of opinion in favour. The Delegates of Sweden and Kenya supported the Canadian approach.

4. The Delegate of Australia suggested that discussion of the precise definition of "explosives" should be deferred until a decision had been taken on the basic issue of the scope of the convention's applicability.

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5. The Delegates of the Union of Soviet Socialist Republics, United States, Cuba, France, Venezuela, Japan and Ethiopia all spoke against taking action at this time to expand the scope of the draft convention. From the very outset the work of the Ad Hoc Group of Specialists on the Detection of Explosives had been directed to plastic and sheet explosives, with the initial approach by the Secretary General having been addressed to States that manufactured those explosives, and with all the research, experiments and testing having been carried out on plastic explosives. To attempt now to apply all of the technical conclusions to other types of explosives by expanding the scope of the draft convention would risk jeopardizing the very valuable work already done. If the Conference was to fulfil the mandate given by the United Nations Security Council, United Nations General Assembly and ICAO Council, it should now adopt a convention limited to the marking of plastic explosives for the purpose of detection which was likely to be ratified quickly by a large number of States (including manufacturing States), and not risk failure by attempting to deal with unforeseen and unforeseeable future developments. If in future, after further work and in the light of technological developments, other types of explosives were identified that called for treatment similar to that given to plastic explosives, they could be covered in some form of protocol to the present convention.

6. The Delegate of the Union of Soviet Socialist Republics, speaking to the linguistic issue of whether or not the reference to "and sheet" should be included in Article I.1, said that - at least in Russian - this was not necessary. The term "plastic" was a general concept, whereas "sheet" referred exclusively to the form given to the explosives. The Delegate of France drew attention to the explanatory note on page 3 of MEX Doc No. 4 Revised. There would definitely be a problem in French if the reference to "sheet" were omitted. He would be prepared to have different terminology on this point in the different language versions of the convention, so long as it was clearly understood that there was no substantive difference. He suggested that the question should be left for consideration by the Drafting Committee. The Delegates of the United States, Ethiopia and Kenya also saw this as a purely linguistic issue that should be referred to the Drafting Committee.

7. The Delegate of Japan, referring to Article I.3, noted that the term "mark" did not appear elsewhere in the text of the convention. He supported the proposal of the United Kingdom in MEX Doc No. 7, paragraph C.2 to replace the definition of "mark" by the definition of "unmarked explosives", the proposed wording of which he found satisfactory. The Chairman noted this suggestion, which would be taken up once the Conference had disposed of the substantive issue relating to the scope of the convention.

8. The meeting adjourned at 1630 hours.



INTERNATIONAL CONFERENCE ON AIR LAW

SECOND MEETING OF THE COMMISSION OF THE WHOLE

(Thursday, 14 February 1991, at 1015 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Article I (cont'd)

1. The second meeting of the Commission of the Whole resumed discussion on Article I, addressing the question of whether the scope of the convention should be limited to plastic and sheet explosives or whether it should be expanded to encompass all categories of explosives.

2. Several delegations spoke in favour of expansion of the scope of the convention. The Delegate of Afghanistan commented that this could be accomplished by redefining the term "explosives" to include not only plastic and sheet but also other explosives as described in the annex to the convention. The Delegate of Argentina believed that the omission of other types of explosives, which were as detrimental as plastic explosives, would eventually necessitate the drafting of a new convention. In the interests of ensuring ratification of this convention, however, he was prepared to agree to the majority viewpoint. The Delegate of Brazil stated that all explosives manufactured industrially should be included in this convention so as to obviate the need for marked and unmarked products.

3. The Delegate of the United Kingdom expressed concern that if the scope were expanded, it could have a serious effect on the development of the substantive articles in the draft convention. He repeated his suggestion that the Conference could agree to a draft resolution which, in addition to the normal provisions, could also encourage manufacturing States to take action to implement the marking of explosives, if possible even before the convention came into force. He proposed that Council be invited to maintain the existing Ad Hoc Group of Specialists on the Detection of Explosives, to continue studies aimed at keeping the technical annex up to date pending entry into force of the convention and to initiate, as a matter of urgency, exploration of the possibility of introducing marking agents into other types of explosives. The Council could thereby begin work on this issue and the work of this Conference would not be delayed.

4. A large number of delegations, including Côte d'Ivoire, China, Mexico and Venezuela, expressed the view that the scope of this convention must be limited to plastic explosives only. Although agreeing, the Delegate of China also believed that efforts should be made to keep the door open for future inclusion in the convention of other explosives, either by expanding its scope or by other possible means.

5. In clarifying his delegation's position, the Delegate of Canada agreed that, although it was crucial that a convention be concluded at this Conference, it was unlikely that the scope would go beyond plastic explosives. He believed that the initial application of the convention should be strictly limited to

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Commission of the Whole

these explosives only, with other types of explosives being specified in the annex, thereby ensuring a mechanism for future expansion. Such a mechanism could easily be incorporated into Article VII which provided for an amending formula for the annex. These views were supported by the Delegates of Kenya and Pakistan.

6. The Delegate of Switzerland, while supporting this proposal, noted that difficulties could arise from transferring the definition of the term "explosives" to the annex. He therefore envisaged a possible extension of the scope of the convention by means of an amendment, which would allow for its future expansion.

7. A variation of the Canadian approach was introduced by the Delegate of Nigeria, supported by the Delegate of Saudi Arabia. Referring to the Chicago Convention and its Annexes as an example, he advocated having a single instrument on the marking of explosives supplemented by a series of technical annexes, each dealing with different categories of explosives.

8. The Delegate of Czechoslovakia favoured retention of the provisions of Article 1 as exclusion of the word "plastic" from one part of the convention could lead to misunderstandings in the interpretation of States' obligations.

9. In relation to paragraph 3, the Delegate of Brazil suggested tagging explosives to enable identification of the manufacturer. Referring to Articles II and III, he noted that there was some confusion between stopping the manufacture of unmarked explosives and stopping their circulation.

10. Several editorial changes suggested during the discussion were referred to the Drafting Committee. The Delegate of Argentina pointed out that, in Spanish, plastic and sheet explosives did not signify two types of explosives and he had no difficulty with retaining both terms or just the word "plastic". The Delegate of Côte d'Ivoire questioned use of the square brackets as well as the quotation marks in the technical annex and suggested their deletion. The Delegate of Pakistan believed that the words "would include, but are not restricted to" in the technical annex, I, Part 1 should be deleted.

11. The Chairman transformed the meeting into the Fifth Plenary of the Conference to elect the First, Second, Third and Fourth Vice-Presidents. The Plenary having completed its work, the Commission of Whole was resumed. It deferred further deliberation on Article I and turned its attention to the obligation of States as contained in Articles II and III.

Article II

12. Although agreeing with the text of Article II, the Delegate of Canada strongly supported the recommendation of the Ad Hoc Group of Specialists on the Detection of Explosives that the term "manufacture" be understood to include the recycling or reworking which produced explosive products that met the definition of plastic or sheet explosives. This would effectively address the problem of control of existing stocks of explosives that might have their original purpose or form altered. In order to accommodate this point, the Delegate of Canada felt

that the term would have to be defined in Article I. Referring to comments made by the Delegate of Japan regarding the need to define "unmarked" as well as "marked" in Article I, he pointed out that only the term "marked" appeared in the title, in the preambular clauses and in Article VI, and he favoured retention of that definition.

13. The Delegate of Indonesia sought clarification of the word "territory" whose meaning he considered to be the same as that in Article 2 of the Chicago Convention.

14. The Delegate of Chile, supported by Delegate of Argentina, objected to the use, in Spanish, of "effectively" in both Articles II and III as it weakened the obligation imposed on States and presupposed negligence or lack of effectiveness on the part of States.

15. The Chairman noted the foregoing points for consideration by the Drafting Committee.

16. The Commission adjourned at 1230 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

FIFTH PLENARY MEETING

(Thursday, 14 February 1991, at 1130 hours)

President: Dr. K.O. Rattray

AGENDA ITEM 6: ELECTION OF THE VICE-PRESIDENTS OF THE CONFERENCE

1. The President having invited nominations for the office of First Vice-President in accordance with Rule 4, paragraph 2 of the Rules of Procedure, the Delegate of Pakistan stated that his delegation was honoured to nominate Dr. F. Cede, Chief Delegate of Austria. Dr. Cede, presently the Consul General of Austria in Los Angeles, was Deputy Director of Legal Affairs, Austrian Ministry of Foreign Affairs, and had had considerable experience at both the United Nations and ICAO.
2. There being no other nominations, the President declared Dr. Cede elected as First Vice-President of the Conference.
3. Dr. Cede, thanking all delegates for the great honour they had placed on him, pledged his support to the President.
4. The Delegate of Algeria then proposed Dr. H. Perucchi, Delegate of Argentina, for the office of Second Vice-President. Dr. Perucchi, who was very well known and highly regarded in the international air law community, was a founding member of the Argentine Academy of Air and Space Law. He was also a Professor in Air and Space Law, an author and a former ICAO Council Member.
5. The President, in the absence of any other nominations, declared Dr. Perucchi elected as second Vice-President.
6. Dr. Perucchi thanked the Delegate of Algeria and assured the Conference of his dedication to the work at hand.
7. The Delegate of Ethiopia nominated Mr. M. Mukai, Alternate Chief Delegate of Japan, for the office of Third Vice-President. Mr. Mukai, who was well known at ICAO, has served for several years in various Japanese embassies abroad and in the Ministry of Foreign Affairs in Japan.
8. There being no other nominations, the President declared Mr. Mukai elected as Third Vice-President.
9. Mr. Mukai thanked the Delegate of Ethiopia for nominating him and, expressing his gratitude for such an honour and his determination to work for a successful conclusion to the Conference, accepted the nomination.
10. The Delegate of Costa Rica then proposed Mr. V. Poonosamy, Alternate Chief Delegate of Mauritius, for the office of Fourth Vice-President. Mr. Poonosamy, who was a legal expert specializing in international aviation law and Director of International Relations of his national carrier, had also had considerable experience in ICAO.

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11. As there were no other nominations, the President declared Mr. Poonoosamy elected as Fourth Vice-President.

12. Mr. Poonoosamy thanked the Delegate of Costa Rica for having nominated him and congratulated the President and the first three Vice-Presidents on their elections. He accepted the nomination not only on his own behalf but also on behalf of his country.

13. Having completed Agenda Item 6, the President declared the Fifth Plenary Meeting closed and resumed the Second Meeting of the Commission of the Whole.



INTERNATIONAL CONFERENCE ON AIR LAW

THIRD MEETING OF THE COMMISSION OF THE WHOLE

(Thursday, 14 February 1991, at 1420 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Article II (cont'd)

1. In resuming discussion of Article II, the Chairman recalled that three points had been noted for consideration by the Drafting Committee. He further stated that the question of tagging explosives had previously been discussed extensively by the Legal Committee and need not be further pursued since the idea was opposed by a great majority.

2. The Delegate of Senegal accepted the draft article. The Delegate of Algeria, referring to the wording in Articles III and IV, expressed preference for "control" rather than "prohibit and prevent" in Article II, with no deadlines for entry into force being stipulated.

3. In providing background to the drafting of the convention, the Executive Secretary clarified that the basic philosophy was to make the future production of unmarked explosives unlawful as of the entry into force of the new instrument. Since it was not feasible to mark the already existing stocks, the only obligation which could be imposed on States was to exercise strict and effective control, with a view to disposing of the existing stocks within agreed time limits. The intent was clear that any future production of unmarked explosives should be not only controlled but also prohibited.

4. Although supporting the statement made previously by the Delegate of Canada regarding the term "manufacture", the Delegate of Italy suggested adding the words "even with recycled materials" in Article II or including a new definition in Article I.

Article III, paragraph 1

5. The Delegate of Senegal pointed out the inconsistent use of the terms "each State Party to this Convention" in Articles II, and "each State Party" in Articles III and IV. The Delegate of France suggested that the complete phrase be used in Article II, followed by the abbreviated phrase in subsequent articles.

Article III, paragraph 2

6. The Delegate of Indonesia expressed concern with the wording "military or police authorities" and suggested substitution of a broader term such as "military or law enforcement authorities of the government or of the State Party". This view was supported by the Delegate of the United States.

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7. The Delegate of Japan, supported by the Delegates of the United States, Canada, Senegal, France and Tunisia, believed that the words "for their own use" were unnecessary in light of the inclusion of "for purposes not inconsistent with the objectives of this Convention". The Delegate of Brazil, however, favoured retention of the phrase because he considered that the movements of unmarked explosives by military authorities should not be exempted.

8. In seeking clarification of the phrase "for purposes not inconsistent with the objectives of this Convention", the Delegate of Australia expressed his opinion that paragraph 2 provided a limited exception to the provision of paragraph 1 to allow movement by military and police authorities of unmarked explosives, i.e. those manufactured before entry into force of the convention.

9. The Executive Secretary stated that the Legal Committee had been well aware of the vague wording of this phrase and asked that the Drafting Committee study the preamble to ensure the existence of a solid basis for the interpretation of the convention's objectives. He pointed out that paragraph 2 did not necessarily refer only to existing stocks but could refer also to new stocks of unlawfully produced unmarked explosives. He cautioned that this concept of the legitimate movement and possession of explosives had to be preserved.

10. The Delegate of the United States added that this broad language was frequently found in international agreements when it was undesirable to attempt to list all possible purposes that might be considered legitimate. Although he had no objection in principle to elaborating this phrase, he felt it was unnecessary.

11. The Chairman noted the foregoing points for consideration by the Drafting Committee. Discussion on the phrase "purposes not inconsistent with the objectives of this Convention" was deferred until consideration of the preambular provisions.

Article IV

12. With regard to the question of the two time limits for disposal of existing stocks, there was a general consensus for a three-year period for stocks other than military. Many different views were expressed, however, in relation to military stocks. The Delegate of Mexico, supported by the Delegates of Tunisia, Ethiopia and Argentina, concurred with the time periods stated in Article IV, paragraph 2. The Delegate of Argentina further stipulated that these deadlines should enter into force at the time of ratification. For stocks held by military and police authorities, the Delegate of Japan suggested an increase to 20 years; two delegations proposed a reduction: the Delegate of Indonesia to 7 or 8 years and the Delegate of the Islamic Republic of Iran to less than 10 years. The Delegate of Saudi Arabia accepted the existing time periods but had no objection to a reduction.

13. The Delegate of Brazil advocated one period of 5 years for disposal as he believed that the scope of the convention would be reduced if two separate time

periods were defined. He did, however, concede that the majority viewpoint was for two distinct time periods.

14. The Delegate of Japan sought clarification of the words "otherwise disposed of" and questioned their inclusion. He suggested that if they were retained, the words "for purposes not inconsistent with the objectives of this Convention" should be added after "disposed of". The Delegates of Mexico and Tunisia supported deletion of "otherwise disposed of". The Delegate of Tunisia added that if they were retained, he favoured including the words "within their territories" after "otherwise disposed of", in order to avoid the problem of one State moving explosives to another State, even if in keeping with the convention's objectives. This raised the issue of non-alignment of text in English, French and Spanish.

15. The Chairman noted the foregoing points for consideration by the Drafting Committee.

16. The Delegate of Saudi Arabia felt that existing Article IV, particularly paragraph 2, was critical for ratification of the convention. In light of the various concerns which had been expressed and in the interest of producing an instrument which would be acceptable, he saw paragraph 2 as a compromise, requiring only minor editorial changes to align the various languages.

17. The Delegate of the Union of Soviet Socialist Republics shared with the Conference the findings of a study dealing with the economic and environmental implications of disposal of existing military stocks of unmarked explosives. The difficulty in the destruction of these stocks was due partly to their location and partly to the fact that they were integrated into ammunition. This integration within existing ammunition and the impossibility of separation for purposes of destruction raised the issue of liquidation of ammunition containing these types of explosives; this in turn was linked to the whole question of disarmament. As a process for liquidating these types of explosives with safety guarantees both for human life and the environment did not presently exist, new technology was needed to extract these explosives. The costs involved would be so exorbitant to render it impractical to rely on States for a solution. The study also raised the issue that it was more difficult to safeguard military stocks than stocks located elsewhere. The position of his delegation was that these explosives had to be very strictly controlled by the State, without setting any deadline for their disposal. He therefore felt it was unnecessary to have a provision in the convention for the destruction of plastic explosives intended for military purposes.

18. Referring to the intervention of the Delegate of the Union of Soviet Socialist Republics, the Delegate of France found the two time periods to be acceptable in principle but recognized the difficulties this might cause for some States. He suggested a differentiation be made according to whether such substances were or were not incorporated in a permanent fashion into military devices. He proposed two different regimes: one for unincorporated explosives in the hands of the military per se and the other for explosives integrated in military devices. On another point, he stated that the words "to neutralise" should be understood as permanently rendering an explosive useless.

19. The Delegate of Algeria summarized the two prevailing viewpoints: some States advocated the compulsory destruction of existing stocks while others referred to the economic, technical and ecological problems that would hinder destruction of the existing stocks. He referred to the technological problems raised by the Delegate of the Union of Soviet Socialist Republics and noted France's suggestion of two separate regimes. He supported the statement made by the Delegate of the Union of Soviet Socialist Republics that States Parties to this convention should make a commitment to ensure that the stocks are controlled.

20. The Delegate of Canada agreed with the remarks of the Delegates of the Union of Soviet Socialist Republics and Japan that it would be difficult, if not impossible, to achieve consensus based on the present language. He commended the proposal put forward by the Delegate of France and suggested making a distinction between freestanding explosives used by the military and those incorporated into munitions and other forms of military equipment. As a possible solution he proposed taking three elements in combination: Article I (definition), Article IV (control) and the annex. He favoured defining, in Article I, incorporated and non-incorporated explosives used by the military. He suggested retaining paragraph 1 of Article IV and creating a separate paragraph dealing with the control of commercial stocks, with wording consistent with the draft text and including the language proposed by the Delegate of Japan "for the purposes of this Convention". He felt that further discussion was warranted on the possibility of a separate paragraph dealing with destruction of freestanding military explosives with a time period of 10 or 15 years, also including the language proposed by the Delegate of Japan. He proposed that current paragraph 3, covering the need to destroy illicit explosives found in the territory of a particular State, remain and that a paragraph be added in the annex on future marking of materials to be incorporated in devices after the three-year period. In this way, Article IV would be silent with respect to a requirement to destroy explosive materials in incorporated military devices.

21. The Delegate of Sweden proposed in paragraph 2 the wording "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" to be included after "destroyed or otherwise disposed of".

22. To emphasize the urgent need for the destruction of unmarked explosives, the Delegate of the Islamic Republic of Iran proposed adding in paragraph 3 "as soon as possible" after "each State Party shall take".

23. The Chairman, summarizing the discussion, remarked on the non-alignment of texts, in particular the use of the word "neutralize" in the French text as compared to "otherwise disposed of" in the English text. He recalled that there was a divergence in viewpoints over the disposal of military stocks. Some delegations expressed the view that it was essential for all stocks to be disposed of within a certain period of time; other delegations believed a distinction for military stocks needed to be made between freestanding and those which were integrated into ammunition. He stated that the practical difficulties

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which these issues raised needed to be resolved by finding a formula to deal with them. The Chairman informed the Commission that discussion of Article IV would resume at the next meeting.

24. The meeting adjourned at 1625 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

FOURTH MEETING OF THE COMMISSION OF THE WHOLE

(Friday, 15 February 1991, at 1000 hours)

Chairman: Dr. K.O. Rattray

1. Opening the meeting, the Chairman announced that as of that morning 72 States and five Observer Organizations had registered for the Conference, for a total of 185 participants.

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Article IV (continued)

2. The Commission having returned to its consideration of Article IV of the draft convention, the Delegate of the United States indicated that one of his Delegation's concerns (which he knew was shared by others) related to the failure to make a clear distinction in that article between existing stocks of unmarked explosives that were held by the military in the form of raw materials and those that were permanently incorporated into military equipment. His Delegation believed there must be a deadline beyond which States would not be at liberty to maintain stocks of unmarked raw material and would accept any proposed amendment that would make the distinction clear in an acceptable way.

3. The Delegate of Venezuela noted that the Delegate of France had also differentiated between explosives which were permanently incorporated into military devices and those that were not. This obviously had to be addressed because at the moment there was a discrepancy between the technical annex and the text of the convention with respect to so-called military explosives. She also expressed support for the proposal by the Delegate of Mexico with respect to Article IV.2, as well as for the arguments advanced by the Delegate of Tunisia in support of the French proposal that referred to "neutralization". That, of course, implied a process, equipment and costs (including ecological costs) that States which did not manufacture or possess unmarked explosives should not have to bear. She proposed that Article IV.2 be amended by inserting "in its own territory" after "are consumed, destroyed or otherwise disposed of" - thus safeguarding other States from damage caused by the wastes emanating from highly unstable explosives.

4. The Delegate of Germany pointed out that "military or police authorities of a State" meant, in fact, the State itself. His Delegation had listened with concern to the statement by the Delegate of the Union of Soviet Socialist Republics, because it also had some difficulty in discussing military stocks. His Delegation would prefer to see Article IV.2 redrafted to omit any reference to military or police authorities, or to 15, 20 or any other number of years, and instead simply to appeal to States to control their stocks of unmarked explosives in keeping with the spirit of the convention. In so far as unmarked explosives in the hands of the private sector were concerned, States would have to establish national laws to regulate them, and in that regard the three-year period for their disposal was acceptable to Germany.

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5. The Delegate of Costa Rica observed that his country was especially privileged and probably unique in that it had no military forces of any kind. Neither did it manufacture or possess explosives - plastic or otherwise. That meant, of course, that it did not face the same problems as confronted other States. However, his Delegation was attending the Conference because Costa Rica wished to be aware of all problems that affected international civil aviation and to assist, even in a small way, in their resolution. With that in mind, his Delegation supported the suggestions made by the Delegates of Mexico and Venezuela.

6. The Delegate of Honduras had no difficulty with the time periods established in Article IV.2. It also favoured reference only to "consumed or destroyed".

7. The Delegate of Pakistan suggested that Articles III.1 and IV.1 should be combined. Treating possession as a separate issue gave the impression that the convention should at least exhort States to include in their laws some penal provisions governing possession and transfer of possession of unmarked explosives. He suggested that one basic weakness in the draft convention was the absence of headings and sub-headings, which would have clarified the intent of the individual provisions. A number of Delegates had referred to the need to distinguish between military and other stocks, and had suggested that these explosives, which were extremely toxic, were probably safest when permanently incorporated into military equipment. If in fact that assumption was correct, perhaps the convention should be revised to request States to establish a relatively short time period within which the raw materials had to be permanently incorporated. It must be recognized that this whole subject was of great concern to the public at large, and that with the adoption of the convention the impression was apt to be that finally all these plastic explosives would be marked. In fact, there would be stocks of raw materials available in the military ordnances of a number of States for as long as 15 years. Surely that period could and should be reduced. For one thing, those in charge of military stocks should not be subjected to the pressure of having to oversee their custody for such a long time.

8. The Delegate of Brazil reiterated his Government's position that it would be highly desirable for a State to entrust the convention's enforcement in its territory to a single body, preferably from within the armed forces of the State. It would also be useful to have included in a State's national legislation provisions identifying violations of the convention and specifying the steps to be taken to deal with them. Finally, there was a contradiction between the wording of Article IV.2 and Part I b) of the technical annex, with the former calling for the destruction of all unmarked explosives and the latter providing an exception for military explosives.

9. The Delegate of Canada indicated that his Delegation had now submitted to the Secretariat for publication its proposed amendments to the convention. They were aimed at providing for an effective régime with respect to the control of existing stocks, while at the same time recognizing the need to take into account both the economic and ecological concerns associated

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particularly with the destruction of military explosives and the practical implementation problems that it created. He understood the paper (MEX Doc No. 25)

should be available on 18 February. He explained in some detail the rationale behind the proposals and expressed the belief that, if accepted, they could provide an effective balance between, on the one hand, the economic, ecological and practical implementation concerns of States (especially those with large stocks of military explosives) and, on the other, the security needs of all States.

10. The Delegate of Senegal shared the views of the Delegates of Mexico, Tunisia, Venezuela and others with regard to the word "neutralized". Whatever the word used, if the concept was to be retained it should be qualified by adding "on its territory". The Chairman suggested that this was a linguistic problem that should be examined by the Drafting Committee, once established.

11. The Delegate of Kenya indicated his Delegation's acceptance of the 15 and 3-year limits specified in Article IV.2, although it would prefer shorter periods if the Conference could so agree. His delegation supported deletion of the phrase "or otherwise disposed of" from that article. The Delegate of Qatar also favoured a reduction of the 15-year period, but said that his Government was prepared to accept any decision taken in this regard.

12. The Delegate of the Byelorussian Soviet Socialist Republic noted that, as a Member State of the United Nations, his Republic had participated in that Organization's meetings where the mandate for this Diplomatic Conference had been established. The Conference should remain within those terms of reference and take a realistic approach, bearing in mind the basic purpose of the convention. Referring specifically to Article IV.2, he too believed there was a need for realistic deadlines for the elimination of unmarked explosives and felt that a 5-year period could create serious difficulties.

13. The Delegate of Ghana also felt strongly that the phrase "or otherwise disposed of" must be qualified so as to ensure that there was no dumping on other States. On the question of military stocks, his Delegation too was reluctant to have the Conference discuss this. It was unrealistic, for security and other reasons, for the convention to attempt to legislate for the military organizations of States.

14. The Delegate of Cuba agreed that Article IV.2 should refer only to consumption and destruction, with the Drafting Committee being left to find the exact wording. On the question of deadlines, his Delegation could accept 3 years for stocks other than those held by the military and police authorities, and believed that the Canadian proposals, to be examined later, would resolve the problems associated with military and police explosives.

15. The Delegate of the United Kingdom could sympathize with those who wanted to see the destruction or other disposition of unmarked explosives take place in the territory of the State Party concerned, and also recognized the concerns expressed by the Delegate of the Union of Soviet Socialist Republics which he knew were shared by a number of other States. The essential purpose of

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the convention was to deny to terrorists the ability to acquire easily unmarked explosives capable of being secreted, undetected, on board aircraft or other forms of transport, or elsewhere. That did not mean that it must go so far as effectively to require a State to rid itself of all unmarked explosives. Those which were incorporated as an integral part of a military device did not pose the threat with which the Conference was concerned. Whilst the problem could be addressed in other ways, his Delegation - which had had the advantage of seeing and contributing to the development of the proposals - welcomed the approach being taken by Canada, believing that it was a helpful and constructive step towards meeting the common goal of securing widespread ratification of the convention. The precise wording to give effect to the Canadian proposals could be left to the Drafting Committee, but he would mention two points that his Delegation felt should be covered: (a) the need, in relation to the excluded explosives described in the technical annex, for the continued application of strict and effective control over possession and transfer of possession to prevent diversion or use for purposes inconsistent with the convention's objectives; and (b) the need to provide for marking as an alternative to destruction for unmarked explosives that were discovered or that might cease to be incorporated in military devices.

16. The Delegate of the Kingdom of the Netherlands looked forward to examining the proposals of Canada which - as described - would seem to respond to a number of the concerns that had been voiced with respect to Article IV. The Delegates of the United States and France associated themselves with this remark. The latter added, with respect to the comments made concerning the use of the word "neutralization", that he fully appreciated and indeed shared the concern lest such neutralization lead to other States becoming the dumping ground for toxic waste products. It was a matter of properly formulating that concern and incorporating it into the text - a task for the Drafting Committee.

17. The Delegate of Canada, while sympathizing with the concerns voiced with respect to the inclusion of the phrase "or otherwise disposed of", said that that expression had been included in recognition of the fact that - while consumption or destruction were probably the only realistic, well-established methods available at present - the door should be left open for possible future development, through research and technology, of improved methods for getting rid of existing stocks that would still be consistent with the convention's objectives.

18. The Delegate of India shared the concerns expressed by the Delegates of Mexico, Venezuela, Tunisia and Senegal regarding the disposal of existing stocks. Any consideration of that question must take into account the ecology, including the high seas. He also supported the suggestion by the Delegate of Pakistan, that the convention would be improved by the inclusion of headings and sub-headings before the individual articles.

19. The Chairman suggested that discussion of Article IV be suspended at this point, to allow for informal consultations among interested Delegates and to await the publication of the Canadian proposals. As he saw it, a broad area of agreement already existed on some elements of the article: Article IV.1; the 3-year deadline for unmarked explosives used for purposes other than military or

police in Article IV.2; and Article IV.3 (subject to suggested drafting changes that seemed acceptable to a large number of Delegations).

Article V

20. With respect to Article V.2, the Delegate of Argentina felt that - in addition to the technical qualifications of candidates for membership on the Explosives Technical Commission (ETC) - it was necessary to take into account where they would come from. His Delegation believed that to a large extent they should be nominees of States that manufactured the explosives covered by the convention, since those States would have the responsibility for their production and distribution and would know who was receiving them for legitimate purposes. States that received those explosives for legitimate purposes as outlined in the convention should also be represented. Geographical and other criteria might also need to be taken into account.

21. The Delegate of Japan believed that Article V should clearly prescribe that the ETC should establish its own rules of procedure. It should also provide for the continued existence of the Ad Hoc Group of Specialists on the Detection of Explosives pending establishment of the ETC, to take account of any possible delay in establishing the Commission. In this regard the United Kingdom suggestion that the Conference adopt a resolution might be a way of achieving that objective. Finally, Article V.3 should make clear that the appointment of a member to fill a vacancy should be for the remainder of the predecessor's term.

22. The Delegate of the Islamic Republic of Iran felt that Article V.1 should state that there could not be more than one member from the same State. As for the ICAO Council appointing the members, what would happen if a majority of the States represented on the Council were not States Parties to the convention? Would those not Parties to the convention be allowed to participate in the appointments? What majority of those voting would be required for a member to be appointed? He also believed that the article should specifically prescribe who would determine the rules of procedure of the ETC but - unlike the Delegate of Japan - felt that that should be the responsibility of the ICAO Council. Finally, like the Delegate of Argentina he considered that the criterion of equitable geographical representation should be taken into account in appointing the ETC members.

23. The Delegates of Indonesia, Mexico and Chile supported the suggestions made by the Delegates of Argentina and Japan.

24. The Delegate of Côte d'Ivoire questioned the need for the parenthetical reference to the Council in Article V.1. The ICAO Council was a well-known body that had existed for many years, and there was no need to qualify it in that way. On a point somewhat related to that raised by the Delegate of the Islamic Republic of Iran, what would be the situation if one or two members appointed to the ETC were not nationals of States Parties to the convention? Would they be legally competent to serve on the Commission? Apart from these considerations, Article V was satisfactory to his Delegation.

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25. The Delegate of Venezuela, while agreeing that the membership of the ETC should include manufacturing and user States, had some problem with applying the principle of equitable geographical representation to the selection of the members. The manufacturers of equipment and explosives were essentially concentrated in one region. Nevertheless, it was important to have as broad a representation as possible, and perhaps the answer was for the Conference to instruct the Council, in making the appointments, to select the majority of the members from manufacturing and user States, with the rest being selected in such a way as to ensure the representation of regions that would not otherwise be represented. She had a more basic concern about the ETC's composition, however, and that related to the status of the members: would they represent States or would they be independent experts? If the former, then - as suggested by the Delegate of the Islamic Republic of Iran - the article should make clear that not more than one member could be of the same nationality. She also agreed that provision should be made for the continued existence of the Ad Hoc Group of Specialists on the Detection of Explosives pending the establishment of the ETC. Finally, she felt that the ETC should establish its own rules of procedure, since Council Representatives from States not Parties to the convention should not participate in the determination of those rules.

26. The Delegate of Cuba shared the views of the Delegates of Argentina, Venezuela and Japan and suggested the inclusion of a new provision following Article V.2 and reading along the following lines: "The Commission, during its first meeting, shall develop and approve its rules of procedure".

27. The Delegate of Kenya believed that no Council Representative from a State not Party to the convention should participate in the appointment of ETC members. He also agreed that the Commission should approve its own rules of procedure. As for Article V.2, he shared the view that the membership should be drawn largely from States that manufactured and/or carried out research on explosives. User States should also be represented, and an attempt should be made to ensure a degree of equitable geographical representation.

28. The Delegate of China fully supported the views of the Delegates of Argentina, Kenya and others. On the issue of the qualifications for membership on the ETC, he felt that the experts should also have direct and substantial expertise in the techniques for the marking of explosives. The question of who should establish the rules of procedure of the Commission in his opinion warranted further consideration.

29. The Delegate of Senegal endorsed the statement of the Delegate of Argentina regarding the origin of the experts appointed to the ETC. As for the size of the Commission, he understood that the membership of 15 had been decided upon more or less as an analogy to the ICAO Air Navigation Commission. In that regard he would recall that the 27th Session of the ICAO Assembly had amended Article 56 of the Chicago Convention to enlarge the Air Navigation Commission to 19 members. He was not proposing any change to Article V.1 but felt that this was a question that might warrant bearing in mind. He supported the views of the Delegate of Japan with respect to the rules of procedure of the ETC, as well as his suggestion regarding the Ad Hoc Group of Specialists on the Detection of Explosives. He also shared the concerns of the Delegate of the Islamic Republic

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of Iran regarding the appointment of ETC members by the ICAO Council and agreed with him that no State should have more than one of its nationals on the Commission.

30. In view of the time, discussion of Article V was suspended at this point, to be resumed at the following meeting, and the meeting adjourned at 1230 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

FIFTH MEETING OF THE COMMISSION OF THE WHOLE

(Friday, 15 February 1991, at 1415 hours)

Acting Chairman: Dr. F. Cede

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Article V (continued) and Article VI

1. The Commission returned to its discussion of Article V, the Delegate of the United States taking the floor. He recalled that the question of the composition and functioning of the Explosives Technical Commission (ETC) had been one of the more thoroughly debated topics at both the Legal Sub-Committee and Legal Committee meetings where the draft convention had been developed. His Delegation's understanding of the consensus that had emerged was that the ETC was to be comprised of a group of very highly qualified technical experts, who would serve as experts in the service of all States and as representatives of no particular States - in other words, a body similar to the Ad Hoc Group of Specialists on the Detection of Explosives. Article V attempted to take into account as many relevant criteria and considerations as possible. For example, it provided explicitly for expertise in explosives research. That was to allow for participation by an individual who might not reside in or be a citizen of a country that manufactured plastic or sheet explosives - in which case he was unlikely to have expertise in manufacturing, although he might have exceptionally valuable expertise in the pure science of explosives and their detection. So far as the formal criteria for appointment to the ETC was concerned, to depart from technical and scientific expertise was to jeopardize the effective functioning of that body, since States Parties to the convention might then feel they had reason to be less confident about the quality and objectivity of the work that emerged from its deliberations.

1.1 His Delegation considered it essential that those principles be embodied and perpetuated in the final text of the convention. The convention already assigned very important responsibilities to the ETC and it might well be that, by the time the Conference ended, it might have additional vital and sensitive functions to perform. For those reasons, his Delegation considered Article V as currently drafted quite acceptable, although it would be prepared to support certain of the proposals advanced at the previous meeting - for example, to provide explicitly that the Commission shall be responsible for determining its own rules of procedure.

2. The Delegate of Germany, referring to Articles V and VI, indicated that his Delegation had a basic difficulty with the fact that Article V was the first to speak of a relationship between the ICAO Council and the convention, and assigned a function to the ICAO Council without providing for the acceptance by the Council of that added responsibility. This could not be left hanging in the air. It must be mentioned somewhere - perhaps in a resolution for inclusion in the Final Act, which would call upon the ICAO Council to assume the functions referred to in the convention. His Delegation would be raising the issue again in the Drafting Committee in connection with the Final Act. Referring to the

detailed regulations outlined in Article V, he saw a need to establish a certain functional relationship between the ICAO Council and the ETC. There was a question about the propriety of Council Representatives that were not from States Parties to the convention participating in the appointment of members of the ETC, or acting upon the recommendations of that body. A paper had been drafted and was now in preparation dealing with this issue. He outlined in general terms the contents of that working paper (MEX Doc No. 23).

2.1 Reacting to comments on Article V made by earlier speakers, and in particular to the suggestion that equitable geographical representation should be taken into account in appointing members to the ETC, he said that Germany would like to see the qualifications listed in Article V left as written, but to open participation in the work of the ETC to other States by creating the status of observers. The Observer from IMO had mentioned the possibility of that Organization being offered observer status in the ETC; similar requests could probably be expected from INTERPOL and other specialized organizations having a direct interest in the Commission's work. Another issue that warranted some thought - and which had been alluded to by the Delegate of Japan - was what he would call a "bridging activity". What would be the situation between the closing date of this Conference and the entry into force of the convention with the subsequent establishment of the ETC? There should be some explicit statement - again, perhaps in a resolution to be included in the final act - to cover that.

3. The Delegates of Honduras and Afghanistan supported the suggestions advanced earlier by the Delegates of Argentina, Japan and the Islamic Republic of Iran.

4. The Delegate of Ghana, while supporting the principles underlying the interventions of the Delegate of Argentina and others with respect to Article V.1, suggested that the function of the ICAO Council envisaged in that article was basically the administrative one of appointing to the ETC candidates nominated by States Parties to the convention - although, of course, on occasion there might be political considerations that caused problems. Perhaps the Executive Secretary could shed some light on that issue.

5. The Executive Secretary, Dr. Milde (D/LEB), referred the Commission to Article 56 of the Chicago Convention, governing the nomination and appointment of members of the Air Navigation Commission (ANC) (the ICAO body most similar to the proposed ETC), which he believed might provide valuable guidance. That article provided for a body of experts appointed by the ICAO Council in their personal capacity and enjoying technical independence of the States that nominated them. It said nothing about the experts representing technical expertise in specific areas, nor did it mention geographical representation. Nevertheless, the reality was that throughout its existence the composition of the ANC had been a balanced one that took such elements into account. Indeed, it was unthinkable - given the real-world situation - to have a slanted or unrepresentative composition of any body. Article 56 did not refer to the Rules of Procedure of the ANC, which was a document approved by the Council as the executive body to which the Commission acted as an adviser. (It was true that the ICAO Legal Committee adopted its own Rules of Procedure, but they, too, were subject to Council approval.) Within the framework of the proposed convention the ETC, like the ANC, would not make policy decisions but rather recommendations to the Council. It therefore seemed appropriate that the Council approve its rules of procedure. It also seemed eminently sensible since only the Council was

in a position to decide on such issues as availability of funds, scheduling of meetings to avoid overlap and excessive costs, etc. If the Commission agreed with his comparison between the ETC and the ANC, he suggested that the questions raised during the discussion related more to drafting issues than to ones of principle.

6. The Delegate of Brazil, supporting the view expressed by the Delegate of Argentina and others, underlined again the importance his Delegation attached to introducing into the convention the concept of tagging and/or otherwise identifying the origin of an explosive.

7. The Delegate of Ethiopia had no problem with the ICAO Council appointing the members of the ETC, nor with the proposed size of that body. As regards the concern of the Delegate of the Islamic Republic of Iran, he was sure that the vast majority if not all ICAO Council Member States would be parties to this important convention. Any that were not could, for reasons of practicality, abstain from voting on appointments to the ETC. He would like to see some flexibility as regards geographical distribution and the number of experts who could be appointed from any one State. As for Article V.2, he hoped that in appointing ETC members the Council would take into account not only technical competence but also such important personal qualities as integrity.

8. The Delegate of Tunisia, while recognizing that Article V was one of the most important articles and that it had more or less been accepted by consensus by the Legal Committee, continued to feel that it was a weak link in the proposed convention. Like the Delegates of Germany and the Islamic Republic of Iran he saw certain inherent contradictions in the legal link between the ICAO Council and the ETC. As for the composition of the ETC, he shared the opinion of the Delegate of Ethiopia, as well as the views expressed on the need for balanced representation between manufacturing and user States.

9. The Delegate of the Union of Soviet Socialist Republics could in principle accept Article V as drafted but recognized the validity of the concerns expressed. While he recognized that the principle of equitable geographical representation must be borne in mind, he believed that it must be subsidiary to the need for experts to have direct and substantial expertise in matters relating to the manufacture or detection of explosives. In the view of his Delegation, in deciding on the composition of the ETC the Council should consider the personal and professional qualifications of the individual experts, the need for balanced representation of manufacturing and user States, and the desirability of ensuring appropriate geographical representation. He felt that the fears about the role of the Council in appointing ETC members were unwarranted: the Council would in fact simply be examining the qualifications of experts nominated by States to ensure that they met the established criteria, and he doubted that so many experts would be nominated that the Council would have to make a choice. As for the terms of reference of the ETC, these should be developed and adopted by the Commission itself. One gap that needed to be filled related to the question of finances: if the ETC members were to act in their personal capacity, would ICAO be expected to cover their travel and per diem expenses, etc? One must not lose sight of the fact that some ICAO Member States might not adhere to the convention or might later withdraw from it - in which case they should not have to share the costs of the ETC's work. In order to avoid future misunderstandings sensitive issues such as financial implications should be examined and dealt with.

10. The Executive Secretary noted that Article 63 of the Chicago Convention made very clear that the cost of representation, whether direct or by appointment of nominees or representatives on any subsidiary body, must be borne by the States concerned. Constitutionally there was no question of ICAO absorbing travel costs, per diem, remuneration or any other costs relating to membership on the ETC. While suggesting that the Commission need not concern itself unduly with financial management issues, he noted that the Legal Committee believed that the direct cost to ICAO of holding one or two meetings of the ETC each year would be minimal and easily accommodated within the overall ICAO budget - especially taking into account Assembly Resolution A27-7 which assigned to security issues the highest and overriding priority in the Organization's work programme.

11. The Delegate of Mexico, noting the parallels drawn by the Executive Secretary between the ETC and the ANC and the fact that the 27th Session of the Assembly approved an amendment to Article 56 of the Chicago Convention to increase the size of the ANC from 15 to 19 members, proposed that Article V.1 be amended to provide for a membership in the ETC of not less than 15 nor more than 19 members. This would permit better representation from developing countries that were neither manufacturers nor purchasers of explosives.

12. At this point the meeting was converted to a plenary session (Sixth Plenary Meeting) in order to establish the Drafting Committee. That being done, it reverted to the Commission of the Whole to continue examining Articles V and VI.

13. The Delegate of Czechoslovakia, while satisfied with Article V as drafted, was nevertheless prepared to accept certain earlier suggestions - i.e., that each State should be limited to one nominee, and that an observer status be created to permit participation by concerned international organizations such as the IMO. He underlined his Delegation's belief that the most important criterion for appointment to the ETC must be very substantial and excellent experience in and knowledge of the manufacture or detection of explosives, and expressed full agreement with the interventions of the Executive Secretary.

14. The Delegate of France was prepared to accept Articles V and VI as drafted and agreed with the analyses presented by the Executive Secretary and the Delegate of the Union of Soviet Socialist Republics. He appreciated the concerns that had been raised but felt that they could be met within the terms of the articles as prepared by the Legal Committee. The ICAO Council would be responsible, in appointing members under Article V, for ensuring the balance of interests mentioned by the Delegate of Tunisia and others. He recognized the validity of the point made by the Delegate of Germany; there should be some mechanism that would enable States Parties to the convention to be assured of regular follow-up of the Commission's work.

15. The Delegate of Canada shared the view that ETC members should be experts free to work independently of the States nominating them, but understood the concern to have balanced representation on the ETC. Perhaps it could be met by inserting a brief clause in Article V along the lines that "In the selection of the Commission's membership consideration should be given to equitable representation of manufacturers and consumers of explosives as well as to equitable geographical distribution of members." His Delegation also agreed on the importance of the Ad Hoc Group of Specialists on the Detection of Explosives

continuing in existence until the convention entered into force, and felt that it would be appropriate to cover this in a suitable resolution at the conclusion of the Conference.

16. The Delegate of Saudi Arabia pointed out that Article V as a whole represented a compromise reached after extensive debate in the Legal Committee that had included most of the points being raised here. He would be reluctant to see it amended to place extra emphasis on one or other element, or expanded to introduce new elements that might make it less widely acceptable. Having said this, he would nevertheless support the proposal by the Delegate of Mexico (which reflected an earlier intervention by the Delegate of Senegal) to amend Article V to provide for a membership on the ETC of between 15 and 19. Finally, while agreeing on the desirability of inviting appropriate organizations to serve as observers on the ETC, his Delegation saw no need for such observer status to be mentioned specifically in the convention.

17. The Delegate of Ecuador insisted that membership on the ETC must take into account equitable geographical distribution as well as the necessary balance between manufacturers and consumers. The personal integrity of the members was as important as their technical expertise and should be mentioned specifically as a criterion for selection. Finally, his Delegation felt that Article V should provide for the development and adoption by the ETC of its rules of procedure.

18. In summing up, the Acting Chairman suggested that the day's discussion on Article V had brought out a number of issues that could be categorized under specific labels and that, in his view, could be settled easily either in the Drafting Committee or in the development of the rules of procedure of the ETC (which, although in the final analysis would have to be approved by the ICAO Council, nevertheless needed to be elaborated by the Conference). The first category concerned the membership of the ETC and involved issues of size, the number of members from any one State, adequate geographical distribution, balanced representation of producers and consumers of explosives, and admission of observers. A second category of issues pertained to the legal relationship between the ICAO Council and the ETC. That concern, he felt, could be dealt with satisfactorily by including a suitable clarification clause. In a third category of interventions he would place the question of the need for an interim régime pending the entry into force of the convention - something which he considered could be settled by giving the Ad Hoc Group of Specialists on the Detection of Explosives a specific role for that interim period.

19. Discussion of Articles V and VI was suspended at this point and the meeting adjourned at 1640 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

SIXTH PLENARY MEETING

(Friday, 15 February 1991, at 1530 hours)

Acting President: Dr. F. Cede

AGENDA ITEM 8: ORGANIZATION OF WORK

Establishment of the Drafting Committee

1. The Acting/President indicated that, after consultation and in agreement with the President of the ICAO Council, he would propose a list of Delegations which he hoped would be willing to participate as members of a Drafting Committee. That Committee would be charged with the very important task of formulating the text of the various articles of the convention in a manner acceptable to all members of the Conference. By its very nature it needed to be limited in size, and would normally meet in closed session (although it was free to meet in open session and to invite other Delegations to participate as observers if it so wished). In drawing up the list due consideration had been given to providing for geographical representation, representation of the main linguistic and cultural traditions, and participation by those Delegations whose input in preparing for the Conference had been significant. The Delegations, in alphabetical order, were: Argentina, Canada, China, Côte d'Ivoire, Czechoslovakia, Egypt, France, Japan, Mauritius, Pakistan, Saudi Arabia, the Union of Soviet Socialist Republics, United Kingdom, United States and Venezuela.
 2. The Delegate of the Islamic Republic of Iran voiced a desire to be a member of the Drafting Committee. His Delegation had participated in the work of the Legal Sub-committee and the Legal Committee and had a strong interest in the work of the Conference. The Delegates of Tunisia and India supported this addition to the proposed membership.
 3. The Conference thereupon agreed, in accordance with Rule 5 of the Rules of Procedure, to establish a Drafting Committee whose members would be drawn from the Delegations proposed by the Acting/President, plus the Delegation of the Islamic Republic of Iran. It was understood that the Committee would hold its first meeting on Monday, 18 February at 1000 hours, at which time it would elect its Chairman.
 4. The meeting adjourned at 1540 hours.
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INTERNATIONAL CONFERENCE ON AIR LAW

SIXTH MEETING OF THE COMMISSION OF THE WHOLE

(Monday, 18 February 1991, at 1000 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Articles V and VI (continued)

1. The Commission returned to its discussion of Articles V and VI, with the Delegate of Senegal as the first speaker. He seconded the proposal by the Delegate of Mexico to establish the size of the ETC at no less than 15 and no more than 19 - a proposal which had given form to a thought he had expressed earlier - and thanked the Delegate of Saudi Arabia for his support of that proposal. The Delegate of India also supported the Mexican proposal.
2. The Delegate of Argentina indicated that his Delegation believed that the question of the rules of procedure of the ETC should be covered in Article VI, rather than Article V as had appeared to be the idea of earlier speakers.
3. The Delegate of the United States, noting that Article VI.3 limited the functions of the ETC to recommending amendments to the technical annex, suggested that consideration be given to expanding it to cover, for example, recommendations concerning the desirability of an additional convention, or other matters that went beyond the scope of the present convention yet fell within the mandate of the Commission under Article VI.1 to evaluate technical developments relating to the manufacture, marking and detection of explosives.
4. There being no further comments, Articles V and VI were referred to the Drafting Committee for development of the final text in the light of the discussion.

Article VII

5. The Delegate of Mexico had difficulty with Article VII.3, which he suggested could in some cases infringe on the sovereignty of States. His Delegation believed that amendments to the technical annex should only be binding on those States which did not expressly object to them, with the possibility being left open for those which objected to accede to them at a later date should they so wish. That objective could be met by amending the last part of Article VII.3 to read along the lines:

"and shall enter into force [180] days thereafter for those States that have not expressly objected to the proposed amendment. Those States which have expressly objected to the proposed amendment may, at a later date, by depositing an instrument of approval or acceptance, express their consent and become bound by what is contained in the said amendment."

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Article VII.4 could then be deleted.

6. The Delegate of Cuba supported the Mexican proposal, subject to it being examined in detail by the Drafting Committee.

7. The Delegate of Saudi Arabia sought clarification of the intended role of the ICAO Council under Article VII.1. His Delegation had understood that the convention would be an independent instrument, with ICAO being in effect its custodian. The Executive Secretary, Dr. Milde (D/LEB), said that the 27th Session of the Legal Committee had been very clear that the ETC - made up as envisaged of experts acting in their individual capacity - was not intended to take final decisions, and that there was a need for a policy-making body that would do so on the basis of the ETC's recommendations. It had recognized that to create a policy-making executive international body outside of ICAO would be unwieldy, costly, and at the very least difficult and time consuming. The consensus had accordingly been to vest in the ICAO Council specific functions in the operation of the new convention, and that there was no constitutional obstacle in the Chicago Convention to prevent the Council from accepting such functions. The Executive Secretary noted that indeed there were precedents for this, some reflected in the Chicago Convention and others - such as the system of Joint Financing of certain services over the North Atlantic - not. Only a small number of States were parties to those financing agreements, but the Council as a whole had jurisdiction with respect to policy matters under them - and this regardless of whether or not certain of its Members were parties to those agreements. Furthermore, the Council had addressed the issue of its relationship to the proposed convention when, on 4 July 1990, in deciding to convene the present Conference, it had specifically committed itself to accept the functions that might be conferred on it under the convention by this sovereign Conference. Whether there was a need later on to establish financial arrangements (by means of an Assembly Resolution or otherwise) was, he respectfully suggested, beyond the mandate of the present Conference.

8. The Delegate of Austria, supported by the Delegate of Mexico, suggested that in order to make the situation abundantly clear, consideration should be given to developing in specific terms the mandate to be given to the Council as the policy-making body in relation to the convention, and to including an appropriate reference to it in the preamble of the convention.

9. The Delegate of Germany, noting that Article VII was a crucial part of the convention, indicated that his Delegation was submitting a working paper (MEX Doc No. 28, in preparation) proposing a new Article VII.3 and an amendment to VII.4. It reflected Germany's strong conviction that the convention should deal separately with the practical consequences of the different forms that amendments to the technical annex could take (i.e., proposals aimed at eliminating parts of Part 1 or 2 of the annex, at supplementing Part 1, or at replacing something in the annex), with certain amendments requiring unanimous acceptance while others could be adopted provided that fewer than five States objected. Unless Article VII was amended both to meet the problems discussed in Doc No. 28 and - as suggested by the Delegate of Mexico - to protect the sovereignty of States, Germany would have great difficulty even to sign the convention.

10. The Delegate of Venezuela found it hard to discuss the detailed text of Article VII when a decision had yet to be taken on the basic issue of the convention's framework - e.g., whether it would cover only plastic and sheet explosives; whether it would include or exclude military explosives, etc. Referring to the intervention by the Executive Secretary, she noted that in effect Articles VI and VII defined the functions to be conferred on the Council, indicating where it would have discretionary powers and where it would not. She took issue with his observation concerning financial arrangements, feeling that limits needed to be established by the Conference itself. The Chairman fully appreciated the concerns just expressed as to the scope of the convention. Although intensive informal discussions were being held on this, no definitive position had yet emerged. Those consultations would be further intensified with a view to presenting specific proposals within the next two days.

11. The Delegate of the United States understood the purpose of Article VII to be to try to find a formula that would ensure the universal application of any change to the technical annex, and in that respect his Delegation found the article satisfactory. At the same time - and although the problem did not exist for the United States - his Delegation understood the difficulty some States had with the concept of an amendment to the technical annex becoming binding on them without specific legislative action by their respective authorities. He was sure that, working in good faith, the Conference would find a solution that would be consistent with the important objective of having an annex that applied consistently to as many States as possible. In so far as Article VII.3 was concerned, while not supporting the idea of a veto by a single State, the United States would like to see a very small number fixed as the number of objections required to prevent an amendment being adopted. The precise figure could perhaps be left to the Drafting Committee to determine.

12. The Delegate of Canada shared the view of those who had stressed the importance of retaining a common régime in order to ensure an effective approach to terrorist attacks. Having said that, his Delegation could in principle support the general ideas put forward by the Delegate of Germany with respect to a two-tiered amending formula for the technical annex.

13. The Delegate of Japan indicated that his Government would prefer a small number of objections, rather than one objection, to be specified in Articles VII.3 and VII.4 as being required in order to prevent an amendment being adopted. In so far as the third sentence of Article VII.3 was concerned, he would propose (a) deletion as redundant of the clause "it shall be deemed to have been adopted"; and (b) insertion after "shall enter into force" of the phrase "for all States Parties", thus underlining the principle of universality. Although he would need to study the exact text, in principle he too could support the German proposal.

14. The Delegate of France shared the view of the Delegate of Venezuela that it was difficult to agree on an amending formula before the scope of the convention was known. In general, France felt that the rule of unanimity should apply to any amendment that could affect the scope of the technical annex. It also believed that States must be given adequate time to study proposals for amendment; that the 90 and 180 days specified in Article VII.3 should not be

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shortened; that the sovereignty of States must be rigorously observed (i.e., they should neither be forced to withdraw from the convention nor be bound by an amendment to which they objected); and that certain amendments could be adopted provided fewer than five States were opposed. Turning to the drafting of Article VII, he noted that in the French text Article VII.3 erroneously reproduced the first part of Article VI, which should be deleted. His Delegation also felt that Article VII.4 should be deleted, since reference back to the ETC would cause unnecessary problems. Finally, with respect to Article VII.5, if the principle was accepted of convening a diplomatic conference in the event that a proposed amendment was not adopted, it was unnecessary to establish its rules in the convention; they would be the rules that normally applied to diplomatic conferences.

15. The Delegate of Uganda supported the concept of a self-executing amending formula - in other words, that a proposed amendment would come into force in the absence of objection by States Parties - and felt that, as drafted, Article VII would be adequate even if the scope of the convention was to be expanded to cover other types of explosives. He was sure that the Drafting Committee would be able to find appropriate wording to take account of the various concerns expressed and suggestions advanced by previous speakers.

16. The Delegate of Tunisia shared the concerns voiced by the Delegates of Saudi Arabia, Mexico, Venezuela and - to a lesser extent - Austria. While respecting the will of States to forge ahead as quickly as possible in attempting to build a legal barrier to aviation terrorism, Tunisia felt that it would be unwise to make haste by ignoring basic legal principles. Practical solutions should be sought, and no doubt could be found, to meet the various reservations that had been expressed. However, such practical solutions should not be equated with ignoring the rule of law. Article VII as drafted was vague. Was the "notification by States" to be at the presidential level, at the level of a minister of foreign affairs, or could it simply be a bureaucratic filing of an objection? Suppose that at a given time States Parties to the convention were only a minority within the ICAO Council. What majority within the Council would be required in order to enable it to propose amendments for adoption by States Parties to the convention? A host of such questions required answers before States - of which Tunisia was certainly one - could be expected to sign and ratify the convention.

17. The Delegate of China also associated himself with the Delegates who had expressed misgivings about the role of the ICAO Council as set out in Article VII. As far as the amendment procedure itself was concerned, that must depend upon a common and clear understanding of (a) the legal status of the technical annex vis-à-vis the convention; and (b) the relationship between the two - questions on which his Delegation would welcome clarification.

18. The Delegate of the United Kingdom indicated that his Delegation was less concerned than were some others about the position of the Council in relation to the convention. In principle it could agree with the suggestion that the issue could be covered satisfactorily by a reference in the preamble to the convention to the decision of the Council to accept the functions conferred upon it by the Conference, with the details of those functions being reflected either

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in the records of the Conference or possibly in a resolution adopted at the conclusion of the Conference. As far as Article VII itself was concerned, like other Delegations his felt that it was essential to maintain the principle of universality of application that had been incorporated in the article as drafted. That had been a cornerstone of the draft convention and his Delegation would be most reluctant to accept any suggestion of introducing into it a system of filing of differences such as existed under the Chicago Convention. The United Kingdom was prepared to accept Article VII as it stood, with a number higher than one being inserted in Articles VII.3 and VII.4. Nevertheless, it understood the serious constitutional problems that some States would face in accepting amendments prior to the completion of their internal legislative processes, and hoped that an appropriate text, acceptable to all, could be developed. Finally, his Delegation was sympathetic to the ideas advanced by the Delegate of Germany for a two-tiered amending formula for the technical annex. Indeed, part of the problem was covered in the joint submission by Germany and the United Kingdom in MEX Doc No. 24.

19. Discussion was suspended at this point, to be resumed at the following meeting, and the meeting adjourned at 1230 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

SEVENTH MEETING OF THE COMMISSION OF THE WHOLE

(Monday, 18 February 1991, at 1500 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Article VII (continued)

1. The Commission resumed its discussion of Article VII, with the Delegate of the Kingdom of the Netherlands taking the floor. He underlined the complexity of this article, dealing with the procedure for amending the technical annex. Some of its elements were so closely related to the subject matter of the convention proper that to amend them would indeed affect the convention. It must not be overlooked that the strictly technical elements of the annex had not been dealt with separately by the Legal Committee but represented the work of the explosives experts. His Delegation looked forward to receiving in writing the German proposal now being processed, which contained important elements that he believed would lead towards a solution of this problem of dichotomy, as well as the Mexican proposal and any others that might contribute to resolving the problem. It hoped that, as a result of the Commission's discussion and the work of the Drafting Committee, a coherent and harmonious whole would be developed. However, it must reserve its position on the article until it saw how it related to the modalities for the entry into force of the convention. If anything other than a numerical formula were to be adopted (e.g., if any special conditions were to be included relating to ratification by manufacturing States) that might well influence its position on the amending formula.

2. The Delegate of Nigeria, noting that Article VII was the only one dealing with an amending formula and that it related to the technical annex only, wondered whether there was not a need for a procedure for amendment to the convention itself, as distinct from the annex. He suggested also that Article VII had potential economic implications which must not be overlooked. For example, an amendment calling for the addition or deletion of marking agents would subsequently lead to the introduction of new, or modification of existing, detection equipment. That in turn would inevitably call for increased expenditure by the airport security organizations that had to purchase and use such detectors. His Delegation felt that the convention should refer specifically to "detecting equipment", which should be defined in such a way as to encourage manufacturers to produce equipment capable of detecting all four types of marking agents specified in the technical annex. In conclusion, he emphasized the importance of the final text of Article VII reflecting the best security and economic interests of all States.

3. On the first point raised by the Delegate of Nigeria, the Chairman observed that the draft final clauses in MEX Doc No. 21, yet to be discussed, contained a proposed Article XIII dealing with the amendment of the convention.

4. The Delegate of India having raised again the question of the link between the mandate of the Council and the functions it was to perform under the

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convention, the Executive Secretary, Dr. Milde (D/LEB), noted that a great deal of thought had been given over the past year to the problem of reconciling what was in the Chicago Convention concerning the mandatory and permissive functions of the Council with what was envisaged for it in the convention. The answer might be surprisingly simple: the Conference could agree that the task conferred on the Council in the convention fell within the mandatory function of the Council specified in Article 54 (b) of the Chicago Convention to carry out the directions of the Assembly. Certainly no one could doubt that, by decision of the Assembly, the problems of aviation security were to be given the highest priority within the ICAO work programme. Furthermore, it was by the initiative of Assembly Resolution A27-8 that the Conference was meeting specifically to prepare as a matter of urgency this particular legal instrument. Therefore, there was no need for any constitutional concern as to whether or not this fell within the jurisdiction of the Council. The Chairman thanked the Executive Secretary for his explanation. He hoped that, as suggested earlier, the Conference would succeed in finding a way - within the framework either of the preambulatory clauses of the convention or in a separate resolution - to make abundantly clear the competence of the Council to discharge its responsibilities in connection with such functions as might be entrusted to it under the convention.

5. The Delegate of the Union of Soviet Socialist Republics suggested that possible differences that might arise regarding amendments to the technical annex could best be solved by conciliation. Perhaps Article VII.2 could be amended to include the thought that the ETC should do its utmost to find a compromise solution acceptable to all States Parties to the convention. His Delegation supported the Mexican proposal, which would have the effect of permitting States to abstain from applying a particular amendment without being obliged to withdraw from the convention as a whole, but had reservations about the German proposal to adopt a two-tier approach to amendments to the technical annex. Finally, his Delegation had no difficulty in accepting the role which the draft convention would give to the Council.

6. The Delegate of Switzerland indicated that his Delegation favoured a system that would not require unanimity provided the convention was limited to plastic explosives. On the other hand, if the door was to be opened to other types of explosives, unanimity on the part of all States Parties to the convention was essential.

7. The Delegate of Ecuador wondered whether there was any mechanism envisaged that would permit States which did not have nominees on the ETC and which were not on the Council to propose amendments to the technical annex. It could happen that on the basis of experience such States, which were required to apply the provisions of the convention, might wish to propose amendments.

8. There being no further speakers, the Chairman recapitulated the discussion so far on Article VII, listing the issues that had been raised and on which, he suggested, a greater measure of agreement was needed before the article could with advantage be referred to the Drafting Committee. On the other hand, he did not feel that the Commission could usefully pursue its discussion on the article until some of the basic issues had been resolved, and in that

regard he would encourage informal consultations among Delegates. He noted that, although MEX Doc No. 24 (a proposal by Germany and the United Kingdom for a new Article VII.6) had not been formally presented and considered, there had in the course of the discussion been comments made in support or otherwise of a provision of that type. The Delegates of the United Kingdom and Germany suggested that Doc. No. 24 had been subsumed in the rather wider discussion on the question of amendments, with the latter indicating that the proposals being presented in MEX Doc No. 25 complemented and completed that in Doc No. 24.

9. The Delegate of Mexico, referring to Doc No. 24, observed that in the Council Mexico had voiced its conviction that if, as proposed, there were to be four detection agents specified in Part 2 of the technical annex, then it was essential that all four be detectable by one single piece of equipment. Otherwise the costs (between one and two million dollars for each piece of equipment) would be prohibitive for developing countries. If, in fact, more than one piece of equipment proved necessary for the detection of the four agents, and proposed Article VII.6 was approved, the financial implications for States would be horrendous. The Delegate of Kenya was also concerned about there being four detecting agents. Why would one not be sufficient? Perhaps that issue could be referred back to the Ad Hoc Group of Specialists on the Detection of Explosives, with a view to avoiding future problems associated with the addition, deletion or substitution of agents.

10. The Chairman understood that the thinking in the Ad Hoc Group of Specialists on the Detection of Explosives had been to have one piece of equipment capable of detecting all four agents. That being the case, proposed Article VII.6 would seem to protect States against the obligation to acquire additional equipment without their agreement as the result of an amendment to the technical annex. The Delegates of the United States and United Kingdom corroborated the Chairman's assessment. Like the Delegate of Kenya, the Delegate of the United Kingdom would also have preferred one detecting agent. Unfortunately, given the numerous constraints that existed (toxicity of different substances; ease of their use; ease of their detection; compatibility of those detecting agents with the plastic explosives they were intended to mark, etc.) it had only proved possible for the Ad Hoc Group to narrow the range of substances down to four, all of which could be detected with existing vapour detection equipment with very minor modifications.

11. The Delegate of France, Chairman of the Ad Hoc Group of Specialists on the Detection of Explosives, confirmed that it should not be difficult for the equipment-manufacturing industry to adapt existing equipment to detect the four additives. As to why four rather than a single agent, the answer was very technical but boiled down to the fact that - depending on the type of explosive being manufactured - there were differing degrees of difficulty in adding one or other of the additives. The ETC would no doubt re-examine the choice of the four additives with a view to reducing the number, but that was not yet possible in light of the research carried out so far.

12. The Delegate of Argentina suggested that proposed Article VII.6 was open to different interpretations which did not seem to reflect correctly the intent of its authors, and needed to be redrafted.

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13. A further brief discussion followed on the issue of the four additives and their detectability by a single piece of equipment, with the Delegates of Trinidad and Tobago, Canada, Ethiopia and Mexico participating. The Delegate of Venezuela found the increasingly technical discussion very difficult to follow. She shared the concerns that had been advanced by the Delegates of Mexico, India and others, but felt that - given the technical studies carried out by experts at the government level and the economic and other aspects that had been considered by the Council - the Conference should concentrate on the legal aspects (which were already quite complicated) rather than spend time on issues that were really outside its competence.

14. Further discussion on Article VII was suspended at this point, to allow for consultations to be carried out as suggested by the Chairman.

Article VIII

15. The Delegate of Austria sought clarification of the meaning of the term "periodically". This could be either a very long or very short time, and the question was, what was the correct interval? A second point referred to the obligation of the Council to communicate such information to all States Parties. His Delegation felt that the ETC - which would have the duty of formulating future amendments that might be highly technical in nature and of dealing with detection agents - might find such reports a source of inspiration. It might not be necessary to refer specifically in the article to the involvement of the ETC, but it would seem useful if the contents of States' reports to Council could be communicated to the ETC in some way.

16. The Delegate of Tunisia supported this suggestion, adding that concerned international organizations such as the IMO would presumably also be interested in those reports. Article VI.2 already provided for the ETC's reports on its findings to be provided to international organizations concerned and that could similarly be reflected in Article VIII. The Chairman remarked that when reports were made to the Council by States it was within the competence of that body to decide that they should be referred to the ETC and international organizations without this being specified.

17. On the issue of the periodicity of States' reports to the Council, the Delegate of Australia noted that a State Party, on acceding to the convention, might well put in place a range of measures which would in essence remain unchanged for quite some time - in which case it would only need to inform the Council once. Therefore, perhaps "periodically" was sufficient. On the other hand, the Delegate of Kenya suggested annual reporting. The ETC was supposed to meet every year, according to Article V.4, and it might be useful for it to have up-to-date information from States immediately before it met. It could be that some States would suggest amendments to the technical annex as part of the general updating. The Delegate of the United States observed that the Delegate of Austria had uncovered a potential difficulty in using the word "periodically". The Delegate of Australia had cited one scenario, but he (the Delegate of the United States) suggested that there was also the possibility that some States might implement the convention through regulatory measures that could, in fact, change from time to time in order to meet the exigencies of changing

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circumstances. Perhaps, instead of saying "periodically", wording along the lines of "shall inform the Council, as soon as possible after they have been taken, of measures taken to implement the provisions of this convention" would be better. As for the question of who should receive the reports, in principle his Delegation was prepared to accept that they be sent also to the ETC and concerned international organizations.

18. There being no further comments, Article VIII was referred to the Drafting Committee for examination in the light of the discussion.

19. The meeting adjourned at 1630 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

EIGHTH MEETING OF THE COMMISSION OF THE WHOLE

(Tuesday, 19 February 1991, at 1000 hours)

Chairman: Dr. K.O. Rattray

1. Opening the meeting, the Chairman announced that as of that morning 77 States and five Observer Organizations had registered for the Conference, for a total of 220 participants.

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Article VIII (continued)

2. Apologizing for not having done so at the previous meeting, the Delegate of Brazil proposed that there be added to Article VIII a provision to establish the obligation on each State to report on the existence of explosives, as well as the procedures for elimination of those explosives.

3. The Delegate of Ethiopia said that his Delegation would like to see the first sentence of Article VIII recast along the lines "The States Parties shall, on the request of the Council, inform it ...". That would take care of the question of periodicity and at the same time States would be reminded to fulfil their obligations.

4. The Delegate of Canada, supported by the Delegate of Austria, felt that it would be useful to include (in either Article VIII or Article VI) a sentence along the lines "States shall, to the degree possible, transmit to the Commission or to the ICAO Council, any relevant information on technical developments relating to the manufacture, marking and detection of explosives."

5. The Delegate of the Union of Soviet Socialist Republics had serious doubts as to the justification for the proposed changes. There was nothing to preclude the Council's calling on States to provide information, but to make it mandatory that it do so by including the reference in Article VIII would only complicate matters. Similarly, the mandate of the ETC was to evaluate technical developments relating to the manufacture, marking and detection of explosives. It could be safely assumed that its members would know how to secure information on such developments. To include the provision suggested by Canada (which was already qualified by the expression "to the degree possible") would needlessly complicate the very simple and concise concept underlying Article VIII, which had been the subject of considerable discussion in the Legal Committee and the sense of which was very clear.

6. The Delegate of Kenya felt, on the other hand, that unless the ETC had guaranteed access to information from all States involved in the manufacture, marking and detection of explosives, some important information was likely to be missed. He also had no difficulty with the idea of the Council requesting information from States. This was done regularly in connection with its responsibilities under the Chicago Convention. He would suggest that - although it might not be necessary to specify this in Article VIII - the Council should

have the responsibility of gathering information, and that should be done at specified intervals (perhaps annually, as he had suggested at the previous meeting).

7. The Delegates of Tunisia and Senegal shared the opinion of the Delegate of the Union of Soviet Socialist Republics that the concept underlying Article VIII as drafted must be maintained. The former suggested that - while not changing the concept - perhaps some of the difficulties that had been raised could be overcome by amending the first sentence of the Article to read "States Parties shall inform the Council whenever specific measures have been taken to implement the provisions of this convention". The Delegate of Senegal called attention to Article 67 of the Chicago Convention, which dealt more or less with this same question. In that article States undertook to provide the Council with certain data; there was no question of the Council having to ask them to do so.

8. The Chairman, summarizing the discussion on Article VIII, suggested that the system of reporting provided for in Articles VI and VIII (with the changes to the latter on which there had appeared to be a consensus at the previous meeting) balanced very well the responsibilities of States and of the Council and would ensure that States Parties, the Council, the ETC and concerned international organizations would be kept properly informed of all relevant developments. He hoped that the Commission could agree that the framework of Article VIII as drafted was generally acceptable, and that the article could now be referred to the Drafting Committee for examination in the light of the discussion.

Draft Technical Annex

9. The Commission turned its attention to the draft technical annex presented in MEX Doc No. 4 REVISED, taking into account also the comments and proposals of the United Kingdom in MEX Doc No. 7 and its two Addenda. The Delegate of the United Kingdom indicated that, in presenting the annex in the form appearing in the two Addenda, the United Kingdom was simply trying to set out in a more appropriate legal form the substance already incorporated in Doc No. 4 REVISED. The United Kingdom text suggested a number of changes which were essentially of a drafting rather than substantive nature. Perhaps, instead of taking up the time of the Commission, those changes could be referred directly to the Drafting Committee.

10. The Delegate of Venezuela believed that the technical annex should be limited to a description of plastic explosives and detection agents, and that Part 1 b) was a substantive issue that (if accepted) should be part of the convention itself. The Delegate of the Islamic Republic of Iran felt that since the description of plastic explosives was very closely related to Article I and to the question of the scope of the convention, it was necessary for the scope to be determined before trying to decide which part(s) of the technical annex belonged within the convention and which should remain in the annex.

11. In response to a request from the Delegate of Saudi Arabia for clarification of the legal status of the technical annex, the Executive Secretary, Dr. Milde (D/LEB), noted that that had been the subject of lengthy discussions in the Legal Sub-Committee, Legal Committee and Council, with much of the discussions involving, effectively, questions of terminology. The annex had been conceived as part and parcel of the convention, in that the convention

would be meaningless - and indeed could not exist - without it. Therefore, it must be subject to the same consensus as the convention itself at the time of its adoption. On the other hand, the annex was given a special status in Article VII with respect to its amendment. The Legal Sub-Committee and Legal Committee had recognized that the annex would contain a good deal of strictly technical information that was subject to evolution, and that might require adjustments to be made promptly and with greater flexibility than was possible under the traditional procedure of amending a convention through a diplomatic conference.

12. The Delegate of Canada agreed completely with the Executive Secretary's assessment and suggested, supported by the Delegate of Argentina, that the Drafting Committee might be asked to include in the body of the convention a provision stating that the technical annex formed an integral part of the convention.

13. The Delegate of the United States, like the Delegate of the United Kingdom, favoured referring directly to the Drafting Committee the various proposed refinements to the detailed legal drafting of the annex. His Delegation had a number of changes to propose, none of them of major substance, which were intended to define more precisely the kinds of military device that might be excluded - such as the specific mention in that list of what were known as "demolition assemblies". As to where Part 1 b) should appear, that could be either as part of the convention or of the annex. What was important was that the precise statement of its content be acceptable.

14. The Delegate of France, Chairman of the Ad Hoc Group of Specialists on the Detection of Explosives, reminded the Commission that the technical annex had been discussed over five meetings of the Group, which had not attempted to enter into legal niceties but had rather concentrated on technical considerations. Certainly the drafting could be improved, but the consensus reached in the Group was a fragile one and he hoped that - in attempting to couch the material in proper legal form - the Drafting Committee would not embark on technical amendments or undertake a complete remodelling of the annex. He noted that the annex was divided into two basic parts - the first the definition of plastic explosives and the second the definition of detection agents. The definition of plastic explosives was in turn divided into two sections, the second of which referred to explosive devices which, for technical reasons, should be exempted from the requirement to be marked (e.g., military explosives). He would recommend that that section, concerning the exclusions, be kept in the technical annex. To move it into the convention would make subsequent amendments to it much more difficult.

15. The Delegate of China thanked the Executive Secretary for his clarification of the legal status of the technical annex, as well as the Chairman of the Ad Hoc Group of Specialists for his explanation of the Group's thinking. In the view of his Delegation Part 1 b) of the technical annex was purely technical in nature and hence the amendment procedure relating to it might be different from that applying to the convention itself.

16. The Delegate of the Union of Soviet Socialist Republics, while agreeing that the draft technical annex should be referred to the Drafting Committee, considered that the Commission must give guidance to the Committee on how it would like the technical annex to appear. Referring specifically to

Part 1 b) 1), he suggested that the fact that "propellent explosives" was shown within square brackets clearly reflected the disagreement that had existed in the Ad Hoc Group of Specialists as to whether they should be mentioned. His Delegation was convinced that "propellent explosives" (which by their very nature fell outside the definition of plastic explosives in Part 1 a) 1), 2) and 3)) should not appear in the technical annex. He proposed that the Commission consider this issue and give appropriate instructions to the Drafting Committee.

17. The Delegates of France, the United Kingdom, the United States and Sweden all agreed that reference to propellent explosives should be deleted from the technical annex, the Delegate of the United Kingdom observing that it had been on that assumption that his Delegation was proposing, in the Addendum to MEX Doc No. 7, to include in the Conference Record a paragraph explaining why propellent explosives were not included. The Delegate of Sweden proposed that that Addendum also be submitted to the Drafting Committee for action.

18. In the absence of further discussion on the matter, the Chairman concluded that the Commission agreed that propellent explosives should be excluded from the technical annex, and that the annex - together with the two Addenda to Doc No. 7 - should be referred to the Drafting Committee for development of the final text.

Article IV

19. The Commission returned* to its examination of Article IV on the basis of the proposal by Canada in MEX Doc No. 25 for the re-structuring of that article. In introducing the paper the Delegate of Canada said that the basis of the proposal was Canada's awareness that, if as expected the convention would require the marking of existing stocks of plastic explosives, what would remain as the greatest potential security risks were those existing stocks which for various reasons it was not possible or feasible to mark. Canada was also conscious of the practical implementation problems with respect to military requirements, and of the important commercial, economic and ecological consequences that had to be dealt with. It was accordingly proposing that a differentiation be made between explosives that were to be incorporated in duly-authorized military devices - which posed less of a security risk and needed only to be controlled - and "free-standing" (i.e., unincorporated) military explosives - which should be destroyed with the least possible delay. No doubt there would be suggestions aimed at improving the draft text, and his Delegation would be happy to consider them in the Drafting Committee.

20. The Delegate of the United Kingdom welcomed Doc No. 25 and thanked Canada for its constructive and positive contribution. His Delegation agreed with all the substantive points and issues discussed in the paper. He was sure that the proposed re-casting of the article would help in achieving a wider acceptance of the convention.

21. The Delegate of the Union of Soviet Socialist Republics felt that the Canadian proposal went a long way towards overcoming the problems that would necessarily arise under Article IV as originally drafted. His Delegation had one reservation, and that concerned the proposal to lower from 15 to 10 years the period allowed for the destruction of unincorporated military explosives. The

* For earlier discussions see MEX-Mins. Commission of the Whole 3 and 4.

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main objectives of the convention, aimed at ensuring the safety of civil aviation, were those stated in Articles II and III. To meet those objectives it was, of course, necessary to deal also with unincorporated military explosives which, unfortunately, had proliferated in many States over the years. He questioned, however, whether a rigid time limit that could create problems for some military authorities was required. His Delegation preferred the more flexible formulation proposed by Finland, Iceland, Norway and Sweden in MEX Doc No.13, namely "preferably within a period of 15 years". That would not preclude earlier destruction, where feasible, of the explosives in question. At the same time it would not impose an unduly restrictive time frame on those States that might otherwise have a problem. He had no fear that the more flexible formula would in any way undermine the underlying objectives of the convention.

22. The Delegates of Czechoslovakia, Argentina and Tunisia indicated support for the text in Doc No. 25. The Delegate of Argentina noted that one element still seemed to be lacking in Article IV on which he understood there had been unanimous agreement - namely, that reference should be made to the fact that the consumption, destruction, marking or other disposition of the explosives in question should be carried out within the territory of the State where the explosives were located. He also shared the concern of the Union of Soviet Socialist Republics about reducing to 10 years the time allowed for destruction of unincorporated military stocks. That subject had been discussed by the Ad Hoc Group of Specialists in January 1990 and by the Legal Committee and, for various reasons, it had been agreed that it would be reasonable to maintain the period at 15 years. The Delegate of Tunisia suggested that the French version of Article IV.4 of the Canadian proposal was misleading in that - as the Delegate of Argentina had said - it did not make clear that the intent was that each State Party would take the necessary measures to ensure the destruction in its territory of unmarked explosives that might be discovered therein. He would ask the Chairman to have the Drafting Committee look into this. The Chairman confirmed that this would be done.

23. Discussion of Article IV was suspended at this point, to be resumed at the following meeting, and the meeting adjourned at 1230 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

NINTH MEETING OF THE COMMISSION OF THE WHOLE

(Tuesday, 19 February 1991, at 1430 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Article IV (continued)

1. The Commission resumed its examination of the Canadian proposal in MEX Doc No. 25 for a new formulation of Article IV, with the Delegate of the United States as the first speaker. The Conference, he suggested, owed the Canadian Delegation a vote of thanks for having produced such a thoughtful and helpful paper. The proposed text substantially met the concerns that his Delegation had cited during the earlier discussions on this article. It would propose certain drafting amendments but he was confident that the Drafting Committee would have no problem in handling them. On a substantive issue, his Delegation believed that it was essential to have a firm time limit within which unmarked unincorporated stocks of plastic and sheet explosives held by the military must be consumed, used, or otherwise rendered ineffective. To adopt the more flexible approach proposed by Finland, Iceland, Norway and Sweden in MEX Doc No. 13 - for which the Delegate of the Union of Soviet Socialist Republics had expressed a preference at the previous meeting - would create a potential loophole whereby a State could seek to maintain indefinitely its stocks of those explosives.

2. The Delegate of Venezuela, while also welcoming the Canadian initiative, had some comments to offer. For example, with respect to the definition of "duly authorized military devices", she would ask "Duly authorized by whom?" Also, the proposal did not reflect the important suggestions by the Delegates of Tunisia and Mexico (which had received widespread support) that the expression "or otherwise disposed of" should be deleted, and that the article should make clear that the destruction of the explosives in question must take place within the territory of the State Party concerned. As for Article IV.3, she understood that it was difficult if not impossible to mark the existing stocks. Why, then, did the proposed text still refer to "marked"? On the question of time limits, her Delegation considered that the period of 10 years proposed by Canada was too short; it would prefer 15 years. Finally, on an editorial point, there was a slight ambiguity in the Spanish version of Article IV.2 which would need to be looked at. The Delegates of Mexico, Costa Rica and Tunisia shared the views of the Delegate of Venezuela.

3. The Delegate of Ethiopia felt that the Canadian proposal provided an excellent basis for a compromise solution to the problems encountered in the earlier discussions. On the question of the time limit, his Delegation supported 10 years but, in a spirit of compromise, could accept a longer period should that prove necessary. With regard to Article IV.4, his Delegation also wished to see reference made to disposition taking place within the territory of the State possessing the explosives.

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4. The Delegate of the Islamic Republic of Iran, while generally supporting the Canadian proposal, would like to see Article IV.4 qualified by the insertion at an appropriate point of the phrase "as soon as possible". Where the qualification would appear could be left to the Drafting Committee.

5. The Delegate of France also supported the Canadian proposal, which he would like to see referred to the Drafting Committee. As regards the time period in Article IV.3, like the Delegate of Ethiopia he would be prepared, in a spirit of compromise, to see it increased to 15 years. However, like the Delegate of the United States he would insist that that be a firm deadline that could not under any circumstances be exceeded.

6. The Delegate of Brazil said that his Delegation continued to feel that the same time limit should appear in both Articles IV.2 and IV.3, and that it should be 5 years. However, it was prepared to support the Canadian proposal.

7. The Delegate of Côte d'Ivoire shared the view of the Delegate of Venezuela that the reference to "marked" in Articles IV.2 and IV.3 was inappropriate, in the light of the experts' opinion that existing stocks could not be marked. As for the expression "or otherwise disposed of", the Canadian proposal qualified it by adding "for purposes not inconsistent with the objectives of this convention". That seemed somewhat confusing and he hoped the Drafting Committee would be able to find better wording. His Delegation had no strong objection to the period of 10 years proposed in Article IV.3 but did not anticipate too much difficulty in raising it to 15 years provided, as the Delegates of the United States and France had underlined, that would be a firm deadline. Finally, his Delegation fully supported the proposal to include in the article reference to "within the territory of the State Party concerned".

8. While also supporting the Canadian proposal the Delegate of Chile questioned the use of the word "authorities" in Article IV.2. That article dealt with explosives used for commercial or industrial purposes, and normally such activities were private in nature and did not involve "authorities". Perhaps "entities" or "bodies" might be better. His Delegation also agreed that the article should provide for destruction on the territory of the State Party concerned.

9. The Delegate of the Kingdom of the Netherlands welcomed the proposal in Doc No. 25 but emphasized that his Delegation did not regard it as the final version of Article IV. In developing the final text for the Commission's approval the Drafting Committee would have to take into account other substantive proposals or elements already agreed upon in principle, as well as any that might arise during the current discussion. With respect to the 10-year time limit proposed in Article IV.3, he noted that this replaced the 15 years suggested by the Legal Committee. However, that 15-year period had been intended to apply to all military or police stocks, whether incorporated or not. If the very constructive Canadian approach of limiting the article to unincorporated stocks was accepted, many of the concerns that had led to the fixing of the 15-year period would have disappeared. Hopefully the shorter period would then be acceptable to those States whose interests the 15-year period had been intended to protect. In supporting a period shorter than 15 years, however, his

Delegation would insist on a very firm and fixed period being included in the convention.

10. The Delegate of Algeria supported the proposal to include in Article IV reference to the destruction taking place on the territory of the State concerned. As for the time limit in Article IV.3, his Delegation would prefer 15 years. This would give States somewhat more latitude but would not prevent those in a position to do so from destroying them in a shorter period.

11. In voicing general support for the Canadian proposal the Delegate of Norway said that, while his Delegation fully understood and respected those States which insisted on including a specific time limit in Article IV.3, for the reasons given in Doc No. 13 it questioned the realism of doing so - especially if the limit were to be set at 10 years. In a spirit of compromise, however, it could accept a 15-year period.

12. The Delegate of the United Kingdom indicated that the expression "or otherwise disposed of" in Articles IV.2 and IV.3 was to allow for the use of other, perhaps as yet undeveloped, technical ways of rendering the explosives ineffective. It was not envisaged that the phrase would permit the use of such ecologically unsound methods as burial. Perhaps better wording could be found to meet this objective. As for the use of the word "marked", this had been included to provide States with an additional option since - although the procedure might not be economically feasible or supportable - it was technically feasible in some instances to mark plastic explosives in stock. The Delegate of Bolivia, speaking to the first point, suggested wording along the lines "consumed, destroyed or neutralized by another method that would not be ecologically dangerous" - with such measures always being carried out within the territory of the State concerned.

13. The Delegate of Japan preferred a 15-year time limit for the destruction of all military explosives, both incorporated and unincorporated. Admittedly unincorporated explosives were the main concern, but even those incorporated into military devices could be misused through theft, diversion, etc., and a time limit for their destruction was also needed.

14. Summing up, the Chairman suggested that there was fairly widespread support for the idea of including a firm time limit for the destruction or other disposition of stocks of unincorporated military explosives, with a difference of opinion as to whether that should be 10 or 15 years. However, even those who preferred the shorter time period were willing to accept a somewhat longer one provided it was fixed and firm. There was still concern about the expression "or otherwise disposed of", but perhaps the Drafting Committee could be charged with finding appropriate wording to reflect the intent of the authors, as explained by the Delegate of the United Kingdom. As to whether the reference to "marked" should be retained, perhaps that could be left open for the time being. Finally, there was obviously substantial agreement on the importance of including in Article IV language to indicate that the explosives in question should be consumed, destroyed or otherwise disposed of within the territory of the State concerned. If the Commission accepted his summation, he would propose now to

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refer Article IV - and in particular the Canadian proposal thereon in Doc No. 25 - to the Drafting Committee. This was agreed.

Article VII

15. The Commission returned* to its consideration of Article VII, dealing with amendments to the technical annex, on the basis of proposals by the Delegates of Germany (MEX Doc No. 28) and Mexico (MEX Doc. No. 30). Since the proposals in Doc No. 28 were the further removed from the original text, the Chairman invited the Delegate to Germany to introduce that paper first.

16. The Delegate of Germany said that the paper distinguished between the different types of amendments to the technical annex, examined their practical consequences (which could vary a great deal), and proposed an amending formula that would reflect the realities of the situation. The thrust of the proposals was that the unanimous agreement of all States Parties would be required for a proposed amendment to Part I of the annex to enter into force. One aimed at eliminating part of Part 2 would also require unanimous consent. However, in so far as the remainder of Part 2 was concerned (and this would, he suggested, relate particularly to an addition to the detecting agents), certain amendments would enter into force unless five or more States notified their disapproval. Doc No. 28 also presented a proposal ("General Solution", page 3) for a type of opting-out clause to be added to Article VII, intended to cover the situation of a State that found itself unable to comply in all respects with an amendment. That would be in line with Article 38 of the Chicago Convention but - since it would work against the desired universality of the new convention - it was being proposed not as something desirable but simply as a way around a possible impasse.

17. The Delegate of Mexico then introduced Doc No. 30, which he felt was self-explanatory. It was intended to meet the requirements of those States - like Mexico - whose Constitutions prescribed that any convention or act which implied an international commitment on the part of the government had to be specifically approved by the appropriate legislative body of the State.

18. The Delegates of Cuba, Chile, Ghana, Ecuador, Algeria, Senegal, Tunisia, Honduras and Bolivia all supported the Mexican proposal in Doc No. 30, the Delegate of Ghana suggesting that it in fact met the concerns of Germany. The Delegate of Czechoslovakia, on the other hand, supported the German proposal.

19. The Delegate of China felt that the amending procedure in Article VII depended on the content of the technical annex. While part of that annex was truly technical, there were other elements that concerned policy issues. His Delegation believed that requiring unanimous acceptance of any proposal for amendment was the best way to ensure early entry into force of the convention by the greatest possible number of States, followed by its effective implementation by all States Parties.

* For earlier discussions see MEX-Mins. Commission of the Whole 6 and 7.

20. The Delegate of the Kingdom of the Netherlands suggested that the basic problem with finding an appropriate formulation for Article VII lay in the fact that, although called a technical annex, the annex was not limited to technical provisions necessary for the application of the substantive elements of the convention. (In this connection he would add that it seemed somewhat odd that there was nothing in the convention governing amendment of the convention proper.) In so far as the constitutional requirements of his country were concerned, even though explicit approval of amendments to the technical provisions would still be required, the procedure for approving them would be much simpler if the technical annex as finally developed was purely technical in nature and contained only those provisions necessary for the implementation of the convention. He would appreciate being assured that, once decisions had been taken on issues of substance, the Drafting Committee would be free to determine what should be in the technical annex and what was more appropriate for the convention itself.

20.1 The suggestion that there be different categories of amendments to the technical annex that would be subject to different approval requirements raised the issue of whether any weight should be given to the status of the States accepting or objecting to a given amendment proposal. If, for example, the Commission adopted the approach that entry into force of the convention depended on its ratification by a minimum number of major producing and/or major user States (and this would depend on the Final Clauses that were still to be addressed), that presumably would have an influence on how proposed amendments to the technical annex could be blocked.

20.2 To sum up, his Delegation must reserve its position on Article VII until it had a clear picture of what the technical annex would contain and also exactly what would be required for the convention to enter into force.

21. The Delegate of Venezuela, suggesting that the Mexican proposal complemented that of Germany, saw a certain discrepancy in the Mexican text. As she read it, the first part of Article VII.3 meant that unanimity was required. How could that be reconciled with the second part? Had Mexico intended a figure other than 1 in the opening clause? The Delegate of Mexico recognized that there was a drafting weakness here. The proposal's objective was to ensure that a State which had expressly objected to an amendment proposal and therefore was not bound by it could, should circumstances change, subsequently consent to be so bound.

22. The Delegate of Kenya was attracted by the Mexican proposal, feeling that no State should be bound by something with which it disagreed. To impose such an obligation, as did the original drafting of Article VII, was to attack the sovereignty of States - not to mention that, as indicated in paragraph 2 of Doc No. 30, in some cases it was contrary to national law. He would appreciate clarification as to how the Legal Committee could have agreed to something which would go against the laws of some States.

23. The Executive Secretary, Dr. Milde (D/LEB), said that since international law was created by the will of States, in fact nothing was contrary to the law if States agreed on it. That had been the philosophy on which the

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Legal Committee had based its text of the article. However, he was not aware of any international multilateral instrument in the field of air law that would make any amendments thereto, or to annexes adopted thereunder, automatically binding with respect to States that had not consented to be bound by such future amendments. The 1919 Paris Convention on Civil Aviation had provided for the drafting of technical annexes under the convention which would have been automatically binding on States. This was recognized as the main reason why so many States of the international community had never adhered to that convention. Having learned its lesson, the international community in developing the Chicago Convention in 1944 had provided that the Annexes to that Convention would be applicable as a legal obligation unless a State opted out. In his view, the Mexican proposal fully reflected the traditional, classic, international law of treaties, both customary and as reflected in the Vienna Convention on the Law of Treaties. The German proposal, on the other hand, went somewhat beyond the traditional framework in that it envisaged certain specified amendments automatically entering into force for all States Parties to the convention.

24. The Delegate of the United States reiterated his Delegation's stand on Article VII, as presented during the earlier discussion. He noted that there were, in fact, multilateral instruments - admittedly not in the aviation field - that provided for certain obligations to be altered without the express consent of the States Parties (e.g., the "Ozone Convention"). However, as the Executive Secretary had pointed out one must face realities, and the debate so far had made clear that a number of Delegations did not share the view that amendments should enter into force even if objected to by 1 State or by a small number of States. He appreciated the constitutional difficulty some States had in accepting that kind of obligation, although the United States did not have that problem. If, as it would seem, the convention had to accommodate the situation of a State that was obliged to seek legislative approval of each and every amendment, his Delegation would be willing to work on the basis of both the German and Mexican proposals, which addressed different aspects of the question. However, in addition to the general problem of having a two-tiered or less-than-universal approach to the application of an amendment, his Delegation had certain technical difficulties with the Mexican proposal. For example, it was difficult to have a sense of the time frame within which an amendment might be brought into force if a State could subsequently, and at any time past 180 days, withdraw its objection by depositing an instrument of acceptance or approval.

25. The Chairman having summed up the discussion and proposed to refer Docs Nos. 28 and 30 to the Drafting Committee, the Delegate of France suggested that it should be possible to find a compromise that would both satisfy the general desire to achieve as great a degree of universality as possible in the application of the convention and, at the same time, take account of the constitutional realities in many countries. That might require abandoning the idea of having a more flexible amending formula. However, if that opened the door to a convention that at any one time would have a technical annex that was not uniformly applicable to all States Parties, the situation would be even worse. His Delegation would be opposed to having two or three régimes applying simultaneously to different States Parties. The Chairman recognized the great importance of having a common régime. This would be easily achieved with the initial convention and its technical annex. It was when amendments to the annex

were proposed that the problem would arise. In the absence of any specific proposal and of objection to his so doing, he referred Article VII, and in particular Docs Nos. 28 and 30, to the Drafting Committee.

26. The meeting adjourned at 1640 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

TENTH MEETING OF THE COMMISSION OF THE WHOLE

(Wednesday, 20 February 1991, at 1030 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Scope of the Convention

1. The Chairman, reporting the results of the intensive informal consultations that had gone on since the beginning of the Conference, said that there had been no consensus for the expansion of the convention at this time. To do so would not only create problems for many Delegates whose mandate was limited to dealing with plastic and sheet explosives, and possibly significantly affect the signing of the convention at this Conference, but would also involve the Conference in the issue of methods of identifying other types of explosives. The consultations had led to the following consensus: (a) to confine the present convention to plastic and sheet explosives; and (b) to seek to adopt at this Conference an appropriate resolution calling upon the ICAO Council to initiate, as a matter of high priority, studies into the methods of detecting explosives other than plastic and sheet explosives, with a view to the development of subsequent legal régimes. He thanked all interested Delegations for the great co-operation they had shown in reaching this consensus.

2. The Delegate of Canada said that, while Canada would have liked to see in the convention a mechanism that would have allowed for its future expansion to cover explosives other than plastic and sheet explosives, it recognized that many Delegates did not feel they were empowered to deal with such an item at this Conference. It accordingly withdrew its earlier proposal to remove the words "plastic [and sheet]" from Article I. It would work closely with other Delegations to reach early consensus on a draft convention, and to develop a strong draft resolution that would (a) maintain in existence the Ad Hoc Group of Specialists on the Detection of Explosives; and (b) request the ICAO Council to initiate studies for the detection of explosives other than plastic and sheet explosives with a view to the future development of a comprehensive legal régime.

Draft Final Clauses

3. The Commission then turned its attention to an examination of the draft Final Clauses, using as a basis of discussion the Secretariat proposals in MEX Doc No. 21 but also taking into account the alternative texts proposed by Argentina, Brazil, Chile and Costa Rica in MEX Doc No. 27 and by the United States in its position paper (MEX Doc No. 9).

Article IX

4. The Delegate of Argentina indicated that the only difference between the proposals in Docs Nos. 21 and 27 on this article dealing with the settlement of disputes was its location. It seemed to the co-authors of Doc No. 27 that the

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provision better belonged at the end of the Final Clauses. It therefore appeared as Article XIII in their proposal. Other than that, either version was acceptable to the co-authors.

5. The Delegate of the United States said that his Delegation could accept any one of the three formulations for this article, while the Delegate of Austria favoured the Secretariat's text and the Delegate of Cuba preferred that in Doc No. 27.

6. The Commission thereupon agreed to refer to the Drafting Committee Article IX in Doc No. 21 and Article XIII in Doc No. 27.

Article X (Article XIII.4 in Doc No. 27)

7. The Delegate of Japan suggested that this provision be omitted. The Vienna Convention on the Law of Treaties made clear that, in principle, any State had the right to enter a reservation whether or not that was specifically provided for in a convention - it being understood that such reservation could not apply to the core clauses of the convention. The Hague and the Montreal Conventions did not contain an equivalent provision to draft Article X, and Japan would prefer to align the three Conventions in this regard. The Chairman observed that, throughout the Conference, emphasis had been placed on the need to secure the greatest possible degree of uniformity of application of the convention, and it was within that context that this proposed article should be examined. It was true that The Hague Convention contained no specific provision concerning reservations. On the other hand, Article XXV of the Tokyo Convention was identical to proposed Article X. As for the Vienna Convention, although it recognized in Article XIX that a State might make a reservation, it also specified that a treaty might prohibit a reservation, or limit the number or types of reservations (e.g., a reservation must not be incompatible with the objective and purpose of the treaty). The issue of incompatibility was, of course, fundamental, and he suggested that the question now to be answered was whether to avoid possible problems of that nature by including a provision like Article X.

8. The Delegates of Argentina and the United States strongly urged retention of an article dealing with admissibility of reservations, the former arguing that it would be impossible to have the universal and uniform convention that everyone agreed was essential if States Parties could make reservations.

9. The Committee decided to retain in the convention a provision along the lines of Article X, and referred the text to the Drafting Committee.

Article XI (Article IX in Doc Mex. 27)

10. The Delegate of Austria, emphasizing the desirability of achieving the widest possible adherence to the convention, favoured omission from proposed Article X.1 of the phrase "members of the United Nations or any of the Specialized Agencies". As to where the convention should be open for signature, his Delegation believed that, in recognition of the paramount role played by ICAO in its development, it would be sufficient to open the convention for signature

at the Headquarters of the Organization only. It accordingly proposed omitting the reference to "in London, Moscow and Washington". The Delegates of the United States, Ethiopia and Czechoslovakia supported these suggestions, the Delegate of the United States adding that, for the same reason, ICAO should serve as the sole Depository (Article XI.2 refers). The Delegate of the Union of Soviet Socialist Republics also supported these suggestions, including that of the Delegate of the United States.

11. The Delegate of the United Kingdom, while supporting the suggestions regarding ICAO's role, said that his Delegation would prefer to include the phrase "members of the United Nations or any of the Specialized Agencies". He understood that all States were at present members either of the United Nations or of one of the Specialized Agencies and therefore would be covered by that nomenclature, and that if ICAO was to become the sole Depository inclusion of the phrase would give the Organization a political frame of reference that might otherwise be lacking.

12. The Delegate of China favoured omission of the reference to "members of the United Nations or of any of the Specialized Agencies", for the reason given by the Delegate of Austria. Although it could agree to having only one location for signature and a single Depository, it would prefer to see both ICAO Headquarters and the United Nations Headquarters in New York designated, since the mandates for ICAO to develop the convention and for the holding of the present Conference had been given by the United Nations General Assembly.

13. The Delegate of the Kingdom of the Netherlands indicated support for including the reference to the United Nations and Specialized Agencies, and to having the convention open for signature at ICAO Headquarters only. However, for the reasons put forward by the Delegate of China, his Delegation would like to see the United Nations designated as the Depository. Civil aviation was a very important beneficiary of the régime of heightened security that should evolve from this convention and Conference. It was not, however, the only mode of transport or other interest that would be protected, and having ICAO as the Depository might lead to confusion when it came to ratification and implementation of the convention. On balance, his Delegation preferred the United Nations as the only Depository. If ICAO was also to be a Depository, then perhaps the other most interested organization, the IMO, should also be included.

14. As regards the place(s) of signature and the designation of the Depository(ies), the Delegate of Tunisia supported having ICAO fill both roles. His Delegation had some reservations about opening the convention to all States. There were a number of entities that were recognized by some as being sovereign States but which were considered by the international community at large to be pseudo-States. Opening the convention to those pseudo-States could lend them an unwarranted legitimacy.

15. The Chairman recapitulated the discussion on Articles XI.1 and XI.2, suggesting that there seemed to be fairly general consensus a) that the convention would be open for signature at the Headquarters of the Organization in Montreal only; b) that it would be open for signature by all States; and c) that there would be a single Depository only, namely, ICAO in Montreal. There

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being no objection to his summation, he accordingly referred Articles XI.1 and XI.2 to the Drafting Committee on that basis.

16. Attention having turned to Article XI.3, the Delegate of Austria said that, after discussing the matter with a number of Delegations, he would suggest that the convention should come into force when it had been ratified by 35 States, including not less than 5 producer States. The Delegate of Czechoslovakia supported that suggestion. The Delegates of Canada, Sweden and Ethiopia indicated that while their Delegations considered that 25 to 30 States would be better, they could accept the suggestion of the Delegate of Austria. The Delegate of Sweden added that his country would have no problem in declaring itself one of the producer States. The Delegate of Argentina could also accept the Austrian suggestion. The number 40 suggested in Doc No. 27 represented approximately 25 per cent of the current total membership in the United Nations, but the co-authors of Doc No. 27 had no problem with reducing it to 35 - provided at least 5 of the States ratifying be manufacturing States. In the view of his Delegation, it was essential that States manufacturers of plastic and sheet explosives be parties to and bound by the convention.

17. The Delegate of the United States also supported the Austrian proposal. In so doing he mentioned the need to determine the means by which a manufacturing State should identify itself as such, and drew attention to the second sentence in the proposed text of Article IX.4 in Doc No. 9. That, he felt, would be a convenient way of determining when the necessary 5 producer States had ratified. The Chairman observed that Article XI.3 of the Secretariat draft presented within square brackets wording that was fairly consistent with that in the United States proposal. The Delegate of Argentina agreed completely on the need to specify in the convention how a State should identify itself as a manufacturing State. In expressing his support for the Austrian proposal the Delegate of Japan suggested that the term "producer State" needed to be defined more clearly in the convention. The Delegates of the Union of Soviet Socialist Republics and Venezuela shared the views of the Delegate of Japan, the former noting that the Drafting Committee had already given some thought to developing a definition of "producer" or "production" in this context. In that regard the Delegate of Venezuela did not feel that it was sufficient for a State simply to declare itself a producer; some parameters were necessary to enable it to be considered a producer State.

18. In also voicing support for the Austrian proposal the Delegate of France suggested that inclusion of the clause "which ... declare that they are producers of the explosives defined in this convention" adequately defined what was meant by "producer States". The Delegates of China and Belgium shared these views.

19. The Delegates of Mexico, Brazil, Togo, Saudi Arabia, Chile and Honduras all supported the Austrian proposal, with the Delegate of Brazil underlining the need for a State ratifying the convention to identify itself as a producer State. The Delegates of Togo and Chile suggested that the reference to "or accession" in Article XI was inappropriate and should be omitted. The Executive Secretary, Dr. Málde (D/LEB), explained that, in the international law of treaties, the expressions "ratification", "acceptance", "approval" and

"accession" had the same legal impact. The traditional practice had been for signatory States to ratify and non-signatory States to adhere. However, this could result in delaying adherence to the instrument because it was not in force (i.e., the States that had not signed had to wait until the instrument entered into force through the action of signatories who ratified). The modern practice was more innovative and flexible, opening the door to a State acceding to an instrument at any time, whether or not it was a signatory. That practice, he suggested, was reflected in Article XI.1, already approved.

20. The Delegate of Gabon, who also supported the Austrian proposal, felt that a definition of "producer State" was needed. What would happen if such a State did not indicate its status when ratifying the convention? The Executive Secretary noted that only once in the law-making activities of ICAO had there been a question of verifying the status of States ratifying a convention. In that case - the Guatemala Protocol to the Warsaw Convention - the problem had been easy to resolve. The Protocol provided that, in order for it to come into force, it must be ratified by a group of five States the volume of whose international carriage by air for the year 1970 was 40 per cent of the total carriage. That could be measured by an objective yardstick, namely published ICAO statistics. Unfortunately, no such objective statistics were available to indicate which State manufactured which type of explosive and in what quantities. In the circumstances, the only reasonable compromise appeared to be self-declaration. The Delegate of Mali saw no reason to doubt the good faith of a State that declared itself to be a producer.

21. The Delegate of Venezuela continued to feel that some objective parameters were necessary in order to categorize a State as a producer State. For example, it did not seem reasonable to consider as a producer State one that might have a laboratory or chemical plant that produced a small quantity of these explosives for research or similar purposes. Other treaties in equally sensitive areas had overcome similar problems and she believed that the Conference must at least seek to establish appropriate parameters.

22. The Delegate of the United States said that his Delegation fully appreciated the difficulty of defining in precise terms exactly what was meant by "producer State", having considered various ways of defining or qualifying "producer" without finding any that were satisfactory. It should be recalled that, when the whole process of developing the convention began, ICAO had sent a questionnaire inviting States that considered themselves to be producers to identify themselves as such and to join in the work of the Ad Hoc Group of Specialists on the Detection of Explosives. That had not posed a problem for States at the time and he wondered why it should in future. He had been struck by the comment of the Delegate of Mali that in the final analysis it was a question of good faith - something that could not be legislated but which the Conference ought to assume States would demonstrate. Once again he invited attention to Doc No. 9, which proposed inclusion in Article I of a simple declaratory definition of "producer State". It was not a perfect definition, but he felt it was probably adequate. However, he would be happy to contribute constructively to an effort by the Drafting Committee to develop something better, if there was consensus that this was needed.

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23. The Chairman interpreted the foregoing discussion on Article XI.3 as showing a consensus that 35 should be the number of States which must ratify before the convention entered into force, with at least 5 of those 35 being producer States. As to whether a method of identifying producer States was needed, he believed that the Drafting Committee could be asked to examine that question on the basis of the proposals in Doc No. 21, Article XI.3, and in Doc No. 9. If in its ingenuity the Committee was able to devise a more precise definition, so much the better.

24. The normal hour of adjournment having arrived, discussion was suspended at this point and the meeting adjourned at 1230 hours.



INTERNATIONAL CONFERENCE ON AIR LAW

ELEVENTH MEETING OF THE COMMISSION OF THE WHOLE

(Wednesday, 20 February 1991, at 1430 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Draft Final Clauses (continued)

Article XI (Article IX in Doc No. 27) (continued)

1. The Commission resumed its examination of Article XI.3, the Delegate of Japan taking the floor. He noted that there were a number of references to "ratification" in the convention, not only in Article XI but also, e.g., in Articles IX and XIII. Docs Nos. 21 (the Secretariat proposals) and 27 (presented by four Latin American States) spoke only of "ratification" and "accession" as the means by which the consent of States to be bound by the convention might be expressed. On the other hand, Doc No. 9 (submitted by the United States) mentioned "ratification, acceptance, approval, or accession", and he felt that, in the interest of flexibility, all four possibilities should be mentioned. He therefore proposed that the relevant articles in Doc No. 21 be amended in line with the United States proposal. The precise wording could, of course, be left to the Drafting Committee. This was agreed.

2. The Delegate of Qatar, referring to the earlier discussion on this article, said that his Delegation agreed with the consensus that entry into force would depend on 35 ratifications, 5 of which must be from producer States.

3. Attention next turned to the period of time which must elapse between the deposit of the 35th instrument of ratification or accession and entry into force of the convention. The Chairman noted that Doc No. 9 provided for 60 days, Doc No. 27 indicated 90 days, and Doc No. 21 was silent. Given the ultimate objective of having the convention enter into force at as early a date as practicable, he suggested 60 days as a possible compromise. This suggestion was accepted without discussion.

4. The same time period (60 days) was approved for inclusion in Article XI.4, dealing with the entry into force of the convention for other States, while Articles XI.5 and XI.6 were approved without change. Article XI as a whole was thereupon referred to the Drafting Committee for action in the light of the discussion.

Article XII

5. The Delegate of Venezuela having suggested that, in view of the Commission's decision that ICAO should be the sole Depositary, the final phrase of Article XII.1 should read "addressed to the Secretary General of ICAO", the Chairman felt that it should be sufficient to say simply "the [not "a"] Depositary". This was an editorial matter for the Drafting Committee.

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6. With respect to Article XII.2, the Chairman observed that Doc No. 27 provided for a period of 6 months, the United States proposal in Doc No. 9 spoke of "one year", and Doc No. 21 left open the question of the effective date of a denunciation. The Delegate of the United States explained that the one-year period had been chosen because, inter alia, it reflected the Vienna Convention standard for denunciations where none was provided for. His Delegation could accept 6 months if there was consensus for that proposal, even though it was anxious lest the convention appear to make it too easy for a State Party to escape its obligations. What period was provided in the other aviation security Conventions adopted under the aegis of ICAO? The Executive Secretary, Dr. Milde (D/LEB), indicated that a period of 6 months was specified in The Hague, Montreal and Tokyo Conventions.

7. The Delegates of Ghana, Venezuela and Tunisia spoke in favour of a 6-month period, with the Delegate of Tunisia suggesting that an additional provision was needed under Article XII, to the effect that the Depositary must inform other States Parties of the receipt of such denunciation. The Chairman believed that Article XI.5 already met that need.

8. In the absence of further discussion the Commission decided on a period of 6 months, and referred Article XII to the Drafting Committee.

Article XIII

9. The Delegate of Austria, supported by the Delegates of the United States, Chile, Argentina, Ecuador and Canada, proposed the omission of this article dealing with the amendment of the convention. In voicing his support the Delegate of Ecuador raised the issue (which had been mentioned during the discussion on Article VII) of including a provision entitling States to suggest amendments to the technical annex. As presently drafted it would be left to the Explosives Technical Commission (ETC) to propose amendments - although presumably States could make such proposals through the ICAO Council, which in turn would refer them to the ETC. The Chairman felt that this related essentially to the working methods of the Council, which he was sure would, in practice, allow for representations to be made by States.

10. The Delegate of Japan said that his Delegation favoured including an article dealing with amendment of the convention, and could accept proposed Article XIII in Doc No. 21 with one amendment (namely, that Article XIII.3 refer not only to ratification or accession but to ratification, acceptance, approval or accession, as had been suggested with respect to Article XI.3).

11. Replying to a question by the Delegate of Senegal, the Executive Secretary confirmed that there had been specific reasons for the decisions to omit an amendment procedure from the Tokyo, The Hague and Montreal Conventions and the Montreal Protocol (parenthetical Note following proposed Article XIII.3 refers). Basically, the Conferences concerned had been satisfied that the 1969 Vienna Convention on the Law of Treaties gave full guidance for general amendments and that there *was* no particular need for a procedure different from that foreseen in the Vienna Convention. Account had also been taken of Assembly Resolution A7-6, describing the procedure for the preparation and adoption of

international agreements within the framework of ICAO, which was in compliance with the Vienna Convention and had always proved satisfactory.

12. The Delegates of Venezuela, Tunisia, India, Mali, Algeria, Gabon and Morocco all favoured including an article along the lines of Article XIII. It was true that under the Vienna Convention the new convention could be amended whether or not it contained a specific amending provision. However, the possibility of encountering problems in so doing would be much less if the convention was self-contained. It should not be necessary to look to another instrument for the purpose of appreciating, understanding and implementing the convention. There was also the consideration that - unlike the Tokyo, The Hague and Montreal Conventions and the Montreal Protocol - this convention was not limited to civil aviation but involved many other interests as well. Furthermore, some States Parties to this convention might not have signed the Vienna Convention, in which case they might not be willing to have the convention amended in the absence of an amending provision simply because the Vienna Convention allowed that to be done.

13. The Delegate of the United States said that he had not been persuaded by anything said so far that a specific amending clause was necessary. Such a clause would essentially be nothing more than a repetition of the relevant provisions of the Vienna Convention. He said this as the representative of a State which had not become party to the Vienna Convention, among other reasons because it considered that Convention to be simply a re-statement of customary law. The United States would recognize those rules as the rules applying whether or not they were in the Vienna Convention and whether or not they were stated specifically in this convention. His Delegation was not concerned over the fact that this convention did not expressly and exclusively relate to aviation security. Its origins were recognized to be rooted in ICAO, and to his mind it clearly constituted a convention on aviation security. The Delegates of the Union of Soviet Socialist Republics and the United Kingdom agreed that Article XIII was an unnecessary duplication of what was already in the Vienna Convention, and would only complicate the text of the convention and its practical application.

14. The Delegate of Venezuela suggested that the Secretariat be asked to re-examine this matter, particularly with respect to Article 40 (governing amendments) rather than Article 9 (relating to the adoption of the text) of the Vienna Convention. She continued to believe that the convention should state clearly the rules that would apply to its amendment. If it did not, as had been said, the Vienna Convention entered into play, and Article 40 of that Convention contained very important elements that related to concerns voiced at the Conference - for example, that any State that became party to a treaty became party to the amending formula of that treaty, and there were obligations on the States with regard to amendments.

15. The Delegate of Senegal indicated that his Delegation had no firm position on this issue. It could accept any consensus that could be reached.

16. The Delegate of the Kingdom of the Netherlands said that his Delegation would reserve its position until it had a clear picture of what

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Article VII would contain. In the meantime, he would appreciate hearing from the Executive Secretary whether the customary international law reflected in the Vienna Convention and the procedures specified in Assembly Resolution A7-6 were complementary, or whether they too might give rise to problems of interpretation. The Executive Secretary confirmed that Resolution A7-6 was indeed complementary to and compatible with the Vienna Convention. However, those two different sources of law contained different things. All ICAO-sponsored international conventions were, of course, fully covered by the customary law of treaties, in particular as codified in the Vienna Convention. In addition, ICAO had internal procedures approved by the Assembly that did not deal with the law of treaties but simply set out the steps to be taken leading to the approval of draft conventions.

17. The Delegate of France also reserved his position pending completion of deliberations on Article VII. However, on the basis of discussions so far - and while prepared to accept any consensus that could be reached - his Delegation was inclined towards including in the body of the convention certain provisions based on the Vienna Convention. Article XIII as drafted could, however, create some problems in terms of compatibility with Article VII, and he suggested the insertion at the beginning of the article of a phrase along the lines "Notwithstanding the provisions made in Article VII for the amendment of the technical annex,".

18. The Delegate of Tunisia continued to favour inclusion of an article governing amendment of the convention, but emphasized that such article must be very specific concerning the mechanism for amendment and for the convening of a diplomatic conference.

19. The Delegate of Mali said that, in supporting inclusion of an amending article, he had been influenced by the fact that not all Member States of ICAO had ratified the Vienna Convention, and it was questionable whether those that had not could be bound by its provisions. It was fine to say that those States would apply the customary law. Certainly that would be done when everything was going well, but in the event of a dispute it was necessary to look to the terms of the convention for answers.

20. The Delegate of the United States did not understand what the perceived problem was in connection with this article. He reiterated his position regarding the relationship between the convention and the Vienna Convention. As for the desire to link Articles VII and XIII, his Delegation was seriously concerned that either to create a link between the two or, alternatively, to state specifically that no link existed would give rise to more legal questions than it resolved. Several Delegates had suggested, in supporting inclusion of Article XIII, that one could not have too much of a good thing. He agreed that one could not have too much law, but in his view that argued in favour of omitting, rather than including, an amendment provision. Having said this, if there was a consensus in favour of including Article XIII, his Delegation would not stand in the way.

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21. The Delegate of Australia said that, for the reasons advanced by the Delegates of the United States and the Union of Soviet Socialist Republics, his Delegation would support the proposal to omit Article XIII.

22. Summing up the discussion, the Chairman suggested that - whether or not Article XIII was included - everyone knew and agreed that the convention would be subject to amendment, and that the necessary amendment procedures would be followed. He suggested deferring further discussion on the Article for 24 hours, to allow for informal consultations which he believed could lead to a consensus as to whether amendment of the convention should be expressly provided for in the instrument itself. This suggestion was accepted and discussion on Article XIII was suspended.

Title of the Convention

23. The Delegate of the Union of Soviet Socialist Republics repeated what he had said at the Commission's first meeting, to the effect that it would be inappropriate at least in the Russian text to refer to "and sheet" in the title, preamble and text of the convention. The Delegates of Ghana and Kenya had no difficulty in omitting the reference to "sheet", while the Delegate of Ethiopia wondered what effect, if any, such deletion would have on the English version. The Executive Secretary said that in the Legal Committee's discussion it had been emphasized by many experts that it was sufficient, at least in English and Russian, to mention only plastic explosives, because in those languages "sheet" referred exclusively to the form given to the explosives and not to their chemical or physical properties. He was not sure what the situation was in Arabic. As for Spanish, several Delegates had indicated in the earlier Commission discussions that the term "sheet" was unnecessary in that language also. However, the expression "en feuille" was indispensable in the French version. He saw no particular problem in having a text that differed linguistically in the various languages. The United Kingdom had proposed, on page 3 of the Addendum to MEX Doc No. 7, a "Conference Record" that would make clear that the terminology was being used with a particular nuance.

24. The Delegate of Saudi Arabia confirmed that, in Arabic, the expression "sheet" referred to the shape of the explosives. His Delegation had no preference as to whether or not the reference to "sheet" was retained. The Delegate of Algeria emphasized that, in order to give the French version of the convention the same meaning and scope as the English version, the expression "en feuille" must be included. This should be taken into account in the Drafting Committee. The Delegate of the United States said that, on balance, his Delegation favoured retaining the expression "and sheet", which had been used throughout - including in discussions in the United Nations Security Council and in the ICAO Assembly Resolution. It was, however, prepared to accept any consensus that might be reached. The Commission thereupon accepted the Chairman's suggestion that the matter be referred to the Drafting Committee.

Preamble to the Convention

25. The Delegate of Austria recalled the earlier discussions in the Commission on the desirability of including, possibly in the preamble, a

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statement of the mandate being given to the ICAO Council with respect to the functions it would be performing under the convention. He did not have any precise wording to offer but asked that thought be given to this. The Chairman encouraged the Delegate of Austria to submit draft text to meet his objective. The Delegates of Saudi Arabia, Senegal, Ethiopia, Trinidad and Tobago and the United States all supported in principle the suggestion by the Delegate of Austria, while the Delegate of Tunisia said that his Delegation had no strong feelings on the subject but would be prepared to consider any specific proposals that might be put forward.

26. The Delegates of Mexico, Saudi Arabia (supported by the Delegate of Tunisia), Ghana and Kenya proposed a number of editorial changes to the preamble, which it was understood would be referred to the Drafting Committee for consideration.

27. The Chairman summed up the main issues raised in the course of the meeting and expressed the hope that - following the informal consultations to be held on the need or otherwise of including Article XIII - it would be possible for the Commission to complete its initial examination of the draft convention at the following meeting and begin its second reading on the basis of material emanating from the Drafting Committee.

28. The meeting adjourned at 1700 hours.



INTERNATIONAL CONFERENCE ON AIR LAW

TWELFTH MEETING OF THE COMMISSION OF THE WHOLE

(Thursday, 21 February 1991, at 1045 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 7: REPORT OF THE CREDENTIALS COMMITTEE

1. Speaking on behalf of the Chairman of the Credentials Committee, the Executive Secretary, Dr. Milde (D/LEB), reported that as of that morning 77 States and 5 Observer Delegations had registered, for a grand total of 226 participants. The Credentials Committee would meet on the morning of Monday, 25 February, and would present its final report to the Conference the following morning. He emphasized the great importance of expediting the proper deposit of credentials and/or full powers of Delegates where this had not yet been done. In response to a question by the Delegate of Venezuela, the Executive Secretary said that up to then some seven to nine Delegations had submitted plenipotentiary powers to sign the convention. This in itself was not a cause for concern, because it was quite common for Delegates to delay submitting their full powers until the instrument in question was ready for signature. He noted, also, that verification of full powers for signature was not within the mandate of the Credentials Committee, which was responsible only for verifying Delegates' accreditation to the Conference. The full powers were verified by the Secretariat, and each Delegate signed under his or her personal responsibility. The Chairman associated himself with the Executive Secretary's appeal for early deposit of credentials not yet submitted.

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Title of the Convention

2. The Commission resumed its discussion on the outstanding elements of the draft convention, the first of which concerned the inclusion or otherwise of the expression "and sheet" in the title, preamble and Article I. The Delegate of Germany, speaking as the representative of a State whose mother tongue was none of the working languages of the Organization and which would have to translate the convention as finally approved, hoped that the Commission could agree to use uniform terminology in all official versions of the convention. Since he understood it was essential that the reference to "sheet" ("en feuille") appear in the French version, whereas it might be redundant but would do no harm in the other languages (except possibly in Russian), his Delegation would propose that the title of the convention (and, by extension, the preamble and Article I) include the expression "and sheet". There was no comment on the German proposal.

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Preamble to the Convention

3. At the invitation of the Chairman, the Delegate of Austria then proposed, in line with his suggestion at the previous meeting, the insertion of the following as the final preambular clause:

"RECOGNIZING that the Council of the International Civil Aviation Organization has accepted to assume functions related to the implementation of the Convention and its technical annex,".

The Delegate of Germany supported this proposal, noting, however, that the convention spoke of the "Annex", not the "technical annex". He took the opportunity also to indicate that his Delegation could support the various editorial changes to the preamble that had been presented towards the close of the previous meeting.

4. There being no further discussion, the preamble to the convention was referred to the Drafting Committee for examination in the light of the discussion.

Texts Prepared by the Drafting Committee

5. The Commission then began its second reading of the draft convention, on the basis of the texts of Articles I through VIII presented by the Drafting Committee in MEX Doc No. 31. The Chairman expressed his and the Commission's great appreciation to the Chairman of the Drafting Committee, Mr. V. Poonoosamy (Mauritius), as well as to its members, for their very excellent work so far. He called upon Mr. Poonoosamy to introduce MEX Doc No. 31, noting that the Commission would be invited to examine each article individually.

6. In introducing MEX Doc No. 31, the Chairman of the Drafting Committee thanked sincerely the Delegates who had played an active role in the Committee's work, as well as the Secretariat for its very valuable contribution to that work. MEX Doc No. 31 covered Articles I through VIII and reflected the consensus reached in the Commission. Work was continuing and the Committee would present further texts as they were developed.

Article I

7. The Chairman of the Drafting Committee noted that the definition of "explosives" included the expression "and sheet". This was being proposed on the basis that its inclusion in the English, Russian, Spanish and Arabic versions (while unnecessary) would cause no real difficulty, whereas its omission from the French version would create serious problems. No change was proposed to the definition of "detection agent". However, that definition made reference to the Annex to the convention, and to meet the concern expressed about the legal status of the Annex, the Committee would recommend that the Final Act reflect the Conference's clear understanding that the Annex was indeed part of the convention. "Mark" had been replaced by "marking", since that was the word actually used in the convention and in the Annex. Finally, definitions of "manufacture" and of "duly authorized military devices" had been developed in response to views expressed in the Commission.

8. There continued to be a strong difference of opinion as to how the convention should deal with sheet explosives. The Delegate of the Union of Soviet Socialist Republics maintained his proposal to omit the term at least from the Russian text, since to include it could very likely lead to an incorrect interpretation. The Delegates of France and Algeria agreed with the Chairman that the consensus at the previous meeting had been to refer to "sheet explosives" only in the French text, with the record of the Conference making clear why there was this linguistic discrepancy between the various versions of the convention. The Delegate of the Islamic Republic of Iran questioned whether inclusion or exclusion of the term would affect the scope of the convention - to which the Chairman replied that the issue was one of linguistics only; as agreed, the convention would apply to plastic explosives, including those commonly referred to in English as sheet explosives, provided that they met the technical definitions set out in the Annex. The Delegates of the United States and Venezuela indicated that they could accept the Chairman's summation, under which the reference would appear only in the French version, on the Chairman's assurance that the Conference's record would include the necessary clarification.

9. Later in the meeting, however, the Delegate of the United States requested that the Commission revert to this question, indicating that the United States technical experts on explosives had been dismayed to learn that the term "plastic and sheet" - which had been used consistently throughout the process of developing the convention - would not appear in the final English text of the convention. They were gravely concerned that the change could be read as excluding an entire class of very dangerous explosives, namely, those commonly referred to as "sheet explosives". To meet that strong concern, and if the Commission agreed to re-open the discussion, he would propose that the phrase "and sheet" (or "or sheet", depending on where it appeared) be retained in the English text of the convention. The Delegate of Canada supported this proposal, agreeing that - since there was obviously a problem with retaining the expression in the Russian version - there should be included in the records of the Conference a clear understanding that, although the Russian text did not refer to "sheet", it was intended to include plastic explosives that were in the form of sheets.

10. The Delegate of Venezuela said that if anything more than a question of semantics was involved she would like the Spanish version also to refer to "plastic and sheet explosives". Her views were shared by the Delegates of Mexico, Argentina and Cuba. The Delegate of Saudi Arabia indicated that he could accept retention of the expression "and sheet" in the Arabic version, in the knowledge that what was being dealt with were plastic explosives including those in sheet form.

11. The Delegates of Jamaica, Tunisia and Czechoslovakia suggested slightly differing wordings which they hoped would overcome the problem, none of which appeared to win support.

12. The Delegate of the Kingdom of the Netherlands was not in a position to join any consensus on Article I.1 until he had examined the corollary in Part 1.I of the technical annex. He suggested that the definition be referred back to the Drafting Committee with the request that it take into account the need to align it with the description in Part 1.I of the technical annex. His Delegation, as another whose mother tongue was not one of the languages in which the convention would be concluded, considered it essential to have a clear

definition, with a meaning that was the same for everyone. That way, countries like his could safely use any of the authentic texts as the basis for their translations.

13. The Delegate of the United Kingdom recalled the extensive study given to this issue by the Ad Hoc Group of Specialists on the Detection of Explosives which, as reflected in part in MEX Doc No. 4, had finally led to the conclusion that, for reasons of clarity, it was probably wise to include the term "sheet". He also mentioned his Delegation's proposal in MEX Doc No. 7 for a form of words that could perhaps be used either as a "Conference Record" or as an addendum to the convention, clarifying the use or non-use of the expression "sheet" in the different language versions.

13.1 Replying to a request for clarification from the Delegate of Ethiopia, he noted that, technically, there were two forms of sheet explosives - those made of rigid material, which Part 1.I of the technical annex made clear were not included within this convention, and those which were flexible or malleable (which would be included under the definition). In other words, the convention would deal only with those sheet explosives that fell within the description in the technical annex.

14. The Delegate of the Union of Soviet Socialist Republics maintained that this was a substantive issue, not simply one of semantics. Referring to "plastic and sheet explosives" could be interpreted as an extension of the scope of the convention - which the Conference had agreed should not be done. He felt there was no alternative but to refer the matter back to the Drafting Committee for further study, with a request that it make a new recommendation concerning the different language versions of the convention.

15. The Delegate of Austria, seconded by the Delegates of Australia and the United States, suggested that the definition of "explosives" in Article I be aligned with the description in Part 1.I of the technical annex and read along the lines: "'Explosives' mean explosive products, commonly known as plastic or sheet explosives, as described in the Annex to this convention."

16. Since it was obvious that a decision could not be taken at that meeting, the Commission accepted the Chairman's suggestion to refer the definition of "explosives" back to the Drafting Committee for reconsideration, taking as a basis the Austrian proposal.

17. The definition of "detection agent" was approved without comment. In so far as the definition of "marking" was concerned, the Delegate of Israel suggested substituting "in the manner described in" for "in accordance with". He did not press the point, however, in the absence of comment or support by other Delegates, and the definition of "marking" was approved without change. The definition of "manufacture" was also approved without change.

18. With reference to the definition of "duly authorized military devices", the Delegate of Indonesia suggested that the expression "law enforcement" be substituted for "police". At least in Indonesia it would be very difficult to transfer all military devices to the military and police authorities, because in his country there were law enforcement authorities apart from the police. The Delegates of Tunisia, India and Pakistan supported this suggestion. The last named noted that, should States decide to make possession

of such explosives a penal offense, they might well come into the hands of customs personnel, other guards, or airport authorities. If the convention referred to "police authorities" that property would then have to be turned over to the police, and this might be difficult in some circumstances.

19. The Delegate of Canada had some difficulty with the Indonesian proposal, noting that in Canada people in the Coast Guard, in Customs Offices and in the Fisheries Department were all duly appointed law enforcement authorities for one purpose or other. One of the objectives of the convention was to restrict to the extent possible the security risks associated with unmarked explosives, and he feared that acceptance of the proposed change might widen the scope of the convention and potentially open the door to future problems. The Delegates of Czechoslovakia, Togo and Venezuela shared these views. The Delegate of Venezuela agreed with the Delegate of Togo that the word "police" as used in the convention referred to a function and not to a particular body. Determination of what constituted military authorities and what were police authorities was a matter of domestic legislation.

20. After a brief suspension of discussion the Chairman reported that, on the basis of informal consultations on this question, a consensus had been reached to retain the expression "police" in the definition of "duly authorized military devices" and elsewhere in the convention. That decision had been taken on the understanding that the records of the Conference would make clear that the reference to "police" was a reference not to an institutional machinery as such but to functions to be carried out, and that it would be for each State to determine, in accordance with its own domestic law, which authorities would carry out police functions within the State itself.

21. The Delegate of Indonesia having indicated that that approach was acceptable to his Delegation, the definition of "duly authorized military devices" was approved without change.

22. The Delegate of Brazil raised again the need to include in Article I a definition of "identification", suggesting wording along the lines:

"'Identification' means the signal which indicates the origin of the explosives."

The Chairman believed that this should be addressed when the substantive provisions were being examined in second reading. The need for such a definition would depend on whether or not it was decided to impose an obligation to identify the manufacturer of the explosive product.

23. The normal hour of adjournment having arrived, discussion was suspended at this point and the meeting adjourned at 1230 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

THIRTEENTH MEETING OF THE COMMISSION OF THE WHOLE

(Thursday, 21 February 1991, at 1430 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Text Prepared by the Drafting Committee (MEX Doc No. 31 - continued)

Article II

1. In presenting the Drafting Committee's proposed text for Article II, its Chairman, Mr. V. Poonosamy (Mauritius), said that the only change introduced by the Committee - i.e., the use of "prohibit and effectively prevent" rather than "prohibit and prevent effectively" - had been intended to make absolutely clear that what was to be done effectively was prevention. Prohibition was an absolute term that stood on its own.

2. The Delegates of Australia, Ecuador, Bolivia and Cuba had problems of a grammatical nature with the use of the word "effectively" in both the English and Spanish versions, with the Delegate of Australia suggesting that it could be deleted on the basis that everyone would understand that the necessary measures to be taken by a State Party to the convention would always have to be effective measures of prevention. The Delegate of Israel felt that the necessity to prohibit and the necessity to prevent were both absolute requirements, and that effectiveness should refer to the measures taken. He accordingly suggested amending the article to read:

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

3. The Israeli suggestion was accepted and Article II as thus amended was approved, subject to a possible editorial change in the Spanish text to reflect the concern of the Delegates of Ecuador, Bolivia and Cuba.

Article III

4. The Chairman of the Drafting Committee noted that Article III.1 needed to be amended in line with the decision taken on Article II. In so far as Article III.2 was concerned, the Committee's text reflected the earlier discussion, when it was suggested that the expression "for their own use" appearing in square brackets in Article III.2 of MEX Doc No. 3 was redundant and could be omitted.

5. The Delegate of Thailand, noting that the expression "the objectives of this convention" appeared several times, was not certain exactly what that meant. The Chairman referred to the preamble which, together with the content of the convention as a whole, he believed reflected those objectives. The Chairman of the Drafting Group shared the Chairman's view.

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6. With respect to the proposal to omit the expression "for their own use" from Article III.2, the Delegate of Czechoslovakia wished to have the records of the Conference make clear that the objective was to enable military and police authorities to have unmarked explosives under their control, for uses not inconsistent with the objectives of the convention.

7. The Delegates of Algeria, Mali and Tunisia continued to have a problem with the decision taken at the previous meeting with respect to the use of the word "police". The approach adopted (i.e., that the word referred to functions to be carried out, rather than to a specific institutional machinery) might be adequate for the purposes of the definition in Article I.5. However, in Article III.2 the term "police authorities" appeared to have another connotation - i.e., to refer not to a generic term or to purposes, but rather to a specific body. The Chairman of the Drafting Committee said that the Committee had considered replacing the term "police" by "law enforcement", but had decided against it - considering the term "police" to be sufficiently flexible, while "law enforcement" would be so general as to be inconsistent with the intended application of the convention. The Delegate of the United States associated himself with the views of the Chairman of the Drafting Committee. His Delegation saw no difference between Article I.5 and III.2: in its opinion, military or police authorities encompassed those official bodies or organs that performed police functions, whether or not they were formally called "police".

8. The Delegate of Canada did not consider the term "police authorities" unduly restrictive in the present context. The expression "by military or police authorities" could mean "by or on behalf of military or police authorities". His Delegation did not consider it necessary, but if it would meet the concerns expressed, perhaps "by or on behalf of" could be substituted for "by".

9. In an effort to overcome the problem, the Delegate of Ghana proposed that "by military or police authorities" be changed to read "by authorities of a State Party exercising or performing military or police functions". This proposal was supported by the Delegates of Germany, France, Ethiopia and Trinidad and Tobago and accepted by the Delegates of Tunisia and Algeria - with the last-named stressing the continuing need for the clarification that it had earlier been agreed would be included in the records of the Conference.

10. Article III was thereupon approved, subject (a) to Article III.1 being amended to reflect the decision taken on Article II and to correct linguistic weaknesses in the Russian and Spanish texts to which the Delegates of the Union of Soviet Socialist Republics and Ecuador had drawn attention; and (b) to Article III.2 being amended as proposed by the Delegate of Ghana (para. 9 refers).

Article IV

11. The Chairman of the Drafting Committee noted that the text being proposed was drawn from both the Legal Committee's text in Doc No. 3 and the Canadian proposal in Doc No. 25 which had been widely supported in the Commission. Except for the deletion from the English text of the word "such", Article IV.1 was identical to that in Doc No. 3. Article IV.2 was based on

Doc No. 25, but attempted to cater to the concerns that had been raised with regard to (a) the addition of "marking" as an option; and (b) the expression "or otherwise disposed of". It also reflected the consensus that, for the purpose of that article, a 3-year period was appropriate. Article IV.3 confirmed 15 years as the time period, while Article IV.4 reflected two suggestions made in the Commission - one regarding the timing of the destruction ("as soon as possible"), and the other regarding the need for the destruction to take place in the territory of the State concerned.

12. The Delegates of Chile and Ecuador (supported by the Delegate of Mexico) drew attention to linguistic weaknesses in the Spanish texts of Articles IV.1 and IV.3, and suggested that there was a need to align the texts in all languages.

13. The Delegate of Argentina observed that, while the expression "rendered permanently ineffective" in Articles IV.2 and IV.3 might satisfy legal experts, at least in the Spanish text it did not meet the needs of the technicians who would actually have the task of converting an explosive into something innocuous. The Delegates of Venezuela and Mexico shared these views and suggested that the Secretariat be asked to re-examine the drafting with a view to aligning the English and Spanish texts. The Delegate of the United Kingdom, as a member of the Ad Hoc Group of Specialists on the Detection of Explosives, indicated that the intent had been to make the material cease to be a plastic explosive. That did not necessarily mean making it inert (something that would be very difficult technically in the case of bulk materials). It might still be an explosive, perhaps in a different form. The purpose of the convention was to address the problem of plastic explosives - materials that could be used in attacks against aircraft - and the Group had felt that, whilst explosives in other forms could perhaps also be used in such attacks, they posed much less of a threat.

14. The Delegate of Ghana said that, while his Delegation found the article generally acceptable, it was concerned that the only reference to destruction taking place in the territory of the State concerned was in Article IV.4. It felt that a similar condition should be included in Articles IV.2 and IV.3. Many so-called "Third World" countries recalled very vividly the attempt by certain organizations to dump in their parts of the world hazardous and toxic waste in various disguised forms, and considered it essential that States be required in all cases to destroy or consume in their territories the stocks described in Article IV as a whole. The Delegates of Costa Rica, Tunisia, Ethiopia and Mexico supported this proposal.

15. The Delegate of Italy agreed with the Delegate of Ghana that, if a reference was to be made to "in its territory", then it should be made in all three articles. However, his Delegation would prefer to see the expression omitted completely. If, for economic, ecological or security reasons, two or more States wished to collaborate and to choose a single location for the destruction or disposition of their military stocks, they should not be denied the right to do so. The destruction of military stocks outside a State's territory obviously could not be done surreptitiously; it would require either a bilateral or a multilateral agreement. If, on the other hand, for some reason

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such agreements were not wanted, Article III.1 already protected States from unlawful movement of unmarked explosives into their territory for the purpose of destruction.

16. The Chairman of the Drafting Committee indicated that the words "in its territory" had been included only in Article IV.4 because the Committee had felt they met the Commission's objective. It had examined the possibility of including the phrase in the other parts of Article IV as well, but had concluded that - in so far as Article IV.2 was concerned - since it dealt with non-military stocks it was already subject to a prohibition of movement under Article III.1.

17. The Delegate of Togo, while appreciating the reasoning behind the Ghanaian proposal, suggested that it should be looked at in the light of the comments by the Delegate of Italy and the Chairman of the Drafting Committee. In so far as Article IV.2 was concerned, as had been said there was no need for the qualification since that dealt with commercial stocks whose movements were already controlled by Article III.1. On the other hand, there was a 15-year period for the destruction of unincorporated military stocks, during which there might be a transfer of possession between States. In that case, which State would be responsible for their destruction? This was, he felt, another case that would require a bilateral agreement, as the Delegate of Italy had suggested.

18. The Delegate of the United States said that his Delegation could easily accept the text of Article IV as presented, subject to the linguistic alignments requested by various Delegates. He had listened with interest to the Chairman of the Drafting Committee's explanation as to why the territorial limitation had been inserted only in Article IV.4. There was, however, an important reason why imposing a territorial limitation with respect to military stocks would not be workable - namely, that it could not be admitted that the military forces of any State were to be confined to the territory of that State in the use of their military equipment, including armaments. Unfortunately there could be circumstances where, in order to carry out objectives entirely consistent with international law, and in particular with the Charter of the United Nations, a military force would be required to consume its armaments outside its own territory. He understood and sympathized with the concerns voiced by the Delegate of Ghana and others. There was certainly no intention - whether or not a territorial limitation was stated - to suggest that a State would be free, in a time of peace and in complying with the terms of the convention, to consume or destroy its unmarked military plastic explosive stocks on the territory of some other State without that State's consent. States could always exercise their sovereignty over their territory and prohibit, limit, or place conditions on, the importation into their territory of any such substances for any purpose whatsoever. That, he contended, offered an adequate safeguard against the kinds of activity that were legitimately of grave concern to the Delegate of Ghana and others. The Delegate of Trinidad and Tobago recognized the validity of the concerns expressed, but also appreciated the arguments advanced by the Delegate of the United States. There was one issue that had not been addressed so far - namely, what consideration would be given to the possible disposal of the explosives in question over the high seas?

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19. The Chairman summed up the discussion, noting that the only contentious issue related to the need (or otherwise) to include in Articles IV.2 and IV.3, as well as in IV.4, an indication that destruction or disposition of stocks of unmarked explosives must take place in the territory of the State concerned. A number of significant points had been made, touching on issues of sovereignty, on the obvious concern of States for their environment, but also on some practical problems. He personally felt that the best way to resolve the difficulty would be to accept Article IV as presented by the Drafting Group (with certain linguistic improvements requested by Delegates), on the clear understanding that the intent of that article was to ensure (a) that a State lived up to its obligation to make certain that the stocks which were in its possession were destroyed or consumed for purposes not inconsistent with the objectives of the convention; and (b) that in so doing they would avoid making other States the dumping ground for such stocks or for the hazardous or toxic wastes emanating from their destruction.

20. The Delegate of Ghana said that, since it was not his wish to delay the work of the Commission, he could accept the Chairman's approach, provided that the records of the Conference specifically mentioned the concerns voiced earlier and indicated that the disposal of those stocks by authorities exercising military or police functions would be carried out in such a way as to respect the spirit and good faith that he considered to be the linchpins of the convention. In endorsing those comments the Delegate of Costa Rica said that his country, which had neither military nor police authorities, would rely completely on the good faith of the manufacturing and user States who would sign and ratify the convention to exercise their responsibilities with requisite consideration for the interests of other States - particularly of developing States. The Delegates of Gabon and Mali shared the hopes just expressed.

21. Article IV was thereupon approved in the form presented in Doc No. 31, subject to the linguistic improvements to the Spanish text requested in the course of the discussion and to the alignment of the references in that article to "military and police authorities" with the decision taken in respect of Article III (para. 9 above).

22. The meeting adjourned at 1630 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

FOURTEENTH MEETING OF THE COMMISSION OF THE WHOLE

(Friday, 22 February 1991, at 1030 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Texts Prepared by the Drafting Committee

Article V (MEX Doc No. 31 - continued)

1. The Chairman of the Drafting Committee, Mr. V. Poonoosamy (Mauritius), noted that the article in MEX Doc No. 31 was identical to the Legal Committee's draft in MEX Doc No. 3, except for the addition of Article V.5 to reflect the consensus in the Commission that specific reference should be made to the rules of procedure of the Explosives Technical Commission (ETC). In line with the Commission's discussions the Committee had given serious consideration to including in the article references to the representation of consumers and producers and to the equitable geographical distribution of membership on the ETC. It had decided, however, that it was not necessary explicitly to refer to these matters in the convention, since the ICAO Council - an institution with its own procedures and practices that took those principles into account - was being chosen to perform a task under Article V and it could be trusted, in deciding on the ETC membership, to give due weight to those considerations, whether or not they were explicitly stated.

2. The Delegate of Czechoslovakia proposed, supported by the Delegates of Canada and the United Kingdom, that the name of the ETC be changed to "International Explosives Technical Commission" (IETC). This would make it abundantly clear that it was not a national body but rather an international one composed of members drawn from among internationally recognized explosives experts coming from different States. In the absence of objection that change was made.

3. The Delegates of Indonesia and China, while appreciating the explanation given by the Chairman of the Drafting Committee, maintained that it would be better to include in Article V reference to the additional criteria of proper representation of manufacturing and user States and of equitable geographical distribution. To meet that objective the Delegate of China proposed the addition, at the end of Article I.1, of the clause "with due consideration for geographical representation, proportion of manufacturing States and consumer States". The Delegate of the Islamic Republic of Iran supported this proposal, noting that his Delegation had earlier suggested that there was a need to cover explicitly in the convention the issue of geographical representation.

4. The Delegate of the United Kingdom, on the other hand, felt that it was unnecessary, and perhaps even inappropriate - given the ICAO Council's widespread experience over the past 45 years in appointing members to similar bodies - to spell out the detailed principles that should guide it in the selection of IETC members. It was sufficient, he believed, simply to include in

the minutes of the present meeting the Commission's understanding that, in appointing the members to the IETC, the Council should respect the principle of equitable geographical representation and the need for proper representation from among manufacturing and consumer States.

5. The Delegate of Germany proposed, as a compromise, that a reference along the lines suggested by the Delegate of China be placed in the resolution that had been proposed to be included in the Final Act. This was too important an issue to be simply mentioned in the minutes of a meeting: it was necessary to have a proper relationship between the new régime of this convention and the Chicago Convention. The Delegate of Senegal supported in principle the proposal by the Delegate of China, but indicated that if there was a consensus for the approach suggested by the Delegate of Germany it would be happy to join in that consensus.

6. The Delegate of Senegal reiterated the suggestion he had made during the earlier discussion, which had been taken up and formally proposed by the Delegate of Mexico (cf. MEX-Min. CW/4 and CW/5), that the reference in Article I.1 to "15 members" be altered to read "not less than 15 nor more than 19 members". The reasons for that proposal had been fully explained at the earlier meetings. He emphasized that he was not pressing for a Commission of 19 members from the outset; 15 would be quite satisfactory. However, the suggested formulation would provide for a degree of flexibility that would permit the Council, should future developments so warrant, to react quickly. The Delegates of Brazil, Indonesia, India, Chile, Costa Rica and Gabon supported the Senegalese proposal.

7. The Delegate of the Union of Soviet Socialist Republics reminded the Commission of the desire that had been expressed to have a balance between the manufacturing and user States in the membership of the IETC. He understood that there were some 8 to 10 manufacturing States, perhaps fewer. If the IETC was enlarged, an imbalance would be created in favour of those States that were not producers - something that would not facilitate the Commission's work. Referring to the parallel that had been drawn between the size of the IETC and that of the Air Navigation Commission (ANC), he suggested that the 15 members of the latter body be looked at in relation to the total ICAO membership of 162 Contracting States - i.e., approximately 1 in 10. Even assuming that the ANC would soon increase in size to 19 members, the relationship would still stand at approximately 1 to 9. That was in sharp contrast to a membership of 15 out of the 35 ratifications required to bring the convention into force. For those reasons - as well as because a Commission of 15 members would be able to work effectively to implement the provisions of the convention - his Delegation considered that at this stage the figure of 15 was reasonable.

8. The Delegate of the United States contended that the figure of 15 had not been chosen arbitrarily or solely because that was also the number of members on the ANC. Rather it was related, as was Article V as a whole, to the objective of creating a technically-oriented body to carry out extremely important work that must be - and be seen to be - wholly technical in character and not influenced by other considerations. His Delegation was prepared to accept Article V without further amendment. If additional changes were to be made, they must be linked directly to technical expertise and to improving the performance of the IETC as a technical body. He hoped that the Conference would not adopt changes to meet any other perceived need.

9. The Delegate of the Kingdom of the Netherlands welcomed the discussion taking place on this important issue, which to his mind underlined the deep conviction of those present as to the need for this convention and for it to enter into force as quickly as possible. The discussion, he suggested, only made sense if one assumed that a large number of States would become parties to the convention. As far as his Delegation was concerned, Article V.2 set out the only criteria for appointment to the IETC - namely, direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives. The Council could be trusted, as the number of States Parties to the convention increased, to make the IETC as representative as possible of the worldwide expertise in those fields, and it was in that spirit that his Delegation was inclined to support the idea of a somewhat flexible size for the Commission. He recognized that it must be kept as small as possible in order to be effective. However, if it was to have credibility it must be representative of all of the States that it was hoped would, without delay, become parties to the convention. The Delegate of China shared the sentiments just expressed and indicated support for the Senegalese proposal.

10. The Delegates of Tunisia and Cuba, in supporting the Senegalese proposal, argued that a membership of 19 would not only permit a better balance to be established between manufacturing and user States but would recognize the human element - i.e., the widespread interest on the part of States to participate in the extremely important work of the IETC.

11. The Delegate of Germany was uncertain about the effect of the Senegalese proposal. When would the Council be entitled to appoint 15 members and when 19? Was the article to be linked directly to the anticipated change in the size of the ANC or was it a matter of providing for greater flexibility? He suspected, in view of the intense interest in this convention on the part of States, that if it was the latter then 19 would very quickly become the norm. In that connection he reminded the Commission of his proposal during the first reading of this article, to the effect that the convention should provide for observer status, with specific rules governing those observers. That could perhaps meet the wishes of States that wanted to follow closely the work of the IETC but were neither manufacturing nor consumer States.

12. The Executive Secretary, Dr. Milde (D/LEB), saw no particular problem here. The IETC would be a subordinate body of the Council, with its rules of procedure being subject to approval by the Council (if Article V.5 was approved). The Rules of Procedure for the Council, and indeed the rules of procedure of all ICAO bodies that he was aware of, provided without any limitation whatsoever for participation by Contracting States and by observers from international organizations. Certain organizations were invited to all ICAO meetings, others only to those in their specified fields of interest.

13. Discussion on Article V.1 was suspended at this point, to allow for informal consultations to take place over the lunch hour aimed at reaching a compromise on the proposals before the Commission.

14. Attention having turned to Article V.2, the Delegate of Ethiopia recalled that there had been considerable support during the first reading for a suggestion that this article should refer also to the personal integrity of the individual as a criterion for membership on the IETC. He would like to see that done. The Delegate of Senegal associated himself with this proposal. The

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Chairman wondered whether this was really necessary. He personally assumed that all experts nominated for membership on the Commission would be persons of high moral character. The Executive Secretary agreed, noting that since the experts would be nominated by States, the responsibility for their integrity rested with those States and should not be challenged by any other authority. If it was decided such a reference should be included, the wording used in the Statute of the International Court of Justice might be considered appropriate - i.e., appointed "from among persons of high moral character".

15. In light of the comments of the Chairman and the Executive Secretary it was decided that it was not necessary to include the suggested reference.

16. The Delegate of Argentina drew attention to certain linguistic weaknesses in the Spanish text of this article, and suggested that it be reviewed and aligned as much as possible with the English text. The Delegate of Chile, supported by the Delegates of Brazil, Costa Rica and Senegal, felt that the problem could be overcome if Article V.2 were redrafted to use the terminology appearing in Article 56 of the Chicago Convention governing the nomination and appointment of ANC Members - i.e., "suitable qualifications and experience".

17. The Delegate of the United States recalled that both the Legal Sub-Committee and the Legal Committee had examined the wording of Article 56 as offering a possible standard for appointment to the IETC, but had concluded that it was not sufficiently rigorous given the very specialized and extremely sensitive task assigned to that body. The text proposed, which was the result of lengthy and painstaking work, set what his Delegation considered to be the minimum qualifications required, and it had its wholehearted support. The Delegate of the Union of Soviet Socialist Republics shared the views of the Delegate of the United States. It would not have been possible to develop specific wording concerning the technical qualifications of nominees to the ANC, since they had to deal with a variety of aeronautical subjects. The IETC on the other hand would be dealing with very specific and precise problems, and his Delegation felt it would be wise to ensure that the experts appointed to the Commission be qualified to deal with them.

18. The Delegate of Argentina thanked the Delegate of the United States for providing the background to the proposed text. However, he would still prefer to see wording such as "suitable qualifications and experience", it being understood - as the Chairman had suggested - that that language obviously must be related to the subject matter that would fall within the competence of the IETC, and that the nominating States and the Council could be expected to select people with the appropriate expertise.

19. In view of the time discussion was suspended at this point, it being understood that the informal consultations to take place over the lunch hour would attempt to resolve this last issue also.

20. The meeting adjourned at 1230 hours.



INTERNATIONAL CONFERENCE ON AIR LAW

FIFTEENTH MEETING OF THE COMMISSION OF THE WHOLE

(Friday, 22 February 1991, at 1430 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Texts Prepared by the Drafting Committee

Article V (MEX Doc No. 31 - continued)

1. The Chairman suggested that, since the informal consultations with respect to the proposed amendments to Articles V.1 and V.2 were continuing, the Commission proceed to examine the remainder of Article V. He reminded Delegates that the Commission was now engaged in what was essentially a second reading of the article as developed by the Drafting Committee; therefore, it could not begin to reconsider matters that had been disposed of in the earlier substantive discussions.

2. There were no comments on Article V.3, which was approved as drafted. With respect to Article V.4, the Delegate of Trinidad and Tobago proposed that, for the sake of completeness and to avoid possible future problems, it be redrafted to read along the following lines:

"The Commission shall normally hold an annual session, which shall be convened by the Council at a suitable time at the Headquarters of the International Civil Aviation Organization. Additional sessions may be held if necessary, upon the call of the Council."

The Executive Secretary, Dr. Milde (D/LEB), welcomed this proposal. The text in MEX Doc No. 3, which had been carried forward into Doc No. 31, simply reproduced Rule 1 of the Legal Committee's Rules of Procedure, without taking account of the provision in the Constitution of that Committee which read: "Sessions of the Committee shall be convened at such places and times as may be directed or approved by the Council." Perhaps some such wording could be used in Article V.4 to provide a desirable degree of flexibility.

3. The Delegate of Chile supported the Executive Secretary's approach, which would permit the IETC to meet elsewhere should a State offer to host a meeting and to defray any additional costs. The Delegate of Canada felt that inclusion of the word "normally" provided the necessary flexibility. His Delegation did not read the present wording as precluding the holding of sessions of the IETC elsewhere, should the Council so decide.

4. The Commission accepted the Chairman's suggestion that the Executive Secretary should re-examine the text in consultation with the Drafting Committee.

5. In response to a request from the Delegate of Mali for clarification of the intent of Article V.5, the Executive Secretary indicated that that article

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was a streamlined and simplified version of the corresponding provisions in the Constitution of the Legal Committee. As drafted, it would be perfectly in order for the IETC to develop and adopt rules of procedure which would be approved by the Council. In practice, however, it was unlikely that a group of highly specialized technical engineers would also be masters of parliamentary procedure, and the reality of the situation was probably that the Secretariat, with the knowledge and agreement of the Council, would prepare draft rules of procedure for presentation to the first meeting of the IETC for comment, amendment and adoption. Once adopted, they would be submitted to the Council for its approval. As was the case with the rules of procedure of all subordinate bodies of ICAO except the Legal Committee (which for historical reasons was empowered to approve its own rules of procedure), the final decision would be the Council's. The Delegate of Mali suggested that it would be clearer to say, in Article V.5, "The Commission shall adopt its rules of procedure after approval of the Council."

6. The Delegate of Venezuela could accept Article V.5 as presented in Doc No. 31 but wanted to place on record that Venezuela did not believe the IETC could be equated with a standing committee of the Council. Such committees were created by the Council itself. On the other hand, this Plenipotentiary Conference was taking decisions independent of the Chicago Convention. The convention it adopted would go beyond civil aviation, affecting also maritime transport, trains - indeed, all forms of transport. She felt that it was necessary to go outside the orbit of ICAO and its rules of procedure and take decisions which reflected all of the interests involved.

7. The Chairman read Article V.5 as meaning that, whatever rules of procedure were adopted, they could only take effect once they had been approved by the Council. Although perhaps the wording could be improved, he believed that, as drafted, the meaning of the article was clear. The Delegates of Mali and the Islamic Republic of Iran continued to have difficulty with the proposed text, with the latter suggesting that the formulation "subject to the approval of the Council" implied not that the Council would approve the rules of procedure of the IETC but simply that it would give the Commission approval to adopt its rules. The Delegates of Ethiopia and the United Kingdom considered that the text in Doc No. 31, at least in English, expressed exactly what was intended. The Delegate of the United Kingdom felt that the problem was more linguistic than substantive. If the difficulty some Delegates had with other language versions could be overcome by using the formulation proposed by the Delegate of Mali as the basis for translation into those languages, he could accept that.

8. There being no further comment, Article V.5 was approved in the form presented in Doc No. 31.

9. The Commission then reverted to the outstanding issues involving Articles V.1 and V.2 - namely, (a) the size of the IETC; (b) whether there should be included, in either paragraph 1 or 2 of Article V or in the resolution to be incorporated in the Final Act, reference to the effect that the Council, in making appointments to the IETC, should give due consideration to the matter of equitable geographical representation; and (c) how the qualifications of the nominees to the IETC should be stated. The Chairman hoped that, as a result of the informal consultations which had taken place and in a spirit of compromise,

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it would be possible for the Commission now to agree: (1) that Article V.1 would reflect that the composition should be "not less than 15 nor more than 19 members"; (2) that matters relating to equitable geographical distribution would be reflected in the resolution to be included in the Final Act; and (3) that Article V.2 would remain unchanged.

10. There being no comment or objection, it was so decided.

Article VI

11. The Chairman of the Drafting Group, Mr. V. Poonosamy (Mauritius), noted that this article was identical to that in Doc No. 3. It had not been the subject of much discussion in the Committee, since the Commission had given no specific instructions in that regard.

12. The Delegate of Japan proposed deletion of the final sentence of Article VI.3. Japan felt strongly that the IETC's discussions must be strictly limited to the technical aspects of the problem of plastic explosives and must not touch on policy or legal issues, and consensus on technical matters was obviously necessary.

13. The Delegate of Italy felt that, as drafted, Article VI - and in particular Article VI.4 - gave the impression that the IETC, through the Council, would be acting as a monopoly. That was not the case: the States Parties could not be deprived of their right to put forward amendments to the convention and to the technical annex. The draft convention said nothing on that subject, nor on the procedure to be followed if States exercised their universally recognized rights, and those omissions must be rectified.

14. The Delegate of the United States said that he would be very reluctant to see the Japanese proposal accepted. His Delegation preferred to leave open the possibility of the IETC reaching decisions by a two-thirds majority vote.

15. The Chairman feared that the proposals advanced by the Delegates of Japan and Italy raised fundamental issues that constituted a reopening of the substantive discussion on this article, and he questioned whether the Commission could deal with those issues at this stage. He pointed out that nothing that was done in the IETC would preclude States from expressing their views or submitting proposals in relation to matters on which the Commission had not reached consensus. There was certainly no intention of suggesting that, because an issue had not been adopted by consensus, the two-thirds majority view would prevail and States' wishes would not be duly considered.

16. The Delegate of Canada reiterated a proposal he had made during the substantive discussion on this article, to which no objection had been raised - namely, that the following sentence be added at the end of Article VI.1: "States shall, as far as possible, transmit any relevant information on these aspects to the Commission or to the ICAO Council." The Delegates of Austria, the United Kingdom and Mali supported this proposal, with the Delegate of the United Kingdom saying that, like the Chairman, his Delegation was very anxious that the

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Commission not re-open discussion on this article. The Delegate of Venezuela had no difficulty with the intent of the Canadian proposal but noted that Article VI talked about the functions of the IETC while Article VIII was concerned with the functions and responsibilities of States. The Delegate of Senegal shared the Delegate of Venezuela's reservation.

17. The Chairman observed that the substance of the Canadian proposal appeared to be acceptable to the Commission, with the question being where the proposed sentence could best appear. Perhaps, as the Delegate of Venezuela had implied, it more properly belonged as part of Article VIII - in which case he would suggest that it be inserted as a new Article VIII.1 reading:

"States Parties shall, as far as possible, transmit any relevant information which could assist the Commission in the evaluation of technical developments relating to the manufacture, marking and detection of explosives."

The present text of Article VIII would be renumbered as Article VIII.2.

18. The Delegate of Canada accepted this suggestion, which was approved by the Commission.

19. The Delegate of Australia suggested that the Drafting Committee might be asked to reconsider the placement of Article VI.4, which he felt might better appear as a new Article VII.1 (the remaining parts of that article being renumbered accordingly).

20. There was no objection to a suggestion by the Chairman that, in a spirit of co-operation and compromise, Article VI be accepted in the form appearing in Doc No. 31, subject to the Drafting Committee's reviewing the question of the proper location for Article VI.4.

Article VII

21. The Chairman of the Drafting Committee observed that Articles VII.1 and VII.2 were identical to the text proposed by the Legal Committee, except for (a) removal of the square brackets from the reference to "90" in Article VII.1, and (b) one editorial change to the French text of Article VII.2. Two alternatives were given for Articles VII.3 and VII.4. The first was based on the Legal Committee's text and was predicated on an amendment to the technical annex requiring unanimity. The second took its inspiration from the proposal by Mexico in Doc No. 30, which had received wide support during the Commission's substantive discussion. If that alternative was selected the Commission would need to determine the figure to appear in Article VII.3. The figure "180" had been left in square brackets in Article VII.4 in that option because the Committee had not had any instructions from the Commission in that regard.

22. The Chairman understood the Commission's decision at the end of its substantive discussion on this article* to have been that the Mexican proposal would constitute the basis for the final text of Articles VII.3 and VII.4, and that what was properly before the Commission now were Articles VII.1 and VII.2, plus Alternative 2 for Articles VII.3 and VII.4.

23. A lengthy discussion followed, with a number of interpretations being offered as to the nature of the Commission's decision after its substantive discussion of the article. The Delegates of France and the Union of Soviet Socialist Republics contended that a number of Delegates had insisted that there must be unanimity among States Parties for an amendment to the technical annex to come into force, and that no decision to the contrary had been taken. Alternatives 1 and 2 must both be examined, since both were reflected in the Mexican proposal in Doc No. 30 (which, in its proposed Article VII.3, had referred to objections by "[1] [X] or more States Parties"). The Delegate of Canada also felt that the two alternatives should be examined, indicating that his Delegation would be prepared to accept Alternative 2 with "5" being fixed as the number of objections required to prevent a proposed amendment from entering into force. That number seemed to strike a good balance, but in a spirit of compromise his Delegation would be willing to consider other proposals.

24. The Chairman maintained that the thrust of the Mexican proposal was to enable an amendment to come into force notwithstanding the objection of a limited number of States, but to leave the door open for such objecting States subsequently to express their consent to the bound by the amendment in question. The Delegate of Australia questioned that interpretation, which he took to mean that the amendment would come into force for the vast majority of States (i.e., those that had not objected), with those that had objected only bound later should they subsequently withdraw their objection. He suggested that Alternative 2 was incomplete. As he read it, and assuming the Canadian suggestion was approved, an amendment would only come into force for any State provided less than 5 States Parties objected to it. Objection by 5 or more States would have the effect of completely cancelling the amendment, with no provision existing for its further consideration since Article VII.5 of the Legal Committee's text had been dropped (something that he had not understood Mexico to intend). As far as he was concerned, that was something that the Commission had yet to address.

25. Clarifying his previous interventions, the Chairman said that he had understood the Commission to have generally accepted the proposal in Doc No. 30, under which (a) an amendment could not come into force for any State unless it had been supported by an overwhelming number of States Parties and only a very small number (Canada was suggesting less than 5) had objected to it; and (b) the very limited number of States that initially objected would have the opportunity later to change their position, deposit an instrument of acceptance of the amendment, and thus become bound by it. The issue now before the Commission would seem to be whether or not to reopen discussion on the basic issue of

* Please see MEX-Min. Commission of the Whole 9

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whether all States Parties must agree in order for there to be an amendment to the technical annex. The Executive Secretary recalled that at the Ninth Meeting of the Commission, the Delegate of Venezuela had drawn attention to what she perceived to be an error in the text of Article VII.3 proposed in Doc No. 30 - namely, that it was not possible to have references both to "[1]" and "[X]" because that made the text incompatible with the following article - and that the intention must be that "[X]" would stand for a figure greater than "1". The Delegate of Mexico had confirmed that understanding. At the end of the Commission's extensive exchange of views the Chairman had ruled that Doc No. 30 should be referred to the Drafting Committee with the understanding that there would be a reference to "[X]" States ("X" being greater than "1"); that a group of X or more States could veto an amendment; and that, if less than X States objected, the amendment would come into force for all but the objecting States, who would have the opportunity - should circumstances so warrant - subsequently to withdraw their objection and agree to have the amendment apply to them also.

26. The Chairman felt that the only way around the impasse was now to ask whether the Commission was prepared to adopt the position that, if one or more States objected to an amendment, that amendment would not come into force - in other words, that an amendment would require unanimous acceptance by the States Parties.

27. The Delegate of the United Kingdom reminded the Commission that the Delegate of Mexico had clearly indicated that, for constitutional reasons, his Government would have to object as a matter of principle to any amendment proposal until it had been accepted by the appropriate Mexican legislative body. A number of other Delegates had made similar statements. Therefore, for the Commission now to accept the rule of unanimity - as did Alternative 1 - would mean that there would be total stagnation. There would always be at least one objection, and progress could never be made - a situation that obviously would not be a satisfactory outcome of the Conference's deliberations. The Delegates of Ethiopia and Trinidad and Tobago associated themselves with these comments. The Delegates of Kenya and Cuba supported Alternative 2, accepting the Canadian proposal that "5" should be established as the number of objections that would prevent an amendment from entering into force. In the interests of achieving universality, the Delegates of Venezuela and the Union of Soviet Socialist Republics favoured Alternative 1, the latter suggesting that, since quite a significant number of States (perhaps many more than 5) appeared to have national legislative requirements concerning the adoption of amendments to conventions, under Alternative 2 the situation could arise where there would be a convention and various amendments that were binding on different States. New legal régimes would be created and the lack of uniformity that would result would inevitably pose a grave threat to international civil aviation.

28. The Delegate of Australia contended that neither Alternative in fact would allow an amendment to be passed - Alternative 1 for the reason given by the Delegate of the United Kingdom, Alternative 2 unless the number established was high enough to take account of all of the States with constitutional requirements such as those applying in Mexico. The Delegate of Czechoslovakia considered that the approach suggested by Germany in Doc No. 28 - of having different standards for the adoption of different categories of amendment - offered a way around the

impasse, but the Chairman noted that there had not been a great deal of support for that proposal and to discuss it now would mean a further reopening of the debate.

29. The Delegate of the Kingdom of the Netherlands still did not feel he could take a position on Article VII until he knew what would be included in the technical annex and whether or not there would be an article dealing with amendment of the convention itself. If the technical annex was to contain anything other than strictly technical matters, his Delegation would insist on the rule of unanimity applying. On the other hand, if it was to be only technical in nature his Delegation would welcome the flexibility envisaged in Alternative 2, which would appear to meet the constitutional requirements of Mexico and of other States in a similar position.

30. The Delegate of Mexico supported Alternative 2 as the more viable and economic approach. It would, he contended, be embarking on a vicious circle to send back to the IETC for reconsideration an amendment which had been objected to by one or more States Parties - as Article VII.4 of Alternative 1 proposed - since the States concerned would presumably simply repeat their objection the next time the amendment was presented. That, at least, would be the case for those States whose objections were based on constitutional grounds.

31. Summing up, the Chairman said that the Commission was faced with an agonizing decision on a very basic issue, but one that it would have to take one way or the other. The choice was quite clear: would the convention require unanimity before any amendment could be made to the technical annex; or would it require something less than unanimity, with the knowledge that (a) the amendment would be binding only upon those States that consented to it, and (b) those States that objected would be given an opportunity to change their minds and subsequently become parties to the amendment. He would ask Delegates to reflect very seriously over the weekend on the implications of those choices, so that a definitive decision could be taken early in the next meeting, on Monday morning.

32. Discussion was suspended at this point and the meeting adjourned at 1730 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

SIXTEENTH MEETING OF THE COMMISSION OF THE WHOLE

(Monday, 25 February 1991, at 1000 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Article VIII

1. The Chairman having opened the meeting and presented Article VIII for approval, as amended at the last meeting of the Commission, the Commission agreed without comment to the new text.

New Article IX (MEX Doc No. 32)

2. At the invitation of the Chairman, the Delegate of Indonesia introduced MEX Doc No. 32, containing a proposal by his Delegation that consideration be given to appropriate technical assistance and related programmes for those countries not equipped to implement the provisions of the convention. The proposal called for a paragraph to be included in the convention, requesting that the Council take appropriate measures to facilitate the implementation of the objectives of the convention, including the provision of technical assistance and measures for the exchange of information. He felt that this addition to the convention would ensure greater acceptance of the convention by those States willing but unable to implement the provisions of the convention due to financial constraints.

3. Several Delegations fully endorsed this proposal, among them the Delegates of Brazil, the Islamic Republic of Iran, Mali, Romania and Thailand. Also endorsing this proposal was the Delegate of Uganda, who stated that the implementation of the convention would involve a degree of technology not easily available in developing countries, and that the best method to ensure that this assistance be given was to provide a clause in the convention.

4. The Delegate of Venezuela recalled an earlier statement in which she had stated that the framework of the convention went beyond the scope of ICAO, as it affected not only civil aviation but other modes of transportation. She believed that certain steps would need to be taken to implement the convention for which developing countries would require the assistance of ICAO. The Delegate of India also believed that ICAO was the proper forum although the matter encompassed other modes of transport; this was an interdependent activity and development would have to occur in more than one country to ensure security for all of civil aviation. The Delegate of Venezuela was also of the opinion that there should be not only a request for assistance but a specific mandatory requirement, and therefore supported the proposal made by the Delegate of Indonesia to include a provision in the convention to that effect. The Delegates of Argentina, Costa Rica and Honduras concurred with the statement that the clause should be imperative in nature and that it should read "the Council shall take action" and not "the Council may take action." The Delegate of Chile, having co-sponsored the draft resolution in MEX Doc No. 34, believed that the

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resolution and the convention were complementary, shared this view. Wishing to be associated with these comments, the Delegate of China commented that the exchange of information as well as financial and technical assistance were most important steps for the convention to be widely accepted and implemented.

5. The Delegate of Tunisia, supporting the proposal that a provision for technical assistance be included in the convention, stated that the financial constraints felt in developing States would require a commitment from the international community to enable less fortunate States to implement the convention. He commented that his country had felt the financial impact of implementing the provisions of the Annexes to the Chicago Convention and all the decisions taken by ICAO, and listed as examples noise restrictions on subsonic jet aircraft and the transition from ILS to MLS. He pointed out that additional financial resources would be required to implement the provisions of this convention. Indicating that developing States were willing to make every effort to implement the convention, but were lacking the financial resources to do so, he appealed to States, especially the developed States, to provide the necessary technical assistance for those States requiring assistance. The Delegate of Chile, indicating that these comments reflected the problems faced by his country, supported the proposal that a provision for technical assistance be included in the convention. The Delegate of Mexico and the Delegate of China, who stated that international co-operation benefitted the international community as a whole, also endorsed these comments. The absence of resources, both financial and technological, added the Delegate of India, had resulted in a situation where SARPs were not always implemented, and the technical assistance programme had been designed to ensure their implementation. He was of the opinion that for the convention to be successful, it should provide for certain practical measures for its implementation.

6. The Delegate of Ghana strongly supported the idea that some form of assistance be provided to those States requiring such assistance. He believed that whether it appear in the resolution or in the convention, this request should be strongly worded, requesting the support of the international community to assist States to effectively implement the convention. This view was shared by the Delegate of Mexico. Agreeing that a request should be made for assistance, either in the resolution or in the convention, the Delegate of Ethiopia, in line with his earlier statement calling for technical assistance, commented that financial resources were unavailable in his country, as well as in other developing States, to adequately provide for the safety and security of civil aviation. He appealed to those States that were able to provide assistance to accept the idea of mutual assistance.

7. Concurring that this was an important aspect for the proper implementation of the convention, the Delegate of Germany nevertheless was of the opinion that the matter of technical assistance should be addressed in the resolution and not in the convention. He believed that this convention was a legal instrument which could not stipulate commitments of other legal régimes. He also felt that the convention would be addressed only to States Parties and would exclude other States and organizations whose help might be appropriate in this regard; he thought that this issue should be addressed not only to ICAO but

to the community of States outside the convention as well as to other organizations.

8. Sharing these views, the Delegate of Japan, understanding fully the importance and the need for technical co-operation for the implementation of the convention, was also of the opinion that this, which he considered a matter of policy rather than a legal matter, should be included in the resolution.

9. The Delegate of Sweden, stating that technical assistance was an important matter, reaffirmed his Delegation's commitment to contribute, through ICAO, in the area of technical assistance. However, he shared the opinion that this matter went beyond ICAO and agreed with those Delegates who had indicated their preference for including the proposal in the resolution.

10. In agreement that the convention would have to not only be widely accepted but widely implemented, the Delegate of the Kingdom of the Netherlands maintained that this involved not only ICAO as security was related, not only to civil aviation but to other modes of transport as well. He thought it appropriate to examine the existing programmes and mechanisms for the promotion of security, such as those within ICAO. He added that consideration should be given to mechanisms within other organizations, such as IMO and the UNDP, as these organizations supported security efforts in the aviation field as well as in other fields. This should be taken into account during discussions and he gave assurances that his Delegation would lend support so that the Commission could reach an agreement on this matter.

11. The Delegate of the United States agreed that the security of international civil aviation and the effective implementation of the convention were important. He indicated that by design the convention was of limited focus, dealing with the question of marking of plastic explosives. The detailed analyses which had been undertaken in the formulation of the convention would not necessarily have been carried out for other aspects, such as equipment-related questions. He also questioned whether it was appropriate at this stage to decide that the ICAO Council was the appropriate provider of the type of technical assistance that seemed to be envisaged, and stated that there should be no restriction in the form of any specific legal formulation on how best to address a problem in the future. He observed that bilateral programmes existed in some States at the present time which might be as effective as the technical assistance that could be provided by ICAO for this purpose. Also to be considered were the financial implications to the Organization, should a mandatory provision be adopted, and his Delegation was not in a position to consent that this expense be borne by ICAO. He therefore shared the opinion of those who wished to include the proposal in the resolution.

12. The Chairman, pointing out that as ICAO and, in particular, the Council had played an essential role in relation to the convention, indicated that there might be an appropriate way in which the Council might be mandated to act as a catalyst for ensuring the appropriate steps which would be required to facilitate the implementation of the convention. Noting that the majority of States had expressed the view that this was a matter of such significance that it should appear in the convention, he proposed the following text, which would

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recognize the central co-ordinating role of the Council in facilitating the implementation of the convention: "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 technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives."

13. The Delegate of Indonesia could agree to this proposal if it were to appear in the convention, and subject to the consent of the Delegations who had expressed support for his original proposal. The Delegates of Chile, India, Tunisia, Uganda and Venezuela indicated their support, as did the Delegate of Ghana, who suggested a slight modification, that is, changing "including technical assistance" to read "including the provision of technical assistance." In view of the consensus forming, the Delegate of the United Kingdom also lent his support to the Chairman's proposal.

14. The Delegate of Italy indicated that the Italian Delegation would reserve its position until further examination of the matter, as they were of the opinion that this went beyond the framework of ICAO. He questioned the desirability from a legal point of view of including in the convention the expense related to technical assistance. In addition, it was the responsibility of the ICAO Assembly to decide on budgetary matters; this Conference was not mandated to authorize the inclusion of this expense in the ICAO budget.

15. Commenting that he had no difficulties with respect to the exchange of information, the Delegate of Finland concurred with the Delegate of Italy and was reluctant to include a reference to technical assistance in the convention. He felt that ICAO, with its limited resources, would be burdened with this financial responsibility. He would prefer if the text were to include "as far as possible" after technical assistance, or refer simply to assistance and not specifically to technical assistance. In the spirit of co-operation, he indicated that he would not object to the consensus.

16. Responding to these concerns, the Chairman explained that the text did not in any manner attempt to commit the funds of ICAO, but that the Council would be the co-ordinator, in co-operation with States Parties and international organizations. The proposal recognized the essential role that ICAO would have to manage and organize the implementation of the convention, including measures relating to technical assistance and the exchange of information. In addition, it recognized the central co-ordinating role of the Council, but did not mandate the Council nor commit the budget of ICAO. In view of this explanation, the Delegate of Mexico extended his support for the proposal.

17. The Delegate of Germany reserved his position and requested more time to examine the matter further, especially in light of the concerns his Delegation had with respect to the financial implications on the ICAO budget. Deferring the discussion to the next meeting, the Chairman adjourned the meeting at 1245 hours.



INTERNATIONAL CONFERENCE ON AIR LAW

SEVENTEENTH MEETING OF THE COMMISSION OF THE WHOLE

(Monday, 25 February 1991, at 1400 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

1. Discussion resumed on a new article to the convention based on the proposal which had been made by the Delegate of Indonesia at the previous meeting. The Chairman emphasized that the text took into account the co-ordinating role of the Council and did not seek to pre-empt the budget of ICAO, and only in this context would it be adopted.

2. The Delegates of Algeria, Brazil and Mali supported the proposal, as did the Delegate of Senegal, who wished to ascertain that the modification that had been suggested by the Delegate of Ghana would be incorporated. The Chairman gave assurances that this would be included.

3. The Delegate of Germany requested that his reservation be put on record. Also expressing reservation, the Delegate of Italy reiterated that the allocation of funds was within the purview of the ICAO Assembly and not this Commission. He indicated that the fact that the budget of ICAO would not be affected by this provision should be placed on record. He also preferred that a slight change be made from "Council will take appropriate measures" to "Council may take appropriate measures". The Chairman gave assurances that these reservations had been noted.

4. As a consensus had formed favouring the inclusion of an article in the convention, the Chairman declared that, based on the proposal put forward by the Delegate of Indonesia, the following would appear as a new 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 VII

5. Turning next to Article VII as contained in MEX Doc No. 31, the Chairman stated that, based on previous consultations, the following addition had been proposed. In the penultimate line of paragraph 2, "and taking into account the nature of the amendment and the comments of States, including producer States," would be added before "may propose". The Delegate of Germany indicated his preference that "shall" replace "may".

6. Drawing attention to paragraph 3, the Chairman specified that the text as it appeared in Alternative 2 was under consideration for approval, the "x" in the first line to be replaced by "five". At the suggestion of the Delegate of Chile, who stated that he wished to have clearly indicated within ninety days from when the amendment would be deemed to be adopted, it was agreed

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to add "from the date of notification of the amendment by the Council" after ninety days in the second line.

7. The Chairman having stated that paragraph 4 would also be as formulated in Alternative 2, the Delegate of Mexico remarked that because of constitutional procedures in some States, these States would be unable to respond within the prescribed time period. For this reason, he indicated that no time period should be specified. At the Chairman's suggestion, it was agreed to delete "within (180) days thereafter or after such other period as specified in the amendment." so that the sentence would end after the word "amendment" in the third line.

8. As no objections were raised to retaining clause 5 of Article VII as contained in MEX Doc No. 3, Article VII as contained in MEX Doc No. 31 was approved, subject to the above-mentioned amendments.

Article IX

9. Consideration was next given to Article IX as contained in MEX Doc No. 35 Revised. Commenting that this article was acceptable to his Delegation, the Delegate of Austria suggested adding "notwithstanding Article VII", as Article VII provided for amendment procedures concerning the annex to the convention. The Delegate of the United States was of the opinion that Article IX reflected the convention as a whole, including the amendment procedures as set forth in Article VII, and thought that no change should be brought to this article. In response to a request for clarification, the Executive Secretary proceeded to explain that the annex would be an integral and indivisible part of the convention, only subject to different amendment procedures. The Delegate of Australia recalled an earlier observation made by the Executive Secretary in which he had stated that the convention could not be read without the annex and wondered whether it was necessary to include Article IX in the convention. The Chairman stated that the article had been formulated based on previous discussions and should remain as is, with the record clearly indicating that the annex would be subject to amendment from time to time as provided for in the convention, and would continue to be an integral part of the convention. The Delegate of Australia countered that for those States fewer than five who objected to an amendment, the annex that would form part of the convention would be not as amended but as unamended. Concurring, the Chairman replied that the annex would only be binding in its amended form upon those parties which had expressed the consent to be bound to the provisions. It was agreed to retain Article IX as it appeared in MEX Doc No. 35 Revised.

Article X

10. The Delegate of Israel wondered whether any reference could be made to those modes of dispute settlement between negotiation and arbitration, and suggested adding "or through any other means of dispute settlement acceptable to them" after "which cannot be settled through negotiation". The Chairman responded that the provision did not preclude two parties to agree to choose an alternative means of settlement and suggested retaining the article as is. Article X as contained in MEX Doc No. 35 Revised was adopted without amendment.

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Article XI

11. The Delegate of Uganda having suggested an editorial amendment, and the Chairman having replied that the substance of the provision was not affected, Article XI as contained in MEX Doc No. 35 Revised was approved.

Article XII

12. The Delegate of Japan, commenting on paragraph 2, stated that "accession" should be added after "approval" in the first line, to be consistent with the second sentence or, alternatively, replacing "by States" with "by signatory States". The Delegate of Ghana agreed with the former suggestion, as did the Delegates of Ethiopia and Chile. It was agreed to change the first line of paragraph 2 to read "This Convention shall be subject to ratification, acceptance, approval or accession by States."

13. The Delegate of Togo, stated that "accession" should be deleted from the third and last lines of paragraph 3. The Delegate of France was in agreement. A discussion ensued, with the Delegate of Mali recalling the observation of the Executive Secretary at an earlier meeting, in which he had explained that it was not the normal accession route and in order for the instrument to be able to enter into force immediately, the procedure for accession had been combined with the ratification procedure for all States. The Executive Secretary reiterated that the Vienna Convention on the Law of Treaties did not make accession contingent on the entry into force of the Convention, and that accession could be done at any time. If the entry into force of the new instrument were limited to the ratification, adoption or approval of States who had signed, the entry into force would also be limited. The intention of the drafting group had been to facilitate the entry into force of the convention by enabling States who had not signed the convention to be able to accede to it at any time, and not only in the traditional manner in which accession would normally be only after the entry into force of the convention. He therefore suggested deleting "before its entry into force in accordance with paragraph 3 of this Article" in the last line of paragraph 1 in order to conform to previous discussions. Paragraph 3 would retain the word "accession" in all instances, which was satisfactory to the Delegate of Togo.

14. Article XII as contained in MEX Doc No. 35 Revised was adopted subject to the aforementioned amendments.

Article XIII

15. It was agreed without comment to retain Article XIII as contained in MEX Doc No. 35 Revised.

Article XIV

16. The Delegate of France having pointed out an editorial amendment in the French text, it was agreed to retain Article XIV as contained in MEX Doc No. 35 Revised.

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17. The Delegate of Japan was of the opinion that an amendment clause should be included in the convention. He pointed out that several international instruments developed in recent years by the United Nations and its specialized agencies included an amendment clause and he gave several examples. He proposed adding the following amendment clause to follow Article XIV: "Any proposed amendment to this Convention shall be approved by a two-thirds 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." This proposal was supported by the Delegates of India, Saudi Arabia and Tunisia.

18. The Delegate of the Union of Soviet Socialist Republics requested that this proposal be submitted in written form for further examination by his delegation; this was seconded by the Delegate of Argentina.

19. The Delegate of Germany indicated his preference that this amendment clause not be included in the convention. The Delegate of the United States was also opposed to the inclusion of an amendment clause, stating that on legal grounds such a provision was not necessary and could be potentially complicated. However, he agreed with those delegates that a written text be submitted for further examination.

20. The Chairman having announced that the proposal made by the Delegate of Japan would be distributed in written form prior to the next meeting, the meeting adjourned at 1630.



INTERNATIONAL CONFERENCE ON AIR LAW

EIGHTEENTH MEETING OF THE COMMISSION OF THE WHOLE

(Tuesday, 26 February 1991, at 1000 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

1. The Commission resumed its consideration of a proposal, put forward orally by the Delegate of Japan at the previous meeting and since distributed in written form under cover of MEX Doc. No. 38, for a new amendment clause. Introducing MEX Doc. No. 38, the Delegate of Japan amended the document to replace the last words of the second sentence, reading "unless by the same majority the Conference decides to apply a different rule," by the words "and thereafter for other States upon ratification, acceptance, approval or accession." The proposal presented by the Delegation of Japan would allow for an amendment of the convention to take place at an international conference, and for such an amendment to enter into force by the same procedure with respect to which the convention would be adopted, i.e. by a two-thirds majority, provided that not less than five producer States had deposited their instruments of ratification, acceptance, approval or accession.

2. The Delegate of Japan elaborated on the reasons for which his Delegation was proposing an amendment clause. The Vienna Convention on the Law of Treaties only provided for general principles and did not take into account the special nature of individual cases; the most recent conventions developed by the United Nations and specialized agencies had included a detailed amendment clause in their texts to meet such individual circumstances. In the draft Convention on the Marking of Explosives for the Purpose of Detection, a consideration related to producer States had been included in the requirement for entry into force of the convention and should also be introduced with respect to future amendments, as was proposed in MEX Doc No. 38; because of time constraints, however, this matter could be determined at a future conference and the text could, for the time being, be restricted to basic principles such as the requirements for adoption and entry into force.

3. The Delegate of Japan believed that the decision of States to become parties to the convention would be largely influenced by the degree of ease or difficulty of the amendment procedure, and that clear provisions should be developed at this time for future international conferences. He had perceived certain shortcomings in the amendment clause suggested by the Secretariat under Article XIII of MEX Doc No. 21, which only paraphrased the general principles reflected in the Vienna Convention on the Law of Treaties and which did not take into account the requirement for entry into force, a feature which was clearly provided for in respect of the Convention itself.

4. In the discussion which followed, a number of additional views were expressed regarding whether or not it was necessary to include a clause relating to amendments. While thanking the Delegate of Japan for his initiative aimed at improving the convention, the Delegate of Argentina could not agree to the text submitted in MEX Doc. No. 38 or to the amendment proposed during its

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presentation. The text of the convention was, in his view, very clear, reflecting detailed study and discussions, and would therefore give rise to very few difficulties in interpretation. Although amendments to the annex might eventually prove necessary in the light of technological developments, the Delegate of Argentina did not anticipate any future need to amend the convention itself. The establishment of a new amending procedure could moreover give rise to differences in interpretation and would not eliminate the need to convene an international conference, as was the case with the amendment regime provided for the annex in Articles VI and VII.

5. The Delegate of Mali maintained that the Vienna Convention only provided a broad outline, thereby granting an opportunity for individual conventions to meet their own special requirements; in this respect, the draft Convention on the Marking of Explosives for the Purpose of Detection dealt with a special subject for which no precedent existed in the annals of ICAO. Having noted the view expressed by the Delegate of Argentina, the Delegate of Mali was hesitant to preclude the possible need to amend the document at a future date, and therefore supported the proposal in MEX Doc. No. 38 as amended orally by the Delegate of Japan.

6. The Delegate of Venezuela was in agreement with the principle underlying the proposal of Japan, since it would be necessary to have clear rules providing for future amendments to the convention. The Venezuelan Delegation could not, however, accept the wording presented in MEX Doc No. 38, and in this respect aligned itself with the statement made by the Delegate of Argentina. A similar view was expressed by the Delegate of Tunisia, who had supported the proposal at the previous meeting and continued to do so, not because he endorsed the wording of MEX Doc No. 38 but because he believed it was necessary to have a provision on amendments. Commenting briefly, the Delegate of Brazil wished to be associated with the statement made by the Delegate of Argentina and the reservations expressed by the Delegate of Venezuela.

7. The text proposed in MEX Doc No. 38 gave rise to concerns on the part of the Delegate of the Union of Soviet Socialist Republics, who expressed reservations vis-à-vis its reference to the various procedures which could be followed by States - i.e. ratification, acceptance, approval or adherence - in becoming parties. Since it was stipulated in Article X that the annex formed an integral part of the convention, the Delegate of the Union of Soviet Socialist Republics also wondered whether the proposed clause, which addressed the convention in its entirety, could be interpreted as conflicting with or superseding Articles VI and VII, which provided for amendments to the annex. Although the Delegate of the Union of Soviet Socialist Republics shared the views of those Delegations which had voiced their gratitude to the Japanese Delegation for its efforts in trying to improve the text of the convention, he believed it would be preferable, in the interest of the convention, not to include the proposed amendment clause.

8. In summarizing the points which had been raised in connection with the proposal in MEX Doc. No. 38, the Chairman observed that a number of fairly strongly held views had been expressed regarding the question of whether or not there should be an express amendment clause in the convention. The proposal

contained in MEX Doc No. 38, presented by Japan, had been explained in great detail. Some delegations, whilst expressing support for the concept of an express provision, had indicated that there may be a need for modifications to that text; other Delegations had expressed the view that they were not in favour of that text and in any event, they were not in favour of an express provision in the convention dealing with that matter as such. During the discussion, it had been clearly recognized by all Delegations that Article VII of the convention provided for a special régime governing the amendment to the annex, which was proclaimed to be an integral part of the convention, and that other aspects of the convention were capable of amendment in the manner provided for and codified in the Vienna Convention on the Law of Treaties. On the understanding that this situation would be duly recorded, the Commission agreed to retain the convention without an additional clause dealing with amendment.

Draft Final Act

9. The Commission next undertook a paragraph-by-paragraph review of the draft Final Act of the Conference, presented in MEX Doc No. 33. The Chairman indicated that the words "and sheet" would be deleted wherever they appeared in brackets, in light of the decision which had been taken at a previous meeting, and that the list of States appearing in the second paragraph would be updated to take into account all those present at the time of the signing of the convention and the Final Act. Observations by the Delegate of Algeria with respect to the inclusion, without brackets, of the words "and sheet" in the French version of the draft Final Act were noted. Further to a request from the Delegate of Gabon, it was understood that the French version of the description of his State would be corrected to refer to the Gabonese Republic. It was noted that the third paragraph, which listed international organizations represented by observers, would include the African Civil Aviation Conference (AFCAC). An amendment suggested by the Chairman to the text of the fourth paragraph was also accepted. When reviewing the final clauses, further to a reminder by the Delegate of Mali, it was understood that the French version would be aligned with an editorial amendment pointed out by the Delegate of France at the previous meeting for Article XIV of the convention.

10. With the above-mentioned adjustments, the text of the Final Act was adopted by the Commission of the Whole, pending its decision on the draft resolution being proposed for inclusion therein.

Draft Resolution

11. The Delegate of the United Kingdom introduced MEX Doc No. 34, in which twenty-five Delegations were proposing a draft Resolution for inclusion in the Final Act. The Delegate of the United Kingdom pointed out that, as was the case with MEX Doc No. 33, a number of issues, such as the inclusion of the words "plastic and sheet", had been overtaken by events since the time of preparation of the draft text. Also, in addition to the twelve co-sponsors (Argentina, Australia, Austria, Canada, Chile, Germany, Italy, Japan, Mauritius, Saudi Arabia, United Kingdom and Venezuela) indicated on the printed document, thirteen other Delegations (Côte d'Ivoire, Finland, France, Ghana, Honduras, Mexico, Kenya, Kingdom of the Netherlands, Senegal, Sweden, Switzerland, Thailand and

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United States) had asked to be considered as co-sponsors and, in some cases, had made substantial contributions to the text now under review.

12. The Delegate of the United Kingdom elaborated on the five main themes addressed in MEX Doc No. 34, which reflected preoccupations which had surfaced over the duration of the Conference. The first theme related to the fundamental objectives of the convention, and the common desire of Delegations that its objectives should be achieved as quickly as possible. The second theme was related to the emphasis which was being placed by many Delegates on the importance they attached to having readily available a choice of effective and economically priced detection equipment, capable of detecting all four marking agents currently included in the annex to the convention.

13. The third theme related to the question of advice and assistance to states; a similar call to States for assistance, made in the resolution included in the Final Act of the International Conference on Air Law held at Headquarters in February of 1988, had formed the basis for developments in other fora with the result that substantive new resources had been made available to ICAO for this purpose over the past three years, and the Organization's ability to provide assistance and advice on aviation security-related matters had changed out of all recognition in that short period of time. It was suggested that this call not be restricted to ICAO but should be addressed to a much wider audience, encompassing individual States, the United Nations and its agencies, and other international organizations.

14. The fourth and fifth themes were directed to the ICAO Council. The first of these was the desire evinced by many Delegates that the Council should maintain in being its Ad Hoc Group of Specialists on the Detection of Explosives, in order for the Group to continue its studies aimed at ensuring that the annex to the convention remained up to date until such time as the convention came into force, at which time that responsibility would be assumed by the International Explosives Technical Commission. The fifth and last theme reflected the desire that the convention not be considered as a conclusion, but only as an important and substantial step towards ensuring that any kind of explosives which might be used to endanger aviation or other modes of transport be detectable by the relevant security agencies. It was recognized that such studies, if successful, might lead in due course to a more comprehensive legal régime if the international community were to come to the conclusion in the future that such action was necessary.

15. The Chairman observed that the very extensive co-sponsorship of MEX Doc No. 34 was reflective of the widespread views held by Delegations with respect to the need for a commitment to continue to work in relation to the convention and matters relating to explosives; the international community as a whole would have to galvanize itself in a co-operative effort to ensure that the implementation of the convention became a reality and was within the means of States as such, by means of technical or other means of assistance. The draft Resolution attempted to provide for a framework in respect of which all of the objectives outlined by the Delegate of the United Kingdom might be pursued.

16. The Delegate of Tunisia cautioned against a multiplicity of resolutions which would weaken the convention by drawing attention away from its own very strong merits. Having said this, the Delegate of Tunisia was nevertheless prepared to join the consensus, subject to a minor adjustment to the Resolution whereby the word "equipment" would be deleted from the third paragraph of the preamble. The sentence would then read "Aware of the importance to all States of the availability of suitable means of detection," and would meet the concerns of developing countries which strove to make use of all means at their disposal, including equipment, personnel and any other security measures. The Delegate of the United Kingdom had no objection to the change proposed by the Delegate of Tunisia, which was supported by the Delegates of Indonesia and Uganda, as well as by the Delegate of Togo, whose Delegation wished to be listed among the co-sponsors of MEX Doc No. 34.

17. The Delegate of Togo then suggested the inclusion of a fourth preambular clause which would recognize the fact that many States may have difficulties in implementing the means of detection; this would be consistent with the fourth operative paragraph which called upon the international community to grant technical, financial and material assistance for the achievement of the objectives of the convention. The wording suggested by the Delegate of Togo would read "Conscious of the fact that the implementation of these means could give rise to serious difficulties for certain States."

18. The Chairman noted the interest which the draft Resolution had aroused among Delegates, as evidenced by the number of speakers who were now requesting the floor to express their views. In the interest of expediting the Commission's debate in the limited time available, the Chairman suggested that priority be accorded to speakers who had difficulties with the Resolution; who had specific suggestions for improvements or otherwise; or who objected to the Resolution entirely, after which the Commission could hear the views of those Delegates who were simply in support of the Resolution. A number of drafting suggestions put forward by the Delegate of Ghana were noted, and further discussion was deferred to the next meeting, with the understanding that the consultations would take place during the interim among the co-sponsors of MEX Doc No. 38 and other Delegations with a view to developing a generally acceptable text which would enable the Commission to more rapidly arrive at a consensus Resolution.

19. The meeting adjourned at 1230 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

NINETEENTH MEETING OF THE COMMISSION OF THE WHOLE

(Tuesday, 26 February 1991, at 1430 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Draft Resolution

1. The Commission of the Whole returned to its consideration of MEX Doc No. 34, which contained a draft Resolution proposed for inclusion in the Final Act of the Conference. The Chairman recalled that at the close of the previous meeting, he had requested the Delegate of the United Kingdom, who had introduced the document, to consult with other Delegations with a view to finding a common basis which would enable the Commission to more rapidly finalize the draft text. In this respect, the Delegate of the United Kingdom indicated that he had consulted a number of Delegations in the time available since the close of the last meeting and that the draft Resolution now being proposed took into account a number of comments made at the Eighteenth Meeting, in addition to some other points which had been raised since.

2. In the amended Resolution, the third preambular clause would be changed to read "Noting the importance to all States of the availability of suitable means of detection;". A new fourth preambular paragraph would be inserted, reading "Recognizing that the implementation of such means could give rise to difficulties for some States." The words "and sheet" would be deleted from the first operative clause, where they appeared in square brackets. The final part of the second operative clause, reading "pending the formal entry into force of the Convention," would be deleted. The third operative clause would be aligned with the new text of the second preambular, and would thereby make reference to "(...) research and development into improved and economic means of detecting all the marking agents specified in the Convention." The final suggestion related to the question of implementing the principle of equitable geographical representation when appointing the International Explosives Technical Commission; to this effect, a third sentence would be added to the fifth operative clause, reading " - to respect the principle of geographical representation in the appointment of the members of the International Explosives Technical Commission." An editorial correction to the second sentence of the fifth operative clause would align the title of the International Explosives Technical Commission with other references appearing in the convention.

3. The Chairman thanked the Delegate of the United Kingdom for the efforts he had made in the short time available with a view to arriving at a consensus. The amendments proposed by the Delegate of the United Kingdom were supported by the Delegates of Brazil, Ethiopia, Pakistan, and Gabon, who requested that their Delegations be included among the co-sponsors of the Resolution. Observations by the Delegates of Gabon and Mali, and by the Delegate of Chile were noted for adjustments to the French and Spanish texts.

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4. The Delegate of Ghana recalled a point which he had raised at the previous meeting regarding whether it was necessary to retain the fourth operative clause, in view of the fact that the point raised therein was already covered by Article IX of the convention itself; if it was decided to retain this clause, the Delegate of Ghana considered it desirable to align its wording with the text of Article IX. The Chairman recalled that the thrust of Article IX was to place the Council in a central co-ordinating position in the international community's activities related to the implementation of the convention, whereas paragraph 4 of MEX Doc No. 34 was really an outward appeal to the international community as a whole; that appeal would hopefully fall upon receptive ears to enable them to respond to the co-ordinating role of the Council. As regards the wording of paragraph 4, the Chairman drew attention to the different character of the Resolution, which, being a policy document, did not call for the type of precision required in the convention, although its text was not inconsistent with the provisions of Article IX.

5. A suggestion was also put forward by the Delegate of Germany, who noted that the convention made use of the term "technical assistance"; this concept had been replaced by "technical co-operation" in virtually the entire United Nations system, the only exception being ICAO. While noting the appeal of the Delegate of Germany to move towards the concept of technical co-operation, the Chairman pointed out that the language contained in the fourth operative paragraph related to "financial" as well as "material" and "technical", and that the word "assistance" governed all three aspects of this collective reference. It would therefore be difficult to use the term "co-operation" in the context of paragraph 4. The Delegate of the United Kingdom sympathized in principle with the concern expressed by the Delegate of Germany, but pointed out that ICAO continued to employ the term "technical assistance" for the time being, and that it would be advisable for the Conference to use the same terminology.

6. A number of editorial amendments of a consequential nature pointed out by the Delegate of Pakistan were agreed to, and the Commission of the Whole thereby completed its consideration of MEX Doc No. 34 and adopted the document with the amendments made.

Text proposed by the Drafting Committee

7. The Commission turned its attention to MEX Doc No. 36, which contained the complete text of the draft convention. The Chairman recalled that the Commission had previously received from the Drafting Committee, all of the other provisions contained from Article I to Article XV, and had examined these in detail; the only provisions which had not been addressed were the preamble and annex. Introducing MEX Doc No. 36, the Chairman of the Drafting Committee indicated that the new revised text contained therein incorporated all of the comments and suggestions which had been made by the Commission insofar as the Drafting Committee had found that it could accommodate them.

8. The Committee had taken into account the view expressed in the Commission that two new clauses should be included in the preamble. One of these was the second paragraph, which read: "Expressing deep concern regarding the increasing trend of terrorist acts aimed at a total destruction of aircraft and

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other means of transportation;". The wording suggested by the Commission of the Whole had been adopted by the Drafting Committee, although reservations had been expressed in the Committee with respect to its reference to an "increasing trend" and it had been suggested that an "increase in terrorist acts" would perhaps be more accurate. The wording suggested by the Commission for the third preambular paragraph had also been retained, although the Committee was concerned that the phrase "(...) plastic explosives can be used with little risk of detection (...)" could be wrongly interpreted as a form of advice to people with illicit intentions. It had been suggested that the term "have been" could usefully replace "can be" in this clause. The reference in the third preambular clause to acts of unlawful interference with maritime navigation would have to be verified.

9. The fourth and fifth paragraphs had been moved up from their original positions farther down in the preamble. In the sixth paragraph, the word "Considering" now replaced "Recalling". A reference was retained in the English text to "plastic or sheet explosives" insofar as these were citations of existing resolutions. In the seventh paragraph, "Bearing in mind" replaced "Recalling". The wording of the new eighth paragraph had been retained as agreed to by the Commission of the Whole.

10. A number of additional amendments were agreed upon during the Commission's clause-by-clause review of the preamble. Further to a point raised by the Delegate of Venezuela, it was understood that the language of the Spanish version would be aligned with the English text of the title.

11. In commenting on the second paragraph of the preamble, the Delegate of the Union of Soviet Socialist Republics did not think it would be necessary to retain the word "total" since terrorist acts were aimed at destruction and that adjective would be either superfluous or unnecessary. His suggestion was supported by the Delegate of Chile and accepted by the Commission. The question of whether the words "increasing trend" should be retained was raised by the Delegate of France, who recalled the concerns expressed on this subject in the Drafting Committee and suggested that the expression be deleted. The Delegates of Mauritius, the Kingdom of the Netherlands, Ethiopia and Argentina supported his suggestion, which was also accepted by the Committee.

12. The Delegate of Czechoslovakia suggested that the last words of the second paragraph refer to the "destruction of aircraft, other means of transportation and other targets, including human beings," since terrorist acts were not aimed exclusively at aircraft and other means of transportation. This proposal was supported by the Delegate of the Kingdom of the Netherlands, who suggested that the clause adopt the language used in ICAO Resolution A27-8, which referred to the fact that acts of unlawful interference invariably result in injury or loss of life. The Delegate of Australia had reservations vis-à-vis the wording suggested by the Czechoslovakian Delegation, which in his view, appeared to suggest that human targets were an after-thought rather than the prime motivation of any acts of terrorism; aircraft and other means of transportation were interfered with by means of plastic explosives precisely because they contained human beings. The Delegate of Czechoslovakia explained that his idea was not to concentrate on the "human beings" element, but to indicate that acts

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of terrorism could be aimed at other targets, such as banks, shops and other buildings, and that the convention represented a common effort to prevent such acts. In light of the explanation provided by the Delegate of Czechoslovakia, the Commission agreed to amend the closing words of the paragraph to include a reference to "other targets". The second preambular paragraph, as amended in accordance with the suggestions put forward by the Representatives of the Union of Soviet Socialist Republics, France and Czechoslovakia, would read: "EXPRESSING deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets;".

13. There was some discussion regarding the text of the third preambular paragraph, which, in the form presented in MEX Doc No. 36, read: "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." The Delegate of Canada supported the point made by the Chairman of the Drafting Committee with respect to the words "can be", and suggested that the expression "with little risk of detection" also be deleted. These suggestions were endorsed by the Delegate of Argentina, who requested a number of linguistic adjustments to the Spanish version of the second and third preambular paragraphs. The Delegate of France questioned whether the Conference and convention could accurately state that plastic explosives had been targeted against other means of transportation, whereupon the Delegate of Canada indicated that to his understanding, quite a few examples existed of the use of plastic explosives against targets such as automobiles, as well as at some train stations; he therefore considered that an alignment of the text with the second preambular clause, making reference to "civil aviation, other means of transportation and other targets," would be factually correct. A suggestion for simplifying the text of the paragraph was then put forward by the Chairman and accepted, whereby the third preambular paragraph was amended to read "CONCERNED that plastic explosives have been used for such terrorist acts;".

14. The fourth, fifth, and sixth preambular paragraphs were accepted without comment. A linguistic point raised by the Delegate of Chile with respect to the Spanish version of the seventh paragraph was accepted, and the Commission thus completed its review of the preamble.

15. The Chairman directed the meeting's attention to Articles I to XV, which the Commission had reviewed on two previous occasions. In connection with Article I, containing definitions for the purposes of the convention, the Delegate of Czechoslovakia wished to record for the benefit of those who would be involved in future work in this field, that the Ad Hoc Group of Specialists on the Detection of Explosives and the Drafting Committee had worked hard and successfully to develop a definition of plastic and sheet explosives which would cover the entire range of explosives that would be subject to the requirements of the convention. The definition had successfully overcome linguistic problems in a technically correct manner and covered a number of explosives. The Delegate of the United States wished to be associated with the statement by the Czechoslovakian Delegation.

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16. Commenting on the definition which appeared in Article I, paragraph 5 of the term "duly authorized military devices", the Delegate of the Union of Soviet Socialist Republics recognized that the definition was not exhaustive or restricted to the matter described therein, but suggested that the word "bombs" be included as a point of emphasis, since less offensive devices had been included. This suggestion was accepted by the Commission.

17. A request for clarification was put forward by the Delegate of Brazil, who wished to know whether the term "Producer State", as defined in Article I, paragraph 6, only included States in whose territories explosives were manufactured; the Delegate of Brazil wondered whether the term could be used to refer to a State which manufactured explosives in the territory of another State. The Chairman believed that the significance of the term "Producer State" arose not so much from the definition but from Article XIII of the convention, which did not address the entity actually producing the explosives, since that entity could be a private individual, a private firm or a State body. The obligations imposed by the convention were obligations of the State in whose territory explosives were being produced, to supervise the activities being carried out within its territory. The Chairman appealed to Delegations to accept the present formulation in that context. His explanation on the purpose of the definition of "Producer State" was supported by the Delegate of Canada. The Delegate of the Union of Soviet Socialist Republics correspondingly recalled that the Drafting Committee had come to an understanding along the lines just explained by the Chairman: If a State assumed the responsibilities under the convention, it was considered to be a "Producer State" if explosives were manufactured within its territory, either by the State or by private or even foreign entities. In all such cases, the State would have to comply with its obligations and ensure that the purposes of the convention were carried out, even though the explosives were not often manufactured by the State itself.

18. The Delegate of the Union of Soviet Socialist Republics then commented on another issue which had been discussed in the Drafting Committee, that being the question of whether a State which manufactured only limited quantities of explosives for research purposes should be considered a "Producer State". The Drafting Committee had considered that the final decision would have to be adopted by the Commission of the Whole, since it was a substantive issue not appropriate for a decision at the level of the Committee. However, many Committee members had expressed the opinion that a criterion governing the quantitative level of production should be included in relation to Producer States. Whereas Article XIII required States to make a declaration, the annex as now formulated excluded certain types of explosives which were manufactured in limited quantities for certain purposes; these exclusions were provided for in Part 1, paragraph II, sub-paragraphs a), b) and c). The Delegate of the Union of Soviet Socialist Republics therefore proposed that Article I, paragraph 6 confine the definition of "Producer State" to mean any State in whose territory explosives referred to in Part 1, paragraph I of the annex were manufactured.

19. The proposal of the Delegation of the Union of Soviet Socialist Republics was supported by the Delegate of the United States. It was pointed out by the Delegate of Canada, however, that the existing definition for "Producer State" used the expression "manufactured"; the definition for that term made

reference to "explosives", for which a definition making reference to the annex was included. Since the definition of "explosives" was already covered in the first part of the annex, the Delegate of Canada considered that this point was already covered and that to add another reference to the annex would complicate the definition of "Producer State". The Canadian Delegation therefore preferred to retain the definition as presented in MEX Doc No. 36. This view was shared by the Delegate of Ethiopia. While commenting on the definition of "Producer State", the Delegate of Canada made a drafting suggestion whereby Article XIII, paragraph 2 would be simplified to read "Each State shall declare whether or not it is a Producer State."

20. The Delegate of Germany believed that in making reference to quantitative factors, it would be necessary to stipulate the amounts concerned, since he knew of at least one incident which had been caused by a very small quantity of explosives. Since the annex as presented in MEX Doc No. 36 had as yet not been introduced or discussed in the Commission of the Whole, the Delegate of Germany would refrain from making any reference to its provisions at this stage of the discussion. His statement was supported by the Delegate of Czechoslovakia. The Delegate of the Kingdom of the Netherlands also had difficulty in participating in what he viewed as an adoption of the annex by inference. The Chairman acknowledged that the Commission had not as yet dealt with the annex, and that the Commission's references thereto would, at this stage, be subject to whatever final form the annex would take. However, the scheme of the convention was to define explosives by reference to whatever was subsequently decided in respect of the annex, which would be the point of reference for the definition of explosives. In accordance with the Chairman's suggestion, it was agreed to retain the existing definition of "Producer State", with the understanding that the Commission would return to that definition, if necessary, in light of any decisions taken on the annex.

21. Linguistic suggestions affecting the French text only were put forward by the Delegate of France in relation to the word "effective" appearing in Article II and the expression "performing military or police functions" where it appeared under Articles III and IV. His suggestions were supported by the Delegates of Senegal and Mali, and the amendment for the term "performing military or police functions" was accepted; however, the Delegate of Côte d'Ivoire expressed reservations vis-à-vis the suggested amendment to Article II, since the semantics of the French "effectif" and "efficace" had already been discussed at length in the Drafting Committee. Further to a suggestion by the Chairman, it was understood that the French-speaking Delegations would consult amongst themselves with a view to arriving at a consensus on the most appropriate wording. Linguistic suggestions affecting the Spanish version only were put forward by the Delegate of Bolivia for Article III and by the Delegate of Chile for Article V, and were accepted without comment.

22. It was pointed out that the wording of Article V, paragraph 4, as formulated in MEX Doc No. 36, made it mandatory for a meeting of the International Explosives Technical Commission to be held at least once a year at ICAO Headquarters. The word "and" was therefore replaced by "or" in order to allow for the meeting to be held at other places and times as may be directed or approved by the Council. An editorial correction pointed out by the Chairman of

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the Drafting Committee was noted, whereby paragraph 3 of Article VI would make reference to "this Convention".

23. In light of two points raised by the Delegate of the Union of Soviet Socialist Republics, the closing words of Article VII, paragraph 2 were amended to read "for States not having expressly objected thereto", and paragraph 6 of Article VII was amended to read "(...) the Council may also convene a conference of all States Parties." In accordance with an editorial suggestion by the Delegate of Australia, references to "States" appearing in paragraphs 2, 3 and 4 of Article VII, were amended to read "States Parties".

24. Further consideration of MEX Doc No. 36 was deferred to the next meeting and the Commission of the Whole adjourned at 1715 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

TWENTIETH MEETING OF THE COMMISSION OF THE WHOLE

(Wednesday, 27 February 1991, at 1000 hours)

Chairman: Dr. K.O. Rattray

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

1. Before continuing its consideration of the draft convention presented in MEX Doc No. 36, the Commission of the Whole referred to MEX Doc No. 39, which contained the text of the Final Act as agreed to at its Nineteenth Meeting. In light of a request which had been conveyed by the President of the ICAO Council to the Chairman of the Commission and observations by the Delegates of Venezuela and Tunisia, the fourth paragraph of the Final Act was amended to read: "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."

2. The Commission then returned to the draft convention in MEX Doc No. 36, having examined the first seven articles at the previous meeting. Article VIII was accepted without comment. An editorial amendment to Article IX was pointed out by the Chairman, whereby the words "of the International Civil Aviation Organization" were deleted from the beginning of the text.

3. The Delegate of Germany wished to record his Delegation's objection with respect to the proposed wording of Article IX, which would have the effect of imposing on the ICAO Council, an obligation not provided for in the convention on International Civil Aviation. The Delegate of Germany proposed that the word "shall" appearing in Article IX be replaced by "may", so as to remove the obligatory nature and align the vocabulary with other provisions in the convention. The amendment proposed by the Delegate of Germany was supported by the Delegates of Japan and Czechoslovakia, as well as by the Delegate of Italy, who shared the view that the Conference did not have the power to adopt mandatory functions for the Council.

4. The Chairman recalled that the Commission had already had a debate on the question of whether the word "shall" should be inserted in Article IX, at which time clarifications had been given to the effect that the Council would act as a co-ordinating body, in co-operation with States concerned and international organizations, in taking the appropriate measures to facilitate the implementation of the convention; that Article IX did not in any way pre-empt the budgetary process of ICAO or commit the budget resources of the Organization for the provision of technical or other assistance; and that all of the constitutional procedures of ICAO were being preserved. It had been in that context and on that understanding, and with the knowledge that this clarification would appear in the records of the meeting, that the Commission of the Whole had previously agreed to the provision in Article IX. The Chairman trusted that in the light of this clarification on the context in which Article IX had been adopted, it would be possible to proceed with other questions with the knowledge that the constitutional procedures of ICAO were not being breached and would be respected.

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5. The explanation provided by the Chairman was endorsed by the Delegate of Tunisia and by the Delegate of Algeria, who recalled that Article IX had, at a previous meeting, been adopted by a wide consensus, following the concerns voiced by many Delegations with regard to the need to allocate resources to certain countries in order to fully implement the convention. The Delegate of Algeria believed that the non-provision of such resources would seriously jeopardize implementation. A similar view was expressed by the Delegate of Venezuela, who thought that the proceedings of the Conference had reflected a recognition that developing countries required technical assistance in order to apply the convention. It was her understanding that a majority of the Delegations had expressed a view to the effect that the Conference should adopt a mandatory requirement on the Council to provide technical assistance for implementation of the provisions. If the text of Article IX was not mandatory in nature, its implementation could not be ensured. The views expressed by the Delegate of Venezuela were supported by the Delegate of Cuba, who considered that the present wording of Article IX was necessary to guarantee assistance to developing countries in this field. The Delegate of China also held the opinion that Article IX as worded was very important for the full implementation of the convention; the Chinese Delegation believed that the provision therein should be mandatory in nature and it therefore could not agree to the change suggested by the Delegate of Germany.

6. The Delegate of Ghana supported the statement by the Delegate of China, and appealed to those Delegations which had expressed reservations, to accept the present wording of Article IX in the interest of civil aviation security in the general international community. The Delegate of Ghana felt strongly that any attempt to modify this wording would be difficult to accept for many Delegations, including his own. His own reading of Article IX did not, to his understanding, commit the Council or any particular State Party to provide technical assistance. The Delegate of Ghana pointed out that the majority of developing countries, and certainly those on the Continent of Africa, had a very limited share of air traffic, and were not affected to the same extent by the problem being addressed in the convention; these countries nevertheless recognized that the question of civil aviation security was a concern for the international community as a whole, and had come to participate in the Conference in that spirit.

7. In the interest of arriving at a consensus, a drafting suggestion was put forward by the Delegate of Sweden, whereby Article IX would read "The Council shall decide, in co-operation with States Parties and international organizations, to take (...)". His suggestion was taken up by the Delegate of France, who wondered whether a consensus could be reached on Article IX if its text read "The Council shall decide on appropriate measures (...)".

8. The Delegate of the United States recalled the discussions which had led to the adoption of the language currently set forth in Article IX: the text represented a compromise which reflected the interests of all Delegations and which should not be disturbed. The Delegate of the United States therefore suggested that Article IX be retained in its present form with the understanding that the differing views expressed on this matter would be duly recorded. His position was shared by the Delegate of the United Kingdom, who considered that

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any adjustment would raise certain doubts on the part of all those who had contributed to the compromise which Article IX represented, and which had been the subject of a general consensus of views. In the light of the views expressed and clarifications provided, the Commission agreed to retain the present wording of Article IX, with the understanding that the concerns and reservations expressed by some Delegations, as well as the understandings which formed the basis for the text, would be duly recorded in the minutes of the meeting.

9. The Commission approved the text of Article X without comment. A number of suggestions, most of them of an editorial nature, were made by the Delegate of the Union of Soviet Socialist Republics in connection with Article XI. One of these was accepted, and the word "or" was replaced by a comma in the first sentence of paragraph 2 where it appeared after the word "signature". A substantive amendment suggested by the Delegate of the Union of Soviet Socialist Republics would replace the word "shall" by "may" where it appeared in the first sentence of paragraph 1. In this respect, the Chairman pointed out that the wording of paragraph 1 was consistent with the basic language contained in all of the security conventions, allowing States Parties which had the right to do so to submit to arbitration, disputes concerning the interpretation or application of a convention which could not be settled through negotiation. That right would arise and would only be affected where a State which was a party to the dispute had filed a reservation in accordance with paragraph 2 of Article XI so that there would be no consensual link between the parties allowing for the settlement of disputes by that procedure. The Chairman appealed for a retention of the existing wording, which was consistent with all conventions dealing with the settlement of disputes.

10. In response to a query from the Delegate of the Islamic Republic of Iran with respect to Article XI, paragraph 2 and Article XII, the Chairman explained that the convention, as presently formulated, did not allow a State to make a reservation other than at the time of signature, ratification, acceptance or approval; this provision was consistent with the language in Article XIX of the Vienna Convention on the Law of Treaties of 1969. The Executive Secretary, Dr. Milde (D/LEB) concurred that the provision in Article XII was compatible with the above-mentioned Vienna Convention, if States so agreed. States had the freedom to permit or not to permit reservations to any particular convention.

11. When reviewing Article XIII, the Chairman reminded the Commission that it had agreed, at the previous meeting, to an amendment suggested by the Delegate of Canada whereby paragraph 2 was simplified to read "(...) each State shall declare whether or not it is a Producer State." An omission to the second sentence of Article XIII was corrected to include "1991" where reference was made to the date when the convention would be open for signature. Subject to these observations, Article XIII was approved by the Commission. Article XIV was approved, subject to an amendment proposed by the Delegate of France affecting the French version only, as well as an editorial correction pointed out by the Delegate of Egypt.

12. The Delegate of Japan recalled that the issue of an amendment clause had been discussed at length in several meetings of the Commission of the Whole, which had, at its Eighteenth Meeting, decided that the positions of both sides

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would be reflected in detail in the record of the Conference, further to a suggestion by the Chairman. The Delegate of Japan therefore trusted that the position of his delegation on the necessity of having an amendment clause, including the requirement for the entry into force, would be faithfully reflected in the minutes. The Delegate of Japan nevertheless continued to have strong feelings of apprehension vis-à-vis giving complete freedom of action to a future international conference on this important legal matter without the provision of clear instructions on basic points by the Conference which adopted the convention. The Delegate of Japan sincerely hoped that any amendment by an international conference in future would be made in accordance with the principles of justice and good faith which were universally recognized in international law and in a manner not inconsistent with the objectives of the convention.

13. The Commission of the Whole proceeded with its examination of the annex in MEX Doc No. 36. Introducing the document, the Chairman of the Drafting Committee explained that the Committee had been requested to consider the draft technical annex on the basis of the text presented in MEX Doc No. 4 Revised. In drafting MEX Doc No. 4 Revised, the intention of the Ad Hoc Group of Specialists on the Detection of Explosives, as conveyed by its Chairman to the Drafting Committee, had been that such document should subsequently be clarified so as to form a proper legal document as an integral part of the convention; MEX Doc No. 4 Revised had never been intended as a final text.

14. To complete the task which it had been given, the Drafting Committee had requested those Members who were also Members of the Ad Hoc Group of Specialists to review MEX Doc No. 4 Revised with a view to clarifying it. The difficult and time-consuming nature of this task had regrettably not made it possible for the Drafting Committee to present the annex to the Commission of the Whole at an earlier time. That the annex presented in MEX Doc No. 36 reflected the intent and content of MEX Doc No. 4 Revised had been confirmed to the Drafting Committee by the Chairman of the Ad Hoc Group of Specialists. Following extensive formal and informal consultations, the Drafting Committee felt able to provide the revised annex to the Commission of the Whole for its consideration.

15. Part 1 of the annex, in its paragraphs I and II, set out the products which were or were not explosives for the purposes of the convention. The Chairman of the Ad Hoc Group of Specialists had made it clear to the Committee that paragraph II of the annex should be retained because it had a bearing on the description contained in paragraph I of the annex as well as on the definition of the term "explosives" in Article I, paragraph 1 of the convention. Moreover, it had been persuasively argued by the Ad Hoc Group of Specialists that the very specific and, in one instance, transitional provisions of Part 1, paragraph II of the annex should be subject to the relatively more flexible amendment procedures for the annex as contained in Article VII with the important built-in safeguards. It had nevertheless been found necessary to subject these limited exemptions to the obligations which were otherwise expressed in the convention relating to the exercise of strict control and destruction, so as to prevent any possibility of loopholes when the annex and the earlier parts of the convention were read together. Paragraph IV defined two terms in the context of the annex

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only. Part 2 dealt with the description of detection agents and the manner in which they were to be incorporated in explosives.

16. Having actively participated in the formal and informal discussions with the Specialists, the Chairman trusted that the Commission of the Whole would refrain from attempting to change the contents of MEX Doc No. 36, since to do so at this late stage could, in his view, upset the delicate balance of the annex which in turn reflected the equally delicate balance of the consensus reached in the Ad Hoc Group of Specialists.

17. The Delegate of Canada strongly supported the inclusion of the annex in the convention, and wished to be associated with the introduction and explanations given by the Chairman of the Drafting Committee. The Ad Hoc Group of Specialists, as an international technical body appointed by the President of the ICAO Council, had worked long and hard to achieve a balance between clarity, simplicity and the need for technical validity. The wording which the Group had produced in MEX Doc No. 4 Revised had never been intended as a final text; it was the content and intent that were important, and the Canadian Delegation agreed that the content of MEX Doc No. 36 included the items which had been designated for inclusion by the Ad Hoc Group. The co-operation which had existed between the Members of the Ad Hoc Group and the Drafting Committee had resulted in a text that was acceptable to both sides.

18. The Delegate of Canada believed that paragraphs I and II of Part 1 were both needed for a technically complete description of the explosives. Exemptions were included for specific technical reasons and it was possible, even probable, that there might be a need for further minor additions. As an example, the Delegate of Canada referred to the research which was underway to use explosives material in a medical procedure which could provide a cheaper, less painful and much more readily available alternative to major surgery. This procedure would require as pure and uncontaminated material as possible, and marking would therefore not be permitted. Article VII of the convention would in such a case provide the appropriate means for adding such an exemption when and if this medical procedure became a reality.

19. The statements by the Chairman of the Drafting Committee and the Delegate of Canada were supported by the Delegates of Argentina, Sweden, Czechoslovakia and Cuba, who were prepared to accept the annex as presented in MEX Doc No. 36.

20. A number of Delegations expressed reservations regarding the annex presented by the Drafting Committee. The Delegate of Germany perceived significant, substantial changes from the draft in MEX Doc No. 4 Revised, on the basis of which Delegations had prepared themselves for the Conference. Having noted the reference which had been made by the Chairman of the Drafting Committee to the co-operation of certain Delegates who also happened to be Members of the Ad Hoc Group of Specialists, he recalled that the German Delegation, in the forum of the Legal Committee, had expressed the opinion that it might be necessary to hold a meeting of the Ad Hoc Group in parallel with the Conference in order to co-ordinate the finalization of the purely technical annex and the convention itself. The Delegate of Germany queried a number of changes, including the

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deletion which had been made from the original version of Part 1, paragraph I, sub-paragraph b); the introductory wording of Part 1, paragraph II, which he considered more appropriate for the convention itself and not the annex; and the text of Part 1, paragraph III, sub-paragraphs a) and b), which in his view duplicated the provisions of Article IV, paragraphs 1 and 2 of the convention itself. As regards this last point, since special rules for the amendment of the annex were provided in Article VII of the convention, the inclusion of elements from the convention in the annex could give rise to complications. It was in the light of these concerns that the German Delegation was not prepared to accept the text of the annex as outlined in MEX Doc No. 36.

21. The Delegate of China also had difficulty with the text presented in MEX Doc No. 36. The late availability of the draft annex, which had been circulated to States at the end of December 1990 with the understanding that it was technical in nature and without any political or legal implications, had not provided sufficient time for his Delegation to study it in such a way as it deserved. The draft annex had now been substantially amended during its examination by the Drafting Committee, and it seemed that both the scope and the nature of the annex had been expanded well beyond the understanding which his Delegation had had before. Although the Delegate of China believed that the annex should be addressed more carefully and prudently from all perspectives, he realized that it would now be difficult to do so under the present circumstances, and in particular the time constraints.

22. The Delegate of China wished to draw attention to an editorial correction which was noted for Part 1, paragraph II, sub-paragraph d) of the English version, as well as two matters which were substantive in nature. The first of these was the time period specified in Part 1, paragraph II, sub-paragraph d), which his Delegation would have difficulty accepting because of technical and economic constraints. The Delegate of China therefore requested that a longer period be considered. His second concern addressed Part 1, paragraph III, sub-paragraphs a) and b), since his Delegation believed that these two sub-paragraphs represented new obligations upon future States Parties. Commenting in particular on sub-paragraph b), he suggested that this provision be aligned with Article IV, paragraph 2 of the convention, where reference was made to four alternatives for disposal of unmarked explosives.

23. Reservations were also expressed by the Delegate of Japan, who maintained that the annex would have to be confined to technical matters. The Delegate of Japan emphasized that there should be no possibility for amending certain key elements, such as the scope of the convention and the obligations to States, through the amendment procedures of the annex. He pointed out that the exemptions listed in Part 1, paragraph II, sub-paragraphs a) to d) were also covered by the general obligations of the relevant articles of the convention, and that the original text presented in MEX Doc No. 4 Revised had been drafted in a very precise manner to indicate clearly the status of such explosives. In agreeing with a point raised earlier by the Delegate of Germany, the Delegate of Japan viewed paragraph III as an unnecessary and inappropriate repetition of the relevant articles of the convention.

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24. Some editorial suggestions put forward by the Delegate of Chile were noted for the Spanish version of Part I, paragraph II, sub-paragraph b).

25. In summarizing the views expressed thus far, the Chairman observed that the purpose underlying the annex as presently formulated was not in any way intended to impair the integrity of the convention, and that the annex, being part of the convention, was merely a description of the types of explosives which would fall within the convention, and the extent to which those explosives would be covered thereunder. The language which had been chosen by the Drafting Committee defined the explosives in an inclusionary and exclusionary manner. Questions had been raised as to the formulation of the text in terms of how exclusionary provisions were being articulated, and some Delegations had suggested that the language contained in the previous draft, i.e. MEX Doc No. 4 Revised, might be more felicitous. The Chairman did not doubt that this drafting question could be resolved.

26. The second matter which had been raised, relating to the question of whether Part I, paragraph III was attempting to impose new obligations which were not consistent with those in the convention, would require closer examination since it might transpire that these obligations were already covered by Article IV of the convention. The Chairman invited Delegates who had expressed concerns to consult with the Chairman and Members of the Drafting Committee in the hope that these observations would be accommodated when the Commission of the Whole resumed its discussions.

27. The meeting adjourned at 1215 hours.

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INTERNATIONAL CONFERENCE ON AIR LAW

SEVENTH PLENARY MEETING

(Thursday, 28 February 1991, at 1100 hours)

President: Dr. K.O. Rattray

AGENDA ITEM 7: REPORT OF THE CREDENTIALS COMMITTEE

1. The President invited the Chairman of the Credentials Committee to present his report in MEX Doc No. 37, whereupon Dr. Jakubovicz (Brazil) informed the Plenary that the only changes seen since the publication of the report were the credentials presented by Belize and Qatar, which increased to 78 the number of States whose credentials had been issued and found to be in due and proper form, and the inclusion of the African Civil Aviation Commission (AFCAC) which increased the number of Delegations of Observers to six. Any credentials which would be received in the interim before the signing ceremony would be studied by the Secretariat on behalf of the Credentials Committee and the Conference would be informed. The Chairman of the Credentials Committee wished to thank the Secretariat, and in particular Mr. Kakkar, Mr. Augustin and Miss Black, for their assistance.

2. The President expressed his thanks to Dr. Jakubovicz for presiding over the Credentials Committee, and to all the other Members of the Committee for their excellent work. Having invited comments from the Plenary regarding the report, and receiving none, the President declared the report of the Credentials Committee adopted.

AGENDA ITEM 10: ADOPTION OF THE CONVENTION AND OF ANY RESOLUTIONS

3. With the understanding that some adjustments to the Arabic version, as pointed out by the Delegates of Saudi Arabia and Tunisia, would be verified by the Secretariat, the President declared the draft convention in MEX Doc No. 41, which had been adopted by the Commission of the Whole at its Twenty-second Meeting, to be adopted by the Plenary.

AGENDA ITEM 11: ADOPTION OF THE FINAL ACT OF THE CONFERENCE

4. The Conference next examined the draft Final Act, presented in MEX Doc No. 39. The Executive Secretary indicated that since MEX Doc No. 39 had not been re-issued in all languages after its approval, some updatings should be noted. On the first page, in the second paragraph, the number of States which had been represented at the Conference was amended to read "79". On page 2, the name of Qatar was inserted in the alphabetical listing of States represented. On page 3, the paragraph immediately following the enumeration of the Observer Delegations was amended to read: "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 last amendment was to page 5, Operative paragraph 5, sub-paragraph b) of the resolution, where the reference to the annex was changed to read "technical annex".

Seventh Plenary Meeting

5. A number of linguistic observations and editorial adjustments of a consequential nature were noted, and it was pointed out by the President that the square brackets appearing around the words "by consensus" were to be deleted from the second paragraph on page 4. With these observations and adjustments, the Conference adopted the Final Act presented in MEX Doc No. 39, which included the Resolution previously adopted by the Commission of the Whole at its Nineteenth Meeting.

6. The President expressed his appreciation for the co-operation of Delegates, which had enabled the Conference to complete its work in time for the Secretariat to complete its preparation of the final documents. The signature of the Final Act and Convention would take place at the next meeting of the Plenary.

7. The meeting adjourned at 1154 hours.



INTERNATIONAL CONFERENCE ON AIR LAW

EIGHTH PLENARY MEETING

(Friday, 1 March 1991, at 1030 hours)

President: Dr. K.O. Rattray

1. The President noted that this was the final plenary meeting of the International Conference on Air Law and stated that its order of business would consist of general statements; Signature of the Final Act of the Conference and of the Convention; a few tributes; and closing remarks by him in his capacity as President of the Conference. He then invited those delegations wishing to make general statements to do so.

General statements

2. The Delegate of Costa Rica congratulated the President for the splendid manner in which he had chaired the deliberations leading to the successful conclusions reached in the interests of the international civil aviation community. He expressed appreciation to Mr. V. Poonosamy (Mauritius), Chairman of the Drafting Committee, for the excellent work accomplished in that body and to Dr. I. Jakubovicz (Brazil), Chairman of the Credentials Committee, for the effective contribution of the Committee towards the results of the Conference. Noting that Costa Rica's motto symbolized democracy and freedom, he called upon all the signatories to the Convention, which had been developed in a spirit of co-operation and in the interests of international civil aviation, to ratify this instrument as soon as possible. In accordance with specific instructions from its President, Costa Rica would sign the Convention and would take all appropriate measures to ensure speedy implementation of its provisions. Furthermore, pursuant to the provisions laid down in this Convention as well as provisions governing the environment, Costa Rica would like to urge those States in possession of plastic explosives, to destroy or consume them or to render them ineffective. The Delegation of Costa Rica was making this plea in light of the proclamation issued by President Calderon on the environment and on the new international ecological order proclaiming one of Costa Rica's foreign policies as defending and protecting the environment without compromising any other States, bearing in mind the fact that ecological problems were the responsibility of individual States. In conclusion, the Delegate of Costa Rica wished the President of the Conference a safe and pleasant trip home.

3. The Delegate of Czechoslovakia expressed the satisfaction of his delegation with the successful outcome of the Conference, recognizing that adoption of the Convention on the Marking of Plastic Explosives for the Purpose of Detection was an important step towards the fight against terrorism. He considered that implementation of its provisions would contribute towards improving, not only the security of civil aviation and of other means of transportation, but also the security of human beings. As co-sponsor with the Government of the United Kingdom of the initiative to prepare an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives were duly marked, the Government of Czechoslovakia wished to record its high evaluation of the excellent work undertaken on this activity by its Rapporteur, Mr. Arnold Kean (United Kingdom); the Chairman of the Legal

Eighth Plenary Meeting

Sub-Committee, Mr. Charles de la Verpillière (France); Dr. A. Sciolla-Lagrange (Italy), immediate past Chairman of the Legal Committee; Mr. S. M. Anwar (Pakistan), Chairman of the Legal Committee; Mr. V. Poonosamy (Mauritius), Chairman of the Drafting Committee of the Conference; and Mr. J.-F. Bouisset (France), Chairman of the Ad Hoc Group of Specialists on the Detection of Explosives; Dr. M. Milde, Executive Secretary of the Conference and Director of the Legal Bureau; Dr. K.O. Rattray (Jamaica), President of the Conference; Dr. Assad Kotaite, President of the ICAO Council; Dr S.S. Sidhu; Secretary General of ICAO; the Secretariat of ICAO as the host Organization; members of the Ad Hoc Group of Specialists on the Detection of Explosives; the Legal Sub-Committee; the Legal Committee and participants in the International Conference on Air Law. He assured the Conference that the Czech and Slovak Federal Republic would do its best to deposit an instrument of ratification to the Convention shortly and encouraged participants present at the Conference to urge their Governments to take similar steps in order to ensure that the Convention would enter into force as soon as possible.

4. The Delegate of the United Kingdom recalled that it was less than three years since the first proposal for a convention on the marking of plastic and sheet explosives had been introduced in the ICAO Council as a consequence of the destruction of PAN AM Flight 103, over Lockerbie, in Scotland, in December 1988. Taking into account the complexities of the subject, he considered it a remarkable achievement to have a full text agreed to by consensus and ready for signature within such a short time. He also recognized the new Convention on the Marking of Plastic Explosives as a permanent tribute to all those who had devoted such considerable and unstinting efforts to ensure its successful completion. The Delegate of the United Kingdom recorded the sincere appreciation of his Government to all those who had contributed to the success of this initiative. His delegation shared the hopes expressed earlier by the Delegates of Costa Rica and of the Czech and Slovak Republic that the new Convention would come into force as quickly as possible so that its provisions might provide an additional effective defense against indiscriminate acts of terrorism. In his opinion, the new Convention was not the end in the fight against terrorism, nor was it intended to be. The invitation to the ICAO Council, contained in the Resolution adopted by the Conference, 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 régime was a clear indication of the continuing determination of the international community to take all necessary measures to protect itself. Nevertheless, he considered this new instrument as a major step forward towards making the world a safer place, particularly for the travelling public. He commended the ICAO Council for the central role it had played in the preparatory work leading up to the successful conclusion of the Conference. The United Kingdom would continue to contribute as fully as possible in any future work upon which the ICAO Council might embark within this context.

5. The Delegate of the United States considered it a pleasure to be able to participate in the closing session of the Conference and to sign, on behalf of his Government, the International Convention on the Marking of Plastic Explosives for the Purpose of Detection negotiated at this Conference. The

Convention was of special significance to him since his own responsibilities was in the field of counter-terrorism. The United States, like other countries represented at the Conference, had experienced the horror which could result from the use of plastic explosives by terrorists. The destruction of PAN AM Flight 103 and UTA Flight 772 were only two examples of the death and destruction which could be caused by the illegal use of these deadly compounds. He believed that the success of the Conference represented a concrete desire on the part of the international community to work together to counter this threat and he felt that the work it had accomplished would pay significant dividends in saving many lives. The Delegate of the United States believed that all delegations could be proud of this accomplishment because, in less than two years, member States had developed the technology, and now the legal instrument, which should contribute to reducing the risk caused to civil aviation and the international community as a whole by the use of plastic explosives. He recognized the significant amount of work accomplished during the past three weeks and believed that special attention ought to be paid to the efforts made by technicians and scientists from different Contracting States to this activity over the past several years. These dedicated men and women had collaborated in a complex effort to identify appropriate marking chemicals to complete the preliminary scientific work that would allow Governments represented at the Conference to sign this important new international instrument. He noted that only a few of these individuals were present at this meeting but, without their efforts, the Conference's participants would not be enjoying the success which they were celebrating today. He was pleased that the Conference had foreseen the possible need for further work to counter future threats from other explosives or related materials, by entrusting responsibility to the International Explosives Technical Commission to examine potential problems, which would help to ensure that the international community would keep pace with future threats against civil aviation and assured the Conference of the support of the United States towards this effort. The Representative of the United States associated his Delegation with the thanks and appreciation expressed to the President of the Council; the President of the Conference; the Chairman of the Drafting Committee, as well as to the other individuals who had assisted in guiding the work of the Conference to such a successful conclusion.

6. The Delegate of France added his Delegation's satisfaction with the results the Conference had achieved, stating that France was one of the countries which had been affected by terrorism with the destruction of the UTA Flight 772. It could therefore only rejoice at the adoption of any measures which would fight this scourge and noted that, with international co-operation, the safety of civil aviation would continue to be enhanced. His Delegation considered that the new Convention represented a significant step forward in the fight against terrorism and would sign it on behalf of the French Authorities. He was pleased with the spirit of co-operation displayed among participants at the Conference and would like to express appreciation to all Delegations which had contributed to this achievement. The Delegate of France expressed particular appreciation to the President of the Conference for having chaired the deliberations so impartially and patiently and having brilliantly directed the discussions without imposing his authority in any unjust or heavy-handed manner. Accordingly, he attributed the success of the Conference not only to the Delegations participating in the discussions but also to the President, to whom he extended his thanks, as well as to the Chairman of the Drafting Committee, the

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Executive Secretary of the Conference and his support staff, the Secretary General of ICAO and the President of the Council. In concluding, he expressed the hope that the Convention would enter into force as quickly as it had been prepared and negotiated in order to enhance the safety of international civil aviation.

7. The Delegate of the Union of Soviet Socialist Republics also viewed adoption of the Convention as a major step towards the struggle against international acts of terrorism. He noted that the success of the Conference had been ensured by the efforts of all Delegations who had shown their interest and spirit of co-operation in arriving at international agreement on the development of measures to deal with acts of international terrorism. His delegation was sure that the marking of plastic explosives would facilitate their detectability and serve as an important step towards enhancing the safety of international civil aviation. He noted that, with all viewpoints being encompassed in the Convention and its adoption by consensus, the appropriate foundation had been laid to ensure its universal ratification. In accordance with instructions received from the Soviet Government, his delegation would sign the Convention which, together with other related instruments prepared by the Conference, represented a wide and all encompassing legal framework for coping with the struggle against international terrorism and acts of unlawful interference with civil aviation. Therefore, he considered it important to put into practice the theoretical groundwork developed for the handling of acts of terrorism and felt that all States should be urged to become signatories to the Convention and, in accordance with the obligations specified therein, to adopt preventive measures against terrorism. The Soviet Delegation noted that the work being undertaken by ICAO in the fight against international terrorism and acts of unlawful interference with civil aviation formed part of the general effort being applied in the United Nations and its Specialized Agencies in this regard. It would be correct, in his view, to consider terrorism as an evil act which cost human lives. States should therefore be encouraged to adopt preventive measures against terrorist acts which would serve as bases for enhancing safety. The Soviet Delegation recognized the need to combat all terrorist acts against civil aviation and to improve the international situation. It continued to feel that, notwithstanding the motives behind it, international terrorism was wrong and reaffirmed its fight against and condemnation of all forms of international terrorism. His Delegation felt that the high level of legal framework now established should become the overriding law in efforts to ensure the safety of human lives and in continuing to build confidence among States. The use of force against international civil aviation should not be tolerated and steps should be taken to regulate situations which were not yet covered by any form of regulations. The Representative of the Union of Soviet Socialist Republics expressed his appreciation to the President of the Conference and his Vice-Presidents, the President of the Council, the Secretary General, the Executive Secretary of the Conference, as well as all other members of the Secretariat for the efforts they had applied towards ensuring the successful conclusion of the Conference.

8. The Delegate of Côte d'Ivoire appreciated the opportunity for having been able to participate in the work of ICAO, which, fortunately, had led to the signing of the Convention on the Marking of Plastic Explosives for the Purpose of Detection. He stated that Côte d'Ivoire had always attached the highest

priority to any matters affecting the security of international civil aviation or other modes of transport. It had ratified the Tokyo Convention of 1963, The Hague Convention of 1970 and the Montreal Convention of 1971 and was in the process of ratifying the Protocol Supplementary to the Montreal Convention of 1971. He informed the Conference that the Chief Delegate of Côte d'Ivoire would be signing the Convention on behalf of his Government and expressed the hope that its universal acceptance and ratification would be of major importance to all signatory States so as to ensure rapid implementation of its provisions and further enhancement of the measures being taken to protect civil aviation against terrorist attacks. He recorded the appreciation of his Delegation to the President of the Conference for the vigilance, dynamism and the clear-sighted manner in which he had led the discussions. This had not been an easy task; however, Dr. Rattray's lengthy experience in this field had, in fact, allowed Delegations to see the fruit of their labours. In concluding, the Delegate of Côte d'Ivoire also expressed appreciation to the President of the Council, the Secretary General, the Vice-Presidents of the Conference, all Delegations present, the Executive Secretary of the Conference, the interpreters and other members of the Secretariat who had all made such a major contribution to the success of the Conference.

9. The Delegate of Brazil attached great importance to the Convention to be signed since its provisions would serve as a method of defense for States faced with the on-going threat of international terrorism. It would also serve as an important tool to the International Civil Aviation Organization in its efforts to find solutions to deal with the continuing problems facing international air transport and ensure that international air transport would be regulated in a safe manner. On behalf of the Government of Brazil, he expressed appreciation to the President of the Council who had made a splendid opening address to the Conference, the Secretary General, the President of the Conference who had so brilliantly chaired the deliberations of the meeting, as well as the Vice-Presidents of the Conference. The Delegate of Brazil also recorded his thanks to the Executive Secretary of the Conference for the very clear and precise clarifications he had provided to facilitate the discussions, as well as to the other legal experts and other Secretariat staff, including the interpreters, for their strong support throughout the Conference.

10. On behalf of his Delegation and on his own personal behalf, the Delegate of Saudi Arabia expressed appreciation for the excellent management of the Conference. In thanking the Secretariat for the services provided, he paid special tribute to the President of the Council, the Secretary General and the Executive Secretary for their contribution to the success of the Conference. He emphasized the importance of the Convention adopted by the Conference which had been convened in response to international concerns regarding unlawful acts against human beings. The Convention was of particular importance to Arab-speaking countries since it had been published in the Arabic language, a practice which he hoped would continue.

11. The Delegate of Uganda thanked the President of the Conference as well as members of all Delegations and the Secretariat for having contributed to the successful conclusion of this Conference resulting in its adoption of this very important Convention. He suggested that all Delegations urge their

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governments to make the Convention a reality by taking all the necessary steps to make it effective as soon as possible.

12. The Delegate of China congratulated the President on the success the Conference had achieved under his guidance and took the opportunity to express the appreciation of his Delegation to the host country and ICAO for the kind support and hospitality rendered to all delegations. He considered it a necessity to combat international terrorism in the common interest of the international community. This involved not only the safety and security of civil aviation, maritime navigation and other means of transportation, but also the stability and development of the countries of the world as well as the safety of the lives and property of all individuals. He noted that China's fundamental position against international terrorism was consistent, unequivocal and well known to all. As an adherent State of the three international civil aviation conventions relating to security, namely the 1963 Tokyo, the 1970 Hague and the 1971 Montreal Conventions, China had always faithfully fulfilled its international obligations. In line with this consistent policy, the Chinese Government had sent a Delegation to this International Conference on Air Law. It had actively participated in the preparation of the Convention on the Marking of Plastic Explosives for the Purpose of Detection and, together with all the other Delegations to the Conference, the Chinese Delegation had played its part in the deliberations. Like all other Delegations, his Delegation believed that the development and, in particular, the full and effective implementation of this Convention would help to suppress terrorist acts using plastic explosives and protect the safety of life and property of all peoples. The Chinese Delegation also recognized the fact that the international community still had a great deal of work to do in the battle against international terrorism and it was imperative that countries of the world should make concerted efforts to effectively co-operate in the implementation of this Convention. His Government was willing and prepared to co-operate with other countries and international organizations concerned. At the same time, it was the view of this Delegation that, despite the different situations in each and every country, the common objective was to fight international terrorism. It therefore considered that States with the necessary resources had more responsibility and obligation to provide to those States in need of assistance technical information and knowledge as well as training, financial and material support relating to this endeavour. He stressed the importance of improving the ability of all States to implement the provisions of the Convention. This, in his view, would enable the whole international community to achieve its objectives.

13. The Delegate of Germany noted that the International Conference on Air Law had been successful in creating a Convention on the Marking of Plastic Explosives for the Purpose of Detection. He also observed that, though there had been differing views during discussions on the final text of the Convention, Delegations had shown a great spirit of compromise to achieve a consensus decision. The German Delegation had, at times, found it difficult to maintain its own national mandate while following the mainstream of the deliberations of the Conference. As indicated in the opening statement of his Delegation, there were still some parts in the Convention which his Government would not find easy to introduce in its national legislation. Nevertheless, the German Delegation was pleased to announce that it had got full powers to sign both the Final Act and the Convention and would like to assure the Conference that his Government

would make every effort to implement the Convention with a view to improving security in international civil aviation. On behalf of the German Delegation, he expressed appreciation to the President of the Conference for his great performance during the deliberations. He also thanked the other officers of the Conference and the ICAO Secretariat, being the host of this important event.

14. The Delegate of Egypt, on behalf of his Delegation and on his own behalf, expressed appreciation to the President of the Conference, whose wise and diligent efforts had enabled the Conference to reach its objective. He also thanked the Delegates who had contributed constructive proposals to formulate this important instrument. The Convention, in his view, would serve as one of the significant and effective means to facilitate the speedy realization of the new legal régime for the safety and security of civil aviation. The new international legal régime, in which all States should participate, represented an inspiration that, he was sure, all Delegations of Contracting States would endeavour to achieve and would bring about a world in which peace and security would prevail. Accordingly, the Egyptian Delegation appealed to all States to take prompt legal steps to ratify the Convention. In closing, the Delegate of Egypt thanked the President of the Council, the Secretary General, the Chairman of the Drafting Committee, the Executive Secretary of the Conference, the translators and interpreters for their valuable contributions in bringing about the success of this Conference and for having published the Convention in Arabic.

15. The Delegate of Peru congratulated the President on the able manner in which he had conducted the deliberations of the Conference. He also expressed appreciation to the President of the Council, members of the ICAO Secretariat, the Chairman of the Drafting Committee as well as all those who, in one way or another, had worked together in the last two years in order to enable this Convention to take shape and result in its signing today. The Delegate of Peru stated that, for countries such as his own, which had been threatened by acts of terrorism that had threatened its very structures and foundations, this Convention was of particular importance. Furthermore, it would send a crystal-clear message to those international groups which were threatening the entire world with their acts of terrorism and would strengthen ICAO's image within the international community. Additionally, the Convention would prove clearly that ICAO was quite capable of responding to the changing requirements of the time and that it was capable, when faced with the requirements of the year 2000, to show that it would be in a position to respond immediately to future challenges facing international civil aviation.

16. The Delegate of Pakistan registered the great satisfaction of his delegation with the results produced by the Conference which it recognized as another step taken to contain the threat to safe air travel. He observed that the deliberations were conducted with experience, efficiency and skill for which credit was due to the President of the Conference and his team. The Pakistani Delegation also expressed appreciation to the Legal Bureau, members of the Drafting Committee and, in particular, the Delegations that had worked so hard during and before the Conference to prepare drafts and comments, especially the Delegations of Canada, the United Kingdom, the United States, Germany, the Union of Soviet Socialist Republics, Argentina, Brazil, Venezuela, Malaysia and Indonesia. The Delegate of Pakistan also joined previous speakers in expressing appreciation to the President of the Council, Dr. Assad Kotaite, the Secretary

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General, Dr. S. S. Sidhu, the President and First Vice-President of the Conference, the Executive Secretary, Dr. M. Milde, the Chairman of the Drafting Committee, Mr. V. Poonoosamy, and the Chairman of the Legal Committee, Mr. S.M. Anwar, for their work which had brought the Conference to this highly satisfactory conclusion. In conclusion, the Delegate of Pakistan thanked the interpreters for their instant and clear translation of the deliberations. He expressed the hope that the implementation of the Convention would be effective and be closely monitored by ICAO and all other parties concerned.

17. The Delegate of Togo welcomed the positive results achieved due to the efforts of all Delegations represented at the Conference. In his view, the Convention on the Marking of Plastic Explosives for the Purpose of Detection about to be signed was an indication of the true determination of the inter-national community to react promptly and appropriately to new forms of unlawful acts against international civil aviation. The Togolese Delegation felt that this text was acceptable in toto, because it took into consideration the concerns expressed by all Delegations throughout the deliberations. It was essentially a preventive mechanism, along with the other instruments which were aimed more at punishment of these crimes, as laid down in the series of security conventions beginning with the Tokyo Convention in 1963. He noted that the practical nature of this Convention showed the steps to be taken in the combat against terrorism and considered it appropriate to note that it made provision for the rendering of technical assistance to those States which expressed a need therefor. It was therefore very important to thank all those countries that would be helping Togo in enhancing its security in civil aviation. His Delegation had no doubt that that assistance would extend to this very crucial field of marking plastic explosives and their detection. Finally, on behalf of the Togolese Delegation, he thanked all Delegates for their spirit of compromise. He also expressed appreciation to the President of the Council, the Secretary General, the entire ICAO Secretariat, including the interpreters, and the Chairman of the Drafting Committee for the excellent work done. Finally, he thanked the President of the Conference, Dr. Rattray, who had so ably guided the work of this Conference.

18. The Delegate of Senegal associated his Delegation with previous speakers who had extended their thanks and congratulations to the President of the Conference for the remarkable manner in which he had guided the deliberations. He also extended his thanks and congratulations to the Chairman and members of the Drafting Committee who were able, in this context, to translate the convictions and common views of Delegations' approach to the problems which had brought them together in an attempt to resolve them. The Senegalese Delegation recognized that all Delegations had demonstrated a spirit of co-operation and understanding which deserved the highest praise and, without which, the results achieved by the Conference would not have been possible, for which it wished to thank them most sincerely. Finally, his Delegation would like to express its gratitude to the President of the Council, the Secretary General, the Executive Secretary as well as the interpreters for their essential support which had played a determining role in the success of the Conference.

19. The Delegate of Israel stated that the importance which the State of Israel, its people and its airline attached to this Convention was, perhaps, obvious and the reasons therefore required no elaboration at the Conference.

Clearly, Israel saw its importance as being two-fold. On the one hand, the actual and literal subject matter of the Convention constituted practical and effective means of fighting terror by ensuring the prevention of terrorist activity against aircraft. On the other hand, and, perhaps above all, the importance of the Convention had stemmed from the need to have a new international instrument which would give a clear message against terrorism to the international community. Therefore, there could, perhaps, be no better and more fitting message from a united and unified international community than such an international convention against terrorism. The Israeli Delegation wished to echo the sincere congratulations previously expressed to the President of the Conference, the President of the ICAO Council, the Secretary General and through the Executive Secretary, to the entire ICAO Secretariat, as well as to those distinguished Delegates who had played such an active and important part in the drafting of the Convention. He believed that all Delegations should be congratulated for the serious and genuine spirit of compromise and co-operation they had demonstrated during the deliberations. The Israeli Delegation had been authorized to sign both the Final Act and the Convention and would do so with the hope that, upon its entry into force, the Convention would constitute a major step forward in the struggle against international terror duly reflecting the sincerity and common purpose of all the Delegations present at the Conference.

20. The Delegate of Venezuela stated that Venezuela had consistently condemned international terrorism, whatever its form and whoever the offenders. For that reason, it had signed the Tokyo, Montreal and The Hague Conventions, instruments which all aimed at enhancing the safety of international civil aviation. In discussions in the Legal Committee, the Legal Sub-Committee, the ICAO Council and the Assembly as well as at this Conference Venezuela had encouraged adoption of the Convention through the widest possible spirit of co-operation. It was her view that the Convention represented a response to the international community which was faced with terrorist acts in the destruction of aircraft causing the loss of human lives. For that reason, the Venezuelan Delegation was determined to become a party to this Convention once it had fulfilled domestic requirements. The Delegate of Venezuela congratulated the President for the excellent manner in which he had chaired the Conference's deliberations. In recalling experiences which he had shared with Delegations, she stated that Dr. Rattray had been one of the few Presidents whom she had witnessed to have presided so excellently over ICAO's meetings. On behalf of her Delegation, she also thanked the Vice-Presidents of the Conference, the Chairman of the Drafting Committee, who had also made an excellent and stupendous contribution to the successful development of this Convention. Finally, she thanked the President of the Council, the Secretary General, the Executive Secretary and other Secretariat staff members, including the interpreters, without whose co-operation it would not have been possible to conclude the Conference so successfully.

21. The Delegate of Mauritius was gratified with this new legal instrument and Delegations' participation in its development. He recognized the Convention as a step towards the final combat against terrorism and was sure that with the provision of technical assistance, as envisaged in the Convention, steps would be accelerated towards achieving its major objective. It was with much pleasure and conviction that his Delegation would sign the Convention. The Delegate of Mauritius thanked Delegations for having honoured his country and

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himself with the Chairmanship of the Drafting Committee and expressed appreciation to all the Delegations which had participated so efficiently in its work. He took the opportunity to personally and warmly thank the President of the Conference for the happy conclusion of the Conference's deliberations and to also warmly thank the President of the Council, Dr. Assad Kotaite, the Secretary General, Dr. S.S. Sidhu, and the ICAO Secretariat for their invaluable support. He extended special thanks to Dr. Milde, Dr. Pourcelet, Mr. van Dam, Mr. Kakkar and Mr. Augustin as well as the invaluable Secretaries of the Legal Bureau and the formidable staff members of the Language Section, stating that the success of the Conference was also theirs.

22. The Delegate of India expressed the profound satisfaction of his Delegation with the outcome of the Conference, stating that his country, being a victim of terrorism in international civil aviation, the deliberations were of a special significance to it. His Delegation was particularly pleased with the provisions in the Convention relating to its implementation as well as to financial and technical assistance matters. He congratulated the President of the Conference for the excellent manner in which he had conducted the deliberations. He also thanked Mr. V. Poonoosamy, Chairman of the Drafting Committee, the President of the Council, the Secretary General, the Executive Secretary and other members of the Secretariat, including the interpreters, for their contributions to the success of the Conference.

23. The Delegate of Bulgaria stated that his Delegation had held reservations about participating in the Conference due to financial reasons but, bearing in mind the importance of safety to air transport and the fight against international terrorism, the Bulgarian Government had authorized the Ambassador for the Republic of Bulgaria in Canada to sign the Convention.

24. The Delegate of Mali associated his Delegation with the preceding speakers in wholeheartedly thanking all those who had contributed to the success of the work on this task which had brought delegations to the point of signing the Convention today. In recalling that unity was strength, he encouraged delegations to take a pragmatic approach towards this matter and reminded them that the airports of developing countries were the most vulnerable ones. Recognizing that security at one airport did not necessarily imply security at all airports, he stated that an important feature in the Convention to be borne in mind was assistance through multilateral co-operation. The Delegate of Mali was of the view that Article 3 bis to the Chicago Convention should be ratified and implemented with the same enthusiasm as the other security-related Conventions and urged Delegations whose States would be ratifying this Convention to take similar actions in respect of Article 3 bis.

25. The Delegate of Ethiopia noted that the Conference was drawing to a close with very satisfactory results; this was of great significance to his Delegation in that the international community was resolved to combat terrorism and to make the world a better place with less mistrust and increased co-operation between nations. His Delegation wished that the spirit and letter of the Convention be implemented by all States. Ethiopia, being one of the early victims of terrorism in civil aviation would, he was sure, become a party to the Convention. He congratulated the President for the brilliant manner in which he had led the Conference to the desired conclusion of all Delegations. He also

respectfully thanked the President of the ICAO Council, the Secretary General, the Executive Secretary of the Conference, Dr. M. Milde, and the Chairman of the Drafting Committee for the very meticulous and excellent work that they had done in order to bring this Conference to a fruitful conclusion.

26. The Delegate of Japan wished to join all other Delegations in expressing his deep thanks to the President of the Conference and to all those connected with the drafting of the Convention leading to its successful conclusion. The Japanese Delegation supported the text of the Convention and, in accordance with its national legal procedures, would become a party to it as soon as possible. He noted that much work still remained to be done in the fight against terrorism and stated that Japan would continue to co-operate with other nations in the international effort to secure aviation security.

27. The Delegate of Honduras first thanked the Lord, the creator of the world, for having given so much wisdom to all the men and women who had gathered here at this Conference to arrive at its successful conclusion in development of a Convention, the implementation of whose provisions would enable all to live together peacefully and in harmony. He then congratulated the President of the Conference on his excellent Chairmanship of the deliberations and thanked the President of the Council, Dr. Assad Kotaite, the Secretary General, Dr. S.S. Sidhu, and all those who had made it possible for the Conference to conclude successfully.

28. The Delegate of Austria stated that, with the successful conclusion of the Conference, he could not desist from the pleasant duty of congratulating the President wholeheartedly for the outstanding job he had done in conducting the deliberations to a successful conclusion. He also believed that the work of the able Chairman of the Drafting Committee deserved the admiration and respect of Delegations. He noted that, without the contribution of the President of the Conference and the input of the Chairman of the Drafting Committee, together with the excellent work undertaken by ICAO's staff, the achievements of today would not have been realized and, for this, his Delegation wished to thank everyone concerned. In analyzing the results of the Conference, he believed that it was fair to say that ICAO had set a further milestone in developing the norms of international law destined to combat the scourge of international terrorism. In his view, the Convention might be considered to be a realistic first step in the right direction, namely, the prohibition of all types of explosives which posed problems of detectability. He considered the unanimous adoption of the Convention as a reason for ICAO to be justly proud. The Organization, under whose auspices this new legal instrument had been elaborated with record speed, would certainly play a crucial role in future fulfilment of the mandate given it by the Convention itself. Therefore, he saw ICAO developing into an Organization that would play an even more important co-ordinating role in security matters extending well beyond civil aviation. Austria wholeheartedly welcomed the outcome of this Conference and his Delegation would recommend to its Government that it sign and ratify the Convention as soon as possible to indicate ample proof of its continued commitment in the combat against international terrorism.

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29. The Delegate of Chile considered the task of confronting inter-national terrorism, in accordance with the provisions of this Convention, to be of particular importance. He noted that the Convention and the annex which formed an integral part of it was an instrument calling for on-going activity on this task. In addition to the development of the Convention on the Marking of Plastic Explosives for the Purpose of Detection and the establishment of the International Explosives Technical Commission, there were three other conventions containing penal codes to deal with security issues - the Tokyo, The Hague and the Montreal Conventions. The provisions in this Convention would therefore serve to fight against acts of terrorism related to international civil aviation. Chile was proud to have participated in the drafting of this Convention which, in his view, represented an important step in the fight for respect for and dignity of human life when faced with the scourge of international terrorism. The Delegate of Chile congratulated the President for the wise and intelligent manner in which he had chaired the discussions at the Conference. He also expressed appreciation to the President of the Council, the Executive Secretary, Dr. M. Milde, and all other ICAO Secretariat personnel who had undertaken preparatory work on the Convention. Finally, he thanked the Chairman of the Drafting Committee, the interpreters and all those who had made it possible for the work of the Conference to conclude so successfully.

Signature of the Final Act of the Conference and of the Convention

30. The Executive Secretary first requested that certain linguistic improvements be made to the Spanish and Arabic texts of the Convention which he assured Delegations would be incorporated in the final version of the instrument prior to its circulation to all Contracting and non-Contracting States. He then outlined the procedure for signing of the instruments, following which the Final Act was signed on behalf of the 75 States listed hereunder:

Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Belize, Bolivia, Brazil, Byelorussian Soviet Socialist Republic, Canada, Cape Verde, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Guinea, Guinea-Bissau, Holy See, Honduras, India, Indonesia, Islamic Republic of Iran, Israel, Italy, Jamaica, Japan, Kuwait, Lebanon, Madagascar, Mali, Mauritius, Mexico, Morocco, Kingdom of the Netherlands, Nigeria, Norway, Pakistan, Peru, Poland, Qatar, the Republic of Korea, Romania, Saudi Arabia, Senegal, Spain, Sweden, Switzerland, Thailand, Togo, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republics, the Union of Soviet Socialist Republics, United Arab Emirates, the United Kingdom, the United Republic of Tanzania, the United States, Venezuela, Zaire and Zambia.

and the Convention was signed on behalf of the following 40 States:

Afghanistan, Argentina, Belgium, Belize, Bolivia, Brazil, Byelorussian Soviet Socialist Republic, Canada, Chile, Costa Rica, Côte d'Ivoire, Czechoslovakia, Denmark, Ecuador, Egypt, France, Gabon, Germany, Ghana, Greece, Guinea, Guinea-Bissau, Israel, Kuwait, Lebanon, Madagascar, Mali, Mauritius, Mexico, Norway, Pakistan, Peru, the Republic of Korea, Senegal,

Switzerland, Togo, Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, the United Kingdom and the United States.

Tributes

31. The Delegate of Argentina expressed on behalf of his Delegation, members of the Drafting Committee, Delegations of Latin American countries and, in fact, all Delegations present at the Conference, appreciation for the work carried out on this task. He attributed much of the success accomplished to the legal and technical experts who had been responsible for drafting the two instruments. In referring to the difficulty of this task, he recognized that those Delegates who had been entrusted with this responsibility had realized that they would have to develop legal instruments which would promote peace throughout the world and provide a new tool for combating acts of unlawful interference and enhance the security and safety of air transport as well as other modes of transport. With that background in mind, members of the Drafting Committee, for whom he held great respect, had applied their efforts towards one constructive goal - that of arriving at the best possible solution. He was sure that their aspirations and efforts would be remembered in the years to come as an underlying contribution to the development of a Convention for strict application towards peaceful means. The Delegate of Argentina stated that the patience, wisdom and efforts of the Chairman of the Drafting Committee, Mr. V. Poonoosamy, whom he had had the privilege to nominate to this position, had contributed to ensuring that the Conference arrived at a successful conclusion. Mr. Poonoosamy, whose personal and professional attributes were well known, had applied all his efforts in the development of this internationally legal instrument for which the Delegate of Argentina thanked him most profoundly and sincerely. He also thanked the other legal and technical experts with whom he had spent many working hours, particularly the Principal Legal Officer, Dr. M. Pourcelet, as well as other members of the ICAO Secretariat, including the translators and interpreters, for their own contributions towards this task.

32. The Delegate of the Islamic Republic of Iran, in the name of God, extended his thanks to the President of the Conference, stating that, once more, the international community had shown its unanimity and co-operation regarding the safety and security of international civil aviation. He noted that the Conference had successfully adopted a Convention which was not only in line with the objective of international civil aviation but also covered the global concern of safety and security, including other modes of transportation. The fact that the international community had placed its trust in the International Civil Aviation Organization to establish and monitor an international instrument for the marking of plastic explosives was a clear indication, in his view, that ICAO was a pioneer in this activity for which everyone was proud. On behalf of the Delegation of the Islamic Republic of Iran and on his own behalf, he expressed sincere thanks and gratitude to the ICAO Council and its President, Dr. Assad Kotaite, for the excellent co-operation rendered to the work of the Conference. It was his view that the Conference would not have been able to achieve all these objectives were it not for the professional, dedicated and hardworking members of the ICAO Secretariat. He also expressed his sincere thanks and gratitude to the Secretary General, Dr. S.S. Sidhu, and all other members of the Secretariat, especially the interpreters, translators and those who had worked day and night behind the scenes in order that the work of the

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Conference could be fulfilled smoothly and in a timely manner. The Delegation of the Islamic Republic of Iran also expressed special thanks to the Executive Secretary of the Conference, Dr. M. Milde, who had so ably guided Delegations during difficult situations and pushed forward the Conference to achieve its objectives in a satisfactory manner. He had understood that this might be the last International Air Law Conference that Dr. Milde would be attending in the capacity of Executive Secretary since he would be assuming a position as Director of the Institute of Air and Space Law at McGill University where he would have the opportunity, in the years to come, to share his knowledge and skills with thousands of students from all around the world.

33. The Delegate of the United Kingdom considered it a great privilege to express the appreciation, not only of his own Delegation but that of all the Delegations assembled at the Conference, for the exceptional manner in which the President of the Conference had presided over the meetings, guided the deliberations, found solutions for apparently irreconcilable positions and, in the nicest way possible, had persuaded Delegates, or, perhaps, forced them, to make progress at times when they appeared to have reached stalemates in the debates. He recalled that it was quite usual for tributes to be paid to the Chairmen of meetings such as this. Indeed, it was almost part of the formalities of the Organization and tributes might sometimes be paid that were not, perhaps, in the strictest possible sense fully deserved. He emphasized most strongly that this was not the case in this instance. As many Delegates had said in their final statements, the President had led the Conference to an outstandingly successful conclusion. His unfailingly good humour, attention to detail yet clear eye to the policy implications of what the Conference was doing, and deep appreciation of the legal intricacies of the subject matter under review had given all Delegations a feeling of confidence that whatever the problems, however desperate the views of Delegates, he would help to find solutions. Indeed, the President had done that so well that there had not been a single vote, either formal or indicative, throughout the almost three weeks of deliberations. That, in the view of the Delegate of the United Kingdom, was an outstanding achievement which deserved the recognition of all Delegations. He noted that what the Conference had achieved since 12 February, under the guidance of its President, was a truly significant step forward in the continuing battle against terrorism. It had brought to a fitting conclusion the enormous amount of work which was being accomplished in the ICAO Council, the Ad Hoc Group of Specialists on the Detection of Explosives and elsewhere since this initiative had been first launched in the Spring of 1989. And for that reason, on behalf of all Delegations present, the Delegate of the United Kingdom thanked the President of the Conference most sincerely and most genuinely.

34. The Delegate of Tunisia, noting that the Conference had successfully accomplished its task and had adopted by consensus the Convention in an exceptional atmosphere of harmony, co-operation and goodwill, stated that he would like, on behalf of the Union of Magreb States (Algeria, Morocco and Tunisia) to thank the President of the Conference for his outstanding performance through the deliberations. He had known Dr. Rattray for many years and had had the opportunity to attend many meetings, including legal meetings, but had to confess that he had rarely witnessed debates having been conducted in such a remarkable manner. Dr. Rattray's smiling authority, deep knowledge of legal intricacies, sense of measure, objectivity and last, but not least, his fairness

in responding to the concerns of all Delegations had, undoubtedly, greatly contributed to the success of this Conference. In reaffirming the gratitude of the Union of Magreb States to the President of the Conference, the Delegate of Tunisia stated that they were proud of him.

35. The Secretary General expressed his thanks for the kind words of appreciation directed to the work done by the Secretariat. In adding his own thanks to the highly professional and efficient Secretariat team who had contributed significantly to the work of the Conference leading to the development of the Convention and its adoption, he drew attention to the semi-visible team of professional interpreters, who had contributed to the mutual understanding of participants during the Conference, and other Secretariat staff members who had worked behind the scenes to ensure the effective flow of documentation. The Secretary General also took the opportunity to pay his sincere tribute to Dr. M. Milde, the Executive Secretary of the Conference, who would be retiring from the service of the Organization later this year after twenty-five years of service for his meritorious service to the Organization. Having served as Executive Secretary for ten Diplomatic Conferences, he was sure that Delegations would wish to be associated with the expressions of thanks directed to Dr. Milde for his excellent support to this Conference and for the learned, objective and impartial opinions which he had provided during the deliberations. The Secretary General then extended his personal gratitude to the President of the Conference for having conducted the deliberations in such an excellent manner as well as to the Chairman of the Drafting Committee without whose constructive efforts and co-operation the Conference would not have culminated in such a successful undertaking. As Secretary General of the Organization, he assured the Conference that ICAO would continue to render the service required by the international community for the protection of civil aviation. As the depositary of the Convention, the ICAO Secretariat would provide the assistance required for its ratification. In closing, he wished all Delegates present a safe and pleasant journey home.

36. The President of the Council, who was commencing his fourth decade of service with the Organization and his 40th year of service to Contracting States, stated that the sequence of events which had transpired this morning had left him moved by emotions with which he was not familiar. On behalf of the Council, he paid tribute to the co-operation and constant support which Delegations of Contracting States had always shown to ICAO, stating that this had served to enhance the efficiency of the Organization and improve the service rendered to Member States. In associating himself with the words addressed to the President of the Conference, whose experience had dated back several years to the first security Convention drafted by ICAO and which now served as the cornerstone for the safety of international civil aviation, the President of the Council noted that Dr. Rattray had continued to perform along the same vein. As he had said earlier in the Council, this was the second consecutive time since 1988 that a convention had been adopted by consensus. He therefore noted that the reaching of decisions by consensus had now become a practice in ICAO for which the Organization could be justly proud because this was not often seen within the United Nations system and he hoped that this spirit of consensus would continue to guide future deliberations of the Organization. The President of the Council then paid tribute to the Director of the Legal Bureau, Dr. Milde, with whom he had worked for 25 years and who would be retiring from the service of the

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Organization in September of this year to assume a post as Director of the Institute of Air and Space Law at McGill University where he would be fulfilling an important role in lecturing to future generations on the first principles of international law. He extended his personal thanks to Dr. Milde as a colleague and a member of the ICAO Secretariat and hoped he would keep in contact with ICAO.

Closing Remarks by the President of the Conference

37. The President of the Conference in his closing remarks, recalled that three weeks ago Delegations had assembled in Montreal against the background of a world struggling to preserve peace and tranquillity in the shadows of hostilities; against a background of an atmosphere of fear in a world struggling to find a fair solution to the issues of conflicts but, above all, with a resolve that the international community and, in particular, the international aviation community, should not continue to be so vulnerable to acts of senseless and wanton terror. He observed that, today, the Conference had taken the first step, but an important step, on a journey dedicated to liberate the world from exposure to the dangers of undetectable explosives which had in the past demonstrated their capacity as weapons of mass destruction. It was his view that the accomplishments here, in Montreal, in adopting this Convention, must not be seen as a reason for complacency or relaxation of effort but, rather, should serve as a catalyst for intensified efforts through international co-operation. In recognizing that the battle had just begun, he recalled, in the words of Sir Winston Churchill, "It is not the end. It is not even the beginning of the end. Perhaps, it is just the end of the beginning." He noted that the Conference had served to reaffirm the conviction of all Delegations present that the bonds which served to unite them as members of the family of nations were far stronger than those which divided them. Therefore, they must take inspiration from the fact that they had been able to negotiate and adopt a convention with sensitive, political, economic and strategic implications by consensus and without a single vote during the entire deliberations. They must take inspiration from the fact that States had demonstrated a willingness to exercise strict and effective control over marked plastic explosives and to destroy existing stocks as provided by the Convention. He noted that the world would certainly be a safer place if explosives were placed beyond the reach of terrorists. Member States of ICAO must take inspiration from the fact that the continuing vigilance of the international community would be bolstered by the monitoring by an International Explosives Technical Commission whose awesome responsibility it would be to evaluate all technical developments so as to be one step ahead of potential saboteurs. They must also take particular inspiration in the recognition of the sobering realities that their security network was no stronger than its weakest link and that many States, particularly developing States, did not have the technical, financial and material resources required for the implementation of an adequate detection system required for the effective implementation of the Convention. The Conference, in this regard, had demonstrated international solidarity in recognizing both in the Convention and in the Resolution that without international co-operation and assistance the efforts made at this Conference would be in vain.

37.1. The President of the Conference noted that, once again, the International Civil Aviation Organization had demonstrated its outstanding capacity to organize, under the auspices of the Organization, and in record time, the preparation of legal instruments by the mobilization of the legal, technological and other resources of the highest order. He stated that the Conference could not properly end without recording its profound gratitude to the President of the Council, to the Secretary General, to the members of the Council and to the entire Secretariat for the outstanding work accomplished. In this connection, he paid particular tribute to Dr. Michael Milde, its Executive Secretary and Director of the Legal Bureau, whose intellectual capacity was now quite legendary, for the selfless and self-sacrificing service to the Organization and to him (as President of this Conference) personally. To the interpreters and translators, whose skills and devotion continued to mesmerize him and to be a source of admiration, the President of the Conference said a hearty "Thank you". He also recorded his gratitude to the four illustrious Vice-Presidents, Dr. Cede of Austria, Dr. Perucchi of Argentina, Mr. Mukai of Japan and Mr. Poonoosamy of Mauritius (also Chairman of the Drafting Committee) for their outstanding contribution and support. The President of the Conference extended particular thanks to the Delegates of the United Kingdom and Tunisia for the sentiments they had graciously expressed to him personally, many of which he was not sure he deserved; he stated, however, that if they offered him a hope for further achievements, he wished to thank them even more sincerely. Finally, the President of the Conference recorded his profound appreciation for the spirit of co-operation and support which Delegations had shown to him throughout the Conference and concluded by stating as follows: "If this Conference has succeeded, let the glory be yours!" With those words, the President declared the International Conference on Air Law closed at 1300 hours.

— END —

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9/02, E/P1/1500

Order No. 9801-1
Printed in ICAO