

INTERNATIONAL CIVIL AVIATION ORGANIZATION

**INTERNATIONAL CONFERENCE
ON AIR LAW**

**(Protocol for the Suppression of Unlawful Acts of
Violence at Airports Serving International Civil Aviation,
Supplementary to the Convention for the Suppression of
Unlawful Acts Against the Safety of Civil Aviation)**

Montreal, 9–24 February 1988

MINUTES AND DOCUMENTS

2003

Published in English only by the International Civil Aviation Organization. All correspondence, except orders and subscriptions, should be addressed to the Secretary General.

Orders should be sent to one of the following addresses, together with the appropriate remittance (by bank draft, cheque or money order) in U.S. dollars or the currency of the country in which the order is placed. Credit card orders (American Express, MasterCard and Visa) are accepted at ICAO Headquarters.

International Civil Aviation Organization. Attention: Document Sales Unit

999 University Street, Montreal, Quebec, Canada H3C 5H7

Telephone: +1 (514) 954-8022; Facsimile: +1 (514) 954-6769; Sitatex: YULADYA; E-mail: sales@icao.int

Egypt. ICAO Regional Director, Middle East Office, Egyptian Civil Aviation Complex, Cairo Airport Road, Heliopolis, Cairo 11776

Telephone: +20 (2) 267-4840; Facsimile: +20 (2) 267-4843; Sitatex: CAICAYA

France. Directeur régional de l'OACI, Bureau Europe et Atlantique Nord, 3 bis, villa Émile-Bergerat, 92522 Neuilly-sur-Seine (Cedex)

Téléphone: +33 (1) 46 41 85 85; Fax: +33 (1) 46 41 85 00; Sitatex: PAREUYA

India. Oxford Book and Stationery Co., Scindia House, New Delhi 110001 or 17 Park Street, Calcutta 700016

Telephone: +91 (11) 331-5896; Facsimile: +91 (11) 332-2639

Japan. Japan Civil Aviation Promotion Foundation, 15-12, 1-chome, Toranomon, Minato-Ku, Tokyo

Telephone: +81 (3) 3503-2686; Facsimile: +81 (3) 3503-2689

Kenya. ICAO Regional Director, Eastern and Southern African Office, United Nations Accommodation, P.O. Box 46294, Nairobi

Telephone: +254 (2) 622-395; Facsimile: +254 (2) 226-706; Sitatex: NBOCAYA

Mexico. Director Regional de la OACI, Oficina Norteamérica, Centroamérica y Caribe

Masaryk No. 29-3er. piso, Col. Chapultepec Morales, México, D.F., 11570

Teléfono: +52 (55) 52 50 32 11; Facsimile: +52 (55) 52 03 27 57; Sitatex: MEXCAYA

Nigeria. Landover Company, P.O. Box 3165, Ikeja, Lagos

Telephone: +234 (1) 4979780; Facsimile: +234 (1) 4979788; Sitatex: LOSLORK

Peru. Director Regional de la OACI, Oficina Sudamérica, Apartado 4127, Lima 100

Teléfono: +51 (1) 302260; Facsimile: +51 (1) 640393; Sitatex: LIMCAYA

Russian Federation. Aviaizdat, 48, 1. Franko Street, Moscow 121351

Telephone: +7 (095) 417-0405; Facsimile: +7 (095) 417-0254

Senegal. Directeur régional de l'OACI, Bureau Afrique occidentale et centrale, Boîte postale 2356, Dakar

Téléphone: +221 8-23-54-52; Fax: +221 8-23-69-26; Sitatex: DKRCAYA

Slovakia. Air Traffic Services of the Slovak Republic, Letové prevádzkové služby Slovenskej Republiky,

State Enterprise, Letisko M.R. Štefánika, 823 07 Bratislava 21, Slovak Republic

Telephone: +421 (7) 4857 1111; Facsimile: +421 (7) 4857 2105

South Africa. Avex Air Training (Pty) Ltd., Private Bag X102, Halfway House, 1685, Johannesburg, Republic of South Africa

Telephone: +27 (11) 315-0003/4; Facsimile: +27 (11) 805-3649; E-mail: avex@iafrica.com

Spain. A.E.N.A. — Aeropuertos Españoles y Navegación Aérea, Calle Juan Ignacio Luca de Tena, 14,

Planta Tercera, Despacho 3. 11, 28027 Madrid

Teléfono: +34 (91) 321-3148; Facsimile: +34 (91) 321-3157; Correo-e: sccc.ventasoci@aena.es

Thailand. ICAO Regional Director, Asia and Pacific Office, P.O. Box 11, Samyaek Ladprao, Bangkok 10901

Telephone: +66 (2) 537-8189; Facsimile: +66 (2) 537-8199; Sitatex: BKKCAYA

United Kingdom. Airplan Flight Equipment Ltd. (AFE), 1a Ringway Trading Estate, Shadowmoss Road, Manchester M22 5LH

Telephone: +44 161 499 0023; Facsimile: +44 161 499 0298; E-mail: enquiries@afeonline.com;

World Wide Web: <http://www.afeonline.com>

Catalogue of ICAO Publications and Audio-visual Training Aids

Issued annually, the Catalogue lists all publications and audio-visual training aids currently available.

Monthly supplements announce new publications and audio-visual training aids, amendments, supplements, reprints, etc.

Available free from the Document Sales Unit, ICAO.

TABLE OF CONTENTS

	Page
PART I	
INTRODUCTION	3
PART II	
LIST OF DELEGATES	7
MINUTES OF THE PLENARY MEETINGS OF THE CONFERENCE AND OF THE COMMISSION OF THE WHOLE	
FIRST PLENARY MEETING, 9 February 1988	15
Opening of the Conference	15
Adoption of the Rules of Procedure	18
Adoption of the Agenda	18
Establishment of the Credentials Committee	18
General Statements	18
SECOND PLENARY MEETING, 9 February 1988	23
Preliminary Report of the Credentials Committee	23
General Statements	23
Election of the President of the Conference	27
THIRD PLENARY MEETING, 10 February 1988	29
General Statements	29
FOURTH PLENARY MEETING, 10 February 1988	35
General Statements	35
FIRST MEETING OF THE COMMISSION OF THE WHOLE, 10 February 1988	37
Organization of Work	37
Consideration of the Draft Instrument	37

SECOND MEETING OF THE COMMISSION OF THE WHOLE, 11 February 1988	41
Consideration of the Draft Instrument	41
Point No. 1. Jurisdiction and Extradition	41
Point No. 2. Preventive measures	42
Point No. 3. Participation of States in the new instrument if they are not parties to the Montreal Convention of 1971	42
Point No. 4. Implications of inclusion in the Protocol of "aircraft not in service at the airport" Paragraph 1 bis of Article 1	42
Inclusion of "threats"	44
THIRD MEETING OF THE COMMISSION OF THE WHOLE, 11 February 1988	47
Consideration of the Draft Instrument	47
Point No. 1. Jurisdiction and Extradition	47
Point No. 2. Preventive measures	48
Point No. 3. Participation of States in the new instrument if they are not parties to the Montreal Convention of 1971	48
Point No. 4. Implications of inclusion in the Protocol of "aircraft not in service at the airport" Paragraph 1 bis of Article 1	48
Inclusion of "threats"	49
Point No. 1. Jurisdiction and Extradition	50
Point No. 2. Preventive measures	51
Point No. 3. Participation of States in the new instrument if they are not parties to the Montreal Convention of 1971	51
Point No. 4. Implications of inclusion in the Protocol of "aircraft not in service at the airport" Paragraph 1 bis of Article 1	52
Inclusion of "threats"	52
FIFTH PLENARY MEETING, 11 February 1988	55
Election of the Vice-Presidents of the Conference	55
FOURTH MEETING OF THE COMMISSION OF THE WHOLE, 12 February 1988	57
Consideration of the Draft Instrument	57
Form of the new instrument	57
Jurisdiction and extradition	57
Preventive measures	58
Participation by States not parties to the Montreal Convention	58
Aircraft not in service at the airport	59
Paragraph 1 bis	59
FIFTH MEETING OF THE COMMISSION OF THE WHOLE, 12 February 1988	61
Consideration of the Draft Instrument	61
Form of the new instrument	61
Jurisdiction and extradition	61
Preventive measures	61
Participation by States not parties to the Montreal Convention	62
Aircraft not in service at the airport	62
Paragraph 1 bis	62

SIXTH PLENARY MEETING, 12 February 1988	65
Establishment of a Drafting Committee	65
General Statement by the Delegation of the Democratic People's Republic of Korea	65
SIXTH MEETING OF THE COMMISSION OF THE WHOLE, 15 February 1988	69
SEVENTH MEETING OF THE COMMISSION OF THE WHOLE, 15 February 1988	75
EIGHTH MEETING OF THE COMMISSION OF THE WHOLE, 16 February 1988	81
Consideration of the Draft Instrument	81
Article III	81
Preventive measures	84
NINTH MEETING OF THE COMMISSION OF THE WHOLE, 16 February 1988	87
Consideration of the Draft Instrument	87
Preventive measures	87
TENTH MEETING OF THE COMMISSION OF THE WHOLE, 17 February 1988	93
Consideration of the Draft Instrument	93
ELEVENTH MEETING OF THE COMMISSION OF THE WHOLE, 18 February 1988	99
Consideration of the Draft Instrument	99
TWELFTH MEETING OF THE COMMISSION OF THE WHOLE, 18 February 1988	103
Consideration of the Draft Instrument	103
THIRTEENTH MEETING OF THE COMMISSION OF THE WHOLE, 19 February 1988	105
Consideration of the Draft Instrument	105
SEVENTH PLENARY MEETING, 19 February 1988	111
Report of the Credentials Committee	111
FOURTEENTH MEETING OF THE COMMISSION OF THE WHOLE, 19 February 1988 ...	113
FIFTEENTH MEETING OF THE COMMISSION OF THE WHOLE, 22 February 1988	117
EIGHTH PLENARY MEETING, 22 February 1988	123
NINTH PLENARY MEETING, 23 February 1988	125

TENTH PLENARY MEETING, 24 February 1988	135
Signature of the Final Act and of the Protocol of the Conference	135

PART III

PREPARATORY MATERIAL

Report of the Legal Committee, 26th Session (Montreal, 28 April to 13 May 1987) (Doc 9502-LC/186)	141
--	-----

PART IV

DOCUMENTATION OF THE CONFERENCE

VIA Doc No. 1	Provisional Agenda	191
VIA Doc No. 2	Provisional Rules of Procedure	193
VIA Doc No. 3	Draft Protocol	201
VIA Doc No. 4	Comments of the Niger	207
VIA Doc No. 5	Comments of the International Air Transport Association	209
VIA Doc No. 6	Comments of Argentina	211
VIA Doc No. 6 (Addendum)	Comments of Argentina	215
VIA Doc No. 7	Comments of Peru	217
VIA Doc No. 8	Comments of Ecuador	221
VIA Doc No. 9	Comments of the International Federation of Airline Pilots Associations	223
VIA Doc No. 10	Comments of Colombia	225
VIA Doc No. 11	Comments of the Kingdom of the Netherlands	229
VIA Doc No. 12	Comments of Chile	231
VIA Doc No. 13	Comments of Australia	235
VIA Doc No. 14	Comments of France	239

VIA Doc No. 14 (Addendum)	Comments of France	241
VIA Doc No. 15	Comments of Chad	243
VIA Doc No. 16	Comments of the Fédération Aéronautique Internationale	245
VIA Doc No. 17	Comments of the Islamic Republic of Iran	247
VIA Doc No. 18	Comments of Cuba	251
VIA Doc No. 19	Comments of the United States	253
VIA Doc No. 19 (Addendum)	Comments of the United States	255
VIA Doc No. 20	Comments of Israel	259
VIA Doc No. 21	Comments of Greece	261
VIA Doc No. 22	Comments of the Airport Associations Coordinating Council	263
VIA Doc No. 23	Comments of Uruguay	265
VIA Doc No. 24	Comments of the United Kingdom	267
VIA Doc No. 25	Comments of Japan	269
VIA Doc No. 26	(Presented by the Delegation of the Union of Soviet Socialist Republics)	275
VIA Doc No. 27	Comments of the United Republic of Tanzania	277
VIA Doc No. 28	Text prepared by the Drafting Committee – Title of the Protocol	281
VIA Doc No. 29	Article III of the Draft Protocol	283
VIA Doc No. 30	Alternative Text for the First Two Preambular Paragraphs	285
VIA Doc No. 31	Draft Final Clauses	287
VIA Doc No. 32	Resolution of the International Conference on Air Law	289
VIA Doc No. 33	Text prepared by the Drafting Committee – Article I	291
VIA Doc No. 34	Report of the Credentials Committee	293
VIA Doc No. 35	Draft Final Act	295
VIA Doc No. 36	Draft Resolution	299

VIA Doc No. 37	Comments of Kenya	301
VIA Doc No. 38	Draft Resolution of the International Conference on Air Law	305
VIA Doc No. 39	Draft Final Act	307
VIA Doc No. 40	Texts prepared by the Drafting Committee	311
VIA Doc No. 41	Draft Final Act	313
VIA Doc No. 42	Draft Protocol	319

PART V

PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION, SUPPLEMENTARY TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION, DONE AT MONTREAL ON 23 SEPTEMBER 1988	325
---	------------

PART VI

FINAL ACT OF THE INTERNATIONAL CONFERENCE ON AIR LAW HELD UNDER THE AUSPICES OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION IN FEBRUARY 1988	331
---	------------

PART I

THIS PAGE INTENTIONALLY LEFT BLANK

INTRODUCTION

The International Conference on Air Law which met in Montreal from 9 to 24 February 1988 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) and Montreal (1978).

The Conference was convened for the purpose of considering, with a view to approval, the text of a *Draft Protocol to amend the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971*, prepared in accordance with the decision of the 26th Session of the Legal Committee.

HISTORY

The 26th Session of the ICAO Assembly, held in Montreal from 23 September to 10 October 1986, adopted unanimously Resolution A26-4, calling upon the Council "to convene as early as possible in the first half of 1987 a meeting of the Legal Committee to prepare a draft instrument for the suppression of unlawful acts of violence at airports serving international civil aviation with a view to adoption of the instrument at a diplomatic conference as soon as practicable, preferably before the end of the 1987 calendar year, in accordance with the ICAO procedures set forth in Assembly Resolution A7-6". The Legal Commission of the Assembly also recommended that the highest degree of priority in the Work Programme of the Legal Committee be accorded to the item: "Development of an Instrument for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation".

Pursuant to Resolution A26-4, the Council decided on 18 November 1986 at the third meeting of its 119th Session, to convene a special Sub-Committee of the Legal Committee at Montreal, for the preparation of a draft instrument for the suppression of unlawful acts of violence at airports serving international civil aviation for the consideration of the Legal Committee. The Council also decided at the same meeting to convene the 26th Session of the Legal Committee.

The subject was studied by a Rapporteur appointed by the Chairman of the Legal Committee and by the Special Sub-Committee of the Legal Committee, which met at Montreal from 20 to 30 January 1987. After a discussion during its 26th Session, held at Montreal from 28 April to 13 May 1987, the Legal Committee decided that "the new instrument should be drafted in the form of a Protocol supplementary to *the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971, to deal with unlawful acts of violence at airports serving international civil aviation; such Protocol would not amend the basic principles of that Convention". Based on this decision and a draft text approved by the Legal Committee, the ICAO Secretariat prepared a draft Protocol for convenience of reference and to facilitate further discussions.

ACTION BY THE COUNCIL

Having reviewed the report of the Legal Committee, the Council decided on 3 June 1987, at the third meeting of its 121st Session, to convene in Montreal an International Conference on Air Law from 9 to 24 February 1988.

PART II

THIS PAGE INTENTIONALLY LEFT BLANK

LIST OF DELEGATES

**ALGERIA, THE PEOPLES'S
DEMOCRATIC REPUBLIC OF**

M. Ghoualmi
I. Ben-Amara

ARGENTINE REPUBLIC, THE

F. J. Pulit
R. Besaccia
H. A. Perucchi
R. Bocalandro
F. E. Dozo
M. C. Salvat
N. A. Bisso

AUSTRALIA

N. S. Reaburn
D. F. J. J. De Stoop
J. E. Sansom

AUSTRIA, THE REPUBLIC OF

H. Türk
H. Winkler
S. Benner

BELGIUM, THE KINGDOM OF

J. Verstappen
D. Flore
J. Naveau

BRAZIL, THE FEDERATIVE REPUBLIC OF

C. A. T. Paranhos
P. C. de Assis
G. R. Pereira
W. C. C. Machado

BULGARIA, THE PEOPLE'S REPUBLIC OF

V. Velitchkov
C. Tepavitcharov
C. Mladenov
V. Jeliakov

**BYELORUSSIAN SOVIET SOCIALIST
REPUBLIC, THE**

V. M. Kourilo
E. N. Vychegzhanin

CANADA

M. Vézina
P. Kirsch
D.M. Fiorita
P. Fauteux
G. Lauzon
V. Hughes
J. Rodocanachi
G. Mazowita
B. Shaffer
B. Stockfish

CHILE, THE REPUBLIC OF

R. E. Eyzaguirre
J. G. Dupouy
R. J. Gaete
J. R. Ansted
J. B. Gillet

CHINA, THE PEOPLE'S REPUBLIC OF

R. Lu
G. Lu
K. Li
Y. Zheng
H. Xue
Z. Zhang
Z. Xi

COLOMBIA, THE REPUBLIC OF

G. Ortega
L. Rodriguez

COSTA RICA, THE REPUBLIC OF

B. Mesen B.
M. Romero-Royo

CÔTE D'IVOIRE, THE REPUBLIC OF

Y. Koné
R. Tahou Siba
B. Koffi-Bi

CUBA, THE REPUBLIC OF

A. S. Gutiérrez
J. S. Núñez
L. Urrutia

**CZECHOSLOVAK SOCIALIST REPUBLIC,
THE**

J. Nulíčka
J. Nulíček
O. Vodička
P. Domin
R. Kožušník
R. Najman
J. Zbiralová

**DEMOCRATIC PEOPLE'S REPUBLIC
OF KORIA, THE**

C. Y. Chol
K. M. Dok

DENMARK, THE KINGDOM OF

J. Bernhard

ECUADOR, THE REPUBLIC OF

F. C. Bassano
L. M. Guerra

EGYPT, THE ARAB REPUBLIC OF

A. O. Ziko

**ETHIOPIA, PEOPLE'S DEMOCRATIC
REPUBLIC OF**

T. Meshesha
Y. Gebre-Egziabher

FINLAND, THE REPUBLIC OF

E. Helaniemi
V.-M. Metsälampi
P. Hillo

FRENCH REPUBLIC, THE

J.-P. Puissochet
J.-M. Bouchaud
C. de la Verpillière
M. Barbin
P. Delacroix
E. Larsabal
M. Ramis

GERMAN DEMOCRATIC REPUBLIC, THE

K. Henkes
G. Damm
J. Mudrack
R. Münch
W. Teuchert

GERMANY, THE FEDERAL REPUBLIC OF

H.-J. Heldt
T. Schmidt
J. Pirrung
E. Frietsch
H. W. Thau
H. Graumann
B. Nierobisch

GHANA, THE REPUBLIC OF

D. O. Agyekum
J. O. Koranteng
J. Tete-Donkor

GUINEA, THE REPUBLIC OF

F. Camara
H. Diallo

HELLENIC REPUBLIC, THE

E. Dimitrakopoulos
F. Daskalopoulou-Livada
G. Korontzis

HUNGARIAN PEOPLE'S REPUBLIC, THE

L.u. Ó. Nagy
Z.u. Szemes
E.u. Kecskeméti

ICELAND, THE REPUBLIC OF

T.Ö. Sigurdsson

INDIA, THE REPUBLIC OF

B. N. Jha
K. K. Bhatnagar
S. Malik

INDONESIA, THE REPUBLIC OF

A. Abubakar
S. Misbach
Suwardi
A. Boediman
S. Joedo
C. Adi
K. Sjah
L. R. Oesman

IRAN, THE ISLAMIC REPUBLIC OF

M. J. Ranaeifar
A. A. Golrounia
M. Hadjighasemali
S. Nadjafi-Tavani
H. Panahi-Azar
F. Bakhtiari-Asl

IRAQ, THE REPUBLIC OF

T. Y. Taha

IRELAND

M. Harper

ISRAEL, THE STATE OF

S. Shohamy

C. Schirman

E. Efrat-Smilg

M. Kimchi

G. Badash

S. Homossany

ITALIAN REPUBLIC, THE

L. Ferrari-Bravo

E. Chiavarelli

M. Gaiani

A. Sciolla Lagrange

G. Grasso

G. Pinto

M. Pieroni

JAMAICA

K. O. Rattray

G. B. Morris

JAPAN

Y. Okawa

M. Mukai

T. Matsumoto

M. Suzuki

T. Fujita

S. Watanabe

JORDAN, THE HASHEMITE KINGDOM OF

R. Sukayri

M. Juma

KENYA, THE REPUBLIC OF

D. K. Ameyo

W. K. Kabuga

P.J. Indeche

A.E. Abwawo

KUWAIT, THE STATE OF

J. A.-A. Al-Sabah

D. S. Bouresli

J. M. Al-Mubarak

LEBANESE REPUBLIC, THE

Y. Arsanios

LIBERIA, THE REPUBLIC OF

F. D. F. Sherman

**LIBYAN ARAB JAMAHIRIYA, THE
SOCIALIST PEOPLE'S**

A. A. El-Kabissi

A.A. Salaheddien

A. A.-B. El-Misilati

M. R. Ghadah

LUXEMBOURG, THE GRAND DUCHY OF

M. C. Lefort

MADAGASCAR, THE DEMOCRATIC

N. Rakotondramboa

A. Rakotomalala

MALAWI, THE REPUBLIC OF

J. L. Kalemera
R. C. Mponda

MALAYSIA

Z. Abdul
T. Jayasuria
A. R. Kechot

MALTA, THE REPUBLIC OF

A. Grech

MEXICAN STATES, THE UNITED

J. Pérez Y Bourás
E. L. Tovar
M. O. de R. de Carvajal

NETHERLANDS, THE KINGDOM OF THE

A. Bos
R. D. van Dam
J. P. H. Donner
M. I. van der Zee
J. W. M. van Lieshout
A. Vrolijk
F. Wernet

NEW ZEALAND

D. C. Higgin

NIGER, THE REPUBLIC OF THE

D. Boubakar
H. H. Maiga

NIGERIA, THE FEDERAL REPUBLIC OF

D. O. Olowu
D. O. Eniojukan

NORWAY, THE KINGDOM OF

M. Ruud
T. V. Nordeng
B. Blokhus

OMAN, THE SULTANATE OF

M. B. R. Al-Baomar
G. B. H. Al-Bulushi

PAKISTAN, THE ISLAMIC REPUBLIC OF

N. A. Shaikh
E. A. Qureshi
S. M. Anwar

PANAMA, THE REPUBLIC OF

F. H. B. Picardi

PERU, THE REPUBLIC OF

L. Arroyo J.
A. Contreras S.
G. Chauny de P.
J. Garland C.
J. L. Ibarra B.
C. Ramírez R.
D. Salazar R.

POLISH PEOPLE'S REPUBLIC, THE

J. Sobieraj
M. Żylicz
L. Łukasik
A. Berezowski
M. Szwed

PORTUGUESE REPUBLIC, THE

L. H. C. Navega
J. A. Reis Borges
C. M. de. B. David Calder
A. M. Santos Pato
S. Espínola
J. C. Sitima

REPUBLIC OF KOREA, THE

S. Y. Park
J. W. Roh
W. C. Rah
J. H. Yoo
Y. K. Oh
W. H. Park
Y.-S. Shin
S. H. Yoon

**ROMANIA, THE SOCIALIST REPUBLIC
OF**

D. Puiu
M. Dimitrescu
A. I. Soare
I. Tanase
V. Teodorascu

SAUDI ARABIA, THE KINGDOM OF

N. Al-Assaf
H. Al-Dabbagh
S. Rajkhan
S. A. Al-F. Al Ghamdi
Z. A.-R. Al-Saleh
S. Al-Monaye

SENEGAL, THE REPUBLIC OF

A. K. Fall
Y. Diallo
T. A. Hane

SPAIN, THE KINGDOM OF

J. S. Rodriguez
L. M. Bada
J. M. Castroviejo
N. M. Cinto
J. De Miguel Zaragoza
J. Aparicio
P. J. Carpio
B. Castejon

SWEDEN, THE KINGDOM OF

V. Hellners
U. Berg
V. Brusén
R. Pettersson
B. Rösiö
A. Gradin

SWISS CONFEDERATION, THE

M. Neuenschwander
B. Buchmüller
G. Panchard
P. Rochat
U. Haldimann
E. Gerber

TOGOLESE REPUBLIC, THE

K. Tsidji

TUNISIA, THE REPUBLIC OF

M. Bachraoui
A. Hicheri
S. Kilani
A. Ben Guirat

TURKEY, THE REPUBLIC OF

K. Toperi
K. Targay
Y. Erensoy

**UKRANIAN SOVIET SOCIALIST
REPUBLIC, THE**

R. V. Stepanovich
V. A. Iosifovich

**UNION OF SOVIET SOCIALIST
REPUBLICS, THE**

M. A. Timofeev
Ya. A. Ostrovsky
B. A. Ryzhenkov

UNITED ARAB EMIRATES, THE

M. Y. Al-Suweidi
M.-D. A. K. Binhendi
M. A. Ahli
M. G. Al-Ghaith
J. N. Mookerjee

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND, THE**

L. C. Oates
J. Siddle
A. W. G. Kean
F. A. Neal

UNITED REPUBLIC OF TANZANIA

F. Ruhinda
G. H. Kaunda
C. V. Mgana
B. K. Mwakisu

UNITED STATES OF AMERICA, THE

E. G. Verville
E. Stohr
I. E. Howie
T. A. Bored
L. Maillett
S. M. Witten
J. L. Casey

VENEZUELA, THE REPUBLIC OF

L. E. Vera Barrios
R. Yepez
C. F. Lander
M. Rodriguez
A. Kaufman

**YUGOSLAVIA, THE SOCIALIST FEDERAL
REPUBLIC OF**

V. Pavićević
V. Lekić
Z. Radosavljević

ZAIRE, THE REPUBLIC OF

K. Bukasa-Muteba
M. Mirindi

**PALESTINE LIBERATION
ORGANIZATION (PLO)**

O. H. Murad

A. Abdullah

**INTERNATIONAL LAW ASSOCIATION
(ILA)**

N. M. Matte

J.-L. Magdelénat

UNITED NATIONS (UN)

A. Adede

**AIRPORT ASSOCIATIONS
COORDINATING COUNCIL (AACCA)**

H. Dillmann

A. Graser

ARAB CIVIL AVIATION COUNCIL (ACAC)

H. H. Hammash

Y. M. El-Zubi

**INTERNATIONAL AERONAUTICAL
FEDERATION (FAI)**

W. P. Paris

**INTERNATIONAL AIR TRANSPORT
ASSOCIATION (IATA)**

H. Larose-Aubry

A. Donohue

L. J. Weber

**INTERNATIONAL FEDERATION OF AIR
LINE PILOTS' ASSOCIATIONS (IFALPA)**

A. A. Van Wijk

J. Keenan

FIRST PLENARY MEETING

(Tuesday, 9 February 1988, at 1100 hours)

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

AGENDA ITEM 1: OPENING OF THE CONFERENCE

1. The President of the Council of ICAO declared open the International Conference on Air Law by addressing the meeting as follows:

"On behalf of the Council of ICAO, it is my great pleasure and privilege to declare open the International Conference on Air Law. The Secretary General, Mr. Yves Lambert, joins me in welcoming all of you to the Headquarters of the Organization.

This Conference was convened by decision of the Council of ICAO in accordance with the procedure approved by the Assembly in Resolution A7-6. In the history of the Organization this is the eleventh international conference convened specifically for the purpose of the unification of international law relating to international civil aviation. An international conference is a rare and very important event in the life of our Organization. The last conference met in this very hall nearly ten years ago; this only underlines the importance of your gathering here in your position as plenipotentiaries of your respective Heads of State, Heads of Government or Ministers for External Affairs.

Only fifteen months ago in this hall the 26th Session of the ICAO Assembly adopted unanimously Resolution A26-4 calling for the preparation of an international instrument for the suppression of unlawful acts of violence at airports serving international civil aviation. It is probably unprecedented in the history of international lawmaking that within the short fifteen months all necessary studies would be undertaken by the Secretariat, by the Rapporteur, by the Special Legal Sub-Committee of the ICAO Legal Committee and by the 26th Session of the Legal Committee to prepare a draft mature for consideration by an international conference.

The International Civil Aviation Organization gives the highest priority in its Work Programme to the protection of safety and security of international civil aviation, which has become an indispensable part of the world economy and world civilization. Some twenty years ago the Member States of ICAO decided to take all necessary measures to protect the security of international civil aviation against criminal acts jeopardizing the safety and regularity of aviation. The Tokyo Convention of 1963 on Offences and Certain Other Acts Committed on Board Aircraft, The Hague Convention of 1970 for the Suppression of Unlawful Seizure of Aircraft, and the Montreal Convention of 1971 for the Suppression of Unlawful Acts Against the Safety of Civil Aviation are important landmarks prepared by previous international conferences convened by the Council of ICAO, and we are proud to note that those Conventions now

First Plenary Meeting

rank among the most widely-accepted unifications of international law. While the Assembly of ICAO, its Council, the Secretary General and myself are striving for complete universality of those fundamental Conventions, it is very gratifying to note that the Montreal Convention of 1971, which this Conference intends to supplement, has already been accepted by 137 States.

The international community, in the unanimously-adopted Resolution A26-4, has already made a policy statement regarding the need to prepare an instrument addressed to the suppression of unlawful acts of violence at airports serving international civil aviation. Consequently, there is no need to discuss in the present forum whether such an instrument is desirable or necessary. Again, you meet here knowing that on 7 December 1987, barely two months ago, the United Nations General Assembly adopted Resolution 42/159 on measures to prevent international terrorism; that resolution unequivocally condemns once again (as was previously done in the unanimously adopted United Nations General Assembly Resolution 40/61 of 9 December 1985), as criminal, all acts, methods and practices of terrorism, wherever and by whomever committed, including those which jeopardize friendly relations among States and their security; that Resolution of the United Nations General Assembly, in Clause 9, welcomes the efforts undertaken by ICAO aimed at promoting universal acceptance of, and strict compliance with, international air security conventions and its ongoing work on a new instrument for the suppression of unlawful acts of violence at airports serving international civil aviation. Consequently, our effort at this Conference is the focus of attention of the entire international community and has the firm support of the United Nations General Assembly.

No doubt you will endeavour to adopt the best instrument possible which would further safeguard the security of international aviation, in particular security at airports serving international civil aviation. However, we may have to bear in mind the old saying frequently quoted at ICAO international conferences, namely, "The best may be the enemy of good". In our decision-making we must try to accommodate minor differences in approach and prepare an instrument acceptable, if possible, to the entire community of nations in the spirit of co-operation and compromise.

It is very pleasing to note that the 26th Session of the Legal Committee presented strong conclusions, and you will wish to be guided by the outstanding spirit of co-operation and understanding which prevailed at that Session of the Legal Committee; only if we maintain that spirit at this Conference will the objectives of ICAO Assembly Resolution A26-4 be achieved.

It would not be helpful if the Conference were to lose much time on marginal issues which are not of significant importance. One such problem is the question of the form of the new instrument. It is my belief that the Legal Committee, by its majority, adduced considerable evidence that the most efficient way would be to draft a new instrument in the form of a Protocol supplementary to the Montreal Convention of 1971 for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; the very fact that this Convention has been ratified by 137 States indicates that a supplementary Protocol to this Convention would have the best chance of speedy ratification and no doubt it would be your intention to make all necessary arrangements to bring the new instrument into force as soon as possible.

Again, it is not the task of this Conference to draft detailed provisions purporting to be model penal legislation for States; the unlawful acts of violence at airports serving international civil aviation are already criminal acts under the domestic legislation of all States or are covered by the general provisions of the criminal codes. The task is to define such acts which, due to their relation to international civil aviation, endangering or likely to endanger safety at an airport, should be singled out as acts deserving the establishment of concurrent (or universal) jurisdiction, making sure that no perpetrator of such an act would go unpunished wherever he is found; the State in the territory of which the alleged offender is found would either have to establish its jurisdiction and prosecute such an alleged offender or would have the duty to extradite him to the State or States having the closest link with the commission of the offence. This is the basic balance of principles as they are embodied in The Hague Convention of 1970 and the Montreal Convention of 1971. Again, it will be our intention to define as offences under the new instrument only acts of a certain level of magnitude deserving the establishment of concurrent or universal jurisdiction.

I am well aware that all of you are concerned that all necessary preventive measures should be taken at international airports and elsewhere to protect the safety and security of international civil aviation. I have noted that at the Legal Committee some Delegations contemplated inserting into the new instrument specific provisions relating to preventive actions. Nevertheless, you will note that Article 10 of the Montreal Convention of 1971 already contains a general provision concerning preventive measures. It would appear that your concern for preventive measures would be better accommodated in the Standards and Recommended Practices embodied or to be embodied in Annex 17 to the Chicago Convention on International Civil Aviation or in the guidance material contained in the Security Manual. Those instruments would be flexible and would enable amendment by the Council to respond to any new challenge and any new modus operandi of the criminal elements. Any specific idea in that respect that you wish to address to the Council of ICAO could be incorporated in a resolution of this Conference and attached to the Final Act which you will adopt.

Your task is difficult and responsible and we must send from this Conference a strong signal emphasizing the fact that acts of violence and unlawful interference aimed against international civil aviation, wherever and in whatever form, are not to be tolerated by the international community.

I wish you full success in your endeavours."

2. The Acting President then introduced the Secretary General of ICAO, Mr. Yves Lambert, also acting as the Secretary General of the Conference, and invited him to introduce the members of the Secretariat serving the meeting: Dr. Michael Milde, Director of the ICAO Legal Bureau, also serving as the Executive Secretary of the Conference, Dr. Michel Pourcelet, Principal Legal Officer, Dr. E.W. Faller, Senior Legal Officer and Mr. G.M. Kakkar, Legal Officer.

First Plenary MeetingAGENDA ITEM 2: ADOPTION OF THE RULES OF PROCEDURE

3. The Conference adopted the Rules of Procedure in VIA Doc No. 2 by unanimous consent.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

4. Having invited observations on the Provisional Agenda in VIA Doc No. 1, and hearing none, the Acting President declared the Agenda of the Conference adopted.

AGENDA ITEM 4: ESTABLISHMENT OF THE CREDENTIALS COMMITTEE

5. In accordance with Rule 2(2), the Conference established a Credentials Committee and the Acting President nominated Finland, Côte d'Ivoire, Colombia, Indonesia and Hungary as members of the Credentials Committee and requested that a member of each of these delegations be designated to sit on the Committee. The Committee would meet at the close of the meeting, elect its Chairman and make a preliminary oral report to the Conference at the next meeting to be held in the afternoon.

AGENDA ITEM 5: GENERAL STATEMENTS

6. The Chairman of the Delegation of Canada (the Honourable Monique Vézina, Minister of State for Transport of Canada) welcomed the delegations to Canada, particularly Montreal, where 18 months previously the Minister of Transport of Canada had called for the development of a new instrument on airport security. Within that time, Assembly Resolution A26-4 had been unanimously adopted, leading to the convening of a special Legal Sub-Committee whose report was subsequently reviewed by the Legal Committee which ultimately produced the existing text which would be reviewed and adopted by the present Conference. The speed with which this process had taken place reflected the importance attributed to the fight against international terrorism. She noted that her government had given the matter top priority and had established a programme designed to support developing States in their efforts to improve aviation security. She described a project in the Caribbean, due to be completed by 1989, where security plans for 17 airports had been completed, and a new security awareness programme was being developed, involving the delivery of new security equipment and security training courses, some of which had already been given. In other regions, field missions were being initiated to evaluate the security needs of local authorities and would, she added, continue for the next four years. In Montreal, the International Aviation Management Training Institute, in addition to its regular curriculum, would be offering a three-week course on aviation security management. In bringing these projects to the attention of the Conference, the Delegate of Canada's intention was to stress the importance of bilateral and multilateral co-operation in addition to legal measures in strengthening aviation security. In this respect, she expressed her government's concern that this important co-operation could be undermined by ICAO's current financial situation, and that Canada had taken a concrete step by paying its assessed 1988 contribution at the end of 1987. On the subject of a new instrument to extend the provisions of the Montreal Convention, the Canadian Delegation would not debate the solutions proposed by the Legal Committee, but would focus its attention on the following issues:

jurisdiction and extradition, preventive measures, participation of States in the new instrument if not parties to the Montreal Convention, and aircraft not in service at the airport. Her delegation favoured solutions that would lead to the widest possible participation by States in the new instrument. She believed that what would enable the Conference to achieve its goal and open the new instrument for signature at the conclusion of the Conference was the conviction shared by all that international terrorism must be fought and not excused nor tolerated.

7. The Delegate of Peru stressed the importance his government attached to combatting all forms of terrorism, which had recently escalated in Peru, and said that it was using all legal recourses available while always respectful of human rights. He remarked that the international airport at Lima had been the scene of terrorist attacks, and as a result strict security measures had been implemented to avoid a recurrence. Drug trafficking had played a major role in the rise of terrorist activities in Peru and the government was combatting both, using the forces of order and the army within the limits established by law. For these reasons, the Delegate of Peru believed that the draft prepared by the Legal Committee responded to the requirements of the international community and that with some improvements and once approved by the Conference would be a very important legal tool that States could avail themselves of in their efforts to stop international terrorism. In this respect, he emphasized his delegation's willingness to co-operate fully in the work of the Conference to develop a protocol supplementary to the Montreal Convention which would be, he believed, a step forward in the interests of the security of civil aviation, in particular at airports which serve civil aviation.

8. The Delegate of Poland reaffirmed his government's commitment to actively participate in the deliberations of the Conference with a view to drafting a final version of an acceptable document. His delegation's position was such that the protocol should encompass the widest possible range of issues and problems relating to the suppression of acts of terrorism perpetrated on the ground, so that no loopholes could be encountered which would necessitate the formulation of another instrument in the future. He emphasized that the scope of the document should be expanded to encompass all installations intended for use in flight operations, such as ATC centres, located beyond the airport. His delegation also supported the need to intensify co-operation among member States of ICAO and the severe punishment of offenders. In this regard, his delegation was strongly in favour of extradition as the most effective means to be used as a deterrent to terrorism, and said thought should be given to which State should be given preference in the extradition of offenders, be it that State which had suffered the most damage, the State of registration of the aircraft, or the State where the offence was committed. In closing, he remarked that in the future, necessary actions should be taken through ICAO to supplement the Tokyo, The Hague and Montreal Conventions so that they would encompass optional provisions relating to extradition and all aspects of co-operation among States for the suppression of terrorism in civil aviation.

9. The Delegate of the Republic of Korea, reflecting upon the Tokyo, The Hague and Montreal Conventions, noted that these were all products of the concerted effort of the international community to combat unlawful acts of violence, and that the draft protocol to amend the Montreal Convention was but

an elaboration of existing international laws and was generally acceptable to his delegation. In expressing the hope that all participating States adopt the draft instrument, he declared that this would indicate a significant step forward in strengthening the safety of international civil aviation. He also remarked that States should not be overly complacent and believed this to be the opportune time to mention two recent acts of terrorism against civil aviation, of which the Republic of Korea had been the prime victim. The first incident he cited was one which had occurred at Kimpo International Airport in Seoul on 16 September 1986, in which a bomb had exploded, killing five persons and injuring 30, and damaging airport property. He believed the casualties would have been greater had the explosion taken place during peak hours. As this incident had occurred as the 1986 Asian Games were about to begin, his government concluded this explosion to be the work of terrorists designed to scare visitors and athletes alike from attending the games. Following this incident, airport security had been tightened and the games were successfully completed without further incident.

The Delegate of the Republic of Korea considered the second incident to be one of the most horrendous and barbarous acts of violence to have been committed against civil aviation. He referred to the disappearance of KAL Flight 858 over the Andaman Sea on 29 November 1987, when it was en route from Abu Dhabi to Seoul, resulting in 115 casualties. He noted that the two suspects, a female and her dead male companion, who were traced to and subsequently apprehended at the Manama Airport in Bahrain through the co-operation of the concerned governments, had been released to the authorities of the Republic of Korea in accordance with the spirit and relevant provisions of the Montreal Convention. After a month-long investigation and interviews with the female suspect, his government had made public the following information: the suspects, who had stopped at several international airports before their disembarkation at Abu Dhabi, left a radio time bomb on board the aircraft which exploded in mid-air. The government of the Republic of Korea concluded that the couple were specially trained North Korean agents acting on the authority of that government. He intimated that this terrorist act was in flagrant violation of the international legal codes including the Tokyo and Montreal Conventions, to which North Korea, an ICAO member State, was a signatory State.

10. The Delegate of Bulgaria intervened on a point of order, and wished to know if the attack of a member State not present was relevant to the approved Agenda of the Conference. The Acting President appealed to the Delegate of the Republic of Korea to limit his remarks to items in the Agenda of the Conference.

11. The Delegate of the Republic of Korea felt that his statements were within the framework of the agenda but agreed to comply with the request of the Acting President. He continued by stating that in his opinion North Korea should not be regarded as a qualified member State of ICAO unless it adhered to the regulations, and indicated that approximately 60 ICAO member States and several international organizations had condemned the North Korean act of terrorism and some States had imposed sanctions against North Korea. While the main purpose of his delegation at this Conference was not to condemn the North Korean act of terrorism, he nevertheless considered that some lessons relating to the security of civil aviation could be learned. Noting that the suspects

had been able to pass successfully through several airport and airline security procedures at the international airports concerned, he considered the security checks for transit passengers ineffective. Measures to check carry-on baggage were also inadequate, he felt, as the bomb had been carried aboard the aircraft. He also wondered whether co-ordination between immigration and security at international airports could be improved as forged passports the suspects had been using had not been noted at five international airports. Therefore, his delegation was of the opinion that only the concerted efforts of the international community could prevent the recurrence of such tragic incidents and that the existing Conventions must be examined for any deficiencies in order to improve the safety of international civil aviation. He stressed the imperative need for the international community to eradicate all forms of terrorism against civil aviation.

12. The Delegate of the Union of Soviet Socialist Republics intervened on a point of order to express his delegation's concern that the statement made was not within the realm of the Rules of Procedure and was disrupting the normal procedures of the Conference. The Acting President noted the point of order, which had previously been made by the Delegate of Bulgaria, stating that the Conference had been convened to consider a draft protocol and asked the Delegate of the Republic of Korea to refrain from making any statements not relevant to items in the agenda.

13. The Delegate of the Republic of Korea resumed by stating that States must continue in their efforts to ensure that explosives and other high-tech devices were detected before being brought onboard aircraft. His government, in co-operation with other government authorities and international organizations, had begun to implement stricter security measures, such as more rigorous passenger screening and tighter baggage checks, in view of the upcoming summer Olympic Games to be held in the Republic of Korea. In closing, he added that he believed the international community could join together in facing the challenges of making international civil aviation safe and secure, and he was certain that the Conference would mark a giant step forward in the development of air law that would accelerate international co-operation in fighting terrorism, thereby strengthening the safety of international civil aviation.

14. Before adjourning the meeting, the Acting President announced that up to the present 64 States and five international organizations for a total of 222 participants had registered.

(The meeting adjourned at 1240 hours)

THIS PAGE INTENTIONALLY LEFT BLANK

SECOND PLENARY MEETING

(Tuesday, 9 February 1988, at 1430 hours)

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

PRELIMINARY REPORT OF THE CREDENTIALS COMMITTEE

1. At the invitation of the Acting President, the Chairman of the Credentials Committee (Delegate of Colombia) gave a preliminary report of the Credentials Committee, indicating that 67 States and seven international organizations had registered as of 1400 hours, and that 45 States and six international organizations had presented credentials in due and proper form. The Credentials Committee recommended that, pursuant to Rule 3 of the Rules of Procedure, all delegations registered be authorized to participate in the work of the Conference.

AGENDA ITEM 5: GENERAL STATEMENTS

2. The Delegate of Saudi Arabia expressed the hope that the Conference would help strengthen and foster understanding between States to work together and strive to keep international civil aviation free from violence, danger and disruption. He stated that the safety and security at airports was necessary for international civil aviation to function and that terrorism should not control its destiny and that unlawful acts of violence must be suppressed and fought wherever and whenever found. He praised the Legal Committee's effort that had led to the development of a draft instrument for the suppression of acts of violence at airports serving international civil aviation and expressed his delegation's confidence that the Conference would endorse an instrument to that effect. In expressing the hope that the Conference would be able to demonstrate the determination of the international aviation community to eradicate all forms of unlawful acts against civil aviation, he reiterated his delegation's acceptance of the text as proposed, at the same time stating that they were ready to support any improvements resulting from deliberations that would lead to a wider satisfaction and acceptance of a new instrument that would once and for all eradicate all forms of violence at international airports serving international civil aviation.

3. The Delegate of Sweden, speaking on behalf of the Nordic Delegations, namely Denmark, Finland, Iceland, Norway and Sweden, expressed the opinion that the draft protocol prepared by the Legal Committee was on the whole well-balanced, and that certain debatable points did not undermine the fundamental outlines of the work carried out thus far. The formulation of such a protocol, which the Nordic Delegation felt would be successfully completed before the end of the Conference, would be an important step forward in the fight against terrorism, and a valuable complement to the existing Conventions related to the safety of international civil aviation. The obligations of States not only stemmed from Conventions, he added, but from fundamental rules of common international law. He noted that, with two conferences being held in

succession, the present Conference preceding the Conference to be held in Rome under the aegis of the International Maritime Organization relating to a Convention for the suppression of unlawful acts against the safety of maritime navigation and of fixed platforms located on the continental shelf, States were demonstrating their resoluteness in this respect. In closing, he asked for the unequivocal international condemnation of the recent act of terrorism against KAL Flight 858 which was, he declared, one of the most serious cases of terrorism against a civil aircraft in recent years.

4. The Delegate of the Union of Soviet Socialist Republics remarked that the Conference was evidence of ICAO's important role in developing co-ordination and co-operation among States in the field of international civil aviation and that States had come to develop and adopt an important instrument and should refrain from disrupting normal proceedings, recalling the allegations that had been made against the Democratic People's Republic of Korea at the previous meeting. His delegation, as no doubt all delegations, felt deeply moved by senseless deaths, especially resulting from terrorism, but questioned the grounds on which the conclusions had been drawn. The Conference faced the important task of strengthening co-operation among States to ensure security at airports serving international civil aviation and protecting human rights. He elaborated on the progress that had been made in this respect, alluding to the Soviet-American summit, but observed that despite the progress made in some areas, there were still phenomena that existed such as international terrorism, an evil which his delegation unreservedly condemned. Since his delegation believed that international co-operation was one of the principal bases for the development of an all-embracing system of international security, broad and consistent application of agreements on the security of international civil aviation should be carried out. That was why his delegation was convinced of the importance of States becoming parties and adhering strictly to the provisions of the Tokyo, The Hague and Montreal Conventions. It was no less important, he felt, to develop new instruments for areas that were not yet regulated which would demonstrate that the international community was ensuring the safety of international civil aviation. In this respect, the draft protocol was an important document that would help eliminate this gap and the Soviet Delegation, expressing the conviction that the Conference would be conducted in an atmosphere of mutual understanding and co-operation, was prepared to examine in a positive fashion amendments and proposals directed at improving this draft protocol which, when approved, would make a substantive contribution to improving the safety of international civil aviation.

5. The Delegate of the United States noted that ICAO had dedicated itself to the promotion of safety in international civil aviation throughout the years and had pioneered the development of legal instruments in which States had united in efforts to combat acts of terrorism that threatened international civil aviation. In this regard, she also noted that the Organization had been relentless in demonstrating its firm resolve and commitment and that States would not accept such behaviour and would co-operate to prevent such acts and punish perpetrators. She stated that ICAO had once again taken determined steps to eradicate all forms of terrorism by the unanimous decision taken by the ICAO Assembly to draft a new instrument to promote and protect safety at international airports. The draft instrument contained a careful balance of the views of all States that had actively

participated in its formulation. Her delegation believed that the Conference should focus on concluding an instrument that would become effective without delay and that this would best be met by a protocol supplementary to the Montreal Convention, which would be a vital tool in the continuing fight against international terrorism. She remarked that the Conference would make an important contribution to the security interests of all States as well as their citizens, and would send a message to those contemplating perpetrating acts of violence against persons or property at international airports that such violence would not be tolerated. Finally she called for the international condemnation of the act of senseless violence that had been perpetrated against KAL Flight 858, as it had implications for the safety of international civil aviation. Her government concurred with the conclusions reached by the Government of the Republic of Korea and shared its sense of shock and revulsion at this act of violence. She added that it was therefore important for the Conference to redouble its efforts to reach agreement on the important new legal instrument and bring the Conference to a successful conclusion.

6. The Delegate of the United Kingdom indicated that his government had supported the work which had taken place to combat acts of violence directed against civil aviation and had taken firm practical measures to combat terrorism. Despite the progress made, he believed there was no room for complacency and regretted that acts of violence against civil aviation were continuing, amply demonstrating the need for international co-operation. In view of the examples of indiscriminate acts against international civil aviation mentioned earlier, he expressed his government's empathy with the victims, stating that his government had previously condemned these acts. With regard to the work of the Conference, he reiterated its task as to define which acts should be singled out for international jurisdiction so that no perpetrator could escape wherever found, and stipulated that the Conference should ascertain that the definition of the offences to be covered was correct and broad so that no loopholes could be encountered. He nevertheless noted that a correct balance should be achieved so that what was covered would be easily distinguishable from that not covered. He believed that no States should be discouraged from subscribing to the protocol because it could possibly cover what they believed should be covered by their domestic laws, that there would be no difficulties in applying the protocol by means of domestic laws, and that the protocol should indicate why some acts were included to the exclusion of others. The Delegation of the United Kingdom considered that, as there was no internationally accepted definition of terrorism, the question of appropriate qualifying criteria should be discussed and had produced a working paper for consideration by the Conference. His delegation, noting the practical and important work before the Conference, would actively participate in the creation of a protocol to ensure the successful outcome of the Conference.

7. The Delegate of Japan expressed his appreciation for the initiative taken by Canada in requesting that a legal instrument dealing with the safety of international civil aviation at airports be formulated and thanked ICAO for its preparation of the Conference. He was encouraged by the large number of States which were participating to contribute to the creation of a new legal instrument for the suppression of international terrorism. He believed that the Conference had been convened at an important moment in aviation security for, despite the growing call for the effective suppression of terrorism and

Second Plenary Meeting

expansion and improvement of international co-operation, acts of violence against civil aviation were nonetheless being perpetrated. He considered that expanding the legal framework at the international level by obliging States to either extradite or refer perpetrators of such acts to the appropriate authorities for prosecution, in addition to intensifying efforts to develop and implement the necessary preventive measures, would be the most realistic and effective approach for the suppression of international terrorism. In this respect, his delegation was pleased with the draft prepared by the Legal Committee and he reaffirmed Japan's intention to co-operate with ICAO member States in their efforts to improve aviation security. Alluding to the statement previously made by the Delegate of the Republic of Korea, he reaffirmed Japan's conviction that terrorism against civil aircraft was inexcusable and he maintained that the terrorist act instigated by whom his government believed to be North Korea should be strongly condemned and spurned by the international community so that such an act never recur.

8. The Delegate of Argentina declared that his delegation, having chaired the Legal Commission at the 26th Session of the Assembly and having actively participated in the Legal Sub-Committee and the Legal Committee, had come to the Conference with the firm purpose of carrying out the work in a productive manner to obtain effective results. He stated that acts of violence at airports represented a pressing and important problem which jeopardized the normal development of international civil aviation, enumerating some statistics on acts of violence which had led to a certain insecurity in the international community. He indicated that the work of the Conference should be based on the principles of justice and must take into account the good of humanity and the improvement of relations between States. At the same time, it was important not to superimpose on the domestic laws of States to enable suppression to be effective. Another principle which had to be taken into account, he felt, was the protected legal interest not only of the safety of civil aviation but also the proper operation of airports, and both should be reflected clearly and unambiguously in the instrument. The three fundamental aspects of this type of offence were the seriousness of offence, the international element and the complexity with respect to protected legal interests. Argentina would put forth some amendments to the proposed draft instrument in the hope of making it possible to incorporate the establishment of severe penalties into domestic legislation. He expressed the hope that the final decision of the Conference would express a universal will and that the instrument adopted would be effective in eliminating or substantially reducing the occurrence of unlawful acts at airports serving international civil aviation.

9. The Delegate of Australia stated that the Conference provided an opportunity for all participating States interested in deterring acts of terrorism at airports to conclude an effective and widely acceptable agreement to deter and suppress serious acts of violence at airports serving international civil aviation; his government's main objective was to ensure that such an agreement be concluded by the end of the Conference. Australia's preference was to have a separate convention dealing with acts of violence at airports, as opposed to a protocol amending the Montreal Convention, due to the importance of the subject and the fact that offences committed at airports could have different consequences and raise different issues than those committed on board aircraft. His government would not, however, press its proposal for a separate convention. He stated that Australia also supported

the inclusion of off-aircraft facilities and personnel in the new instrument, as persons at airports were already covered in the Montreal Convention. His government also advocated the inclusion of the concept of threat, as threats to commit acts of terrorism at airports could endanger the safety at those airports, but recognizing that, should the agreement be formulated as a protocol to the Montreal Convention, this could prove to be difficult as the Convention itself did not cover threat. He also wished to ensure that the proposed agreement include the firing of missiles or other devices from outside the airport, as he felt there would be serious gaps in the new instrument should this not be covered. Australia would wish to maintain a delicate balance between extradition and prosecution to ensure that no greater priority be given to extradition, and to retain complete discretion over extradition requests, in accordance with Article 8 of the Montreal Convention. The Australian Delegation would raise these as well as other less substantive points during the course of the deliberations, recognizing that the Legal Committee had provided the Conference with a solid foundation with which to base its work, and confident that an acceptable and effective instrument would be completed by the end of the Conference.

10. The Delegate of Chile remarked that his delegation believed the international community should have a legal instrument which would immediately make punishable unlawful acts of violence at airports serving international civil aviation, as these offences affected and endangered not only personal safety but also the normal operation of airports, undermining the confidence States should have in the safe and orderly development of civil aviation. His delegation thought that the creation of categories of offences on a universal basis would complement the progress achieved in the development of techniques to prevent unlawful acts, and also complement the scope of the Tokyo, The Hague and Montreal Conventions, since these offences affected the orderly operation of international air services, thus giving rise to great insecurity at airports. His delegation had previously noted that acts of terrorism had not been limited to aircraft in flight, as was the case in the tragic event of KAL, a terrorist act condemned by Chile, but had spread to international airports. This was why legal means were absolutely essential to ensure that perpetrators would be punished, within a system of prosecution and extradition similar to offences in the Montreal Convention. For this reason his delegation believed that the new instrument should take the form of a protocol supplementary to the Montreal Convention so that ratification would be facilitated, as the new offences would not alter the basic provisions of the Montreal Convention. The Chilean Delegation wished to reserve the right to discuss certain issues when the draft would be under consideration; he stressed that it condemned all forms of terrorism, and considered that perpetrators of terrorist acts at airports should be severely punished by all States, in accordance with the draft protocol which would be adopted.

AGENDA ITEM 6: ELECTION OF THE PRESIDENT OF THE CONFERENCE

11. The Acting President having invited nominations for President of the Conference, the Delegate of Saudi Arabia proposed Mr. Philippe Kirsch, Chief Delegate of the Canadian Delegation, and since 1983 Director of the Legal Operations Division in the Department of External Affairs. He remarked that Mr. Kirsch had represented Canada at numerous international conferences, and particularly relevant to the present one, had been Chief Delegate of Canada at

Second Plenary Meeting

the 26th Session of the Legal Committee and Chairman of its Working Group. He had also served as Chief Delegate at the 25th Session of the Assembly (Extraordinary) which had adopted Article 3 bis to the Chicago Convention. Mr. Kirsch had recently acted as the Chairman of the preparatory committee of the IMO on the suppression of unlawful acts against the safety of maritime navigation. The Delegate of Saudi Arabia considered that Mr. Kirsch, with such an outstanding background, would be a great asset to the Conference by acting as its President. The nomination of Mr. Kirsch was fully supported by the Delegates of China, Egypt, France, Ghana and Mexico. The Delegates of Jamaica and the Union of Soviet Socialist Republics referred to Mr. Kirsch's outstanding contributions toward the elimination of international terrorism in supporting the nomination. The Delegates of Chile, Colombia, India, Kenya, Pakistan and the United States echoed their support for the nomination, referring to the excellent manner in which he had conducted the deliberations as Chairman of the Working Group at the 26th Session of the Legal Committee. The Delegate of Italy endorsed the nomination and expressed his gratitude for the way Mr. Kirsch had presided over the preparatory work for the IMO Conference that would be held shortly.

12. The Delegates of Chile, Colombia, India, Jamaica, Mexico and United States voiced expressions of gratitude and appreciation to the President of the ICAO Council for the excellent guidance he had provided thus far.

13. In view of the overwhelming support, the Acting President declared Mr. Philippe Kirsch President of the Conference and invited him to take the chair.

14. The President expressed his appreciation to the Delegate of Saudi Arabia for nominating him and thanked the numerous delegations which had supported the nomination. He referred to Dr. Kotaite's competence, his inspiration while presiding over the Conference thus far, and for the excellent start he had encouraged. He also expressed his gratitude to the Conference for its confidence in electing him. He greeted those he had had the opportunity to work with in the past as well as the Secretary General, Dr. Milde and his colleagues in the Legal Bureau. The President of the ICAO Council congratulated Mr. Kirsch on his nomination and expressed confidence that the Conference would succeed in carrying out its designated task under his able leadership.

(The meeting adjourned at 1700 hours)

THIRD PLENARY MEETING

(Wednesday, 10 February 1988, at 1000 hours)

President: Mr. P. Kirsch

AGENDA ITEM 5: GENERAL STATEMENTS

1. The presentation of general statements resumed, commencing with the Delegate of China who stated that the opening of the Diplomatic Conference demonstrated the determination of the international community to strengthen its co-operation in the fight against unlawful acts of violence against international civil aviation and to consolidate the legal regime set up by the Tokyo, The Hague and Montreal Conventions. China, being a party to these Conventions, has adopted domestic legislation to the limits of their provisions. The Chinese Delegation agreed that the new instrument should take the form of a Protocol supplementary to the Montreal Convention, so as to expand the scope of the Convention and to help bring the Protocol into force at the earliest date. In regard to the scope of application of the instrument, the Chinese Delegation was of the view that the concept of airport facilities be restricted to those closely related to the operation of the airport. Their preference on the subject of jurisdiction was for the establishment of universal jurisdiction as adopted by the Montreal Convention and, on the extradition issue, the Chinese Delegation felt that the application of the existing procedure and provisions should be consistent with the form of the instrument.

2. The Delegate of Czechoslovakia, noting that his State had always been bound by the Tokyo, The Hague and Montreal Conventions, welcomed the expansion of the legal system through the development of the new instrument and advocated that it be rapidly entered into force and consistently observed by all States. The Czechoslovak Delegation recognized the draft as a well-balanced instrument and expressed its intention to support those proposals that would retain, to the greatest extent, the principles and provisions of the text as adopted by the Legal Committee. The Delegation of Czechoslovakia proposed that official documents of the Conference omit what it considered to be unfounded accusations against the Democratic People's Republic of Korea and its agencies, so that the Conference could be seen solely as a true struggle to ensure the increased confidence of the peoples of the world in the safety of air transport.

3. The Delegate of Egypt recognized the adverse effects of terrorism on international activities, especially civil aviation and, quoting the Preamble to the Convention on International Civil Aviation, listed the many ICAO bodies concerned with the development of security programmes in whose meetings Egypt had actively participated. Egypt supported the specifications of Annex 17 and

Third Plenary Meeting

applied the procedures of the ICAO Security Manual, having established security committees in some major Egyptian airports to that effect. Egypt's Supreme Anti-terrorism Commission, legislature, civil aviation law and penal law all served on various levels to repress, examine or punish acts of unlawful interference against civil aviation. In addition, Egypt was a party to the three international security Conventions. The Egyptian Delegation welcomed the new Protocol as a further step in the strengthening of the above Conventions, and expressed its intention to ratify the Protocol at the earliest opportunity.

4. The Delegate of Greece expressed his belief that the substance of the new Protocol formed an essential supplement to the Montreal Convention and would fill a need noted by Greece at the Air Law Conference held in Rome in 1973. Considering that the legal system established by the Tokyo, The Hague and Montreal Conventions had left a gap as regards airports, the Greek Delegation was of the opinion that the most appropriate form for the new instrument was that of a Protocol additional or supplementary to the Montreal Convention. The Greek Delegation, while satisfied with the text of the draft Protocol, believed that it could be improved to some extent, but added that the goal was to develop not a perfect instrument but one that could be readily accepted by and useful to the international community.

5. The Delegate of Indonesia declared his support for the early adoption of an instrument for the suppression of unlawful acts of violence at airports serving international civil aviation and affirmed that Indonesia had a great interest in aviation security due to its location between two continents and because of its many airports open to access from neighbouring countries. The Indonesian Delegation expressed its preference to have the new instrument take the form of a Protocol additional to the Montreal Convention and stated that its adoption would pose no difficulties to them since the substance of the proposed amendment had been reflected in the Indonesian penal code since ratification of the Montreal Convention.

6. The Delegate of Austria praised the preparatory work leading to the draft Protocol as another step in the fight against international terrorism, which he noted was ever-increasing in intensity. The Austrian Delegation condemned the attack on Korean Air Flight No. 858 of 29 November 1987 and urged that it be fully investigated and the offenders brought to justice. While recognizing that terrorism could not be eradicated by legal instruments alone and that gaps still existed in the legal system, the Delegate of Austria was of the opinion that laws were important and effective in the prevention of terrorism and therefore his Delegation supported the work of the Conference. The Austrian Delegation believed that a Protocol would be the best form for the new instrument and that the Montreal Convention was the best basis upon which to expand. The Delegate of Austria reaffirmed his Delegation's belief that the existing definition of an airport was adequate for the purposes of this instrument. Pointing to paragraph 1 bis as the likely core of the instrument, he expressed the view that not all criminal acts should be declared international crimes, and that whatever acts were included in the Protocol should be qualified in order to specify why they were considered international crimes. Similarly, noting that a significant problem faced by the Legal

Committee was the question of how to define the acts of violence and destruction to be covered by paragraph 1 bis, the Austrian Delegation believed that the present wording would pose problems of interpretation in practical application. The Austrian Delegation viewed threats to commit certain acts of violence as serious offences in themselves and urged that the concept of threat be included in the instrument. The Delegate of Austria supported the view that facilities outside the parameters of an airport but essential to its operation be protected in the same way as the airport itself.

7. The Delegate of Bulgaria viewed the instrument as a tool for enlarging the legal basis for co-operation against unlawful acts against international civil aviation and declared his Delegation's condemnation of the use of force against innocent people, their property, and sometimes their political or moral values. In light of this, the Bulgarian Delegation opposed the use of the Conference for the achievement of political goals since this would distract Delegates' attention from their immediate task. Furthermore, the Bulgarian Delegation believed that a general debate was not necessary and that deliberation of the draft should commence as soon as possible.

8. The Delegate of the Ukrainian Soviet Socialist Republic, recognizing the importance of the development and adoption of a document to combat acts of violence against airports serving international civil aviation, considered the draft a satisfactory basis for discussion. The Ukrainian Soviet Socialist Republic had ratified a number of international agreements including The Hague and Montreal Conventions and, more recently, the Tokyo Convention, in addition to being a member of the United Nations Committee on International Terrorism. The Delegation of the Ukrainian Soviet Socialist Republic shared the regret of other Delegations for the recent victims of terrorism, but considered it inadvisable to become involved, at the present Conference, with allegations it felt had been made for political purposes. The Delegate of the Ukrainian Soviet Socialist Republic also indicated his Delegation's distrust in the investigation of the act of terrorism in question. In conclusion, he emphasized his Delegation's readiness to participate actively in the success of the Conference.

9. The Delegate of Yugoslavia observed the importance of safety in air services and stated that efforts were being taken by States throughout the world to suppress unlawful interference. Yugoslavia, in endeavouring to fulfill its obligations in this regard, had ratified all Conventions on unlawful interference with international civil aviation and strictly followed ICAO security policy as set out in Annex 17. In addition to outlining the comprehensive Yugoslav domestic programme in aviation security, the Delegate of Yugoslavia explained that Yugoslavia co-operated with many countries for the development of both bilateral and multilateral agreements, and that having promoted a high level of safety in civil aviation, air traffic in Yugoslavia had been operating without disturbance. Yugoslavia, at the 26th ICAO Assembly, had voted in favour of Resolution A26-4, and presently supported the draft text of the Protocol to the Montreal Convention.

Third Plenary Meeting

10. The Delegate of the Federal Republic of Germany reaffirmed his position against all forms of terrorism and regarded the draft as an appropriate basis for discussion. On behalf of his Delegation and as depositary of the opinions of 11 Member States of the European Community, the Delegate of the Federal Republic of Germany expressed deep regret for the lives lost in the tragedy of Korean Air Flight No. 858 and condemned this act of terrorism against civil aviation.

11. The Delegate of Ghana expressed his appreciation for and admiration of Canada's initiative in providing financial and technical assistance to some Caribbean States. While finding the Protocol generally acceptable, the Delegation of Ghana believed that consideration should also be given to providing assistance to developing States, particularly those in Africa, to improve airport security. The Delegate of Ghana pointed out that while African airports and airspaces had been safe in the past, there was no guarantee that they would remain so. He suggested that if discussion of this issue were not considered appropriate at the present Conference that perhaps it could be taken up at another forum. The Delegation of Ghana shared the concern of the international community over the urgent need to conclude legislation to facilitate the fight against terrorism.

12. The Delegate of Costa Rica supported the draft in principle because of his Administration's concern over terrorist acts, and stressed the importance of the implementation of the document being prepared. The Costa Rican Delegation reiterated its support for every effort made to combat acts of violence.

13. The Delegate of the Islamic Republic of Iran assured the Conference of his Delegation's past and continued support of ICAO's efforts to ensure safety in international civil aviation. In spite of ICAO's efforts, however, acts of violence still occurred and the Islamic Republic of Iran had been the victim of many such acts. In light of this, the Iranian Delegation expressed its appreciation for the work of the ICAO Council and hoped that Council resolutions would be more actively implemented. It was proposed that the scope of the new instrument cover all areas of civil aviation not already dealt with by existing instruments in order to protect, specifically, the special vehicles that carry passengers to and from the airport; airline offices; and civil aviation facilities located outside airport areas. The Delegate of the Islamic Republic of Iran emphasized that success in the fight against terrorism required that instruments be backed by actions.

14. The Delegate of the Kingdom of the Netherlands, declaring his government's support of and participation in the preparatory work for this instrument, stated that the test of the instrument's success would be in how quickly it could be ratified and made operative by the largest number of States. He pointed out that airports' role as focal points of international air transportation justified the introduction of a special regime for certain criminal acts at airports that were in all other aspects indistinguishable from those criminal acts committed outside the airport and already covered by domestic law. This implied that the scope of the Protocol be clearly

restricted to the protection of this function of international airports. The Delegate of the Kingdom of the Netherlands expressed his Delegation's intention to contribute to the Conference in a positive way.

15. The Delegate of Ethiopia recognized the role of security in the success of civil aviation and the air transport industry and the significant influence these had on the health of the economy. He stressed that the task of combatting terrorism must be carried out with a deep sense of responsibility for life and property, and that it was only through the rigorous application of laws, the formation of a common front by the international community and the action of public pressure against terrorism that the problem would eventually be eliminated. The Delegate of Ethiopia explained that many air travellers visited Ethiopia because its airports were conveniently located, its capital city was the seat of several international organizations, and because it contained a wealth of history and scenery. The importance of aviation to the economy and international reputation of Ethiopia had made this State sensitive and attentive to airport security matters. The Delegate of Ethiopia viewed the passenger as the most important product in air transport and hoped that governments and international organizations would continue to offer technical assistance so that passengers could travel in maximum safety and comfort. The Delegate of Ethiopia concluded with a note of tribute to the pioneers of civil aviation to whom the Conference owed the opportunity for their work to flourish free from terrorism.

16. The Delegate of Colombia expressed her Delegation's desire to participate actively in the amendment of the draft text which it considered well-developed and meeting the international concern to suppress acts of violence against civil aviation. The Colombian Delegation supported the decision that the instrument take the form of a Protocol supplementary to the Montreal Convention, believed that no list of the means used should be included under offences because the Montreal Convention contained no such list, and hoped to see the concept of threat included as an offence. In reviewing the Montreal Convention, the Colombian Delegation found Article 10 too vague and wished to present to Delegates the idea of amending it to make its meaning more specific.

17. The Observer for the United Nations expressed his appreciation for the invitation extended to the United Nations to be represented at this Conference and indicated his confidence in its leadership. The Observer for the United Nations then addressed the problem of terrorism which had attracted the attention of the United Nations in 1972, when an Ad Hoc Committee on international terrorism had been established, later producing recommendations relating to practical measures against terrorism that were endorsed by the General Assembly. Among subsequent resolutions by the General Assembly on terrorism was Resolution 40/61 that condemned as criminal, acts, methods and practices of terrorism whether and by whomever committed. The Assembly had also called upon States to fulfill their obligations under international law in connexion with international terrorism and, in this resolution, also encouraged ICAO to continue its efforts aimed at promoting acceptance of and compliance with international air security Conventions. The problem of terrorism had also

Third Plenary Meeting

been addressed by the Security Council which, in one resolution, condemned those terrorist acts at Rome and Vienna airports and called upon all concerned to refrain from taking any action inconsistent with the obligations under the Charter of the United Nations and other relevant rules of international law. The Observer for the United Nations went on to explain that the latest action by the United Nations on the problem of terrorism had been considered under two aspects, the first in 1987 with Resolution 42/159 which urged States to undertake five specific measures designed to encourage co-operation between States for the prevention of terrorism and for the apprehension, prosecution or extradition of perpetrators of such acts. In that resolution, the General Assembly also welcomed ICAO's efforts in the promotion of its international air security Conventions and in its present work. The second aspect, addressing the question of convening an international conference for the purpose of defining terrorism and differentiating it from the struggle of peoples for national liberation, was presented to States and their views on how best to approach the subject would be reported by the Secretary-General at the 44th Session of the General Assembly. In addition to the resolutions mentioned above, the United Nations had produced some Conventions towards eliminating terrorism, such as the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents, and the 1979 International Convention against the Taking of Hostages, which singled out the taking of hostages as inadmissible and unlawful under any circumstances and for whatever purpose. This Convention was designed to fill the gap in international law in cases of hostage-taking where there were no applicable treaty obligations for the parties concerned to deal with the unlawful act. The Observer for the United Nations concluded by saying that the United Nations welcomed and applauded ICAO's efforts to extend to airports the anti-terrorist measures afforded to aircraft by the Tokyo, The Hague and Montreal Conventions.

(The meeting adjourned at 1230 hours)

FOURTH PLENARY MEETING

(Wednesday, 10 February 1988, at 1430 hours)

President: Mr. P. Kirsch

AGENDA ITEM 5: GENERAL STATEMENTS

1. Upon resuming the general debate, the Delegate of Ecuador declared that living in an increasingly violent world caused States to seek international co-operation to neutralize violence through laws. He stated that the international community should not be speaking in abstractions when its problems were concrete, but that its actions should speak for themselves. He declared that faced with an interdependence of problems, the Conference must respond by creating interdependent solutions, and that Ecuador valued all actions taken by the international community to suppress terrorism. The Delegate of Ecuador commented that the world was not so large that it could not be controlled but not so small that problems should overcome it, and that both the problems and the solutions could be found within each person. He explained that ethical standards should form laws and that these laws should become States' obligations. The aim should be for practical laws to discourage and punish crime at international civil airports and the responsibility was two-fold since it meant not only taking care of our own world but also that of the future. The present goal should even include fighting the moral and social terrorism of illegal drug trafficking by air. The Ecuadorian Delegation believed that the Protocol should be an instrument additional to the Montreal Convention and concluded by pledging its efforts towards its establishment.

2. The Observer for the Airport Associations Co-ordinating Council, noting that the AACC represented some 400 international airports, airport authorities and national airport associations in over 100 States, referred to the AACC's VIA Doc No. 22 and declared his Council's support for ICAO's guiding role of urging States to assume their responsibilities to protect civil aviation against acts of terrorism. The AACC reiterated its support also for the promulgation of the draft instrument to supplement the Montreal Convention. The Observer repeated the point made by the AACC at the 26th Session of the Legal Committee that the three pillars of any international co-ordinated action against terrorism were prevention, legislation and response, where prevention meant the training of security personnel and the availability of detection equipment; effective legislation meant strict adherence to and implementation of all ICAO security Conventions by all States and the inclusion of the concepts embodied therein in all multilateral and

Fourth Plenary Meeting

bilateral air service agreements; and effective response required States to co-operate closely with one another to suppress terrorism in line with ICAO Resolution A26-4. The Observer for the AACC reaffirmed his Council's commitment to ICAO, listing those bodies in whose meetings it had participated, such as the ICAO Committee on Unlawful Interference, the Aviation Security Panel and other ICAO meetings dealing with security matters, and expressed his pleasure at attending the present Conference.

3. Many Delegations began their statements by congratulating the President on his election to the chair, and he, in turn, thanked them for their statements, expressing his gratitude for their compliments and for their support for the Conference.

4. The general debate having been concluded, the President offered his impressions of the statements. He observed that all Delegations reiterated their unequivocal condemnation of all forms of terrorism with particular reference to the safety of civil aviation in general and security at international airports in particular; all speakers expressed full support for the existing Conventions on aviation security and on related instruments; and it was generally felt that those Conventions needed to be supplemented by additional provisions relating to the security of airports serving international civil aviation. The President noted the appreciation expressed for the work done by the Rapporteur, the special Sub-Committee and the Legal Committee. He believed that it was generally agreed that the work of the 26th Session of the Legal Committee formed an excellent basis for consideration and that, over-all, the draft would be acceptable with some minor adjustments. It seemed widely understood that the instrument should take the form of a Protocol supplementary to the Montreal Convention. The President noted that a number of observations of substance had been made and that these would be discussed shortly.

The Plenary was then transformed, at 1500 hours, into the first meeting of the Commission of the Whole which would be open to participation by observer delegations.

FIRST MEETING OF THE COMMISSION OF THE WHOLE

(Wednesday, 10 February 1988, at 1500 hours)

Chairman: Mr. P. Kirsch

AGENDA ITEM 7: ORGANIZATION OF WORK

1. The Chairman began the meeting by listing the following four issues that had been referred to the Conference by the Legal Committee for further deliberation (the paragraph references following each issue refer to the Report of the 26th Session of the Legal Committee (Doc 9502)):

- (1) the area of jurisdiction and extradition (4.58 - 4.63);
- (2) preventive measures (4.64 - 4.65);
- (3) the participation in the Protocol of States not parties to the Montreal Convention (4.66 - 4.67); and
- (4) the implications of the inclusion in the Protocol of aircraft not in service at the airport (4.71).

The Chairman explained that while Delegates should give priority to these issues, the discussion was not limited to them, and that other issues of importance had been raised such as the text of paragraph 1 bis, the question of referring paragraph 1 bis to the Drafting Committee or any limited subsidiary body in order to simplify its discussion, and the possibility of the final clauses of the Protocol being addressed by the Drafting Committee. The Chairman suggested that the establishment of the Drafting and other Committees be deferred to a later stage in order to give the Commission of the Whole some time to develop its views on the issues at hand. As this procedure seemed acceptable to the Commission of the Whole, Delegates were invited to take the floor.

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT INSTRUMENT

2. The Delegate of Tunisia, believing that many Delegates did not have with them their copy of the Report of the Legal Committee, questioned whether it would not be appropriate, in the future, to include in the Order of Business all documents necessary for the Conference. In response, the Executive Secretary, Dr. M. Milde agreed that the Order of Business for each meeting should list relevant documents, but explained that the Order of Business for the first and second Plenary Meetings had contained a footnote to the effect that Orders of Business for subsequent meetings would normally not be issued

First Meeting
Commission of the Whole

(for reasons of economy) and that since no objections had been raised when the agenda was adopted, it had been understood that this met with Delegates' approval. Dr. M. Milde also pointed out that subsequent Orders of Business would have included only one item, that is, Agenda Item 9: Consideration of the draft instrument. With respect to the Report of the Legal Committee, Dr. M. Milde explained that the Secretary General had sent copies to Contracting States on 10 June 1987, emphasizing that it would be the basic document for this Conference. While general distribution of the document would not be made again, Dr. M. Milde assured Delegates that copies would be provided to Delegations upon request.

3. Referring to the procedure outlined by the Chairman, the Delegate of Argentina suggested that discussion of the four issues mentioned earlier be deferred until the following day in order that all would be able to consult the relevant documents. He suggested that the current discussion deal with general issues pertaining to the Protocol. The Chairman had no objection to this since Delegations had already been invited to address other issues. Not wishing to limit the present meeting to one or another issue, however, the Chairman repeated his invitation to Delegates to address the four issues listed or, as mentioned by the Delegate of Argentina, to general questions.

4. Several Delegations then presented their main differences or suggestions for improvement to the draft Protocol. It was strongly felt, however, that the draft created by the Legal Committee was already an excellent document and formed a sound basis for discussion.

5. In reference to the first of the four issues, namely the area of jurisdiction and extradition, the Delegate of the United Kingdom was content that the system set up by the Montreal Convention should apply. The Delegate of France felt that the wording of paragraph 2 bis of Article 5 introduced new concepts with respect to the Montreal Convention in that it seemed to establish a system which favoured extradition to the country in which the crime was committed. It was felt that this contradicted the system established in the Montreal and The Hague Conventions which allowed for extradition being granted to other States with legitimate reasons for requesting it. The Delegate of France then described how, if the suggested extradition solution were adopted in the Protocol and if the instrument also included aircraft not in service, this could create technicalities giving rise to situations in which acts of terrorism that were very similar in nature could result in extradition solutions that differed greatly, depending only on such variables as whether or not the aircraft had been in service at the time of attack or the length of time it had been out of service. He added that this was not the system that had been retained in the draft instrument for the upcoming Convention on maritime law to be held in Rome.

Relating to the second issue, that of preventive measures, the Delegate of the United Kingdom questioned the necessity of including specific obligations on this subject and the Delegate of France suggested that the issue be carefully studied.

On the issue of the participation in the Protocol of States not parties to the Montreal Convention, the Delegate of the United Kingdom felt that in light of the number of States which were already parties to the Montreal Convention, there was no need for States to be able to ratify one without the other. Similarly, the Delegate of France felt that due to the technical similarity of the two instruments, it would be difficult for States to become parties to the Protocol without also ratifying the Convention.

In reference to the fourth issue, the implications of the inclusion in the Protocol of aircraft not in service at the airport, the Delegate of the United Kingdom would accept its inclusion but believed it would cause problems of interpretation. The Delegate of France was not in favour of its inclusion since the Montreal Convention did not refer to aircraft not in service.

6. Several Delegations commented on the text of paragraph 1 bis, particularly that phrase describing the means used to commit an act of violence. While the Delegate of Argentina favoured the omission of a list of such means, the Delegate of Tanzania was concerned that the existing list was not an exhaustive one and suggested the addition of all other means. The Delegate of the United Kingdom observed that the present wording was the result of much discussion and a subsequent vote on the part of the Legal Committee and, while reluctant to reopen debate on the issue, he felt that the present wording was not limiting enough. The Delegate of India wished to have noted that the Legal Committee had considered using the words "bombs and explosives" in listing means used, but had decided that the term "device, substance or weapon" included "bombs and explosives" as well.

The Delegate of Argentina believed that the act of knowingly communicating false information which might endanger safety at an airport should be included as an offence in the Protocol, since a similar offence, but only applicable to aircraft in flight, appeared in the Montreal Convention. He was also concerned that the phrase "act of violence" had never been defined and, favouring its retention, expressed his Delegation's desire to see it defined.

The Delegate of the United Kingdom raised two points regarding the qualifier "if such an act endangers or is likely to endanger safety at that airport". He felt that this qualifier could be interpreted to include the unintended consequences of those who might not be deliberately trying to endanger safety at an airport and this posed a problem since acts of this nature should not be within the scope of the instrument. Secondly, he considered the term "safety at the airport" too vague, since one could limit the scope of the instrument depending on how the word "safety" was defined.

The Delegates of Argentina and Tanzania advocated the inclusion of the concept of threat as an offence, as did the Delegate of India, since it was felt that in view of the gravity of the offence, the mere threat of such an act would constitute a serious action against the safe and orderly growth of civil aviation. The Delegate of India declared, however, that he would be satisfied

First Meeting
Commission of the Whole

if there were a consensus within the Conference, as there had been within the Legal Committee, that the provision of "attempt" also covered the concept of "threat".

Some Delegates commented on the question of what exactly constituted an airport serving international civil aviation. The Delegate of Argentina stated his Delegation's intention to submit a paper for the purpose of developing a definition of the concept, whereas the Delegate of India supported the text of paragraph 1 bis in as much as it spoke of airports serving international civil aviation, believing it adequately covered the requirements. The Delegate of Argentina also wished to see defined the term "severe penalty" since it appeared in both the Montreal and The Hague Conventions and would be applicable to the Protocol as well. Concerning the issue of whether or not to include off-airport facilities in the scope of the Protocol, the Delegate of India felt that only those acts committed against facilities situated at the airport should be included.

The Delegate of Tanzania put forth a suggestion to improve the Preamble to the Protocol by adding, after the words "matter of grave concern" in the second 'Considering' clause, the words "to the international community". This suggestion would be circulated to the Delegates in the form of a paper.

Finally, the Delegates of Argentina, India and Tanzania expressed their support for the general consensus that the new instrument be in the form of a Protocol additional and supplementary to the Montreal Convention. The Delegate of Argentina, wishing the reasons for this support recorded, explained that the choice to create a Protocol rather than a new Convention was appropriate because of the close relationship of the crimes dealt with in both instruments and the similarity of the protected legal interest and because a Protocol to a Convention that was already ratified by such a large number of States would be more quickly and easily adopted than a new Convention with its new issues and questions. With the Montreal Convention as the basis and source of the Protocol, the problem of developing a new doctrine with possible differences with respect to the previous Convention would be eliminated.

(The meeting adjourned at 1640 hours)

SECOND MEETING OF THE COMMISSION OF THE WHOLE

(Thursday, 11 February 1988, at 1000 hours)

Chairman: Mr. P. Kirsch

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT INSTRUMENT

1. Referring to a point raised by the Delegate of Colombia regarding the organization of work proposed by the Chairman earlier, the Chairman explained that the reason he had requested delegations to concentrate their attention initially on certain points was to permit him to better identify the substantive positions of delegations on those subjects, to decide which questions were going to be referred to the Drafting Committee and to better organize the later stages of the work.

2. The discussion which followed mainly centered around the four points the Chairman had previously requested delegations to direct their comments to.

Point No.1. Jurisdiction and Extradition

3. The Delegations of Venezuela and Chile shared the opinion that Article III of the Protocol as drafted by the Secretariat should satisfy the requirements of States in respect of jurisdiction and extradition. They believed that it would not be appropriate to establish any preferential jurisdiction. The Delegate of Venezuela further suggested that it would be appropriate to establish as in Article 5, paragraph 3 of the Montreal Convention, that any other legal jurisdiction in accordance with national legislation was not excluded.

4. The Delegate of Kenya affirmed that his Delegation supported the recommendation of the Legal Committee that the State where the offender was present should establish jurisdiction, but mindful of the balance between jurisdiction and extradition established by the Montreal Convention, would support such views which did not disturb that balance.

5. The Delegate of Norway stressed the view that the instrument should establish universal jurisdiction for the offences in question, and that the new instrument should in no way depart from the Montreal Convention of 1971, should not upset the delicate balance between prosecution and extradition and that there should be no specific provision favouring in any way the State in whose territory the offence was committed. Similar views were expressed by the Delegate of Japan who felt that the final decision should be at the discretion of the State where the offender was present.

6. The Delegate of Malawi commented that Article 2 bis harmonized the provisions of the Protocol with those of the Montreal Convention, taking into account the country of occurrence as the logical choice of forum. He supported the comments of the Kingdom of the Netherlands regarding interests and responsibilities of the State of occurrence as contained in VIA Doc No. 11.

Second Meeting
Commission of the Whole

Point No.2. Preventive measures

7. Most of the Delegations who presented their views during this meeting were of the opinion that preventive measures were more properly dealt with within the ambit of Annex 17 of the Chicago Convention. The Delegate of Austria considered that a reference to preventive measures was desirable but could be dealt with in a resolution included in the Final Act. This suggestion was supported by the Delegates of Chile and Malawi.

8. The Delegate of Venezuela indicated that her Delegation favoured the inclusion of a paragraph relating to measures that should be adopted by States to prevent the committing of offences. The Delegate of Bulgaria expressed a similar view and supported the wording suggested in VIA Doc No. 26.

9. Referring to the statement of the Delegate of Ghana several Delegations expressed the view that assistance should be accorded to developing countries which lacked the resources to introduce adequate security measures at their airports. It was suggested that this Conference should adopt a resolution on the subject.

Point No.3. Participation of States in the new instrument if they are not parties to the Montreal Convention of 1971

10. The Delegates of Venezuela, Chile, Italy and Malawi expressed the opinion that ratification of or adherence to the Protocol should imply, automatically, for States not parties of the Convention, adherence to the Montreal Convention of 1971. Speaking in support of this view the Delegates of Austria and Kenya, emphasized further that they opposed opening any possibility concerning the participation of States in the Protocol who were not parties to the Convention. The Delegate of Japan stated that his Delegation supported the basic concept contained in the Secretariat's draft but proposed the wording put forward by his Delegation in VIA Doc No. 25.

11. The Delegate of Bulgaria expressed doubts as to whether new member States acceding to the Montreal Convention would automatically accede to the Protocol.

Point No.4. Implications of inclusion in the Protocol of "aircraft not in service at the airport"

12. The Delegates of Venezuela, Austria, Kenya and Malawi in their statements expressed themselves in favour of the inclusion of "aircraft not in service at the airport" in the Protocol. The Delegate of Austria proposed further that his Delegation would wish to include all types of aircraft and make no distinction between private aircraft and aircraft of a commercial nature.

13. Reflecting on the statement by the Delegate of France, the Delegate of Austria stated that his Delegation had interpreted Article III paragraph 2 bis, and for that matter Article 5 of the Montreal Convention, in

quite a different manner. According to his Delegation's view, neither of these Articles contained any provisions restricting States to extradite to any country. Rather they dealt exclusively with the question of establishment of jurisdiction. He recalled that in the discussion of the Legal Committee the reference to paragraph 1(a) had been included in paragraph 2 bis before it had been decided to include aircraft not in service within the scope of the Protocol. At that point in the discussion, any reference to paragraphs (b) (c) and (d) would have been totally irrelevant. Now that aircraft not in service on the ground have been included in the Protocol, it followed that, rather than to delete reference to paragraph 1(a) altogether, the last line of paragraph 2 bis should be expanded to include a reference to paragraphs 1(b) and 1(d) as well. The view of the Delegate of Austria was shared by the Delegations of Norway and Kenya.

14 The Delegate of Italy concurred with the analysis made by the Delegate of Austria regarding the meaning of Article 5 of the Montreal Convention, and moreover on the scope of the obligation for extradition under that Convention. However, he felt that a much simpler way of addressing the problem would be to delete paragraph 2 bis of Article 5 and, instead, to amend the existing paragraph 2 of Article 5 by adding in the third line after the mention of Article 1, paragraphs 1(a), (b) and (c) the mention also of para 1 bis of this Article. Among other considerations, this provision would cover an attack on an aircraft not in service on which the offender escaped to another State.

15. Apart from the four points dealt with above Delegations gave their views on the following subjects:

16. The Delegate of Bulgaria considered that the title of the Draft Protocol being contemplated was incorrect and believed that it should contain the phrase "to deal with unlawful acts of violence at airports serving international civil aviation" thereby reflecting its specific aim.

Paragraph 1 bis of Article 1.

17. The Delegates of Norway, Italy and Malawi were of the opinion that the listing of means used in Article 1, paragraph 1 bis should be deleted as it might narrow the scope of the Protocol and provide an escape valve for offenders.

18. The Delegate of Malawi was in general agreement with those delegations who wished to add an extra phrase including "or other means" but felt that in some legal systems this latter phrase might only relate to "devices, substances or weapons" and would exclude, for example, a lethal karate blow. He suggested "using whatever means" or "using any means" would alleviate this concern. Another minor amendment that he proposed was the substitution of "performs" by "commits" in Article 1 bis (a). He cautioned against the use of the words "serious" or "seriously" to qualify the injury or damage to facilities in paragraph 1 bis of Article 1 as this would bring in an element of subjectivity in determining guilt. Reflecting on the concerns expressed in VIA Doc No. 24, the Delegate of Malawi did not agree with the United Kingdom that definition of the offences covered required further

Second Meeting
Commission of the Whole

improvement in order to define a crime as being international in scope and not a matter for the State's domestic laws. In his view, elements in various legal systems would be adequate to meet these concerns.

19. The Delegate of Japan was of the opinion that the words "is likely to cause" in paragraph 1 bis (a) was a subjective concept and should be deleted. He also had difficulty with the views expressed in VIA Doc No. 24. Referring to the qualifier suggested by the United Kingdom, it was his Delegation's view that the proposed phrase "is designed to endanger" would add a subjective element in the application of paragraph 1 bis of Article 1. It was also his Delegation's opinion that the term "safety at that airport" appearing in the draft prepared by the Secretariat encompassed in its meaning the "safe operation of the airport".

20. The Delegation of Venezuela preferred that the listing in Article 1 paragraph 1 bis be retained and was not averse to the insertion of an additional phrase including "or other means". In any case her Delegation would be willing to go along with the majority in the Conference on this issue.

21. The Delegation of Chile also agreed with those delegations who had proposed the addition of "or other means" to the listing of the means used to commit offences.

22. The Delegate of Kenya supported the listing of the means of committing offences as provided for in the present draft of Article 1 bis.

23. The Delegate of Austria supported the suggestion of the United Kingdom that the qualifier to Article 1 paragraph 1 bis should be improved to include an element of intent. This view was shared by the Delegates of Norway and Kenya. In this connection, the Delegate of Italy suggested that an amendment to the qualifier of paragraph 1 bis of Article 1 reading "if such an act is aimed at endangering and actually endangers safety at that airport" might meet the concern of the United Kingdom delegation.

24. The Delegate of Bulgaria was also of the opinion that "safe operation of the airport" was not more explicit than "safety at that airport" and stated that in his Delegation's view "intent" was already established in the introductory statement of paragraph 1 bis by the phrase "unlawfully and intentionally".

Inclusion of "threats"

25. The Delegate of Norway favoured the inclusion of "threats" in Article 1 as his Delegation was not convinced that a reference to attempts also covered threats. The Delegates of Chile and Kenya supported the inclusion of "threats" as one of the types of offences contemplated by the Protocol, but in order to avoid an imbalance with the Montreal Convention the Delegate of Kenya felt that this word should be included in the Montreal Convention as a whole.

26. The Delegate of Italy voiced an opinion similar to that of the Delegate of Kenya in that the notion of "threats" should not be included in the Protocol unless it was included in the entire Montreal Convention as well.

27. The Delegate of Malawi felt that it would be difficult to arrive at a universal definition of "threats" and believed that its inclusion was not practicable.

28. The Delegate of Bulgaria expressed the view that "attempt" covered "threat" and was against its inclusion in the Protocol.

29. The Chairman thanked the Delegates for their views stating that he now had a much clearer idea of how to proceed and adjourned the Commission at 1230 hours.

(The meeting adjourned at 1230 hours)

THIS PAGE INTENTIONALLY LEFT BLANK

THIRD MEETING OF THE COMMISSION OF THE WHOLE

(Thursday, 11 February 1988, at 1400 hours)

Chairman: Mr. P. Kirsch

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT INSTRUMENT

1. Opening the meeting, the Chairman drew the attention of the Commission to Rule 6 of the Rules of Procedure as outlined in VIA Doc No. 2, concerning the participation of the public in meetings of commissions, committees or working groups and advised the Commission that there were a few persons present who had a professional interest in the deliberations of the Commission. As no objections were raised to their presence, he then invited comments from the Delegates present.

Point No.1. Jurisdiction and Extradition

2. The Delegate of Greece emphasized the importance that the balance established by the Montreal Convention should not be upset by granting priority of extradition to the State where the offence was committed. With regard to adding jurisdiction in favour of the State of the offender's or victim's nationality, she considered that this might not be advisable for the sake of uniformity with the Montreal Convention.

3. The Delegate of Jamaica stated that the principles relating to jurisdiction should be compatible with those of the Montreal Convention and supported the provisions contained in Article III of the Draft Protocol contained in VIA Doc No. 3, requiring the State where the offender was found to assert jurisdiction. His Delegation would not wish any priorities to be established regarding jurisdiction or extradition. The Delegate of Peru believed that paragraph 2 bis of Article 5 of the draft prepared by the Secretariat guaranteed the attainment of the objectives of the Protocol.

4. The Delegate of Sweden was of the opinion that Article III as drafted by the Secretariat, was well-balanced but associated himself with the Norwegian Delegation in being opposed to an obligation to extradite to any specific country which might be interested because of the offence. Similar views were expressed by the Delegate of Denmark.

5. The Delegate of Australia explained that it was a fundamental element of Australian law that Australia should not be compelled to extradite. He stated further that the delicate balance between extradition and prosecution as expressed in the Montreal Convention should not be disturbed.

6. On the question of extradition and prosecution, the Delegate of Israel favoured an equal footing for those two procedures with no preference given to either one, in conformity with Articles 7 and 8 of the Montreal

Third Meeting
Commission of the Whole

Convention. He pointed out, however, that other States might have a legitimate right of jurisdiction over the offender, for example, the victim's country.

Point No.2. Preventive Measures

7. Most of the Delegations who offered their comments felt that preventive measures were best dealt with in the context of Annex 17 to the Chicago Convention. The Delegates of Peru, Australia and Denmark expressed their willingness to support a resolution in the Final Act covering these measures.

8. The Delegate of Jamaica felt that to make preventive measures a legal obligation might not be possible to implement because of the considerable disparity in the resources of States and for that reason might also impede ratification.

9. The Delegate of the Islamic Republic of Iran urged the inclusion of provisions on preventive measures in the Protocol.

10. The Delegate of Côte d'Ivoire supported the suggestion of the Delegate of Ghana regarding technical assistance to developing nations concerning security measures at their airports.

Point No.3. Participation of States in the new instrument if they are not parties to the Montreal Convention of 1971

11. Most of the delegations supported the provisions of paragraph 2 of Article VI of the draft Protocol attached to VIA Doc No. 3.

12. The Delegate of the Islamic Republic of Iran proposed that the International Civil Aviation Organization be added to the list of Depositaries in order to facilitate the ratification process.

Point No.4. Implications of inclusion in the Protocol of "aircraft not in service at the airport"

13. Most of the delegations favoured the inclusion of the phrase "aircraft not in service at the airport" in the Protocol.

14. With regard to the effect of this inclusion on jurisdiction and extradition, the Delegate of Greece felt that jurisdiction should also be established in favour of the State where the aircraft was registered, the State where the lessee had his principal place of business or the State of his permanent residence, as this would bring the Protocol as close as possible to the Montreal Convention.

15. The Delegate of Australia also favoured the inclusion of the State of registry of the aircraft being included in the provision relating to jurisdiction. Regarding the drafting of Article III, he and the Delegate of Denmark supported the proposal of the Delegate of Italy on the need for a simple addition to the present Article 5 of the Montreal Convention.

16. While indicating his preference for aircraft not in service being included in the Protocol, the Delegate of Israel felt that the main purpose of the Protocol should be to protect people rather than objects, but if such a proposal caused difficulties with any other delegations, Israel would be ready to go along with the majority view.

17. The Delegate of Jamaica contended that the fact that an aircraft happened to be a piece of property at an airport should not necessarily make it a matter for international protection any more than trucks or other vehicles. In order to make the destruction of an aircraft not in service an international offence, it was his opinion that the act of destruction or damage must be such as firstly to disrupt the services of the airport and secondly to endanger the safety of the airport or its operations, and unless there was a combination of those factors there would be no basis for which liability could be established under this Protocol. The same could be said for any other kind of property at an airport other than an aircraft on the ground.

Paragraph 1 bis of Article 1

18. The Delegate of Greece felt that paragraph 1 bis was as close to precision as possible. Her Delegation considered that the insertion of a new element stressing the terrorist's intention would not only depart from the model of the Montreal Convention but would also make it more difficult to define what a terrorist action was. It was her opinion that the qualifier of paragraph 1 bis defined the type of act sufficiently.

19. The Delegate of Côte d'Ivoire was satisfied with the drafting of paragraph 1 bis except for the expression "disrupts" appearing in 1 bis (b). He supported the view of the Delegation of France expressed in VIA Doc No. 14, that the word "interrupts", which accorded with Article 10 paragraph 2 of the Montreal Convention, should be used instead.

20. Rather than deleting the listing of the means used in paragraph 1 bis, the Delegate of Australia preferred the addition of the term "or any other means". He endorsed the view of the Delegate of Japan concerning the qualifier to paragraph 1 bis. He felt the consequences of acts on the safe operation of an airport serving international civil aviation were the important element and intentions or motives behind those acts would present prosecutors with considerable difficulties.

21. Commenting on the listing of means used to commit the offence, the Delegate of the Islamic Republic of Iran favoured a more explicit wording to cover all destructive means. The Delegates of Sweden and Israel thought the list of means used should be deleted. The Delegate of Jamaica stated that his Delegation would keep an open mind as to whether the phrase "or any other means" should be added or not.

22. The Delegate of Peru felt that the phrase "or is likely to cause" in sub-paragraph (a) of paragraph 1 bis and the phrase "or is likely to endanger" in the qualifier should be deleted since it was his Delegation's opinion that

Third Meeting
Commission of the Whole

if acts had not taken place they could not be classified as offences. He also expressed doubts with regard to the use of the words "serious" in sub-paragraph (a) of 1 bis and "seriously" in sub-paragraph (b). He recalled that the concept of "serious" had been eliminated in the Montreal Convention and it would not be consistent to include it in the Protocol.

23. The Delegate of Sweden supported the view of the Delegate of the United Kingdom expressed in VIA Doc No. 24, that the qualifier of paragraph 1 bis required more precise definition. The Delegate of Denmark felt that an introduction of the concept of intention as suggested by the United Kingdom would limit the wording in this paragraph to more typically terrorist actions. He also suggested a minor amendment to paragraph 2 of Article II of the Secretariat's draft: the words "Article 1 of" should appear before the words "the Convention" in the first line of that paragraph.

Inclusion of "threats"

24. The Delegate of Greece thought it definitely undesirable to make an international offence out of a mere threat. The Delegate of Sweden favoured the mention of the concept of threat somewhere in describing the offence.

25. The Delegate of Australia supported the view of the Delegate of Italy on this subject that as the Montreal Convention did not include in Article 1 paragraph 1, the making of a threat as an offence, if this Conference were ready to give general application to the making of threats as an offence, then he would support such a general application. However, his Delegation considered that the threat should be one to commit any of the substantive offences, and that the threat should actually result in danger to the safe operation of the airport.

26. Other comments by Delegates concerned the inclusion within the scope of the Protocol of facilities and persons serving international civil aviation located outside the airport boundary. The Delegates of the Islamic Republic of Iran, Peru and Australia supported their inclusion, the Delegate of Australia suggesting further that this could be done by incorporating references to these facilities in sub-paragraph (b) of paragraph 1 bis. The Delegate of Jamaica was of the opinion, however, that some offences with international elements, such as an attack on a downtown city office, could constitute criminal acts under domestic law.

27. The Delegates of Israel and Australia favoured the inclusion of dissemination of false information within the scope of the Protocol, in conformity with Article 1 paragraph 1 (e) of the Montreal Convention.

28. The meeting was suspended at 1515 hours and went into Plenary Session. It was resumed at 1600 hours.

Point No.1. Jurisdiction and Extradition

29. The Delegate of the United States considered that the possibility of including additional bases of jurisdiction in the Protocol without upsetting the balance of the Montreal Convention was worth exploring further. She felt that the country of the victim as well as the country of the offender might have a strong interest in asserting jurisdiction.

30. Regarding jurisdiction and extradition, the Delegate of Switzerland stated that his Delegation would not wish to give priority to the State in which the offence was committed.

31. The Delegate of Senegal emphasized that the principles and terminology used in the Montreal Convention of 1971 must be respected in the additional Protocol complementing it. Regarding jurisdiction, it was his Delegation's view that the offence should be sufficiently well-defined so as to establish universal jurisdiction. Therefore the concepts of threats and intentions, if they were to be kept, must be defined.

32. Referring to the point raised by the Delegation of France implying that there was a limitation on the decision to extradite in paragraph 2 bis of Article 5 of the Draft Protocol contained in VIA Doc No. 3, the Delegate of the Kingdom of the Netherlands pointed out that Article 5 did not deal with extradition but with the establishment of jurisdiction and his Delegation interpreted the proposed Article 2 bis as a limitation on the obligation to establish jurisdiction by confining such jurisdiction to the offences in question if extradition to the territorial State were refused. He did not think, therefore, that this paragraph should be amended, or if it were, only by deletion of paragraph 1(a). He reiterated the point raised by his Delegation in the Legal Committee that paragraph 2 bis should contain the obligation to establish jurisdiction only if extradition were requested and refused. Their proposal had not been supported by the Legal Committee despite its very logical basis, and if it were not supported by the Conference, his Delegation would not persist.

33. The Delegate of Malaysia expressed his Delegation's full support of the Protocol as drafted by the Secretariat.

Point No.2. Preventive Measures

34. The Delegate of the United States observed that States had an obligation to implement preventive measures to protect civil aviation against unlawful acts of violence. However, her Delegation was of the opinion that specific measures for prevention should be contained in instruments that ensured the maximum flexibility on the part of the international community to respond to changing threats and conditions and which were conducive to continuing review and updating. The Delegates of Switzerland and Senegal agreed that preventive measures should fall within the purview of Annex 17 of the Chicago Convention.

Third Meeting
Commission of the Whole

Point No.3. Participation of States in the new instrument if they are not parties to the Montreal Convention of 1971

35. The Delegates of the United States, Switzerland and Senegal expressed their support for Article VI paragraph 2 as proposed by the Secretariat.

Point No.4. Implications of inclusion in the Protocol of "aircraft not in service at the airport"

36. The Delegate of the United States expressed her agreement with "aircraft not in service" being included in the Protocol. Regarding the specific proposals put forward by Austria and Italy, while her Delegation was inclined toward the simpler drafting solution, it would like to examine them more closely. A similar view was expressed by the Delegate of Switzerland.

37. Referring to the inclusion of aircraft not in service in the Protocol, the Delegate of Senegal felt strongly that there should be no such lacuna in the text as it would be difficult to fill it in later.

38. The Delegate of the Kingdom of the Netherlands did not agree with the proposal of the Delegate of Austria regarding the amendment of paragraph 2 bis of Article 5, because in the opinion of his Delegation, the inclusion in this paragraph of aircraft not in service would confuse the issue and amend the whole meaning of the Convention.

Paragraph 1 bis of Article 1

39. The Delegate of the United States endorsed the view of previous speakers that the existing text of paragraph 1 bis be followed as closely as possible. She reminded the Conference that the draft under consideration reflected the careful balance of differences of approach among all the States which had participated in this effort over the past year and her Delegation would be very reluctant to risk upsetting that balance by reopening this text.

40. Referring to the proposal put forward by the United Kingdom in VIA Doc No. 24, the Delegate of Switzerland remarked that even though the United Kingdom had identified a problem, his Delegation did not consider that the solution proposed was necessarily the best one since to refer to the intentions of the author of the act would introduce a subjective element, making the offence difficult to define. With regard to the second part of the United Kingdom's proposal, his Delegation feared that the introduction of critical zones in the airport would complicate the issue and supported the current wording of paragraph 1 bis which corresponded better to what was aimed at in the Preamble to the Protocol. Lastly, the Swiss Delegation would like the concept of "serious injury" replaced by "serious bodily injury". According to legal specialists in Switzerland, the courts tended to consider as injuries some visible injury to the surface of the body so that the effect of injury by substances such as toxic gases or radioactive material might need definition.

41. Referring to the text of paragraph 1 bis of Article 1, the Delegate of the Kingdom of the Netherlands remarked that the present qualifier was too broadly defined as it talked of safety at the airport. In his Delegation's view, this could include traffic safety or even safe conditions of labour. Therefore they supported the qualifier proposed by the United Kingdom in VIA Doc No. 24 insofar as it referred to the safe operation of the airport. His Delegation, however, was opposed to introducing the concept of design or, as proposed by the Delegation of Italy, the insertion of "aimed at" in the qualifier as this would introduce a subjective element, difficult to prove in a court of law.

(The meeting adjourned at 1630 hours)

THIS PAGE INTENTIONALLY LEFT BLANK

FIFTH PLENARY MEETING

(Thursday, 11 February 1988, at 1530 hours)

President: Mr. P. Kirsch

AGENDA ITEM NO.6: ELECTION OF THE VICE-PRESIDENTS OF THE CONFERENCE

1. On nominations by the Delegates of the United Kingdom, Tunisia, Venezuela, and India respectively, the following Vice-Presidents of the Conference were elected.

First Vice-President - Mr. Daniel K. Ameyo (Kenya)
Second Vice-President - Dr. Josef Sobieraj (Poland)
Third Vice-President - Mr. Zolkipli Abdul (Malaysia)
Fourth Vice-President - Mr. A. Sánchez Gutiérrez (Cuba)

2. The President welcomed the four Vice-Presidents to their office. Having completed Agenda Item 6, he declared the Fifth Plenary meeting closed.

THIS PAGE INTENTIONALLY LEFT BLANK

FOURTH MEETING OF THE COMMISSION OF THE WHOLE

(Friday, 12 February 1988, at 1000 hours)

Chairman: Mr. P. Kirsch

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT INSTRUMENT

1. After outlining the agenda of work for the Commission of the Whole's morning and afternoon meetings, The Chairman re-opened discussion of the issues on which Delegates had been invited to express their views.

Form of the new instrument

2. A number of Delegations added their support to the general agreement that the new instrument should take the form of a Protocol supplementary to the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

3. In response to a question raised by the Delegate of Colombia concerning ICAO's role as a depositary organ of the Protocol, the Director of the Legal Bureau replied that the established practice regarding depositary powers had several precedents including the Tokyo Convention of 1963 and the Guatemala Protocol of 1971, as well as numerous amendments to the Chicago Convention. Referring to the system of three depositaries devised in 1963 for the Convention on the Cessation of Nuclear Tests in the Atmosphere, on the Surface and on the Seas and its subsequent adoption at later conferences, he indicated that this system had been followed at the Montreal Conference of 1971 and that the draft Protocol presupposed the same system of depositaries.

Jurisdiction and extradition

4. The importance of maintaining the balance already established in the Montreal Convention between extradition and prosecution requirements was commented on by several Delegations. While a number of these shared the view that the text proposed in Article III did satisfy this requirement, the Delegate of Canada stated that his Delegation could not agree to a formulation which would give priority of extradition over prosecution. The Delegate of New Zealand also indicated that her Delegation would not be able to support any system of preference between prosecution and extradition or any priority listing of the States entitled to exercise jurisdiction.

5. The extension of jurisdiction to include the State of Registration and the State of the operator of aircraft not in service at the airport, if such aircraft were included in the protocol, was favoured by the Delegations of Canada, China, New Zealand, Pakistan and the Union of Soviet Socialist Republics. In this context, the Delegate of Canada agreed with those Delegates who considered that the existing text of Article 5, sub-paragraph 1 c) would as a result no longer be appropriate. The Delegates of the Federal Republic of Germany and New Zealand, referring to the consequential need to extend the

Fourth Meeting
Commission of the Whole

scope of Article 5, paragraph 2 bis, added their support to the drafting suggestion made the previous day by the Delegate of Italy.

6. Commenting on the proposed wording of paragraph 2 bis, the Delegate of Colombia suggested that its reference to the State mentioned under paragraph 1 a) be modified to repeat the expression "State in whose territory the offence was committed". The Delegate of Belgium, however, considered the inclusion of any reference, including the one proposed in the draft, as having too limiting an effect.

Preventive measures

7. The Delegate of the Union of Soviet Socialist Republics drew attention to his Delegation's proposal (VIA Doc No. 26) for including in the text of the new instrument a separate article containing more specific obligations for States in preventing acts of violence at airports serving international civil aviation. In his view, the current provisions of Article 10, paragraph 1 of the Montreal Convention were of too general a nature and did not offer clear guidance to States, while the more detailed recommendations of Annex 17 did not carry the force of obligations. The specific preventive measures proposed by his Delegation included the presence of duly authorized and trained officers responsible for ensuring security at an airport serving international civil aviation; the holding of regular inspections and continuous monitoring of aviation security measures by forces of national bodies of the State in which the airport was located; and the establishment of rules to prevent the unauthorized access to the air side and to other areas of vital importance to the operation of the airport.

8. While the Delegations of Poland and the German Democratic Republic favoured the inclusion of provisions related to preventive measures, the majority was not convinced of the desirability of including these, preferring to see the responsibility for preventive measures remain within individual States. Several Delegates expressed the view that the subject was adequately covered by Article 10 of the Montreal Convention, and that specific technical measures should remain within the ambit of Annex 17 to the Convention on International Civil Aviation, the Standards of which, as was pointed out by the Delegate of Belgium, were more than recommendatory in nature and required adherence by ICAO Contracting States. The Delegate of Ethiopia reiterated his concern with respect to the implementation difficulties which mandatory provisions would bring about in a number of States, and emphasized the need for technical assistance to be provided in this area. It was his hope that the Conference would produce a statement or resolution to this effect. The possibility of adopting a resolution on the subject of preventive measures was also commented upon favourably by a majority of Delegations.

Participation by States not parties to the Montreal Convention

9. It was generally agreed that participation in the Protocol by these States should be linked with ratification of the Montreal Convention. A number of Delegations considered that since the two would be read and interpreted as a single instrument, participation in the Protocol should automatically have the effect of participation in the Convention. States not party to the Convention would therefore be able to adhere to it through ratification of the Protocol.

The Delegate of the Federal Republic of Germany, however, preferred a reformulation of Articles VI and VIII which would require such States to deposit two separate instruments of accession. The Delegate of Canada emphasized the importance of adopting a formulation which would neither affect the ratification process of the Convention in a negative way, nor discourage States from participating in the Protocol.

Aircraft not in service at the airport

10. Although a majority of Delegations were in favour of including this concept under paragraph 1 bis, sub-paragraph b), the Delegate of Finland stated that he shared to some extent the hesitations expressed by the Delegate of Jamaica, and the Delegate of Mexico suggested an alternate wording which would avoid making reference to aircraft not in service. The Delegate of Canada, while willing to accept the inclusion of the term, pointed out that it could be interpreted in two ways: to mean either any aircraft located at an airport serving international civil aviation other than an aircraft to which the Montreal Convention would apply, or an aircraft to which the Montreal Convention would apply, except that such aircraft was beyond the time-frame set out by the Convention. He suggested the Drafting Committee develop a text which would clearly define the term; this suggestion was supported by the Delegates of Belgium, Finland and New Zealand.

Paragraph 1 bis

11. When addressing the question of whether the text of paragraph 1 bis should refer to possible methods employed by an offender, a number of Delegations expressed doubts on the inclusion of the qualifying phrase "using any device, substance or weapon". Although the Delegate of Canada indicated that a more precise formulation could not accommodate the different requirements of various legal systems, it was the opinion of the Delegate of the Republic of Korea that the proposed wording could have the effect of allowing for unlawful acts committed without the use of such means. This view was shared by the Delegates of Ethiopia and Mexico, as well as the Delegate of Colombia, who was in favour of deleting the phrase if a complete list of all means used could not be incorporated in the text. A listing of offences and means was strongly objected to by the Delegates of Finland and Spain, who considered such an enumeration as potentially dangerous. The Delegation of New Zealand wished to place on the record its support for those Delegations which had called for the addition of the words "or any other means" to this phrase.

12. The subject of whether or not external air navigation facilities should be included within the scope of paragraph 1 bis was commented on by a number of Delegates. The Delegate of Spain, when discussing the legal interests to be protected in the application of jurisdiction, considered that the protection of air services should be recognized as the primary interest, and in this context he advocated a functional approach which would include radio navigational aids and other facilities essential to the safety of air traffic. The Delegate of Poland favoured the inclusion of facilities located outside the airport in addition to aircraft not in service and communication of forced intervention. The Delegate of Colombia suggested an alternative text for paragraph 1 bis, sub-paragraph b) which would read "destroys or seriously damages the facilities or services of an airport," and which would delete the

Fourth Meeting
Commission of the Whole

reference to disruption of services in the final portion of this sub-paragraph. This re-wording was suggested in order to align the text of the Protocol with that of the Convention, which differentiated between facilities and services, and also to reflect concerns expressed by Delegates for the inclusion of services and facilities pertinent to the airport.

13. There was some discussion on the question of whether the concept of threat should be included in the text of the Protocol. Whereas the Delegates of Colombia, Ethiopia and Poland agreed that the threat of an act of violence should be included since it could seriously disrupt the services of an airport, the Delegate of the Federal Republic of Germany expressed hesitation over the inclusion of a term which he considered not sufficiently precise and covering too broad a scope to be practical. The Delegate of Mexico did not see the need to explicitly refer to threat, since it was implicitly included as an offence leading to the serious disruption of airport services. The Delegate of Finland drew attention to the importance of maintaining a distinction between those offences to be included in the protocol and offences to be left to domestic legislation.

14. The Delegate of Finland referred to his Delegation's proposal presented at the 26th Session of the Legal Committee to further qualify the term "airport serving international civil aviation," appearing in paragraph 1 bis, in order to limit the application of the new instrument to the operations and uses of international civil aviation. In this respect, his Delegation was now willing to concede to the majority opinion that the present wording sufficiently covered the concept.

15. A number of Delegations were also in favour of the deletion of the qualifying phrase which read "if such an act endangers or is likely to endanger safety at that airport." While the Delegate of Colombia wished to see the expression "or is likely to endanger" omitted because of its subjective nature, the Delegate of Ethiopia viewed the phrase as redundant to the substance of paragraph 1 bis and the Delegate of the Republic of Korea proposed its deletion in the interest of clarity. The Delegate of the Federal Republic of Germany expressed preference for what he considered to be the more precise wording suggested the previous day by the Delegate of Italy.

16. When addressing the question raised at earlier meetings of whether intent should be considered the determining factor, the Delegates of Canada, Finland and Pakistan maintained that the consequences of a particular act should be the only consideration, and that the concept of intent should be limited to the intention necessary to commit the offence as provided in the introductory words of paragraph 1 bis. The Delegate of Canada further indicated that the introduction of intention with respect to the consequences on safety at an airport would not only involve motive, a concept not appropriate to the Montreal Convention, but would also oblige prosecuting authorities to prove double intention.

17. The Chairman suspended further discussion of these issues by the Commission of the Whole to the afternoon meeting.

(The meeting adjourned at 1230 hours)

FIFTH MEETING OF THE COMMISSION OF THE WHOLE

(Friday, 12 February 1988, at 1400 hours)

Chairman: Mr. P. Kirsch

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT INSTRUMENT

1. The Commission of the Whole completed its discussion of the issues on which Delegations had been invited to express their views.

Form of the new instrument

2. The Delegates of Ecuador and Costa Rica indicated their agreement with the form which the new instrument would take, as a protocol supplementary to the Montreal Convention. The Delegate of Ecuador further considered that the Protocol should only apply when an individual who had committed an offence was present in a State other than the State in which the offence took place.

Jurisdiction and extradition

3. The Delegates of Ecuador and Costa Rica added their support to the general opinion that the balance between extradition and prosecution requirements in the Montreal Convention should be respected. The Delegate of India, recalling the discussion of this issue at the 26th Session of the Legal Committee in which his Delegation had made certain concessions in the interest of maintaining this balance, considered the proposed text for Article III of the Protocol to be satisfactory. Commenting also on the proposals for extending the scope of jurisdiction to include the State of Registration and the State of the operator of aircraft not in service at the airport, the Delegate of India expressed some hesitation over the adoption of provisions which would allow for concurrent jurisdictions by a number of States. The Delegate of Argentina, elaborating on the nature of the term "jurisdiction" and its application in the Protocol, outlined the advantages and disadvantages associated with the establishment of either multiple or single jurisdiction, and stated his Delegation's support for the formulation proposed in Article III of the draft Protocol.

Preventive measures

4. The Delegate of Ecuador considered it desirable for the Conference to formulate a Recommendation for the adoption of such measures by States. The Delegate of Costa Rica, while of the opinion that this subject was adequately covered in Article 10 of the Montreal Convention, also supported the adoption of a Resolution which would emphasize the importance of implementing preventive measures.

Fifth Meeting
Commission of the Whole

Participation by States not parties to the Montreal Convention

5. The Delegate of Ecuador agreed that participation in the Protocol should imply ratification of the Montreal Convention, and suggested a formulation similar to that established in Article XXIII of The Hague Protocol to the Warsaw Convention of 1929. The Delegate of Costa Rica wished to be associated with the view that ratification of the Protocol by States not party to the Convention should imply automatic adherence to that Convention. The Delegate of Italy preferred a formulation which would require States not party to the Convention to deposit two separate instruments of accession, and suggested an alternative text for the second paragraph of Article VI which would read: "Ratification of this Protocol by any State which is not a Party to the Convention shall not have any effect unless the ratifying State also accedes to the Convention." A similar modification would apply to the second paragraph of Article VIII.

Aircraft not in service at the airport

6. The Delegates of Ecuador and Costa Rica both supported the inclusion of the concept of aircraft not in service in the provisions of paragraph 1 bis; the Delegate of Ecuador also favoured the inclusion of facilities located outside the airport. The Delegate of Japan considered that the inclusion of aircraft not in service would necessitate the amendment of Article 4, paragraphs 3 and 4 in the Convention to ensure compatibility with its Protocol.

Paragraph 1 bis

7. When addressing the question of whether reference should be made in paragraph 1 bis to possible methods employed by an offender, the Delegates of Ecuador and Costa Rica agreed with those Delegations which had objected to any listing of possible offences and means. The Delegate of Italy, referring to the difficulties expressed by Delegations on the inclusion of the qualifying phrase "using any device, substance or weapon", supported the suggestion made to include the words "or any other means" as a way to alleviate these difficulties. The Delegate of Italy also commented on the hesitations expressed by the Delegation of France concerning the use of the word "disrupts" in sub-paragraph b). While the Delegation of Italy was not in favour of the suggested alternative "interrupt," a term which it interpreted to mean a complete break in services, a less absolute "interrupts in whole or in part" would be acceptable.

8. The proposal to include a definition of "airport serving international civil aviation" was referred to by the Delegate of Ecuador, who did not consider such an inclusion advisable for the time being in view of the difficulties involved in covering all possible elements within a single definition. The Delegate of Italy also preferred to see the term remain without further specification.

9. Turning to the issue of whether threat should be incorporated in the Protocol, the Delegate of Ecuador favoured the inclusion of this concept as a separate offence distinct from the attempt to commit an unlawful act. The

Delegate of Japan, however, indicated that there were no provisions covering threat in the Montreal Convention, and maintained that while the provisions of paragraph 1 bis, sub-paragraph b) would apply to those threats which disrupted the services of an airport, other acts of threat did not need to be covered in the Protocol.

10. Referring to other items, the Delegate of Japan commented on the suggestion that terrorist activities be referred to in the text of the preamble. In this respect, the Delegation of Japan did not consider the term "terrorism", with its various implications, to be appropriate to the Protocol.

11. The Delegate of Italy queried what appeared to be a drafting inconsistency between the title of the instrument which read "Draft Protocol to Amend the Convention ..." and the third preambular clause which stated "Considering that it is necessary to adopt provisions additional to those of the Convention ..."; and further noted that the reference, under Article II of the Protocol, to paragraph 2(a) of the Convention should specify that this paragraph was located under Article 1. The Delegate of Italy also suggested the deletion of Article IX, which referred to denunciation of the Protocol, and which did not appear consistent with the nature of the Convention and its Protocol as being a single instrument.

12. There were no further speakers wishing to comment on the items under discussion. The Chairman, in summarizing the main points which had emerged from this debate, indicated that the matters discussed by the Commission of the Whole could be divided into three categories, each requiring a different approach.

13. The first category outlined by the Chairman comprised four items on which an acceptable level of agreement had been reached, and for which drafting of final provisions could commence. These items included the form which the instrument should take, as a Protocol supplementary to the Convention; the linking of participation in the Protocol with ratification of the Convention itself; the agreement to not include a definition of an airport serving international civil aviation; and the inclusion of aircraft not in service in the provisions of paragraph 1 bis. The second category, requiring detailed examination and some drafting work, included the title, preamble and final provisions of the Protocol. The third category, whose items required further discussion by the Commission of the Whole, included jurisdiction and extradition; preventive measures; and certain parts of paragraph 1 bis, in particular the question of the intent of the offender to disrupt services or endanger safety of the airport. On this last item, the Chairman reminded Delegations of the work already done by the Legal Committee in the development of the proposed paragraph 1 bis, the text of which reflected considerable efforts to reach a compromise.

14. The Chairman then informed the Commission of his intention to establish a Drafting Committee which would commence work on the final provisions. The Commission of the Whole would address the three remaining items on its work programme, beginning with paragraph 1 bis and the issue of intent; followed by jurisdiction and extradition; and lastly preventive

Fifth Meeting
Commission of the Whole

measures. He requested the Executive Secretary to read the list of Delegations which were being proposed for nomination to the Drafting Committee, following consultations between the President and Vice-Presidents of the Conference and with the co-operation of the President of the ICAO Council and members of its Secretariat. The list, to be approved by the Conference in accordance with Rule 5 of the Rules of Procedure (VIA Doc No. 2), comprised twenty-two States which included, in English alphabetical order, Argentina, Austria, Bulgaria, China, Egypt, Federal Republic of Germany, France, India, Islamic Republic of Iran, Jamaica, Japan, Kingdom of the Netherlands, Norway, Peru, Senegal, Spain, Tanzania, Tunisia, Union of Soviet Socialist Republics, United Kingdom, United States and Venezuela.

15. Before adjourning the meeting, the Chairman asked Delegations if there were any questions on the proposed programme of work. In response to a question raised by the Delegate of Niger concerning a proposal made by his Delegation for the French text of paragraph 1 bis, as well as a request for clarification from the Delegate of the Islamic Republic of Iran on ICAO's role as a depositary organ of the Protocol, the Chairman indicated that these matters would be dealt with in the Drafting Committee. The meeting was then adjourned in order to convene the fifth meeting of the Plenary.

(The meeting adjourned at 1545 hours)

SIXTH PLENARY MEETING

(Friday, 12 February 1988, at 1545 hours)

President: Mr. P. Kirsch

Establishment of a Drafting Committee

1. At the invitation of the President, the Executive Secretary read the list of Delegations proposed for the establishment of a Drafting Committee which would begin working on the final provisions of the protocol. The list comprised twenty-two States which included, in English alphabetical order, Argentina, Austria, Bulgaria, China, Egypt, Federal Republic of Germany, France, India, Iran, Jamaica, Japan, Kingdom of the Netherlands, Norway, Peru, Senegal, Spain, Tanzania, Tunisia, Union of Soviet Socialist Republics, United Kingdom, United States and Venezuela.

2. The Delegate of the Union of Soviet Socialist Republics, while expressing agreement with the proposal for a drafting committee as well as with its composition, requested clarification on the factors which had been taken into account in selecting States for the group. The President replied that the list of Delegations proposed for the Drafting Committee had been established taking into account several factors, including those of language and geographic region, as well as extensive consultations. The Drafting Committee, thus established, was called upon by the President to hold its first meeting immediately after the plenary meeting to discuss the organization of its work.

General Statement by the Delegation of the Democratic People's Republic of Korea

3. The Delegate of the Democratic People's Republic of Korea, whose Delegation had been unable to participate in the general debate of earlier plenary meetings, congratulated the President and Vice-Presidents on their election. His Delegation had come to the Conference in a spirit of co-operation and hoped to participate actively in its work, and in this respect would be prepared to sign the instrument under consideration at the conclusion of the Conference. Making reference to the subject of preventive measures, he emphasized the importance of implementing such measures and of eliminating the causes of unlawful acts at international airports, since it was his Delegation's view that the draft instrument should include specific obligations for States in this area.

4. The Delegate of the Democratic People's Republic of Korea then expressed his Delegation's great dismay with comments made during the general discussion by the Delegation of the Republic of Korea on the subject of an incident involving Korean Air Flight 858 on 29 November 1987. While he did not believe that this subject was appropriate for discussion at the Conference, he

Sixth Plenary Meeting

did wish to refute the allegations made by the Delegation of the Republic of Korea with respect to his State's involvement in the incident. He said that as for the KAL incident his Government had already rejected the "results of investigation" made public by the South Korean rulers as a fabrication full of lies, deception and contradiction. Maintaining that no material evidence had to date been produced to support these allegations, the Delegate of the Democratic People's Republic of Korea stated that in the absence of wreckage or flight recorders, any claims made by the Republic of Korea would remain unsubstantiated. He strongly questioned the accuracy of a number of details given by the Republic of Korea, including those related to the site of the incident, the identities and roles of the alleged offenders, and the means by which the alleged offence had been committed. The Delegate of the Democratic People's Republic of Korea said that the propaganda department of the Central Committee of the National Democratic Front of South Korea had branded the KAL incident as a self-made drama of the gang of Chon Doo Hwan and Roh Tae Woo and disclosed the true colour of it on the basis of reliable information obtained by the organization.

5. The Delegate of the Republic of Korea intervened on a point of order and objected to the discussion of an issue which in his Delegation's view was not on the agenda of the Conference.

6. Following a request from the President to resume his general statement on the understanding that he confine it to the agenda of the Conference, the Delegate of the Democratic People's Republic of Korea pointed out that reference to the Korean Air Flight 858 incident had first been made by the Delegation of the Republic of Korea during the general discussion, and that his Delegation was now obliged to exercise the right of reply. He then further elaborated that the "South Korean habitual liars had advertised as his Government's deeds the Kim Dae Jung kidnap case, the August 15th shooting incident of the former dictator, the explosion at the Kimpo Airport and the kidnap operation of a secretary of the South Korean Embassy in Lebanon." He then started to elaborate on his own Delegation's interpretation of the incident as it related to past conflicts between the two States.

7. A second point of order was raised by the Delegate of Chile who stated that since the right of reply had now been duly exercised by the Delegation of the Democratic People's Republic of Korea, it was his opinion that Rule 10 of the Conference's Rules of Procedure in VIA Doc No. 2 should be applied. The President accepted this point of order and insisted that further remarks be restricted to the subject at hand.

8. The Delegate of the Democratic People's Republic of Korea concluded his general statement by emphasizing the need for a clarification of the causes behind the Korean Air Flight 858 incident before the issue was discussed any further. It was his Delegation's view that the international community should condemn all acts of terrorism as well as any efforts made to shift the responsibility for such acts on others.

9. In response to the statement made by the Delegation of the Democratic People's Republic of Korea, The Delegate of the Republic of Korea wished to defend the statement made earlier by his Delegation on the subject of the Korean Air Flight 858 incident.

10. The Delegate of Bulgaria intervened with a third point of order. He wished to associate himself with the point of order raised earlier by the Delegate of Chile, and appealed to the President to maintain his ruling.

11. The President adjourned the meeting.

(The meeting adjourned at 1558 hours)

THIS PAGE INTENTIONALLY LEFT BLANK

SIXTH MEETING OF THE COMMISSION OF THE WHOLE

(Monday, 15 February 1988, at 1000 hours)

Chairman: Mr. P. Kirsch

1. Prior to resuming discussion on the Commission's work, the Chairman invited members of the Credentials Committee to make their report as soon as possible. The Czechoslovak Delegation had also requested membership in the Drafting Committee; there were no objections.

2. The Chairman outlined the three items which were to be discussed in the Commission of the Whole as agreed upon at Friday's meeting. These were:

- last line of paragraph 1 bis of the draft Protocol
- questions regarding jurisdiction and extradition
- preventive measures

3. The Chairman summarized the discussions on paragraph 1 bis from the previous session, noting in particular the new element raised in respect of the last line, i.e. whether or not it was necessary to consider, as an essential element in the definition of the offence, the intent of the offender to endanger safety at the airport. Realizing the difficulty in discussing this clause in isolation, the Chairman invited remarks on the whole of paragraph 1 bis but asked that comments be directed particularly to the last line. Three basic proposals (i.e. deletion, amendment or preservation of existing text) had already been introduced. The floor was then opened for comments.

4. The Delegate of the United Kingdom stressed the importance of having a suitable qualifier, the absence of which, it was felt, would endanger acceptance and ratification by many States. As the existing qualifier was considered too wide, two possibilities were suggested. The Drafting Committee could prepare a paragraph for the Preamble stating that the primary purpose of the Instrument was to deal with terrorism. It could also attempt to improve the existing qualifier taking, as the criterion, the actual consequences of the act, (emphasizing the causing of terror or alarm among the public) rather than the intention of the act.

5. The Delegate of Argentina supported the proposal made by the United Kingdom Delegation in VIA Doc No. 24, particularly the suggested paragraph on page 2 which referred to the intent of the offender and the consequences of his act of violence as well as providing a definition of the airport. He agreed with the existing text of paragraph 1 bis, but wished the report to reflect his views on the act of violence. As he felt that the principal goal of the offender was to produce an effect of fear, there was a need to include the intent of the offender and he believed that the subjective aspect of the act of violence should be more precisely formulated. The Delegate stressed that, thus far, no definition had been given for "an act of violence" nor clarification on

Sixth Meeting
Commission of the Whole

the scope of the offence and believed that this would eventually cause difficulties in interpretation for all Contracting States.

6. The Delegate of Chile agreed that the wording of paragraph 1 bis in its present formulation was the most appropriate. He believed that the element of intent was basic and essential. The fundamental element was the fact that it endangered or was likely to endanger safety at an airport serving international civil aviation; for this reason Chile previously had proposed adding the word "threat" to commit these offences. Therefore, at the Legal Committee, Chile had not seen the need for an enumeration of means used to commit the offence.

7. As in the case of Czechoslovakia, Chile asked to be included in the Drafting Committee. There were no objections.

8. The Delegate of Venezuela supported existing paragraph 1 bis. He expressed great interest in VIA Doc No. 24 as he also felt that the incorporation of intent was essential. However, he did not agree with defining an airport as it had been Venezuela's understanding that there was no necessity for that in this Protocol. The Chairman reaffirmed this point.

9. The Delegate of Venezuela proposed that the qualifier could be clarified to refer to intent even though this was reflected in the introduction to paragraph 1 bis and suggested deletion of the phrase "or is likely to endanger" (as was submitted by Peru at an earlier meeting). As the offences must be serious and of such a nature to justify international jurisdiction, Venezuela could not support inclusion of the word "threat".

10. The Delegate of Greece supported paragraph 1 bis elaborating that it adequately focused on four main elements which would qualify the acts as international in character and thus prohibit undue extension of the scope of the article:

- the act must be performed at an airport serving international civil aviation
- the act must in fact or potentially cause either serious injury or death to persons or destruction of or damage to facilities at the airport
- the act must be unlawful and intentional
- the act must endanger, or be of such a nature as to endanger, safety at the airport.

11. The final element was viewed as the most important. The Delegate of Greece considered that the element of intention was already included in the expression "unlawfully and intentionally" and adding a double intent or the cause of terror as additional criteria would create difficulties.

12. The Delegate of Madagascar stated that, although a general consensus had been reached on the definition of acts of violence in relation to this Protocol, an acceptable criterion to identify those which fell under the scope of the Instrument and those which fell under the sovereignty of the State of occurrence was still lacking. He pointed out that this criterion could not be

based on the nationality of offender or victim or place of occurrence; nor solely on the consequences of the act. Premeditation, although it had shortcomings, would be one good means of differentiation in principle. However, the intent of the offender was an important element to be considered. The Delegate of Madagascar suggested that the meeting should look at objective (i.e. the consequences, either real or designed) and subjective criteria (i.e. intent of the offender). This latter intent was different from the intent in line 2 of paragraph 1 bis, which referred to full mental capacity without which an individual could not be held criminally responsible. In order to clarify this point, the Delegate of Madagascar therefore favoured the wording already suggested by the United Kingdom Delegation, "if such act is designed to endanger." The deletion of the enumeration of the means used to commit the offence was also proposed.

13. The Delegate of Canada found the whole of paragraph 1 bis acceptable and supported the comments made by the Delegate of Greece. He believed that paragraph 1 bis contained the elements of the offence and of the application of the Protocol, stressing that there already existed the three requirements for the act to be subject to the Instrument. These are that the act must have been committed using a device, substance or weapon; it must have been committed against a person at an airport serving international civil aviation and it must endanger or be likely to endanger safety at that airport. The text also sufficiently met the requirement to avoid the application of the new Instrument to private acts of violence. Canada could not agree to the suggestion made to add the words "causing alarm or terror in the minds of persons" as it would introduce the concept of motives to the act (which was not present in the Montreal Convention).

14. The Delegate of Poland pointed out that endangering safety at an airport was only one of the possible consequences of a violent terrorist act; other possible consequences, i.e. causing public fear or disorder, could be included in the qualifier phrase. Consequently, the Delegate of Poland proposed an amendment to be considered by the Drafting Committee as follows: in the last qualifier phrase after "if such an act endangers or is likely to endanger safety", add the words "or otherwise produces or is likely to produce public fear at that airport."

15. The Delegate of the United States supported existing paragraph 1 bis. The underlying question was whether a sufficient or correct threshold for making the offence an international one had been articulated. In relation to the new element of intent, she felt this would result in a double intent requirement which the Delegation of the United States opposed. The sentiments expressed, particularly by the Delegates of the United Kingdom and Poland, that consequences rather than intention should be the focus if the qualifier were to be altered were supported, and she complimented the Delegate from Greece for her analytical remarks. Two observations were made. In international law, an instrument was to be interpreted in the light of its object and purpose. As the purpose of the Conference was to enhance the international legal regime for combating acts of severe violence that endanger safety at airports, the Delegate of the United States felt it more appropriate to clarify these intentions in the Preamble rather than in the last line of paragraph 1 bis. The Delegate of the United States also cautioned against

Sixth Meeting
Commission of the Whole

defining "terrorism" in legally binding terms because of its inherent difficulties. She pointed out that the qualifier already elaborated sufficiently on the point that the Protocol was not dealing with every act of violence at an international airport.

16. Both the Delegates of Kenya and Japan supported paragraph 1 bis in its present formulation. The Delegation of Kenya shared the views expressed by Greece, Canada and the United States that there was no need for double intention (i.e. intent to commit and intent to endanger).

17. The Delegate of Australia stressed the importance of the consequences of the offence as set out in parts a) and b) of paragraph 1 bis. Australia would not support double intention or double consequence in the qualifier, nor agree to inclusion in the qualifier or the Preamble of any specific reference to terrorism or to causing public alarm or fear.

18. The Delegate of Colombia agreed with the existing wording of paragraph 1 bis. He felt it would be worthwhile to amend the first preambular paragraph, as proposed by the Delegate of the United Kingdom, to stress that it was not every act of violence but terrorist violence at airports serving international civil aviation. The Delegate of the Islamic Republic of Iran supported the existing text of paragraph 1 bis, although he would agree to minor changes to remove any ambiguity regarding consequences of the violent act, for example, instead of "safety" add "endanger the safe operation of an airport." The Delegate of Malta accepted paragraph 1 bis but felt that the qualifier still lacked sufficient precision to avoid ambiguity regarding the intention of the offender.

19. The Delegate of France stated that, even though the original objective of the Protocol had been to suppress terrorist acts defined by both the intent of the offender and the consequences of the act, he felt that paragraph 1 bis (in particular the last line) was not the best place to express this concern. He too felt the qualifier should remain unchanged; however, he had no objection to an amendment to the Preamble, allowing the concerns expressed by the United Kingdom Delegation to be considered.

20. The Delegate of the Kingdom of the Netherlands felt that the scope of the Protocol would have to be wide enough to encompass acts of terrorism at airports but restricted enough not to encompass ordinary crimes. He was not in favour of double intent but expressed interest in the proposal to amend the wording of the Preamble. He also supported the idea of more precise wording to the text of the draft Protocol.

21. The Delegate of Pakistan agreed with existing paragraph 1 bis but not with the inclusion of double intent. He felt that the present text automatically excluded private acts of violence which did not endanger safety at an airport.

22. The Delegate of Norway had supported, during the initial debate in the first week of the Commission of the Whole, the strengthening of the qualifier by focusing on the intent of the offender. After careful reflection on the debate, he was now convinced that the qualifier should remain

unchanged. If this intention needed clarification, he supported amending the Preamble. The Delegate also favoured deletion of "device, substance or weapon".

23. The Delegate of Denmark also supported existing paragraph 1 bis but expressed interest in an amendment to the Preamble, clarifying that the Protocol dealt with terrorist acts. He suggested adding words such as "designed to cause terror" after the words "unlawful acts of violence" in the first and third preambular paragraphs.

(The meeting adjourned at 1230 hours)

THIS PAGE INTENTIONALLY LEFT BLANK

SEVENTH MEETING OF THE COMMISSION OF THE WHOLE

(Monday, 15 February 1988, at 1400 hours)

Chairman: Mr. P. Kirsch

1. The Commission resumed its consideration of the last line of paragraph 1 bis, with the Delegate of Italy taking the floor. He favoured retention of paragraph 1 bis as presently formulated. The element of intent was well formulated in the beginning of paragraph 1 bis and already included the concerns expressed by several Delegates who had suggested amending the last line of paragraph 1 bis. The inclusion of a reference to terrorism in this paragraph would not be acceptable although he would consider its incorporation into the Preamble.

2. The Delegate of China shared the views expressed by the Delegates of Greece and Canada and favoured retention of the existing text. The Delegate of Iceland, referring to the interventions by the Delegates of the United Kingdom and Colombia, could not accept the inclusion of double intent. In addition, he was opposed to adding the element of threat.

3. The Delegate of Malawi concurred with the comments of the Delegate of the United States regarding the purpose of the Conference and the clarification of the intentions in the Preamble rather than in paragraph 1 bis. In support of the comments made by the Delegate of the United Kingdom in reference to terrorism, the Delegate of Malawi also favoured amending the Preamble of the draft Protocol. A second approach would be to exclude from extradition criminal acts which were not terrorist acts. He felt that the international character of the unlawful acts was already clearly emphasized in Preambular paragraph 1 and that, if the suggestions of the Delegate of the United Kingdom were adopted, it would only reemphasize this point. Therefore, he suggested the formulation of an additional paragraph in the Preamble as follows: "CONSIDERING further that the adoption of the appropriate measures should only extend to those unlawful acts of violence with character which go beyond the scope of the existing national jurisdiction of the authorities in whose territory they are committed and that co-operative measures are necessary to deal with such acts,". As the Delegate of Malawi could not agree to the incorporation of a definition of terrorism, even in the Preamble, this would be avoided by the above inclusion.

4. The Delegate of Ethiopia added his support to the majority view by accepting existing paragraph 1 bis, the reasons for this having already been clearly enumerated by the Delegates of Greece, Canada and others. The concept of terrorism was felt to be already adequately reflected. The Delegate of Finland also supported the present wording of paragraph 1 bis, mentioning specifically the comments made by the Delegations of Norway, Denmark, Greece and Canada. Additional proposals regarding the Preamble would nevertheless be considered.

Seventh Meeting
Commission of the Whole

5. The Delegate of Cuba, referring to the elements of the offence, favoured retention in the body of the Protocol of the subjective elements relating to intent and threat. However he felt that defining terrorism could best be taken up in some other forum even though he would agree to its mention in the Preamble. Some of the formulations in the resolutions adopted by the General Assembly of the U.N. (particularly A40-61) and the resolution adopted last year in Doc. 40-834 were suggested as guidance.

6. The Delegate of Sweden endorsed the existing qualifier. Although he could identify with the ideas presented by the Delegate of the United Kingdom, he was not clear what new wording for the qualifier was actually being proposed. He felt that some discrepancy existed between this new wording, as he understood it, and the wording in VIA Doc No. 24. He was not opposed to amending the Preamble to emphasize the terrorism aspect but stressed that the qualifier must remain, whether the Preamble was amended or not. Attempting to define terrorism at this Conference would, in his opinion, be unsuccessful. It was pointed out that the question of threat in paragraph 1 bis had not been included as one of the three items to be discussed in the Commission of the Whole. As this topic had been referred to by many Delegations (including Sweden) in their initial statements, he hoped that it could be taken up at a later stage or in the Drafting Committee.

7. The Chairman stated that all proposals made previously on other parts of 1 bis had not been overlooked. All other issues could be referred to the Drafting Committee but the qualifier, in particular the question of intention, deserved more debate in the Commission of the Whole because it was the subject of new proposals which had not been discussed in the Legal Committee.

8. The Delegate of Romania supported paragraph 1 bis in its present formulation. He did however favour deletion of the words "serious" and "seriously" as it was felt that the important element was injury and the safety of the airport, not the seriousness of the damage or injury, thereby making it consistent with the Montreal Convention.

9. As no other Delegations wished to have the floor, the Chairman summarized the discussions. The majority of Delegations favoured a qualifier at the end of paragraph 1 bis. As well, he noted that the positions of many Delegations had changed somewhat; initially discussions began due to the need to examine whether the intent of the offender to jeopardize the safety of an airport should be an essential part of the definition of the offence. After discussions, however, most Delegations did not want this element of intent added to the final part of paragraph 1 bis. Some Delegations favoured adding an objective element to indicate that the effect of the offence was to cause terror or alarm to the public. Two approaches were suggested. The first, to add a new qualifier to the end of paragraph 1 bis referring to the terror-causing effect of the offence, created difficulties for some Delegations. The second approach, to amend the Preamble to clarify this effect, appeared to offer more flexibility although not all Delegates had agreed. The discussions held so far should provide enough guidance to the Drafting Committee to begin work on paragraph 1 bis as a whole, and to prepare text for submission to the Commission of the Whole with a view to its eventual adoption. He suggested that this part of the Protocol should now be referred to the Drafting Committee.

10. The Delegate of the United Kingdom suggested that the third "Considering" clause in the Preamble to the IMO's draft Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation could be examined by the Drafting Committee with a view to strengthening the second "Considering" clause of the Draft Protocol. He suggested the wording "Considering that the world-wide escalation of acts of terrorism is a matter of grave concern".

11. The Delegate of Venezuela had understood that most Delegations favoured retention of paragraph 1 bis unchanged, with an amendment to the Preamble if considered necessary. For this reason, he asked for clarification on whether the Preamble was to be sent to the Drafting Committee.

12. The Chairman felt that enough debate had been carried out on paragraph 1 bis to refer it to the Drafting Committee. However, as one of the proposals made in connection with paragraph 1 bis was an amendment to the Preamble, that part of the Preamble relating to paragraph 1 bis would also fall within the Drafting Committee's mandate. As the IMO Convention had been drafted after the Montreal Meeting of the Legal Committee, it could be referred to the Drafting Committee for consideration.

13. Turning to the second item before the Commission of the Whole, i.e. Jurisdiction and Extradition, the Chairman summarized two points which had already been raised; the existence of paragraph 2 bis in the Protocol and the decision to include a reference to aircraft not in service located at the airport. Some ideas had also been raised in the general debate and the Chairman felt these should now be developed. During discussion in the Commission of the Whole the Delegate of Italy had mentioned his intention to submit a document on jurisdiction and extradition. As this text was not yet available in all languages, the Executive Secretary was asked to read the text.

14. The Executive Secretary commented that this text, presented at the Third Meeting of the Conference, amplified on the proposal of Austria, i.e. that there was no need for a new paragraph 2 bis as all necessary amendments could be inserted into the existing paragraph 2 of Article 5 of the Montreal Convention, recognizing that reference must be made not only to extradition to a State mentioned in paragraph 1 (a) but also to paragraphs (b) and (d) in case reference to aircraft not in service was included. New paragraph 2 of Article 5 of the Convention should read:

"2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraphs 1 (a), (b) and (c), in Article 1, paragraph 1 bis and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article."

15. The Delegate of Italy stressed that the only change to the existing paragraph 2 of Article 5 of the Montreal Convention was the addition of a reference to paragraph 1 bis of Article 1.

Seventh Meeting
Commission of the Whole

16. The Chairman confirmed the Delegate of Finland's understanding that, in consideration of any proposal, the Commission was using the existing wording of paragraph 1 bis. As to a definition for aircraft not in use, he commented that, during the first debate of the Commission of the Whole, all Delegations had accepted that aircraft not in service or an equivalent concept would be included in the Article.

17. The Delegate of India stated that the implications of the proposal were that the provision in Article 5 regarding jurisdiction and extradition would be the same for all offences found in the Montreal Convention and offences which would be added as a result of this Protocol. Although the proposal had certain merits in that the provisions of the Protocol would be consistent with the existing Montreal Convention, he felt that it would not recognize the specific nature of the offence being considered at this Conference, i.e. those offences committed at an airport. The Legal Committee draft made quite clear the distinction between those offences committed at an airport and those dealing with aircraft in flight and he felt this distinction would be lost and therefore would be unacceptable if the Delegate of Italy's proposal were accepted. He also reiterated that the inclusion of aircraft not in service (or a similar concept) was essential.

18. The Delegate of Belgium had no objection in principle to the proposal but felt that the offence covered in sub-paragraph (d), paragraph 1 of Article 1 of the Montreal Convention would be excluded from a State's obligation to establish its jurisdiction; he did not view this as a logical course of action.

19. The Delegate from Malawi felt that the inclusion of aircraft not in service brought up new dimensions not previously considered. The Montreal Convention had addressed the issue of extradition and jurisdiction, making the place of commission of the crime irrelevant. However, this Protocol had the distinct feature that the offences were localized. Article 5, paragraph 1 of the Montreal Convention established the basis for jurisdiction by identifying the circumstances which would entitle a Contracting State to exercise jurisdiction and by limiting the granting of that jurisdiction by not making offences under Article 1 (d) and (e), subject to jurisdiction or extradition. Article 5, paragraph 3 of the Montreal Convention recognized criminal jurisdiction, exercised in accordance with national law. Article 8, paragraph 2 subjected the extradition right to conditions which might be stipulated by the law of the requested State. Article 5, paragraph 2 introduced some specificity into the scope of extradition. Article 2 bis did likewise except it introduced specificity in relation to the State entitled to seek extradition. Article 2 had allowed other Contracting States (apart from the State of occurrence) to exercise jurisdiction.

20. The Delegate of France stated that this issue would determine whether France would be a signatory to the Protocol. His position in relation to Article 5 was not wholly firm because the text was not available in the four working languages of the Organization and also the final drafting of paragraph 1 bis had not been decided. Nevertheless he recalled that Article 5 as amended by the Convention should retain discretionary freedom for States in regard to extradition to the State making a request (be that either the State of occurrence of the offence or that of the nationality of the victims or the

offender). He did not wish to upset the balance of the Montreal Convention and specifically did not want sub-paragraph (d) of paragraph 1 of Article 1 introduced into Article 5.

21. The Delegates of Venezuela and the Union of Soviet Socialist Republics concurred with the Delegate of France regarding availability of translated text and the final drafting of paragraph 1 bis and the Chairman confirmed that the text would be distributed in all four working languages as quickly as possible. Some Delegations expressed interest in the Delegate of India's attempt to distinguish between offences covered by the Montreal Convention and those covered by the Protocol. The Delegate of Venezuela suggested a separate paragraph to deal with jurisdiction and extradition.

22. The Delegate of Chile also reserved judgement until the translated text was available. He felt that the proposal aimed at supplementing or adding to certain aspects of the Montreal Convention which would cover the offences affecting airports serving international civil aviation. If the proposal favoured substitution, he could not agree as he felt that the balance between jurisdiction and extradition would be upset. He had agreed to retain Article III (or similar) of the Protocol independent of the Articles in the Montreal Convention, thereby retaining this balance.

23. The Delegate of Colombia also felt that the new text of paragraph 1 bis was very important. He believed that problems would be encountered at a later stage in accepting the text proposed by the Delegate of Italy because there would be no specific restrictions on jurisdiction or extradition following an offence if no mention were made of aircraft not in service. Jurisdiction and extradition should both be established but dealt with in a separate paragraph such as that of 2 bis which was found in the text of the Legal Committee. Article 1 bis and Article 5 were quite clear; any amendment to Article 5, paragraph 2 could give rise to problems of interpretation.

24. The Delegate of the United States stated that there appeared to be unanimous support for the inclusion of aircraft not in service, thus demanding an alignment of Article III of the text of the Protocol. She favoured the solution put forward by the Delegate of Italy. She also felt it desirable to maintain the balance between prosecution and extradition which was contained in the Montreal Convention. The task of this Diplomatic Conference had evolved into adding a new offence to the Montreal Convention. She agreed that it would be consistent and relevant to consider whether the interests of States other than the State of place of occurrence, the State in which the offender was found and the State of registry should be reflected in the Protocol. She suggested the inclusion of a provision in the Protocol that would add to the countries which must establish jurisdiction over the offences listed in Article 5, paragraph 1 of the Montreal Convention, a fifth possibility, i.e. when an offence was committed against a national of a State.

25. The Chairman recalled that two more ideas were to be discussed in the Commission of the Whole before the Drafting Group made its first report - jurisdiction and extradition and preventive measures. If the text of the proposal of the Delegate of Italy were not available by the next morning, the Chairman asked Delegates to be prepared to discuss preventive measures until such time as the text was available.

THIS PAGE INTENTIONALLY LEFT BLANK

EIGHTH MEETING OF THE COMMISSION OF THE WHOLE

(Tuesday, 16 February 1988, at 1000 hours)

Chairman: Mr. P. Kirsch

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT INSTRUMENT

Article III

1. The Chairman directed that discussion of jurisdiction and extradition be continued and invited observations on a draft Article III presented in VIA Doc No. 29 by the Delegation of Italy. Several delegations expressed the view that it was not desirable from a legal point of view to amend any provisions of the Montreal Convention, among them the Delegate of Greece and the Delegate of Canada, although the latter could accept the substance of the Italian proposal. The Delegate of the Union of Soviet Socialist Republics emphasized that it was beyond the authority of the Conference to amend the Montreal Convention. Deleting paragraph 2, as proposed by the Italian Delegation, would amend the Montreal Convention, and his delegation was opposed to any amendment as it was its goal to facilitate the participation of States in the protocol, whether parties to the Convention or not. It should also be envisaged that some States parties to the Montreal Convention might not wish to become parties to the protocol. As to the substance, he suggested that the text of the Legal Committee could be modified, taking into consideration the suggestions in the Italian proposal or other proposals, and this would be acceptable to his delegation if the provisions of the Montreal Convention were not amended. The Delegate of the Kingdom of the Netherlands stated that even if the Conference were to prefer an extension of the obligations, this should not be done by amending the Montreal Convention, and the Delegate of the United Kingdom agreed with the statements made by the Soviet and the Netherlands Delegations. The Delegate of Togo supported the substance of the Italian proposal, but as to form agreed with the Soviet Delegation. The Delegate of Chile concurred with the statement made by the Soviet Delegation, as did the Delegate of Kenya and the Delegate of Czechoslovakia. The Delegate of Cuba shared the view of the delegations who opposed any amendments to the Montreal Convention, stating that the provisions of the Montreal Convention had been applied in his country and were compatible with his country's domestic laws.

2. The Delegate of Norway said his delegation's interpretation of Article 5 of the Montreal Convention was that it did not deal with extradition, as this was dealt with in Articles 7 and 8, nor did it deal with the question of the right of States to establish jurisdiction. This view was shared by the Delegate of the Kingdom of the Netherlands, who considered it should be left to the discretion of States as long as it did not infringe upon the sovereign right of other States, and that it was clearly indicated in paragraph 3 that the Convention did not exclude jurisdiction exercised in accordance with national law, that States had a right to establish jurisdiction also in cases

Eighth Meeting
Commission of the Whole

not mentioned in paragraphs 1 and 2, and that it concerned only the obligation to establish jurisdiction in some specific cases. The Delegates of Kenya, the Kingdom of the Netherlands and the United Kingdom concurred that Article 5 concerned the obligation to establish jurisdiction. The Delegate of Canada agreed, adding that it simply insured that the perpetrator would be prosecuted or submitted to the competent authorities for prosecution in accordance with Article 7, or be extradited. He did not believe the intent of Articles 5 or 7 when read with Article 8 was that a State would have fulfilled its obligations if the perpetrator were extradited to a State not party to the Convention or a State that did not have the jurisdiction to try the individual for the offence, although the Montreal Convention did specify that if an individual were not extradited, he should be submitted to the authorities in the State in which he was found for prosecution. The Delegate of the Kingdom of the Netherlands disagreed with the Canadian Delegation view that a State would have fulfilled its obligation only by extraditing an offender to a State party to the Convention, as his delegation believed a State would be in conformity as long as it extradited the offender, even to a State not party to the Montreal Convention.

3. The Delegate of Norway stated that the draft prepared by the Legal Committee was in his delegation's view not totally satisfactory, referring only to States mentioned in sub-paragraph 1 a) of Article 5. This led to the possibility that if the State where the offence had taken place did not request extradition, the State where the offender was found did not have the obligation to establish jurisdiction and to prosecute, and the offender could remain unpunished in that State. His delegation therefore favoured the proposal put forth by the Italian Delegation. The Delegate of Japan also wished to support the Italian proposal.

4. The Delegate of Ghana stated that sub-paragraph 1 a) provided for a wider jurisdiction not limited to that paragraph, and that there would be a problem of solving conflicting claims among different States requesting the extradition of the offender. His delegation believed that the State in which the offence was committed was most directly linked with the offence and should have precedence over the jurisdiction of any other States. The Delegate of the Kingdom of the Netherlands suggested that the reference to sub-paragraph 1 a) in the last line of the Legal Committee draft should be changed by deleting the reference to sub-paragraph a) to align it with the Italian proposal or, as the Delegate of Greece had proposed, by adding sub-paragraphs. The Delegate of Argentina thought this proposal was a profound amendment to the draft text proposed by the Legal Committee, and stated that, as the last part of the proposal recognized all States in paragraph 1 when referring to extradition, which meant they would have the right to demand extradition in order to exercise jurisdiction, his delegation believed that the offences defined in the protocol should be subject to more explicit jurisdiction than those outlined in the Montreal Convention. He thought the earlier comments made by the Delegate of France when referring to other types of jurisdiction were more practical. His delegation preferred the draft produced by the Legal Committee. The Delegate of Saudi Arabia wished to be associated with the statement made by the Delegate of Argentina to maintain the text as in the original draft proposed by the Legal Committee, as did the Delegate of Mexico.

5. Commenting on aircraft not in service at an airport, the Delegate of Greece favoured enlarging the number of States which had jurisdiction, particularly the jurisdiction of the State of registry of aircraft not in service. The Delegate of Ghana said that the inclusion of aircraft not in service in sub-paragraph 1 b) should not warrant the widening of jurisdiction as would occur if the Italian proposal were adopted, whereas the Delegate of Japan thought it necessary to apply the same concept of jurisdiction and extradition to aircraft not in service as included in the proposed sub-paragraph 1 bis b). The Delegate of Canada stated that the problem with respect to the expansion of jurisdiction was directly linked to aircraft not in service, and only if this were accepted would there be a need to expand the obligations of States to include the State of registry or State of the lessee as in sub-paragraphs 1 b) and d) of the existing Article 5. The Delegate of Mexico said the problem outlined by the Delegate of Canada was the result of including aircraft not in service, and that the protocol was designed to protect airports without distinguishing between the property located at the airport. The Delegate of the Kingdom of the Netherlands believed that aircraft not in service were part of the property of an airport and the Delegate of Kenya shared that view, as did the Delegate of the United Kingdom, adding that for this reason the offence would always be carried out in the territory of a State and as there was no question of aircraft landing there was no need to add sub-paragraphs b), c) and d). The Delegate of the Kingdom of the Netherlands was of the opinion that if aircraft not in service were included in the offence, this would not lead to jurisdiction extending to the State of registry but would be limited to the territorial State. This view was shared by the Delegate of Venezuela.

6. With respect to sub-paragraph 1 c), the Delegate of Greece believed this sub-paragraph was only applicable to aircraft in flight and seemed useless when applied to aircraft not in service, and could create problems of interpretation. The Delegate of Canada did not see the need for this sub-paragraph applying to aircraft not in service, whereas the Delegate of Japan approved the inclusion of this sub-paragraph in the text.

7. The majority of delegations were in favour of maintaining the text as proposed by the Legal Committee, among them the Delegates of Chile, Cuba, Czechoslovakia, Ghana, Guinea, Kenya, the United Kingdom and the Delegate of Venezuela, who did not wish to extend the field of jurisdiction as it could create conflict. The Delegate of Greece favoured the adoption of the Legal Committee draft, with an addition covering jurisdiction of the State of registry of aircraft not in service by adding sub-paragraph b) in the last line of the text. The Delegate of Togo also agreed, saying it should be amended in line with the text of the Italian proposal.

8. The Delegate of Italy remarked that her delegation had made its proposal taking into consideration aircraft not in service and that the draft of the Legal Committee had created problems by referring to sub-paragraph 1 a) with respect to extradition. To make provisions for aircraft not in service, she suggested the Legal Committee text could be amended by the deletion of sub-paragraph a) in the last line of the text, in line with the many delegations which had voiced objections to amending the Montreal Convention.

Eighth Meeting
Commission of the Whole

The Delegate of the United States concurred with these observations concerning the consistency in form of the proposed text.

9. The Chairman expressed his gratitude to the Italian Delegation for its proposal and, from the discussion that had ensued, noted that many delegations had expressed a preference for adopting a provision that was independent from the existing Article in the Montreal Convention, and that the Montreal Convention should not be altered. He noted basically four positions and suggested that before the discussion of jurisdiction and extradition resumed at the following meeting, consultations be held concentrating on two possibilities: the adoption of Article 2 bis as it was drafted by the Legal Committee, and the possibility of adding some jurisdictions mentioned in Article 5.

Preventive measures

10. The Chairman, declaring that the discussion would now focus on preventive measures, gave the floor to the Delegate of the Union of Soviet Socialist Republics, who felt that the majority of delegations had emphasized that preventive measures would be very important in the suppression of terrorist activities and thanked those who had advocated his delegation's proposal. He wished to see a consensus, and expressed the belief that this might best be achieved if preventive measures were reflected in a resolution and not included in the draft protocol, adding that his delegation had elaborated a draft resolution which it would submit for consideration by the Conference in the hopes that such a resolution would be fully supported. Among the delegations which supported the proposal were the Delegate of the Byelorussian Soviet Socialist Republic, who said a resolution would help strengthen the efforts to combat unlawful interference, and that preventive measures could be reflected in both ICAO documentation and in national practice, the Delegate of Ecuador and the Delegate of Sweden. The Delegate of Czechoslovakia believed this was a balanced way of drawing the attention of Contracting States as well as airlines and ICAO to the fact that preventive measures were necessary to suppress unlawful acts of violence perpetrated at airports serving international civil aviation. The Delegate of Côte d'Ivoire said his delegation was prepared to support the Soviet proposal, stating that preventive measures were one of the most essential elements of the proposed protocol and that it would be desirable to maintain the balance and harmony between the protocol and the Montreal Convention. He believed that in addition to Articles 10 and 12 of the Montreal Convention, Annex 17 and the Security Manual contained effective measures. The Delegate of Kenya said that aviation security was a priority and as his country had two international airports, considered the safety of that airport critical. His delegation was conscious of the fact that preventive measures had been called for in documentation, including Conventions such as the Montreal Convention and Annex 17, and agreed that a resolution as proposed by the Soviet Delegation be adopted. The Delegate of Canada reiterated his delegation's position which favoured the adoption of a resolution.

11. The Delegate of Argentina, stating that this proposal represented specific obligations for States, and that it was not appropriate to include preventive measures in a protocol as they were more concrete than the general

measures in Article 10 of the Montreal Convention, would accept the Soviet proposal to include them in a resolution, as these principles should be recognized and would serve as guidance in the future. The Delegate of China declared that his delegation shared the view of several delegations who agreed that preventive measures were adequately covered in Article 10 of the Montreal Convention as well as in Annex 17, and so should remain within the scope of those documents. He wondered if the Conference should examine ways to add some provisions in Annex 17 but, if the Conference were to adopt a resolution, his delegation could accept the views expressed by the Delegate of Argentina.

12. The Delegate of Venezuela, recognizing that the Conference was favouring the adoption of preventive measures in a resolution, stated that ICAO was studying in the Council and the Standing Committees various security measures to be taken at international airports; the fact that this Conference had been convened in such a short period of time demonstrated the importance of preventive measures. The resolution should emphasize the application of these measures at airports, and as ICAO had already made a certain amount of progress, having contacted Contracting States in a position to provide assistance and those in a position to receive it, wished to ascertain that the resolution would recognize the efforts and the progress made by ICAO in this respect.

13. The Delegate of the Republic of Korea favoured the inclusion of preventive measures in the draft protocol but in the spirit of co-operation would concede to a resolution.

14. The Delegate of Niger stated his delegation's intent to support the Soviet proposal, which would have implications for States particularly such as his with limited resources for implementation. He referred to the statement made by the Minister of State for Transport of Canada regarding the establishment of an assistance programme, and noted that it was unfortunately limited to one region. The Delegate of Canada replied that the programme had been established to assist developing States and that the project in the Caribbean was but an extension of an on-going project in that region; he wished to assure the delegations that the programme was not limited to that region and that missions had been planned for other regions such as Africa and Asia. He also mentioned that the International Aviation Management Training Institute was accessible to all, without limitation as to region or nationality.

15. The Delegate of Ghana stated that Article 10 of the Montreal Convention provided a broad framework for States to provide preventive measures, and so believed that some form of international co-operative effort for technical assistance would be desirable. His delegation was also encouraged by the comments made by the Delegate of Canada and was convinced that some specific provision for organized assistance would achieve the desired objective of enabling developing States to participate effectively in the common effort to deal with violence and unlawful acts of international piracy against international civil aviation. He acknowledged that individual States had the primary responsibility, but said that the discharge of this responsibility should not be negated by the incapacity of certain disadvantaged States to implement these measures. His delegation therefore wished to make the following proposal for the consideration of the Conference: "that this

Eighth Meeting
Commission of the Whole

nonference resolves that considering the peculiar situation of certain developing countries which are parties to this Convention an international fund be established for the provision of technical, financial and other material forms of assistance to member States which require them". His delegation was requesting that its proposal be reflected in the draft to be presented by the Soviet Delegation and, if the proposal was acceptable, would further suggest that ICAO act as a co-ordinating body of such a fund. The Delegate of Ecuador firmly supported the proposal for the establishment of an international fund, as his delegation was in favour of ensuring the proper co-operation and technical assistance to certain States to ensure that effective preventive measures were applied. The Delegate of Niger also agreed with the statements made by the Delegates of Ghana and Ethiopia proposing that a resolution be adopted by the Conference with a view to providing assistance to States which did not have the necessary resources to fulfil their obligations in implementing preventive security measures. The Delegate of Côte d'Ivoire supported the proposal to encourage international co-operation in this area to achieve the goals to eliminate terrorism and establish safety and security, as his delegation believed it was through international co-operation that the international community could solve the problems of international terrorism. The Delegate of Kenya joined the delegations, particularly of Ghana and Côte d'Ivoire, in calling upon the international community to consider the particular limitations of some States, saying that his State did consider preventive measures to be a priority, but was handicapped because of lack of equipment, financing and training. His delegation would support, in addition to the Soviet resolution, a separate resolution calling on international assistance, technical, financial and material to developing States to improve their aviation security, and to ensure preventive measures and, appreciating the fact that bilateral assistance had been offered, wished to see the co-ordinating role undertaken by ICAO. The Delegate of Sweden was of the view that it was possible to connect a resolution on the question of technical assistance with the more general resolution on preventive measures. He noted with great interest the proposal by the Delegate of Ghana to institute a fund, saying it was not possible to take a stand on how the assistance should be made, but wished to assure the Ghanaian Delegation and others who had spoken on the subject of technical assistance of the full support of the Swedish Delegation.

16. The Chairman adjourned the meeting by stating that the discussion on preventive measures would resume at the following meeting.

(The meeting adjourned at 1230 hours)

NINTH MEETING OF THE COMMISSION OF THE WHOLE

(Tuesday, 16 February 1988, at 1400 hours)

Chairman: Mr. P. Kirsch

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT INSTRUMENT

Preventive measures

1. The Chairman having indicated that discussion would resume on preventive measures, the Delegate of India stated that his delegation, recognizing the need for continuous and effective implementation of preventive measures against acts of unlawful interference, supported the proposal put forth by the Soviet Delegation calling for the adoption of preventive measures in the form of a resolution. Several delegations echoed their approval of the Soviet proposal, among them the Delegate of Costa Rica, who stated that this would complement the existing standards and the Delegates of Madagascar and Senegal. The Delegate of Ethiopia reiterated that his delegation had proposed the adoption of a resolution and would be pleased to see the draft produced by the Soviet Delegation; and the Delegate of Malawi was pleased to see a consensus being achieved in favour of this option. The Delegate of Iran indicated that his delegation also shared that view and supported the idea of including the elements of international co-operation. The Delegate of Guinea also supported the Soviet proposal, stating that if preventive measures were effectively implemented, States would be in a better position to increase the safety of international civil aviation, as did the Delegate of the United Republic of Tanzania, who stated that all efforts should be made to develop preventive measures for, if they were applied uniformly and on a co-operative basis by all States, the existing laws would not be broken. The Delegate of Chile commented that ideally there should never be a need to apply preventive measures, but as that was not the case, his delegation wholly supported the criteria calling for preventive measures and therefore believed that they should be outlined in a resolution, adding that any resolution should be submitted to the Drafting Committee. The Delegate of Pakistan voiced the opinion that if no such resolution were under consideration, States would nevertheless be bound under Article 1 to implement preventive measures to prevent offences in Article 1, and as the proposed paragraph 1 bis would be added to Article 1, the obligation to take necessary preventive measures would automatically extend to include the offences under that paragraph. His delegation voiced no objection to the adoption of a resolution but preferred that its text be very general.

2. The Delegate of Colombia remarked that her delegation favoured preventive measures, the implementation of which should lead not only to a great level of security against acts of violence but also against acts which, though in themselves not violent, gave rise to violence, such as the trafficking of narcotic substances or illegal weapons. For this reason, the

Ninth Meeting
Commission of the Whole

Colombian Delegation deemed it very important to envisage development of preventive measures. Referring to the Soviet proposal, the Delegate of Colombia summed up its three basic principles which, she intimated, implied that States would endeavour to take preventive measures. The Delegate of Poland mentioned three categories of preventive measures, the first covering all measures that are provided for in the existing international instruments, including Annex 17, the second that covering all measures in VIA Doc No. 26 and any others that delegations might wish to make and which would ultimately be approved by the Conference. He was of the opinion that there was a third category, that is the co-operation among States regarding exercising their jurisdiction or application of extradition procedures and suggested that the Conference might wish to make some recommendations with regard to all three categories. The Delegate of Israel said that his country had in the past introduced in various forms a list of security measures to be implemented by all States, and that these plans contained dozens of security measures, the absence of any one of which could break the security chain. His delegation believed that the taking of effective preventive measures and co-operation between all States had a major role in combating terrorism, and in principal supported the general idea of a resolution. It had difficulty, however, in supporting a resolution mentioning only some preventive measures as indicated in the Soviet proposal, as it felt that the exclusion of some preventive measures could be interpreted as meaning that they were not important enough and could be ignored. The Delegate of Nigeria believed that if preventive measures were not implemented at every stage of international civil aviation, security could be threatened because the strength of international aviation security was limited to the strength of its weakest link. The Delegate of the United States cautiously agreed to the idea of a resolution as her delegation did not object to the Conference sending a strong signal regarding the importance of preventive security measures, but recalled that the reason all delegations were at the Conference was for the purpose of adopting an international instrument addressing acts of violence at international airports.

3. The Delegate of Costa Rica agreed with the Delegate of Venezuela who had stated at the previous meeting that the draft resolution should recognize the role ICAO had played in implementing the Assembly resolution, emphasize the measures adopted and the fact that ICAO had requested States which were able to provide assistance to do so, and as an example of such aid referred to the Delegate of Canada's opening remarks. The Delegates of Chile and Mexico were also in agreement that the draft resolution should recognize the efforts that had been made by ICAO through its various bodies.

4. Several delegations were of the opinion that preventive measures were adequately covered in several ICAO documents, among them the Delegate of Senegal, who felt that ICAO had done a great deal in the area of security through the adoption of Annex 17, which was flexible and could easily be amended, and the Security Manual. His delegation believed that if a resolution were to be adopted, the Conference should examine whether it was appropriate and necessary to propose new security measures that could possibly be used by the Council as a basis for amending Annex 17, as well as examine the efforts made by States in implementation and should include implementation since this was the problem, adding that if all standards and recommended practices of Annex 17 were implemented the great majority of offenders would be deterred.

The Delegate of the United Republic of Tanzania thought some preventive measures had been detailed in various annexes such as Annex 17 and manuals on unlawful interference. The Delegate of Pakistan said the Soviet proposal included some preventive measures covered in Annex 17 and Article 10 of the Montreal Convention. The Delegate of Chile believed that preventive measures were already covered in Articles 10 and 12 of the Montreal Convention, Annex 17 and the Security Manual, recognizing that the provisions in Article 10 of the Montreal Convention were general but nevertheless mandatory, and did not feel that it would be necessary to amend the Montreal Convention, as Article 10 was clear in this respect and paragraph 1 of Article 10 should be applicable in respect of those offences. The Delegate of Mexico reiterated that Article 10 of the Montreal Convention perfectly covered preventive measures and thought States had already implemented those measures, and believed Annex 17 and the Security Manual gave sufficient guidance in this area. With regard to drafting a resolution, while she did not feel it necessary, she would not oppose it if the majority were in favour, but would like to see it kept general. The Delegate of Indonesia, believing that security at airports was the most important factor to prevent acts of violence, was of the opinion that Article 10 of the Montreal Convention and Annex 17 had sufficiently accommodated this issue. Due to the technical nature of preventive measures, he felt they would best be accommodated in the form of reviewing Annex 17, but would not voice any objections if preventive measures were reflected in the adoption of a resolution, if widely acclaimed by the Conference.

5. Several delegations commented on the importance they attached to the need for technical assistance in the implementation of preventive measures. There was strong support for the proposal made by the Delegate of Ghana who had called for the inclusion of technical assistance for States lacking the financial and technical resources to implement preventive measures in the resolution and the establishment of a fund for this purpose. Advocating their support were the Delegates of Costa Rica, Chile, Nigeria and the United Republic of Tanzania, the latter favouring the inclusion of specifications for methods on how States could contribute to this multilateral fund, so that States such as his which lacked resources but wished to implement preventive measures could have access to material means and much-needed personnel. The Delegate of India strongly supported the proposal for inclusion in the Soviet resolution or a separate resolution, taking into consideration the comments and concerns of the Delegations of Kenya, Ghana and Côte d'Ivoire. This support was echoed by the Delegate of Colombia, who believed States wishing to implement preventive measures should have the necessary economic resources to do so, and by the Delegate of Guinea. As his was a developing State, the Delegate of Senegal supported this idea and felt that the Conference should give some guidance, even if a formal fund were not established, and that co-operation should be through regional projects in three phases: drawing up an inventory of needs in various States, financing for equipping airports and training personnel, and assistance in the discharge of operating costs.

6. The Delegate of Malawi also felt that States must have the necessary resources to implement preventive measures for them to be effective, and that it was crucial that the question of technical assistance be incorporated either in the Soviet resolution or in a separate resolution. He stated that the main concern was that because of the tendency of some donor States toward a

Ninth Meeting
Commission of the Whole

bilateral system of aid, some States would have difficulty in convincing their respective planning authorities to release funds for aviation security, when faced with more pressing concerns. As an example he specified his own government's situation where it would be unrealistic for the planning authorities to approve such funding when some sector of the population was without water, and thus appealed to those present to seriously consider technical assistance so that preventive measures could be established at international airports. The Delegate of Madagascar stated that Madagascar had since 1986 made large improvements at the international airport of Antananarivo to improve security and safety measures, placing a burden on the national budget in view of the economic difficulties his country was facing. In addition to bilateral co-operation, he considered it essential to establish an international mechanism for assistance and co-operation in the implementation of preventive measures. His delegation fully supported the proposal made by Kenya for the creation of an international fund, and was open to any proposals regarding the formulation of such an idea. The Delegate of Mexico said her delegation could accept a resolution to this effect if it were recognized that this issue had previously been examined by the Council on the initiative of Guatemala with the support of Mexico. The Delegate of France stated that preventive measures must be applied at all airports and pointed to an assistance programme France had launched in two phases in 12 African States members of ASECNA, the first almost completed and the second beginning in April, indicating the importance France attached to security and preventive measures. The Delegate of the United States said that several delegations had raised important issues in the general context of prevention and technical assistance and she stated that her country was actively working with other States to exchange expertise on training, equipment and procedures for best preventing crimes against civil aviation. She believed there was a place in ICAO for exploring the best ways to ensure that States used resources to ensure their international obligations were carried out, but thought that perhaps this was not germane to the task at hand and her delegation had not come prepared to discuss these issues in detail. She believed the subject too important to be given superficial consideration and suggested that it might be best if an appropriate ICAO body such as the Secretariat or the Council consider the subject in greater depth.

7. The Delegate of Madagascar believed that the designation of ICAO as the co-ordinator of a special assistance fund would be a guarantee of competence and integrity in this respect, and this view was supported by the Delegates of Nigeria and the United Republic of Tanzania. The Delegate of Senegal believed there were mechanisms in existence such as the UNDP, and the ICAO Technical Assistance Bureau which had already done a great deal in this area. The Delegate of France, however, drew the attention of the Conference to the need to avoid infringing on the jurisdiction of the Secretary General and various ICAO bodies which dealt with security, particularly the UIC. He felt it important not to commit the financial bodies of ICAO as the Conference did not have the mandate to do so.

8. The Secretary General drew attention to the current status of ICAO's technical assistance in the field of aviation security. He indicated that the ICAO Technical Assistance Bureau and the Regional Offices had implemented many national security-oriented projects and one large project in Asia, and that

ICAO was negotiating with the UNDP regarding additional projects. At the same time, many bilateral technical assistance projects had been implemented, some directly administered through ICAO. The regular programme of ICAO was also active in this respect, having organized seminars in Saudi Arabia and Malaysia dealing with security, and he now thanked these delegations. He noted that the establishment of a voluntary fund for technical assistance being discussed by the Conference had previously been discussed by the Council, but it had questioned the wisdom of establishing yet another voluntary fund as the majority of donor States preferred to channel their contributions through the UNDP or bilateral assistance. The ICAO Secretariat and especially the Technical Assistance Bureau were actively involved in the implementation of the provisions of the Tokyo, The Hague and Montreal Conventions, Annex 17 and the Security Manual, within the limitations of existing resources, and he considered that it would be desirable if the Conference were to adopt a resolution as a clear demonstration of the political will of States to receive more assistance from the funding institutions, such as UNDP, as he felt that such a resolution would assist ICAO in its negotiations with such sources.

9. The Chairman summed up the discussion by stating that all States attached considerable importance to the establishment and implementation of preventive measures and were determined to promote their establishment. He noted that many delegations had mentioned the importance of assistance in the implementation of preventive measures, and had suggested that an assistance fund be established for this purpose. A consensus seemed to have formed for a resolution to be adopted by the Conference rather than preventive measures being included in an article of the draft protocol. He thanked the Delegation of the Union of Soviet Socialist Republics for its co-operation and suggested that it hold informal consultations with any other interested delegations, taking into consideration the various views, and submit the text to the Conference for approval.

10. The Chairman then called upon the Chairman of the Drafting Committee, who expressed his gratitude to the members of the Drafting Committee who had approached the task in a very constructive manner and to all who had assisted in the Committee's progress. He also thanked the Legal Committee and the Secretariat who had provided the draft text. The initial terms of reference for the Drafting Committee were that it examine the final clauses in light of the title and preamble, and in commencing its work, it had noted that the presentation of this report was in no way final as it could be affected by subsequent decisions of the Conference, relating to the substance of the protocol, in particular Article 1 bis. With this in mind, the Drafting Committee had decided that it should commence work by considering the title as the fundamental starting point, then consider the final clauses and only then return to the preamble, which was closely linked with Article 1 bis, and as its final task consider any other clauses. In reviewing the title, the Drafting Committee had concluded that it should reflect the Protocol and had decided upon a protocol supplementary to the Convention. With reference to the word "at" which appeared in square brackets, the Chairman noted that this had been included strictly on the basis that the Conference might alter Article 1 bis; it might be necessary to look at that word in light of decisions taken regarding that Article. The Committee had also considered the final clauses and would discuss these when the text had been considered by the delegations.

Ninth Meeting
Commission of the Whole

The Chairman indicated that the Drafting Committee had made progress and some outstanding points were still being considered, but it had turned its attention to Article 1 which was linked with the final clauses, and would then turn its attention to the substance of Article 2, Article 1 bis and the preamble. The Chairman congratulated the Chairman of the Drafting Committee and its members for the significant progress they had made in a limited amount of time and invited questions or observations on the work of the Drafting Committee.

11. The Delegate of France was deeply concerned as to why a corrigendum had been issued in respect of the French text that had altered "dans" to "aux", noting that "dans" had been used in various texts such as the text adopted by the Legal Committee, and had always served as a reference for the work of his government and it was on this basis that his government had established its position. He requested that the French title be reverted back to its original form, with the understanding that "dans" remain in brackets. The Chairman reassured the Delegate of France that this question would be resolved.

12. The Delegate of Spain commented on the last line of the title, suggesting that "signed at Montreal" should appear as "done at Montreal" as at the end of the Conference the final act would be signed and only those delegations which had the authority to do so would sign the protocol. The Executive Secretary replied that in the title of the Montreal Convention as well as in other protocols "signed" had been used. The Chairman referred the matter to the Drafting Committee.

13. With regard to Article 1 bis, the Delegate of Colombia believed there were two points which the Conference had not yet resolved, one the inclusion of threat, the other if "or is likely to endanger" should be deleted; she asked for clarification as to whether the Conference or the Drafting Committee would resolve this, as she felt these were beyond the scope of the Drafting Committee. The Chairman explained that because of the time constraints the Conference had collectively agreed to ask the Drafting Committee to advise it on issues not yet finalized, and assured him that the Drafting Committee was subject to the authority of the Conference and whatever conclusions reached would be submitted to it for approval.

14. In congratulating the Chairman of the Drafting Committee, the Delegate of Venezuela stated that her delegation supported the title of the protocol submitted by the Drafting Committee and that any of the definitions that had been considered by the Conference would be acceptable. She also pointed out that "signed at Montreal" appeared as "done at Montreal" in the Spanish text and requested that this be aligned accordingly.

(The meeting adjourned at 1630 hours)

TENTH MEETING OF THE COMMISSION OF THE WHOLE

(Wednesday, 17 February 1988, at 1000 hours)

Chairman: Mr. P. Kirsch

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT INSTRUMENT

1. After the Chairman briefly outlined the morning's work programme, discussion resumed on the issue of jurisdiction and extradition. Those who were satisfied with the text as drafted included the Delegates of Australia, Ecuador, Madagascar and Yugoslavia. The Delegates of Australia and Madagascar favoured the existing text because it emphasized the territorial nature of the offences, while the Delegate of Ecuador believed it would be inappropriate to establish a net of competing jurisdictions as would be possible if the text were changed so that more States were given jurisdiction.

2. The Delegate of Switzerland preferred the solution of changing the text by deleting from paragraph 2 bis the words "to the State mentioned in paragraph 1 (a) of this Article", a solution that supported the proposals made by the French Delegation in VIA Doc No. 14. The Swiss Delegation felt that Article 5 of the Montreal Convention greatly restricted extradition and it did not wish to see this reinforced by the Protocol.

3. The Delegate of Panama also preferred that jurisdiction be extended to include the State of registry and the State of the operator of a leased aircraft as well as the State of nationality of the victim, in order to create in the Protocol the same extent of jurisdiction to be found in the Montreal Convention.

4. The Delegate of France explained that due to informal consultations with other Delegates, the views presented by his Delegation in VIA Doc No. 14 had changed somewhat. The consultations had shown him that Article 5 of the Montreal Convention did not deal with extradition but with States' obligation to establish jurisdiction. The requested State could choose to which State it would grant extradition and this could be one of the States obliged to establish jurisdiction by Article 5, paragraph 1 or it could also be the State of nationality of the offender or the victim. The French Delegation therefore found the draft of paragraph 2 bis acceptable but wished to see deleted the reference to sub-paragraph (a), so that the amended text would read "and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article". This proposal was supported by the Delegates of Ireland, Japan and Togo. The Delegate of the United States believed it would be more consistent with the Montreal Convention to include a reference to the other States listed in Article 5, paragraph 1, because aircraft had a special status compared to other property on an airport and so the State of registry or the State of the operator of an aircraft had a special interest. The Delegates of Japan and Togo reiterated this view, believing that aircraft not in service should have the same protection as aircraft in flight.

Tenth Meeting
Commission of the Whole

5. The Delegate of Venezuela could not support the amendment suggested by the Delegate of France on the grounds that eliminating sub-paragraph (a) would mean extending jurisdiction to States that had nothing to do with the offences considered by the Protocol since these States had been included in the Montreal Convention because of their relation to aircraft and not to airports. The Delegate of Venezuela agreed with the Delegate of France, however, in that they were establishing jurisdiction and that extradition was a matter for States to decide. The Delegates of India, Colombia and Mexico shared the view of the Delegate of Venezuela, agreeing that the text should remain as drafted.

6. The Delegate of the Republic of Korea supported the draft since it gave jurisdiction to the State where the offence was committed, but commented that if the concept of threat were included as an offence in the Protocol, then it might not be necessary to limit the scope of jurisdiction to paragraph 1 (a) of Article 5 since the threat could be made in a third country. The Delegate of the Republic of Korea suggested then that the text might be improved if it were to include all paragraphs of Article 5.

7. The Delegate of Chile reiterated his stand that the Protocol remain as drafted because the text was adequate and did not create too broad a field for jurisdiction and extradition. He pointed out that the text of paragraph 1 bis had not yet been approved, and that if it were decided to include aircraft not in service, then it could be desirable to add to paragraph 2 bis a reference to the State of registry of an aircraft, that is, a reference to sub-paragraph (b).

8. The Delegate of Italy, referring to the statement made by the Delegate of France, reiterated the view that it was States' obligation to establish jurisdiction and reminded Delegates that Article 5, paragraph 3 of the Montreal Convention stated that the Convention did not exclude any criminal jurisdiction exercised in accordance with national laws. The Delegate of Italy also observed that if aircraft not in service were included in paragraph 1 bis, then the amendment as proposed by France or at least the addition of sub-paragraph (b) to paragraph 2 bis might be appropriate. The Delegate of Greece also proposed this addition in order to include the interests of the State of registry of an aircraft not in service as did the Delegate of Senegal, who felt it would be a reasonable compromise. The Delegates of Italy, Greece, and Senegal each expressed the willingness, however, to accept the text as drafted in the hope of attaining universal applicability and acceptance of the Protocol.

9. The Chairman expressed his pleasure at seeing that many Delegations were being flexible and that there was a general concern to reach a consensus. He repeated the summary he had made during the previous meeting, listing the solutions that seemed to be most broadly supported, namely, the retention of the text as it was or broadening the text to cover certain types of jurisdiction in Article 5 but not all of them, depending on whether or not aircraft not in service were included in the Protocol. He observed a growing support for the inclusion of sub-paragraph (b) but noted that it would be necessary to wait for the final text of paragraph 1 bis before making a decision on this matter. The Chairman asked once again that Delegations resume consultations to try to resolve differences and said that when some results were achieved, the discussion of this issue would resume.

10. In response to the President's invitation, the Delegate of the Union of Soviet Socialist Republics reported that a small study group representing a broad range of Delegations had been established and had produced a draft resolution on preventive measures. This draft resolution was being translated and, when ready, would be immediately distributed to Delegates.

11. The Delegate of the United Kingdom, speaking as the Chairman of the Drafting Committee, then introduced the draft final clauses of the Protocol, drawing Delegates' attention to VIA Doc No. 31. He explained that Article IV had been deleted and its substance transferred to Article I, the text of which would be available later. He pointed out that dates had yet to be inserted in Article V, and with reference to Article VI, the Drafting Committee believed the wording to represent the views of the Commission of the Whole as to the correct relationship between the Protocol and the Montreal Convention in that any State could ratify the Protocol but to do so must also subscribe to the Montreal Convention. He noted that the Drafting Committee had departed in one respect from the Montreal Convention in that ICAO had been added as a Depository. Article VII, although different in style from Article 15, paragraphs 3 and 4 of the Montreal Convention, was their equivalent in terms of when the Protocol was to come into force, and the number of signatory States required for this was also accepted by the Drafting Committee. Article VIII, matching Article 6 dealing with accession, and Article IX dealing with denunciation, were also thought by the Drafting Committee to match the desire of the Commission of the Whole as to the relationship between the Protocol and the Convention, namely that a party might denounce the Protocol alone and remain party to the Convention, but if a party were to denounce the Convention it would also be denouncing the Convention as supplemented by the Protocol.

12. The Delegate of Niger began the discussion on the draft final clauses by commenting that having seen the work produced by the Drafting Committee, he would not press for consideration of his Delegation's proposals as presented in VIA Doc No. 4. On the subject of Depositories, the Delegate of Niger wished to have clarified how the Depositories had been chosen and the number of States established. He also enquired about the difference in the order of the names of the depositary States in the different language versions of the draft final clauses. The Delegate of Malawi pointed out that there were different ways of interpreting how the instruments of ratification were to be deposited, depending on how Article VI were read, that is, the word "and" could be seen as requiring States to deposit instruments of ratification with all of the Depositories, not just with one of them. He cited a situation where his government had deposited an instrument of ratification with three Depositories resulting in the establishment of three different dates on which the instrument was to take effect, a situation which he felt must create loopholes in the legal system. The Delegate of Malawi suggested that the phrase "one of those Depositories" be added for clarity. The Delegate of the Republic of Korea put forth the suggestion that there be only one Depository for the Protocol and that for efficiency and convenience it be ICAO.

The Executive Secretary, Dr. M. Milde, explained that the present procedure for depositing instruments of ratification was an established international practice which had first been developed in 1963. What was meant in Article VI was that States could deposit their instruments with one of the

Tenth Meeting
Commission of the Whole

Depositaries, including ICAO in this case, or, as some States wished, with all of them. If States chose to deposit an instrument with more than one Depositary, the different dates of entry into force would not create legal difficulties since in international practice it would be the first date with whichever Depositary was involved that would determine the applicability of the instrument. On the subject of changing the wording of the Article, the Chairman of the Drafting Committee wished to make clear that since they had followed international practice, they did not feel free to add the word "one" in reference to the number of Depositaries. In addition, he explained that as they were constructing a supplementary Protocol, it was necessary to follow the Convention as much as possible and that since the Convention called for three Depositaries, it would be inappropriate to have only one for the Protocol. The addition of ICAO as a Depositary had, however, been considered useful. In reply to the query of the Delegate of Niger, the Executive Secretary, Dr. M. Milde, noted that the different language versions of the draft did, indeed, differ in terms of the order of the names of the depositary States and that this was because each authentic text observed the alphabetical order of that language.

13. The Delegate of the Republic of Korea commented on the suggestion made by the Delegate of Niger in VIA Doc No. 4, agreeing with the idea to eliminate several Articles of the draft dealing with ratification, accession, denunciation, and so on, by stating in Article VIII that the provisions contained in the Convention relating to these subjects were also valid for the Protocol. In reply, the Chairman of the Drafting Committee explained that the Committee had examined this proposal but from a technical point of view had found it to be not a straightforward option.

14. The Delegate of Madagascar wished to know whether Article 14 of the Montreal Convention, dealing with disputes concerning the interpretation of the Convention, were applicable to the Protocol since Article IV of the Protocol, which had seemed to answer this question, had been merged with Article I. The Executive Secretary, Dr. M. Milde, replied that the new Article I, when received, would clarify the issue as it would state that the Convention and the Protocol were to be read and interpreted together as one single instrument, consequently Article 14 would apply to those adhering to the Montreal Convention only through the supplementary Protocol.

15. The Delegate of Japan raised an editorial point with reference to paragraph 1 of Article IX, suggesting that the word "party" be replaced by "Contracting State" so as to be consistent with the corresponding article of the Montreal Convention. The Chairman of the Drafting Committee indicated that while in the Montreal Convention reference was made to a "Contracting State", he believed that the proper practice as regarded the Protocol was to use the term "Party to the Protocol".

16. The Delegate of Australia, in reference to the final provisions following Article X in VIA Doc No. 31, observed that it would be more consistent with the style of the Montreal Convention if the paragraph beginning "In witness whereof" were to appear before the paragraph beginning with "Done at Montreal". This suggestion was supported by the Delegate of the Kingdom of the Netherlands. The Executive Secretary, Dr. M. Milde agreed, indicating that the present order was a clerical error and should be reversed as noted.

17. The Delegate of Madagascar, referring to VIA Doc No. 28 dealing with the title of the Protocol, noted that the title spoke of "supplementing" the Protocol rather than of "amending" it. He then pointed out that since Article II of the draft Protocol contained the instruction to delete paragraph 2 (a) of the Convention and replace it by a new paragraph 2 (a), the Protocol could not be seen as something that merely supplemented the Montreal Convention, since it was, in fact, amending it. The Chairman of the Drafting Committee noted this, and, explaining that Article II had not yet been dealt with by the Drafting Committee, assured the Conference that there could certainly be found another way to introduce the substance of the new paragraph 2 (a) that would result in its supplementing rather than amending the Convention.

18. The Delegate of Columbia queried the use of the phrase "done at Montreal" in the title of the Protocol as presented in VIA Doc No. 28, as this seemed inconsistent with the title of the Convention which stated "signed at Montreal". The Executive Secretary, Dr. M. Milde, explained that "done at Montreal" was the authentic text even though the words "signed at Montreal" appeared on the cover of Doc 8966. The Chairman of the Drafting Committee added that another reason in support of using the two terms was to avoid any confusion that might arise by the repetition of the same word so soon after it first appeared.

19. The Delegate of the Union of Soviet Socialist Republics raised the issue that at the beginning of the present work there had been the question of whether to make the new instrument an independent document or a supplement to the Montreal Convention and he noted that this question had influenced the work that had followed. He expressed doubt in the decision that States wishing to become parties to the Protocol must also adhere to the Convention, stating that while the Protocol would supplement the Montreal Convention, this did not make it less independent legally. He believed that if it were possible to participate in the Convention and not in the Protocol, then the opposite situation should also be acceptable. The Chairman replied that although the Commission of the Whole was free to reopen any issue, it had been understood at the end of the first meeting to be the clear decision of the Commission of the Whole not to construct provisions that would enable a party to subscribe to the Protocol alone and, on that basis the Drafting Committee had proceeded. The Chairman of the Drafting Committee reminded Delegates that the Conference was constructing a supplementary document and that it was not necessary for any party to the Montreal Convention to subscribe to this supplementary document.

(The meeting adjourned at 1230 hours)

THIS PAGE INTENTIONALLY LEFT BLANK

ELEVENTH MEETING OF THE COMMISSION OF THE WHOLE

(Thursday, 18 February 1988, at 1000 hours)

Chairman: Mr. P. Kirsch

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT INSTRUMENT

1. In opening the 11th meeting of the Commission of the Whole the Chairman noted that there seemed to be general agreement, at least on a provisional basis, on the title and the final provisions, subject to the part in brackets which in turn depended on what was done ultimately with paragraph 1 bis. The discussion at the meeting would start with a Resolution on preventive measures proposed by the Union of Soviet Socialist Republics and contained in VIA Doc No. 32.

2. In presenting the resolution the Delegate of the Union of Soviet Socialist Republics explained that on the basis of their proposal an unofficial group representing a broad range of delegations had worked out a compromise and had prepared the draft resolution on preventive measures against unlawful acts of violence at airports serving international civil aviation. This resolution was contained in VIA Doc No. 32. There was just one area where it had been difficult to obtain a consensus of opinion and that was with regard to the opening phrase of operative paragraph 3 which read "Urges the international community to "extend" technical, financial and material assistance ...". Some Delegations preferred to use "continue to extend" while other Delegations wished to alter the word "extend" to "increase".

3. In taking the floor, the Delegate of Kenya addressed himself specifically to operative paragraph 3 of the resolution, stating that this paragraph should be read in conjunction with the fourth preambular paragraph. In drafting the fourth preambular paragraph his Delegation had wished to link the fact that there was already assistance being provided to States in need to an acknowledgement from the international community that some States nevertheless faced difficulty in implementing security measures at airports. In his Delegation's view if the wording in paragraph 3 urged the international community to "continue to extend" technical assistance the force of the preambular clause would be reduced to the level of maintaining a status quo in respect of assistance. He urged the Conference to support inclusion of the word "increase" in the first line of paragraph 3. The Delegates of Ghana, Nigeria, Ethiopia and Malaysia gave their support to the statement of the Delegate of Kenya. The Delegate of Colombia also supported the Delegate of Kenya with regard to the use of the word "increase" in operative paragraph 3, but suggested, as an alternative, the term "step up" in the opening sentence.

4. The Delegate of the Federal Republic of Germany stated that with regard to paragraph 3 of the resolution, his Delegation was not empowered to make any financial commitments regarding preventive measures and would prefer to stay with the original text which read "Urges the international community to "extend" technical, financial and material assistance ...".

Eleventh Meeting
Commission of the Whole

5. The Delegate of the United Kingdom expressed a definite preference for the word "continue" but as it was highly desirable for this resolution to obtain the widest possible support, his Delegation would be willing to agree with the use of the word "extend". The Delegate of Italy also supported the word "extend".

6. The Delegate of Sweden suggested that, in order to bridge the difficulties with regard to the wording of paragraph 3, the text should read "'consider increasing" technical ...". This would encompass in its meaning "continue to extend" without making any commitment on the part of delegations present. The views of the Delegate of Sweden were shared by the Delegates of Argentina, Czechoslovakia, Ecuador, Chile, Iceland, Switzerland, Venezuela, the Islamic Republic of Iran and Japan. The Delegates of Poland and Norway preferred the phrase "to extend" but were prepared to accept "consider increasing" as a compromise.

7. The Delegate of Niger preferred the proposal put forward by the Delegate of Kenya, but, recognizing that the delegates present were not authorized to make financial commitments, and in a spirit of compromise, would be willing to accept the wording proposed by the Delegate of Sweden. Similar views were expressed by the Delegates of Malawi, Pakistan and Cuba.

8. Referring to paragraph 3 of the resolution, the Delegate of India noted that security in civil aviation affected all countries and that nobody was safe unless everybody was safe. What was important was the expression by the international community of the desire to co-operate in assisting those States whose resources were inadequate and his Delegation thought this could best be achieved by deletion of both words in square brackets in VIA Doc No. 32 and retaining the original text to read "Urges the international community to extend ...". The Delegates of Senegal and China expressed their support for the views of the Delegate of India but with the addition of the word "further" so the phrase would read "further extend".

9. The Delegate of Costa Rica proposed combining all three concepts that were being debated and suggested that the phrase read "Urges the international community to continue to extend and to increase ...". The Delegate of the United Republic of Tanzania suggested "continue and increase" as these words took into account that certain States are already providing assistance as well as suggesting that this assistance be increased.

10. The Delegate of the Federal Republic of Germany stated that further to his earlier comments, he had had discussions with other Delegations on this subject. They had agreed as a compromise to withdraw their previous proposals and with regard to the opening phrase of paragraph 3, to have both square brackets removed and to come back to the original wording "Urges the international community to extend ...".

11. Summing up the Chairman noted that, in the course of the morning's discussions, several Delegations had suggested amendments of a technical nature to operative paragraph 1 and preambular paragraph 2 and he suggested that those Delegations should later consult with the Executive Secretary concerning these matters.

12. Referring to a proposal made by the Delegate of Senegal to amend the fourth preambular paragraph in order to reflect the concerns of the Delegate of Kenya that certain States still faced problems in implementing preventive measures despite the assistance they were already receiving, the Chairman suggested the following rewording of that paragraph:

"Aware that notwithstanding assistance given to States in need, some States, especially developing States, still face difficulties in implementing preventive measures because of insufficient financial and technical resources".

13. Regarding operative paragraph 3, the Chairman proposed that the Commission accept provisionally the suggestion made by the Delegate of Sweden that its opening phrase should read "Urges the international community to consider increasing ...". He was aware that some Delegations were still concerned that this formulation might commit them to something they had no authority to do. Such Delegations could, in the mean time, check with their capitals and the Commission could go back to that issue at a later stage if necessary. But, based on past experience and on many precedents that have been applied to comparable circumstances, he believed there would be no problem in proceeding for the time being on that basis.

14. The Delegate of Senegal requested a clarification from the Secretary General concerning the practical application of resolving clause 3. He wished to know, whatever the final formulation of this paragraph, whether the provisions of this clause were enough for the Council to monitor or ensure the application of this provision. He noted that in this Clause the ICAO Council had not been expressly addressed and therefore he wondered if, as it stood, the Council could take action through the Secretary General, to implement this provision or would it be useful to either add another clause or expand this one with a phrase requesting the Council to monitor its implementation.

15. The Secretary General assured the Conference that this resolution, if adopted, would be presented to Council, with his recommendation that Council take practical measures to communicate to the international community the wishes contained in operative paragraph 3.

(The meeting adjourned at 1230 hours)

THIS PAGE INTENTIONALLY LEFT BLANK

TWELFTH MEETING OF THE COMMISSION OF THE WHOLE

(Thursday, 18 February 1988, at 1400 hours)

Chairman: Mr. P. Kirsch

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT INSTRUMENT

1. Introducing the Draft Final Act contained in VIA Doc No. 35, the Executive Secretary explained that it comprised a report on the sequence of events and on the decisions taken. Any Resolutions that were adopted by the Conference would be included as an integral part of the Final Act and after it was finalized, it would be signed by the accredited representatives of States who had taken part in the Conference.
 2. There followed a brief discussion on the form of the document being considered, the Executive Secretary explaining that the Draft had been prepared in the standard format of Final Acts of Diplomatic Conferences convened under the auspices of ICAO.
 3. The Chairman then reported that the Drafting Committee had concluded its consideration of paragraph 1 bis and that its work on the Preamble to the Protocol was almost complete. That left Article 2 bis on issues relating to jurisdiction and extradition to be resolved and he opened the discussion to any delegation that wished to comment.
 4. The Delegate of Colombia pointed out that paragraph 4 of Article 8 of the Montreal Convention established that, for the purpose of extradition, it would be deemed that the offences took place not only where they occurred but also in the States required to establish their jurisdiction. For this reason she felt that, at the end of paragraph 2 bis, reference should be made to the States mentioned in paragraphs 1(a) and (b) of Article 5 of the Montreal Convention. She considered that paragraphs (c) and (d) would not be easily applicable.
 5. As there were no other comments, the meeting adjourned at 1430 hours.
-

THIS PAGE INTENTIONALLY LEFT BLANK

THIRTEENTH MEETING OF THE COMMISSION OF THE WHOLE

(Friday, 19 February 1988, at 1000 hours)

Chairman: Mr. P. Kirsch

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT INSTRUMENT

1. The Chairman outlined the schedule of work for the Conference's morning and afternoon meetings, which would include consideration by the Commission of the report of the Drafting Committee; discussion of the question of threat and of issues relating to jurisdiction and extradition; review of a Draft Resolution presented by the Delegation of Argentina and, if necessary, of the Draft Resolution on preventive measures and technical assistance; and consideration by the Plenary of the report of the Credentials Committee.

2. The Chairman of the Drafting Committee, Mr. L. Oates (United Kingdom), in introducing his Committee's report (VIA Doc No. 40), expressed his thanks to its members for the spirit of co-operation with which they had carried out their work, and informed the Commission that only one item remained on which the Drafting Committee had not been able to reach a consensus. He then directed the Commission's attention to those points which had been discussed by the Drafting Committee, commencing with the title of the draft Protocol, which the Committee had decided to confirm as previously produced and without any square brackets at any point.

3. Referring next to Article I, which established the basic relationship between the Convention and the Protocol, the Chairman of the Drafting Committee explained that for those States which would subscribe to the Protocol, the Convention would be read with the addition of the words added in the text of the Protocol. For those States which would accede only to the original Montreal Convention, the Convention would apply without the addition of the words contained in the Protocol.

4. Turning to the text of Article II, the main substantive article containing the proposed paragraph 1 bis, the Chairman of the Drafting Committee informed the Commission that although a large number of suggestions had been considered by the Drafting Committee in the course of its debate on this article, no consensus had been reached on any of the substantive changes proposed. Referring in particular to proposals for changing the reference to means used, he indicated that the Drafting Committee had not wished to disturb the fundamental compromise reached in the Legal Committee on this point. The same concern had applied to other proposals for substantive changes, including those related to the inclusion of external facilities, as well as a number of editorial suggestions which, in the course of discussion, had been found to raise points of substance on which a consensus could not be reached. The Drafting Committee was therefore recommending adoption of the English text of Article II as drafted by the Legal Committee. The French, Russian and Spanish

versions had also been considered, and while no problems had been encountered with the wording of the Russian text, the second paragraph of Article II had been redrafted in the French and Spanish versions to make it consistent with the concept of the Protocol as supplementary, and not deleting or replacing any material in the Montreal Convention.

5. The text of Article III, dealing with the issue of jurisdiction and extradition, would require further consideration by the Commission of the Whole. The final provisions of the Protocol would be one clause shorter than in the draft contained in VIA Doc No. 3.

6. The Commission's attention was then directed back to the text of the preamble. The Chairman of the Drafting Committee explained that since no consensus on changing the qualifier in paragraph 1 bis had seemed possible following the debate in the Commission of the Whole, the Committee had considered amending the text of the preamble to reflect the concerns expressed by a number of delegations that the scope of the international offence could be more precisely identified. The outcome of the Committee's debate on this subject was a proposed change to the first preambular clause which would indicate more clearly that the Protocol was considering unlawful acts of violence which endangered safety of persons or which jeopardized the safe operation of airports. When voting on this amendment, only one member of the Drafting Committee had indicated he could not accept it and one other member had abstained.

7. The Chairman of the Drafting Committee next referred to the matter upon which no consensus had been reached: a proposal to include a note, shown in square brackets in the text prepared by the Committee, expressing concern over the escalation of terrorist activities in the world. He reminded the Commission that when this issue was considered at the 26th Session of the Legal Committee, it had been resolved on an indicative vote in the working group to not incorporate such a reference. Out of the 24 delegations entitled to vote in the Drafting Committee, 11 had voted in favour of this reference and 9 had voted against its inclusion. A number of delegations had moreover indicated that they would have great difficulty in accepting the inclusion of such a reference, which they argued was not appropriate for the Protocol. The matter was therefore being referred to the Commission of the Whole for its decision.

8. The Chairman expressed his thanks to the Chairman of the Drafting Committee for his introduction of the report contained in VIA Doc No. 40, and observed that since the matter being referred to the Commission of the Whole had already been discussed at some length by that body as well as by the Legal Committee at its 26th Session, a decision could be taken without much further debate. After inviting comments from Delegations on the report of the Drafting Committee, and receiving none, he requested that Delegates express their views through an indicative vote as to whether or not the first paragraph of the preamble, appearing in square brackets in the report of the Drafting Committee and reading "concerned about the escalation of terrorist activities in the world," should be included in the preamble of the Protocol.

9. On a point of order, the Delegate of Tunisia requested clarification on the voting procedure being adopted. He then suggested that two separate votes be taken; the first to measure the degree of support for the text of the preamble including the sentence in square brackets, and the second on the same preamble without this reference.

10. The Observer from the PLO, commenting on the text under question, expressed the view that its wording should not include any terms for which a clear definition had as yet not been developed.

11. Further to the suggestion made by the Delegate of Tunisia, The Chairman informed the Commission that in addition to the two indicative votes which would be taken, a third would follow to determine how many delegations could support the formula which had received the highest number of votes.

12. Indicative votes on preferences for the text of the preamble were then taken. The result showed 38 Delegations in favour of including the clause in square brackets, and 31 in favour of the preamble without this clause.

13. The Delegate of Sweden, on a point of order, asked for clarification of a comment made by the Chairman during the voting procedure to the effect that Delegations could vote in favour of both versions of the preamble. The Chairman explained that the objective of an indicative vote was simply to determine Delegations' preferences; he then called a third indicative vote to determine the number of Delegations which, in view of the outcome of the first two votes, could now accept the inclusion of the clause in brackets.

14. The result of the third indicative vote showed that 49 Delegations were willing to accept the Protocol with the additional preambular clause.

15. The Chairman indicated that there was no need to take a formal decision on the issue at this stage, given the relative equilibrium between the preferences manifested. After inviting further comments from delegations on the report of the Drafting Committee, and receiving none, he turned the Commission's attention to the question of whether or not the concept of threat should be included in paragraph 1 bis. He reminded the Commission of a request put forward earlier that this issue be the object of a decision not by the Drafting Committee, but by the Commission of the Whole.

16. The Delegate of Colombia considered the inclusion of threat in the Protocol to be of absolute importance in enabling States to classify and penalize incidents of threat which endangered the safety of an airport. With a view to developing as complete a text as possible, her delegation was proposing that the text of paragraph 1 bis, sub-paragraph a) be modified to read "performs or threatens to perform an act of violence against a person at an airport serving international civil aviation ...".

17. The proposal made by the Delegation of Colombia was supported by a majority of Delegations commenting on this issue. The Delegate of Argentina, referring to his delegation's proposal in VIA Doc No. 6, suggested the inclusion of threat as a separate sub-paragraph under paragraph 1 bis. He

Thirteenth Meeting
Commission of the Whole

elaborated on the reasons his delegation wished to see this amendment included, indicating that he did not consider the concept of threat to be already covered by the term "perform," as had been suggested by a number of delegates at the 26th Session of the Legal Committee. Referring to The Hague Convention which, under Article 1, sub-paragraph a), referred to the use of "force or threat thereof," the Delegate of Argentina considered the absence of this concept in the Montreal Convention to be a dangerous omission. Since threat was, in his opinion, a specific act capable of creating chaos at an airport, thereby interfering with its safe operation, it should be included in the Protocol.

18. The inclusion of the concept of threat was further supported by the Delegate of India, who expressed the view that threat should be considered as a separate concept whose repercussions included serious damage to the tourism industry of States as well as the undermining of the travelling public's confidence in the safe operations of an airport. The Delegate of Ethiopia considered that since the role of the Protocol was to supplement the Montreal Convention with offences for which it did not provide, the inclusion of threat as an offence through the Protocol would not be an inconsistency with the Convention itself. The Delegate of Kenya, interpreting the objective of the Protocol to be the protection of property and facilities necessary for the safe operation of an airport, considered that threat was an offence serious enough to be included in its provisions. The Delegate of Chile recalled a proposal made to the Special Sub-Committee at the Legal Committee's 26th Session that threat be regarded as a means of performance of the offence, and considered that in this capacity threat could constitute a danger to civil aviation or could interfere with the safe operation of airports. The Delegations of the Islamic Republic of Iran, Ecuador, Costa Rica, Saudi Arabia, Egypt, Panama and Israel also expressed their support for the inclusion of the concept of threat.

19. Several Delegations expressed difficulty with the proposal. The Delegate of Japan referred to the report of the 26th Session of the Legal Committee, which had concluded that the scope of paragraph 1 bis should be restricted to an offence which constituted an actual act of violence. While threats disrupting the services of an airport would be covered by sub-paragraph b) of paragraph 1 bis, the Delegation of Japan did not consider less serious threats to be appropriate to the Protocol. The Delegate of Greece indicated that her delegation could not accept the inclusion of a concept which it considered would extend beyond reason the scope of application of paragraph 1 bis. It was the opinion of her delegation that threat, by its nature, was not capable of endangering or being likely to endanger safety at an airport; nor could the concept be included in the notion of attempt, since threat did not involve commencement of execution. For these reasons the Delegation of Greece considered that the question of threat should remain in the ambit of domestic legislation. The Delegate of France expressed support for the opinions made by the Delegations of Japan and Greece, and maintained that the introduction of this concept would create an inconsistency between the Protocol and the Montreal Convention which did not deal with threat. He held the view that while threat could, under certain circumstances, constitute an offence, it did not constitute an international offence to be provided for in this instrument. The Delegates of the United Kingdom, the Federal Republic of Germany and the United States also objected to the inclusion of the concept of threat in the Protocol.

20. An indicative vote was taken on whether the text of the Protocol should refer to a threat to perform the act of violence. The result was 30 Delegations in favour and 35 against, with 11 abstentions.

21. Before taking up discussion of the next item on the meeting's order of business, The Chairman expressed his concern with the outcome of the two indicative votes taken thus far. He observed that a formal vote on either of these issues would yield inconclusive results, and for this reason considered it desirable for delegations to enter into informal consultations with a view to arriving at a consensus, with the First Vice-President of the Conference, the Delegate of Kenya, serving as the contact for these consultations.

22. The Delegate of Jamaica agreed with the concerns expressed by the Chairman. He suggested that during these consultations, Delegates consider the possibility of excluding from the Protocol those provisions on which agreement had not been reached, in the interest of obtaining the necessary degree of consensus. The Delegates of Tunisia and Venezuela also shared the concerns expressed by the Chairman and supported his proposal.

23. Turning to the subject of jurisdiction and extradition, the Chairman wished to address the question of whether or not the text of paragraph 2 bis should include a reference to Article 5, sub-paragraph 1 b) of the Montreal Convention, which referred to aircraft registered in the State in question.

24. The result of an indicative vote taken to establish the Commission's preference showed 49 Delegations in favour of keeping the existing text of paragraph 2 bis, and 18 Delegations in favour of including in it the reference to Article 5, sub-paragraph 1 b).

25. A third indicative vote showed that 79 Delegations could accept the existing text of sub-paragraph 2 bis, as preferred by the majority.

26. When commenting on the provisions covering jurisdiction and extradition, The Delegation of Japan expressed the opinion that the Conference should give consideration to the appropriate amendment of paragraphs 2, 3 and 4 of Article 4 of the Convention so as to cover the cases contemplated in sub-paragraph b) of paragraph 1 bis of Article 1, as paragraph 6 of the Article 4 now became applicable to the attempts to commit above cases as a result of the addition of paragraph 1 bis to paragraph 2 a) of Article 1 of the Convention.

27. The Chairman then directed the Commission's attention to a Draft Resolution contained in VIA Doc No. 36, presented by the Delegation of Argentina and co-sponsored by Brazil, Chile, Colombia, Costa Rica, Ecuador, Panama, Peru and Spain. The Draft Resolution consisted of a recommendation to Contracting States relative to the adoption of domestic legislation aimed at the classification of offences committed at airports serving international civil aviation and the establishment of severe penalties therefor.

28. The Delegate of Japan pointed out an editorial amendment to the second preambular clause which should be corrected to refer to Article 5 of the Montreal Convention.

Thirteenth Meeting
Commission of the Whole

29. The Delegate of Argentina, in introducing his delegation's Draft Resolution, indicated that the Protocol would be ratified by a large number of States with legislative systems which differed greatly. In order to ensure application of the Montreal Convention and its Protocol, it was imperative that each State incorporate into its domestic legislation a classification of the offences covered in the Montreal Convention, and the penalties to be imposed for these offences.

30. The Chairman indicated that discussion of this Draft Resolution would commence at the afternoon meeting, following the report of the Credentials Committee in the sixth meeting of the Plenary. Before adjourning the meeting, he requested the Director of the Legal Bureau to make a statement, whereupon Dr. M. Milde informed the Commission of a discrepancy appearing in the title, first considering clause and first resolving clause of the Draft Resolution: whereas the Spanish word "qualificacion" had been translated into French by its equivalent, "qualification", it appeared in the English and Russian versions as "classification". In order to avoid any misunderstanding in terminology, he suggested that Delegates consider referring, in all languages, to the concept of "definition of offences".

(The meeting adjourned at 1231 hours)

SEVENTH PLENARY MEETING

(Friday, 19 February 1988, at 1400 hours)

President: Mr. P. Kirsch

AGENDA ITEM 7: REPORT OF THE CREDENTIALS COMMITTEE

1. The President invited the Chairman of the Credentials Committee to present her report, whereupon Mrs. L. Rodríguez Pérez (Colombia) informed the Plenary that of the 81 States represented at the Conference, credentials in due and proper form had been presented by 80 Delegations. Only one Delegation had as yet not submitted credentials. She expressed her appreciation to Mr. Kakkar and Dr. Faller of the Legal Bureau for their assistance, as well as to the other members of the Committee.

2. The President expressed his thanks to Mrs. Rodríguez Pérez for presiding over the Credentials Committee, and after inviting comments regarding the report, and receiving none, adjourned the Sixth Plenary Meeting to resume the work of the Commission of the Whole.

(The meeting adjourned at 1425 hours)

THIS PAGE INTENTIONALLY LEFT BLANK.

FOURTEENTH MEETING OF THE COMMISSION OF THE WHOLE

(Friday, 19 February 1988, at 1425 hours)

Chairman: Mr. P. Kirsch

1. The Commission of the Whole began its consideration of the Draft Resolution presented by the Delegation of Argentina (VIA Doc No. 36), containing a proposed recommendation to Contracting States relative to the adoption of domestic legislation aimed at the classification of offences committed at airports serving international civil aviation and the establishment of severe penalties therefor.

2. The Delegate of Norway expressed doubts as to the advisability of embarking upon consideration of this item at such a late stage of the Conference, and further indicated that his Delegation was not convinced of the need for a resolution on this subject. Commenting on the text, he questioned the meaning of the term "classification," or "definition of offences," which would appear in the first operative clause; his Delegation would be opposed to any term insofar as it implied directives for carrying out the provisions of the Protocol by internal legislative powers. It was his Delegation's view that substantive recommendations going beyond the obligations laid down in Article 3 of the Montreal Convention should be dealt with in the Convention itself or in its Protocol.

3. The Delegate of the Union of Soviet Socialist Republics, while expressing agreement with the principle that offences defined in the Protocol should be appropriately and severely punished, did have reservations on a number of points, including the appropriateness of the expression "Protocol to amend the Convention" in the Russian and English versions. With respect to the term "classification" or "definition of offences," he expressed the view that the objective of such a Resolution should not be to classify or define offences but rather to recommend the adoption of appropriate measures for the punishment of those offences covered by the Protocol. To the extent that the draft could be amended to offer guidance to States on such measures, it would be acceptable to the Delegation of the Union of Soviet Socialist Republics.

4. The Delegate of Japan, commenting briefly on the draft Resolution, held the view that a recommendation on the adoption of special measures to fulfil the requirements of the Protocol would be an impingement on the internal legislative systems of States. For this reason, the Delegation of Japan was not in favour of adopting the Resolution.

5. The Delegate of Denmark stated that the obligation for States should be confined to the adoption of severe penalties for the punishment of offences contained in the Protocol, with no additional requirements on implementation. Since Article 3 of the Montreal Convention would cover this obligation, he saw

Fourteenth Meeting
Commission of the Whole

no need to adopt a resolution on the subject. He further indicated that the wording of a recommendation on penalties, if different from the wording of Article 3, might originate some confusion with respect to existing obligations.

6. The Delegate of Bulgaria expressed support for the Draft Resolution, and offered some suggestions on wording which included modifying the first resolving clause to read "...recommend to Contracting States that they, when appropriate, adopt ..."; and replacing the word "amend" by the word "supplement" in the first paragraph of the preamble and in the first resolving clause. The Delegate of Bulgaria also suggested the deletion of the phrase "and to impose penalties proportional to the seriousness of these offences," in view of the fact that this recommendation would touch upon the internal legislative systems of States, a number of which had already introduced such measures.

7. The Delegate of Mexico took the floor to express his complete support for the Draft Resolution, which he believed strengthened the contents of Article 3 of the Montreal Convention.

8. The Delegate of Pakistan expressed difficulty with the term "classification of offences" as well as with the expression "penalties proportional to the seriousness of these offences," and indicated that he was still somewhat confused about the Resolution both as to content and the need for it. In his view, its contents were either contradicting the provisions of Article 3 of the Montreal Convention, or simply repeating these, in which case there was no need for its adoption. He further shared the opinion of those delegates who considered that advice on domestic legislation fell outside the purview of the Conference.

9. The Delegate of Tunisia indicated that although his Delegation had no difficulty for the moment in accepting the Draft Resolution, it might be more appropriate for the Conference to present the Resolution to the ICAO Council for adoption by that body.

10. There were no further comments on the Draft Resolution presented by the Delegation of Argentina. The Chairman summarized the discussion which had just taken place, and observed that since very few Delegations had taken the floor, it was difficult for him to determine the Commission of the Whole's general position on this subject. He then invited the Delegation of Argentina or one of the Delegations which had co-sponsored the paper to take the floor.

11. The Delegation of Argentina, referring to the objections which had been raised on the text of the Draft Resolution, indicated that the wording of the final draft could be amended in consultation with the ICAO Secretariat. With regard to substance, he wished to clarify that the document simply recommended to States that they create the necessary legislation, including the outlining of offences and penalties, in order to be able to apply the Montreal Convention. As was the case with the Conventions of Tokyo and The Hague, the Montreal Convention was dependent upon such domestic legislation in order to be applied. It was his impression and that of the Delegations which had co-sponsored the draft resolution that the Conference was the appropriate body

for its adoption. He then indicated that the Delegation of Argentina as well as the co-sponsors would be willing to accept the decision of the Commission of the Whole on this subject.

12. The Director of the Legal Bureau informed the Commission of the Whole that the issue of domestic implementation of the different Conventions had been the subject of discussion by both the ICAO Council and the Assembly. In this respect, the Resolution on the safeguarding of civil aviation against acts of unlawful interference, adopted unanimously by the Assembly at its 26th Session, contained not a recommendation but an appeal to Contracting States to give special attention to the adoption of adequate measures against persons committing acts against the safety of civil aviation; and in particular to include in their legislations provisions for the severe punishment of such persons. The text adopted by the Assembly had the advantage that it adopted the same wording as the Conventions.

13. The Chairman suggested that the Commission of the Whole resume its discussion of the Draft Resolution presented by Argentina after the recess, then turned the meeting's attention to the Draft Resolution of the International Conference on Air Law, dealing with preventive measures and technical assistance (VIA Doc No. 38).

14. The Delegate of the United Kingdom wished to raise two points on this subject. The first concerned a drafting suggestion for the fourth preambular clause which referred to the difficulties faced by certain States in implementing preventive measures. He suggested that the word "fully" be inserted in front of "implementing" in order to avoid misinterpretation, so that the clause would read "...some States, in particular developing States, still face difficulties in fully implementing preventive measures...".

15. The second point raised by the Delegate of the United Kingdom concerned the substance of the third resolving clause, which called for increasing technical, financial and material assistance by the international community. In this context the Delegate of the United Kingdom, while expressing his agreement with the principles upon which this resolving clause was based, did not view the Conference as an appropriate forum for discussing funding or technical assistance, and indicated that his Delegation's authority did not extend to supporting recommendations related to the increased funding of technical assistance activities.

16. The Delegate of Mexico wished to be associated with the comments made by the Delegate of the United Kingdom on the text of the fourth preambular clause. The Chairman then asked whether any delegations had difficulties with this suggestion made by the Delegate of the United Kingdom, whereupon the Delegate of Senegal indicated that while his delegation would have preferred not to amend this clause, it was prepared to accept the amendment in the interest of reaching a consensus. He then referred to a proposal made earlier by his delegation to substitute the word "notamment" for "en particulier" in the French version of the text.

Fourteenth Meeting
Commission of the Whole

17. The Chairman noted the drafting suggestion made by the Delegate of Senegal, then indicated that if there were no further comments, in accordance with normal procedure the text of the Draft Resolution could be adopted by the Conference without a vote, provided that positions of the delegations which had expressed difficulties with it could be reflected in the report. Since the Resolution appeared satisfactory to everyone, the Chairman considered it as adopted in principle.

18. The Chairman then invited comments from Delegations on the revised text of the Draft Final Act (VIA Doc No. 39). He informed the meeting that in the English version, the last line of the first paragraph should read "done at Montreal" instead of "signed at Montreal," and that this change would apply to the other language versions as well. There were no further comments on the text of the Draft Final Act.

19. Returning to the subject of the Draft Resolution presented by the Delegation of Argentina in VIA Doc No. 36, the Chairman invited further comments from delegations. The Delegate of Argentina then took the floor to inform the Commission of the Whole that, in view of the comments made during discussion of this proposal as well as consultations with other delegations undertaken during the recess, the Delegation of Argentina and the co-sponsoring delegations would not insist upon further consideration of this item, in order to save time for discussion of other issues related to the Protocol. The Chairman thanked the Delegation of Argentina for the spirit of co-operation it had shown towards the rest of the Conference.

20. The Chairman then invited the First Vice-President of the Conference, the Delegate of Kenya, to inform the Commission of the Whole of the outcome of consultations undertaken since the morning meeting. The Delegate of Kenya expressed his thanks to the Chairman and delegations present at the Conference for the efficiency and co-operation with which they had carried out the objectives of the Protocol. He then reported that a consensus had emerged on the two issues left outstanding at the close of the morning meeting, i.e. the inclusion of the term "terrorism" in the preambular provisions of the Protocol, and the inclusion of threat as a separate and distinct offence. As a result of consultations, it had been agreed that these two concepts would be excluded from the draft Protocol.

21. The Chairman expressed his thanks to the Delegate of Kenya for his outstanding work carried out in such a limited time, and thanked the delegations present for the spirit of co-operation which they had demonstrated. He then informed the Commission of the Whole that it had concluded its work on the substance of the Conference, and that it would proceed to a final reading of the draft Protocol and the Final Act at its next meeting.

(The meeting adjourned at 1450 hours)

FIFTEENTH MEETING OF THE COMMISSION OF THE WHOLE

(Monday, 22 February 1988, at 1000 hours)

Chairman: Mr. P. Kirsch

1. The Chairman stated that the Commission of the Whole would examine the text of the draft Final Act (Via Doc No. 41) and the draft Protocol (VIA Doc No. 42) to determine their technical accuracy, after which a Plenary would be called to approve and adopt both texts.
2. The Executive Secretary drew attention to several editorial errors which would be reflected, as necessary, in all four language versions.
3. There were no comments on VIA Doc No. 41. The Chairman then opened the floor for discussion of VIA Doc No. 42.
4. The Delegate of the United States of America, as one of the depositary governments, requested clarification by the Executive Secretary on the wording of Article V, paragraph 3. The interpretation of her delegation, based on multilateral treaty practices, was that instruments of ratification or accession could be deposited with any of the four Depositaries, i.e. either with the Union of Soviet Socialist Republics, the United Kingdom, the United States of America or the International Civil Aviation Organization.
5. The Executive Secretary reconfirmed the interpretation which had been reached in 1970 (The Hague Convention) and in 1971 (Montreal Convention), that the depositary system was intended to be alternative, not cumulative. He did concede, however, that the text might not be clear as new language had been introduced. In order to clarify this text and make it consistent with Article 15 of the Montreal Convention, he suggested the wording "Instruments of ratification shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and with the International Civil Aviation Organization, which are hereby designated as the Depositaries.", (i.e. replace "or" in the third line with "and" and after "Northern Ireland" delete "and" and insert a comma.)
6. The Delegate of the United Kingdom, as Chairman of the Drafting Committee, reminded the Delegates that the wording of this paragraph had been discussed in the Drafting Committee. In relation to the question of "or" versus "and", he stressed that use of either word would not change the existing State practice to deposit with one or more of the depositary governments. However, as ICAO was not a government, it would be incorrect, in his view, to delete "and" before "the United States of America". The remaining question was whether the "or" should remain or be changed to "and".

Fifteenth Meeting
Commission of the Whole

7. The Delegate of Chile stated that his Delegation, as well as some other Latin American Delegations, would like this paragraph clarified because, in Spanish, the wording represented a cumulative system. If the word "or" remained, it would imply that ICAO was a government. He did not want "or" replaced by "and".

8. The Delegate of Pakistan, supported by the Delegate of Mexico, felt that the intention should be clearly stated rather than relying on past practices. Two proposals were offered: the deletion of "and" before "the United States of America", or the addition of the word "any", i.e. "deposited with any of the governments". This latter suggestion was supported by the Delegate of Ghana.

9. The Delegate of the United States felt that Delegates' interpretation of this paragraph was uniform; it was the phraseology which was creating difficulties. She favoured the solution made by the Executive Secretary; it reflected the intent of all Delegations and was consistent with the Montreal Convention.

10. The Delegate of Peru agreed with the Delegate of the United States of America. However, if the customary practice were followed, the proposals made by the Executive Secretary and the Delegate of Pakistan would have to be considered. So that the Spanish language version of the text would clearly reflect common practice, he suggested also deleting "and" before "Northern Ireland". Thus, it would read: "shall be deposited either with the Government of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain, Northern Ireland, the United States of America etc."

11. The Delegate of Jamaica supported the proposal of the Delegate of Pakistan to delete "and" before "the USA" with no further changes to the rest of the paragraph.

12. The Delegate of Switzerland suggested that, at least for the French language version, if more exactitude was needed regarding the depositaries, the following wording could be used: "Instruments of ratification shall be deposited with the Government of the Union of Soviet Socialist Republics or the United Kingdom of Great Britain and Northern Ireland or the United States of America or with the International Civil Aviation Organization".

13. The Delegate of Venezuela felt that this paragraph was already quite clear although he could agree to replace "or" before "with the International Civil Aviation Organization" with a comma. Referring to the statement made by the Delegate of the United States of America, it was pointed out that this had already been discussed in the Drafting Committee and Plenary with no opposition. However, he felt that the existing text could remain provided the understanding of its interpretation was reflected in the minutes; this was supported by the Delegate of the United States of America.

14. The Delegate of Sweden stressed that, due to translation difficulties, this point (i.e. "or" versus "and") must be made very clear. Some suggestions already submitted, in particular those of the Delegates of

Pakistan and Switzerland, were clearer in regard to stressing the alternative, rather than the cumulative, system than the one made by the Executive Secretary.

15. The Delegate of Austria pointed out that if the wording of Article V were altered, corresponding changes would need to be made in Article VII (paragraph 3) and Article VIII (paragraph 1). It also had to be clearly stated that the deposit of written notification to one of the Depositaries was sufficient. Although he favoured retaining the existing text, he would agree to delete "and" before "the United States of America" and retain "or".

16. The Delegate of the United Kingdom reminded the Commission that the Drafting Committee had been very conscious of the formulation used in the Montreal Convention (i.e. the use of "and"). However, the Delegate felt that ambiguity still existed; the understanding that the depositary system was intended to be alternative was not universal. If the provision were to read: "Instruments of ratification shall be deposited with any one or more of the following ...", this would retain the ability of States to deposit with one or more of the Depositaries in accordance with their national practices. Corresponding changes would then need to be reflected in Articles VII and VIII.

17. The Chairman outlined three general conclusions. The first was that interpretation by Delegates of the article was uniform. The second was that the possibility of depositing the instrument with more than one Government should not be excluded. The third was that, for reasons of clarity, some Delegations now supported a change to the wording of this provision. In particular, the proposal of the Delegate of Pakistan had received a great deal of support, with the risk of misinterpretation being small. He felt that this proposal would be acceptable to the Delegations, taking into account adjustments proposed by the Delegates of the United Kingdom and Austria.

18. At the request of the Chairman, the Executive Secretary read the text incorporating the modifications proposed by the Delegate of Pakistan: "Instruments of ratification shall be deposited with any of the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America or with the International Civil Aviation Organization which are hereby designated as the Depositaries." Consequent amendment would be required in Article VII, paragraph 3 and Article VIII, paragraphs 1 and 2 ("any of the Depositaries"). Moreover, he felt that Article V, paragraph 3 merited further discussion because "with any of the Governments" could cause misunderstandings, implying that there could be more than one government in any of the States.

19. The Delegate of Kenya, supported by the Delegates of Austria, France, the Kingdom of the Netherlands, Canada, Tunisia, Colombia and Venezuela, did not favour amending the Protocol. As it was so closely linked with the Montreal Convention, any changes to it would necessitate changes to the Convention itself. As an instrument of international law, there was an international practice which would apply for its interpretation.

Fifteenth Meeting
Commission of the Whole

20. The Delegate of Pakistan was of the opinion that the text had already departed from the Montreal Convention by the addition of the International Civil Aviation Organization as a Depository. To be consistent with the Montreal Convention, he favoured the text proposed by the Executive Secretary. If the existing text remained, he felt that a footnote should be added stipulating that where the text read "or", the meaning was "and".

21. The Delegate of Australia endorsed the proposal made by the Delegate of Pakistan. He agreed with that part of the proposal of the Executive Secretary to replace "or" with "and" as this would avoid the impression that Instruments of ratification needed to be deposited with all three Governments or with the International Civil Aviation Organization.

22. The Delegate of Senegal supported the Delegate of Pakistan's proposal. However, in the spirit of compromise, he favoured retention of the existing text with the understanding that Instruments of ratification be deposited with one of the four Depositories.

23. The Chairman restated the proposal made by the Delegate of Pakistan, i.e. the text remain virtually as formulated except for the replacement of "or" with "and". As no objections were voiced, the proposal was adopted.

24. The Delegate of Jamaica sought further clarification. He had understood that the Delegate of Pakistan had actually submitted two proposals: either the deletion of "and" (before "the United States of America") and retention of "or" or the addition of "any"; it was not necessary to include both. He himself favoured the first. He believed the document itself should be as clear as possible with its interpretation contained therein, rather than in a separate document.

25. The Chairman explained that the solution adopted was consistent with the Montreal Convention and with the common understanding. To clarify this, he requested the Executive Secretary to read out the proposal. Reiterating that this was a matter solely of interpretation which had already been adopted by consensus, the Executive Secretary stated that the wording as endorsed was: "Instruments of ratification shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and with the International Civil Aviation Organization which are hereby designated the Depositories."

26. The Chairman clarified a question from the Delegate of Mexico who pointed out that this proposal was not the original one; the Chairman stated that it was the revised version.

27. The Delegate of Pakistan stated that this was not his proposal. He had made two suggestions: the addition of the word "any" or replacement of the word "and" after "Ireland" with a comma. He had not suggested substituting "or" with "and".

28. The Delegate of Austria reiterated his position of retention of the existing text, adding that he believed a decision had already been taken.

29. After a brief consultation, the Executive Secretary again read out the above statement that was considered to be closest to the Montreal Convention and which it was believed was the proposal of the Delegate of Pakistan.

30. The Delegate of Mexico felt that, in the Spanish language, this text would be meaningless and he could not agree that an editorial error should be perpetuated. Of the two proposals made by the Executive Secretary, his preference was for the first.

31. The Delegate of Canada agreed with replacing "and" after "Northern Ireland" with a comma but felt that "or" could remain.

32. The Delegate of the United Kingdom stressed that this matter had been discussed in the Drafting Committee at great length; there had been a consensus regarding its interpretation but difficulty existed regarding phraseology. Although the Drafting Committee attempted to be consistent with the wording used in the Montreal Convention, it was felt that "or" was more appropriate; otherwise ICAO would be viewed as an additional, rather than alternative, requirement. He felt that, even though the text was not perfect, it would be satisfactory provided this understanding was reflected in the record. Similar views were expressed by the Delegates of Pakistan and Jamaica.

33. The Commission of the Whole accepted the suggestion proposed by the Delegate of the United Kingdom to retain the text of Article V, paragraph 3 as originally drafted.

34. The Delegate of Pakistan then proposed replacing "added" in Article II, paragraph 2, second line, with "inserted". There were no objections.

35. As there were no more comments, the Commission of the Whole approved the text of the draft Protocol as outlined in VIA Doc No. 42 with the technical adjustments that had been made.

36. As this was the last meeting of the Commission of the Whole, the Chairman again invited Delegates to make any comments. As no Delegation wished to take the floor, the Sixteenth Meeting of the Commission of the Whole was declared closed.

(The meeting adjourned at 1215 hours)

THIS PAGE INTENTIONALLY LEFT BLANK

EIGHTH PLENARY MEETING

(Monday, 22 February 1988, at 1215 hours)

President: Mr. P. Kirsch

1. The Chairman invited the Conference to approve the text of the Final Act and adopt the text of the draft Protocol as recommended by the Commission of the Whole.
2. The Delegate of Mexico queried the phrase "estados necesitados" ("in need") in the fourth WHEREAS clause of the draft Final Act in VIA Doc No. 41. As this had a negative connotation in Spanish, he suggested deleting "to States in need". This view was supported by the Delegates of Spain, Costa Rica, Venezuela, Peru, Cuba, Argentina, Ecuador, Colombia, Chile, Algeria, Jamaica, Pakistan and Senegal.
3. The Delegate of Pakistan, pointing out that this phrase also appeared in paragraph 3, suggested the wording "to States requiring such assistance" or similar. The Delegate of Senegal called attention to the French text which had retained "notamment les Etats en développement" and not "des Etats en développement".
4. The Chairman, referring to the comments of the Delegate of Senegal, stated that the text could easily be altered with corresponding changes in all language versions. The Executive Secretary then read out the text as amended in the four languages. This formulation was adopted.
5. Turning to the point raised by the Delegate of Pakistan, the Executive Secretary felt that, as the connotation was different, no change was required.
6. The Conference then adopted the Final Act of the Draft Protocol with the adjustments shown above.

(The meeting adjourned at 1230 hours)

THIS PAGE INTENTIONALLY LEFT BLANK

NINTH PLENARY MEETING

(Tuesday, 23 February 1988, at 1000 hours)

President: Mr. P. Kirsch

1. This meeting being the last to hear general statements, the Delegate of Austria took the opportunity to express his gratitude to the Government of Canada for its initiative in sponsoring the resolution that led to the development of the Protocol, a resolution co-sponsored by Austria, among others. He stated that the adoption by consensus of the Protocol constituted a further milestone in the development of international air law and represented tangible proof of the determination of the international community to eradicate terrorism. Austria viewed the Protocol as more than legal theory, seeing it also as a reaction to the terrorist attack on Vienna Airport in December 1985. He stressed that Austria believed that conflicts should be resolved exclusively by peaceful means and that terrorism must be tackled by each State individually and in co-operation with others. While, on the whole, very satisfied with the adopted text, the Austrian Delegation felt that the Protocol could have gone further in some respects, such as by including the concept of threat as an offence, although it was noted that this concept had not been retained in order to achieve a consensus. The Austrian Delegation was pleased that the adopted phrase "facilities of an airport" could be viewed as covering the concept of facilities outside the perimeter of an airport serving international civil aviation but essential to the operation of such airport. This Delegation would be signing only the Final Act of the Conference the following day but felt that the Protocol would soon be approved by the Austrian Federal Government. The Delegate of Austria was pleased to note the adoption of a resolution urging all States to take preventive measures to suppress terrorism against international civil aviation. He expressed his appreciation to the President and to the Government of Canada and paid tribute to the Chairman of the Drafting Committee, as well as to the ICAO Secretariat, particularly to Dr. M. Milde and his colleagues, and to what the Delegate of Austria termed "the well-known ICAO spirit". He concluded by hoping that the spirit of mutual understanding and compromise that had characterized this Conference would prevail at the upcoming international conference on maritime law since a similar result there as had just been achieved in Montreal would signify remarkable progress in the field of international anti-terrorist legislation.

2. The Delegate of Brazil expressed satisfaction with the results achieved by the Conference, stating that the Protocol confirmed the provisions that the Government of Brazil had been trying to apply, thus showing that Brazil had been following the right path regarding the safety of international civil aviation. The Brazilian Delegation then proclaimed its pleasure at signing the Protocol and extended its congratulations to the President.

Ninth Plenary Meeting

3. The Delegate of Poland praised the President for the excellent manner in which he had presided over the Conference and declared that the following day the Polish Delegation would sign the Protocol and Final Act. He stated his Delegation's satisfaction with the solutions incorporated in the new instrument while regretting the omission of the concept of threat as an offence and that the use of extradition procedures had not been expanded. The Polish Delegation stressed its condemnation of international terrorism in all its forms and its support for efforts to end unlawful acts against airports through expansion of the Montreal Convention. The Delegate of Poland remarked that of greatest importance was the content of instruments, especially those measures allowing for the punishment, by severe penalties, of persons guilty of committing acts of violence. He stated that often the severity of punishment was proportional to the degree of damage done only towards the citizens or property of the State where the offender was apprehended, with lesser damage to that State resulting in lighter punishment, and so he believed that in order to ensure punishment proportional to the crime, priority should be given to granting jurisdiction to the State most affected by the unlawful act. He felt that the international community should consider creating, as a next step, a Protocol to establish this priority of jurisdiction. In the meantime, his government would act in conformity with the existing instruments. In concluding, he expressed the hope that the international community would comply with the spirit and results of the Conference, and expressed his gratitude to the Secretariat and to Dr. M. Milde in particular, for their assistance in the achievement of these results.

4. The Delegate of the United Kingdom observed that it was the initiative of the Canadian Minister of Transport, supported by the United Kingdom and other States, that had given the impetus for this Conference, the successful completion of which was due in great measure to the chairmanship of Mr. Kirsch, a member of the Canadian Delegation. He remarked that although there was no reference to terrorism in the text of the Protocol itself, all knew that it was terrorism, however defined, that had brought Delegations to this Conference and raised the need for the Protocol. He stated that they had discussed the wording of the qualifier to paragraph 1 bis, and while it had not been changed, he noted that the Preamble had been slightly modified to clarify what was meant by endangering safety at an airport. He also assured the Conference that his government would carefully study the Protocol in order to incorporate it into domestic law. In conclusion, he repeated his appreciation for the efforts of the President as well as for those of the Secretariat.

5. The Delegate of France pointed out that France had, from the outset, been associated with the Canadian initiative leading to the development of the Protocol and had actively participated in the work of the Legal Sub-Committee as well as that of the Legal Committee. He congratulated the President of the Conference, the Vice-Presidents and the Chairman of the Drafting Committee as well as the President of the Council, the Secretary General and the Secretariat, for their roles in the success of the Conference. He expressed his pleasure at seeing the Conference adopt by consensus such a timely and significant instrument and, announcing that the text met the approval of his Delegation, declared its intention to sign the Final Act the following day and the Protocol within the following weeks.

6. The Delegate of the Union of Soviet Socialist Republics declared that an important document had been adopted by the Conference, whose success had been ensured by the efforts of all Delegations. He stated that although many provisions had been the result of compromise, the main strength of the instrument was that all points of view had been considered and that it had received the unanimous support of the Conference. He announced that he had been authorized by his government to sign the Protocol. He considered the most important task now facing States to be the implementation of the instrument by taking specific measures, including preventive measures, which was why the Soviet Delegation had attached such importance to the adoption of a resolution on preventive measures. He believed the work done by ICAO to suppress terrorism to be but part of the efforts being exerted by the United Nations and other international organizations, stating that his Delegation considered co-operation among States to be one of the cornerstones for the establishment of international security and realized the need to eliminate the underlying causes of terrorism. He explained that the Soviet Union had always condemned terrorist actions, no matter what motives were put forth to explain them, such as the attempts sometimes made to identify national liberation movements with terrorist activities. The Soviet Union would continue to fight terrorism in all its forms and believed that to eradicate terrorism it was necessary to reinforce trust among States and that States must refuse to use force in international relations. He then expressed his gratitude to the President of the Conference, the Vice-Presidents, the President of the Council, the Secretary General, the Executive Secretary and to all members of the Secretariat.

7. The Delegate of Venezuela declared that a spirit of co-operation had prevailed throughout the Conference which signalled a new success in the work of ICAO. She believed that the Protocol would strengthen the trilogy of Conventions dealing with aviation security, namely, the Tokyo, The Hague and Montreal Conventions. She stated that Venezuela condemned all forms of international terrorism and therefore felt satisfied with the successful conclusion of the Conference. She then congratulated the President, the four Vice-Presidents, the Chairman of the Drafting Committee, the Secretary General, the Legal Committee, the Legal Sub-Committee and the Executive Secretary for their contribution to the success of the Conference.

8. The Delegate of Algeria expressed his Delegation's appreciation to the President for his decisive role in the success of the Conference and observed that Algeria had actively participated in it and in the work of the Legal Committee. He declared that the instrument, supported by a broad consensus, reflected the international co-operation that had prevailed for the purpose of strengthening air transport security. He commented that it was not enough to consider only the effects of violence without viewing its underlying causes and that solutions must be based on justice and respect for those peoples fighting against all forms of domination. He also wished to reaffirm that the instrument should serve the safety of passengers on international civil aviation and not be used to defend attacks against the territorial sovereignty of States. He concluded with words of congratulation to the President, Delegates, the Vice-Presidents, the Secretary General and the Secretariat.

9. The Delegate of Italy welcomed the adoption by consensus of the Protocol, saying that he believed that the creation of legal instruments should always be accompanied by strong co-operation among States. He expressed his Delegation's gratitude to the Government of Canada for its initiative in the adoption of the Protocol which was timely considering the recent occurrence of events which had deeply affected some States, particularly Italy. He stated that the Protocol was satisfactory to his Delegation and, noting that it did not differ significantly from the draft, was pleased to announce that his Delegation would be signing the Protocol. The Delegate of Italy then referred to the upcoming Conference on maritime law to be held in Rome, explaining that it, also, was intended to fill a gap in existing regulations against unlawful interference, and hoped that the spirit of goodwill and co-operation that had prevailed at this Conference would continue in Rome. He then reiterated his congratulations to the President of the Conference, the Chairman of the Drafting Committee, the President of the Council, the Secretary General, the Legal Bureau and all others who had contributed to the Conference.

10. The Delegate of Chile extended congratulations to the Government of Canada, the President of the Conference, the Vice-Presidents, the President of the Council, the Secretary General and the Executive Secretary, as well as to the entire staff of ICAO. He also congratulated the Chairman of the Drafting Committee, the members of each committee and all Delegates for their spirit of mutual respect and co-operation. He recognized that the adopted text had been arrived at by consensus and declared his Delegation's satisfaction with it. He announced their intention to ratify the Protocol and Final Act and stated that, having already ratified the Montreal Convention, Chile wished to support as many laws as possible regarding unlawful interference with international civil aviation. Chile condemned all forms of terrorism and for this reason the Chilean Delegation was dismayed to see deleted from the Protocol's Preamble the mention of the concern of the Conference about the proliferation of terrorism throughout the world. He also regretted the omission of the concept of threat, and similarly, would have preferred to see listed all those measures or tools that could be used to perform unlawful acts, feeling that these omissions provided for a legal lacuna which could in the future affect the safety of international airports. He added that since the concept of aircraft not in service at an airport had been included in paragraph 1 bis, he would have liked to have seen included in paragraph 2 bis to Article 5 of the Convention the possibility for jurisdiction to the State of registry of such an aircraft. In spite of the above, he was pleased with the instrument and reiterated his intention to sign it.

11. The Delegate of Indonesia joined other Delegations in congratulating the President of the Conference and in expressing appreciation to the Secretariat as well as to the Government of Canada which had taken the initiative to address the subject of the Conference. He called the Protocol a show-case for international understanding and co-operation and stated that it reflected the political will of participants to preserve the safety of international civil aviation. He assured the Conference that although his country would soon have a new government, it would maintain its policy of working for increased safety in international civil aviation, and added that Indonesia would be among the first to ratify the Protocol.

12. The Delegate of the Kingdom of the Netherlands wished to make clear that although his Delegation would not be signing the Protocol at the conclusion of the Conference, they welcomed its adoption by consensus. He thanked the President, the officers of the Conference and the members of the Legal Bureau for their contributions, and assured the Conference that the Kingdom of the Netherlands would sign the Protocol in the near future.

13. The Delegate of Ecuador expressed his congratulations to the President of the Conference, committee members, the Government of Canada and all ICAO staff. He stated that the work of the Conference showed a spirit of co-operation and demonstrated that the moral conscience of humanity had now taken the form of an international consensus condemning acts of international terrorism. He explained that legislation in Ecuador provided for the inclusion of, as well as severe penalties for, those acts which are covered by the Protocol, and so his Delegation would take pleasure in signing the Final Act, and soon afterwards, the Protocol. He was generally pleased with the text of the Protocol but regretted that the concept of threat had not been included. He wished to note that while Ecuador did not allow extradition of its citizens, paragraph 2 bis to Article 5 of the Convention would give Ecuador jurisdiction over the offences covered in this paragraph pursuant to the provisions which applied in its penal code, in order that perpetrators would not go unpunished.

14. The Delegate of the United States thanked the President for his efforts as both President of the Conference and Chairman of the Working Group of the Legal Committee. She also thanked the Chairman of the Drafting Committee, the First Vice-President the Executive Secretary and the Secretariat. She declared that the past year had presented a great opportunity for the development of international law on a very worthwhile subject, and that the unanimous support shown for the Canadian initiative leading to Assembly Resolution A26-4, the prevailing spirit of co-operation and the adoption by consensus of the Protocol showed that the most had been made of this opportunity. In conclusion, she stated that her Delegation looked forward to signing the Protocol.

15. The Delegate of Malaysia joined others in expressing his satisfaction over the success of the Conference. He remarked that although forming a diversified group, participants had been able to reach a consensus due to having a clear goal supported by the determination and will of all Delegates. For this, he thanked the Chairman, the President and Secretary General, and Dr. M. Milde and his staff. Expressions of thanks were also extended to the Drafting Committee, the Government of Canada, and to all Delegates. He reaffirmed his Delegation's support for the Protocol, noting with pleasure that no major changes had been made to the draft and declared his Delegation's intention to sign the Protocol and Final Act the following day.

16. The Delegate of Kenya thanked the Government of Canada, the President of the Conference, the ICAO Council and its President, the Secretary General, the Legal Bureau and the entire staff of ICAO and expressed his gratitude to Delegates for the honour of having appointed him First Vice-President. He stated that Delegates could take pride in knowing that this Protocol had been one of the few anti-terrorist documents to have been adopted by consensus. He

Ninth Plenary Meeting

declared that having developed such an instrument was the first step, the second step being the implementation of its provisions. He urged Delegates to continue to show the spirit of goodwill that had prevailed at this Conference to ensure that the Protocol were implemented. He believed that the best way to eradicate the menace of terrorism was to co-operate not only in ensuring that criminals were apprehended but also through punishment and preventive measures, and for this he called upon Delegates to consider the provisions of the resolution that had been appended to the Protocol. With the desire for safe civil aviation often hampered by lack of resources, a plea for assistance to developing States had been made, and the Delegate of Kenya felt convinced that assistance would be forthcoming. He concluded by stating his intention to sign the Final Act and, shortly afterwards, the Protocol, and by wishing fellow Delegates a good trip home.

17. The Delegate of Colombia extended thanks to the President of the Conference, the Secretary General, the Executive Secretary and his colleagues, the members of the Credentials Committee, and the interpreters who had served the Conference. She stated that Colombia had, from the beginning, demonstrated its interest in the development of this Protocol and had co-sponsored the paper initiated by Canada. She observed that her Delegation was pleased with the text of the Protocol although they would have preferred it to include the concept of threat as well as the possibility for granting jurisdiction to the State of registry of an aircraft. The Delegate of Colombia explained that her Delegation would sign the Final Act but, due to internal legislation, would not be able to sign the Protocol.

18. The Delegate of Portugal hailed the results of the Conference and added that his Delegation, above all, would like to see each State put the new legal document into practice. On behalf of his Delegation, he expressed gratitude to the President and the Secretariat, and stated that he hoped to sign the instrument the following day.

19. The Delegate of India expressed his appreciation for the initiative taken by the Government of Canada during the 26th Session of the Assembly, an initiative which had been co-sponsored by India, among others. He explained that his country was committed to the aims and objectives of the Chicago Convention and of ICAO, was party to the Tokyo, The Hague and Montreal Conventions, and had enacted appropriate domestic legislation in addition to following the measures of Annex 17. He expressed satisfaction with the outcome of the Conference, noting that it was the result of a spirit of consensus and observing that the text of the Protocol had not changed significantly from the draft. He indicated that he would sign the Final Act the following day and that India would give careful, serious and expeditious consideration to signing the Protocol. He was pleased with the unanimous adoption of the accompanying resolution sponsored by the Delegate of the Union of Soviet Socialist Republics and, like the Delegate of Kenya, hoped that an increased technical and financial assistance would be forthcoming to States that had the will but not the means to implement security measures at airports. In conclusion, he expressed appreciation for the work of the Chairman of the Conference, the First Vice-President and to the other Vice-Presidents, the Chairman of the Drafting Committee, the officials of the Legal Bureau, in particular Dr. M. Milde, the Executive Secretary, as well as to the Government of Canada.

20. The Delegate of the Republic of Korea praised the Chairman as well as the Secretariat, the Secretary General, and Dr. M. Milde and his colleagues for their contributions towards the success of the Conference and congratulated Delegates on their spirit of co-operation. He reminded Delegates that the adoption of the Protocol alone was not enough to suppress terrorist acts but that the most efficient way to do so would be through the implementation of such instruments. He stated that his country had firmly resolved to do its utmost to protect civil aviation and he appealed to all other States to make similar efforts not only for themselves but for the safety of the entire world. He declared that he would sign the Protocol and Final Act and added expressions of gratitude towards the Canadian Government, the Drafting Committee and the Legal Committee.

21. The Delegate of the Federal Republic of Germany expressed his appreciation and thanks to the President of the Conference, the Secretary General, the Executive Secretary and the representatives of the Secretariat, as well as to the Canadian Government for initiating the Conference, the Delegation of the Kingdom of the Netherlands for its work on the draft in the Legal Committee, and to the Chairman of the Drafting Committee. He saw the results of the Conference as broadening the scope of the existing system of civil aviation security and as representing a clear decision of the international community to continue to contribute towards common efforts to combat terrorism.

22. The Delegate of Ghana expressed general satisfaction with the outcome of the Conference and confirmed that his Delegation would be signing the Protocol the following day. He remarked that the mere signing of the Protocol would not be enough, however, to fulfill its objective and hoped that the spirit of co-operation seen at the Conference would continue to characterize States' efforts to deal with unlawful interference. He expressed disappointment in that a firm commitment towards providing assistance to developing States for the establishment of security facilities had not been achieved at this Conference, but he was pleased that there had been some understanding of the problem and hoped that it would be given some consideration. He concluded with words of appreciation for the excellent manner in which the Conference had been organized, and expressed gratitude to the Canadian Government for its initiative in terms of both the Conference and for providing assistance to needy countries.

23. The Observer for the International Federation of Airline Pilots' Associations, noting with interest that the text of the draft Protocol had been adopted with little change, considered the new instrument to be a necessary addition to the existing Conventions on air safety. He hoped that the new Protocol would be quickly accepted and incorporated into the national legislation of all States since laws must still be implemented in order to be useful and the past had shown that aviation terrorists had, at times, not only escaped punishment but had had their actions applauded. He voiced his association's wish that the international aviation community would find ways to ensure that the principles embodied in the aviation safety Conventions were implemented.

24. The Delegate of Israel joined other States in congratulating the President, the Drafting Committee and the Secretariat, and declared that her State attached great importance to the work done at the Conference, finding the Protocol to be well-balanced and appropriate. She declared that terrorism should not be tolerated by the international community, to whom many of the perpetrators were well known, and that States should commit themselves not to assist terrorist groups in any way. Immediate ratification of the Protocol was the next important step in the combat of terrorism, followed by the application of the new instrument. Her Delegation believed that there existed further steps to be taken by the international community in this regard, such as the banning of civil aviation services to countries which did not abide by the provisions of the applicable Conventions. She was pleased to announce her Delegation's authorization to sign both the Protocol and the Final Act and concluded by expressing her belief in international co-operation as one of the major tools in the combat against terrorism.

25. The Delegate of Peru congratulated the President and the Secretariat for the successful work carried out at the Conference. While he did not wish to make any reservations to the Protocol, he believed it would have been more appropriate to delete the phrase concerning those acts which were "likely to cause or endanger" since they involved a subjective evaluation and would be difficult to prove unlawful. He felt that the concept of attempt should have been included in paragraph 1 bis and that the term "serious" should have been deleted from Article II so as not to specify the gravity of the act but simply its nature. He also felt that the Protocol should have included acts of violence which were committed to airport facilities located outside the premises of an airport and stressed that, in spite of the efforts of several States, this had not been included, although he believed that there was passive agreement that such acts be included.

26. The Delegate of the United Kingdom suggested that the Conference might wish to pay tribute to the late Dr. Gerald Fitzgerald, who had been closely involved with the legal work of ICAO for more than 40 years. Dr. Fitzgerald had joined the Secretariat of PICA0 in 1946, becoming a member of the ICAO Secretariat when ICAO was established, and serving until 1974 when he had retired. During this time, he had participated actively in the work of the Legal Committee which produced, among other things, The Hague and Montreal Conventions, and he had worked actively with some of the major figures of the Legal Committee of the time. When Dr. Fitzgerald had retired from the Secretariat as Principal Legal Officer, he had joined the Canadian Department of Justice, thus becoming a frequent Delegate at ICAO meetings and had been elected Chairman of the Legal Commission of the 1983 ICAO Assembly. The Delegate of the United Kingdom added that Dr. Fitzgerald had inspired many students of air law while teaching at McGill University and had been a great humanitarian. He had also been an accomplished pianist, and as a cyclist had become a familiar sight in Ottawa. The Delegate of the United Kingdom then suggested that the condolences of those attending the Conference be conveyed to Mrs. Fitzgerald on the passing of Dr. Gerald Fitzgerald.

27. The Chairman expressed his sincere appreciation to the Delegate of the United Kingdom for his thoughtful suggestion and felt that those present

who had been students of Dr. Fitzgerald would agree that the description made had been an accurate one. As the Conference appeared to accept the suggestion, it was so decided.

28. The Delegate of Canada thanked the Delegate of the United Kingdom and other members of the Conference for the tribute to a well-known Canadian, saying that he could add little to the fine description by the Delegate of the United Kingdom, except to say that Dr. Fitzgerald had been a teacher, friend, and co-worker to many. On behalf of the Canadian Delegation, the Delegate of Canada stated that he would be pleased to transmit the sentiments of those at the Conference, including the Secretariat, to Mrs. Fitzgerald.

29. The Executive Secretary, Dr. M. Milde outlined the course of events planned for last meeting of the Conference, during which signing of the Protocol and Final Act were to take place. In reply to a query by the Delegate of Mexico, the Executive Secretary announced that copies of the document would be available the following morning for perusal by Delegates and indicated that if any misprints were discovered, these should be reported to the President.

30. The Secretary General referring to the new Protocol that would officially come into existence the following day, likened it to a new stone in the wall against unlawful acts against international civil aviation, and assured the Conference that the entire Secretariat would do its utmost to implement the new instrument. In light of ICAO's ongoing financial crisis, the Conference would be satisfied to note that costs had remained well within the budget established by the Council for the Conference. To the President of the Conference and to all Delegations, the Secretary General expressed his sincere thanks. On behalf of the President of the Council, and all the members of the Secretariat, the Secretary General thanked Delegates for the confidence they had placed in the Secretariat and the honour they had paid it in doing so, and assured the Conference that the service required and expected of ICAO by the international community in the protection of international civil aviation would continue. The Secretary General reiterated his gratitude to all Delegations to whom he wished a 'Bon Voyage' to their homelands.

31. The President indicated that he would make a statement the following day but wished to take the present opportunity to thank the Secretary General and his colleagues, Dr. M. Milde, Dr. M. Pourcelet, Dr. E.W. Faller and Mr. G.M. Kakkar for the quality of the work they had done. Special praise was extended also to the interpreters and translators for the exceptional quality of their work. The President expressed gratitude to Delegates for their co-operation both among themselves and with him and remarked upon their positive attitude towards problem-solving, declaring that it had been a great pleasure to work with them.

(The meeting adjourned at 1240 hours)

THIS PAGE INTENTIONALLY LEFT BLANK

TENTH PLENARY MEETING

(Wednesday, 24 February 1988, at 1000 hours)

President: Mr. P. Kirsch

AGENDA ITEM 12: SIGNATURE OF THE FINAL ACT AND OF THE PROTOCOL OF THE CONFERENCE

1. The President stated that this was the Tenth and final Plenary Meeting which was convened for the purpose of signing the Final Act and the Protocol of the Conference.
2. After summarizing the work which had been carried out, the President outlined the procedure for signing the instruments. The Final Act was then signed on behalf of the following 77 States:

Algeria, Argentina, Australia, Austria, Brazil, Bulgaria, the Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Ethiopia, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Ghana, Guinea, Greece, Hungary, Iceland, India, Indonesia, the Islamic Republic of Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malawi, Malaysia, Malta, Mexico, the Kingdom of the Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Panama, Peru, Poland, Portugal, the Republic of Korea, Romania, Saudi Arabia, Senegal, Spain, Sweden, Switzerland, Tunisia, Turkey, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, the United Arab Emirates, the United Kingdom, the United Republic of Tanzania, the United States of America, Venezuela, Yugoslavia and Zaire

and the Protocol was signed on behalf of the following 46 States:

Argentina, Brazil, Bulgaria, the Byelorussian Soviet Socialist Republic, Canada, Chile, China, Czechoslovakia, Denmark, Egypt, Ethiopia, the German Democratic Republic, the Federal Republic of Germany, Ghana, Hungary, Iceland, Indonesia, Israel, Italy, Jamaica, Kuwait, Lebanon, Liberia, Malawi, Malaysia, Mexico, Niger, Norway, Pakistan, Peru, Poland, Portugal, the Republic of Korea, Romania, Saudi Arabia, Senegal, Sweden, Switzerland, Turkey, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, the United Arab Emirates, the United States of America, Venezuela, Yugoslavia and Zaire.

3. The President remarked on the uniqueness of this Conference, the first in almost ten years. The celerity with which the preparatory work had been carried out as well as its quality enabled the Conference to produce results quickly. In particular he expressed gratitude to Mr. Rodrick Van Dam of the Kingdom of the Netherlands, special rapporteur of the ICAO Legal Committee, for his excellent pioneering work in developing the first draft of the Protocol, to Mrs. Irene Howie of the United States of America, in her capacity as Chairman of the Special Sub-Committee of the Legal Committee and to Mr. Alberto Sciolla-Lagrange, Chairman of the Legal Committee.

4. The purpose of the Conference was to establish a new international regime to suppress unlawful acts of violence at airports serving international civil aviation and to ensure that the perpetrators of such acts would be punished wherever they were. The Conference, in signing the Final Act and complementary Protocol, had accomplished this goal. This new Protocol would increase international co-operation to prevent and suppress such acts and to discourage potential perpetrators.

5. Several factors had contributed to the success of the Conference. Participating States were convinced of the necessity of reaching a balanced agreement; they had put aside their national preferences in favour of finding a text that would encourage the widest participation of States. The importance of the work was underscored by the number of participating States and by the firm support of the UN General Assembly. The single most important factor that had enabled the Conference to adopt by consensus a new international instrument was that States, united in their condemnation of terrorism, held the conviction that unlawful acts of violence at airports serving international civil aviation could not be tolerated wherever and by whomever committed. The fact that the Protocol was the first instrument concerning the protection of international civil aviation to be adopted without a vote was highlighted.

6. The adoption of the Protocol by consensus, the signing of the Protocol by 46 States on the first day of signature (with many declarations of intent to sign after the Conference) and the signing of the Final Act by 77 States gave rise to the belief that the Protocol would enjoy the same level of participation as the Montreal Convention. As States had expressed during the Conference their desire to see the Protocol enter into force in their respective countries as quickly as possible, the President stated that it was now States' responsibility to become party to the Protocol and to carry out their obligations under it.

7. The President stressed that the adoption of international instruments did not itself ensure the safety of airports. He recalled the Resolution in the Final Act which urged States to take all possible steps to suppress acts of violence at airports serving international civil aviation, including preventive measures recommended in Annex 17 of the Chicago Convention. The Resolution also requested the ICAO Council to continue giving highest priority to the adoption of effective measures to prevent unlawful acts and called upon the international community to consider increasing technical, financial and material assistance to States to enhance security at their airports.

8. He expressed his gratitude to the four Vice-Presidents of the Conference for their efforts, skill and assistance as well as to the Chairmen of the Drafting and Credentials Committees. He expressed particular thanks to the President of the ICAO Council and the Secretary General for their invaluable assistance and support and to Dr. Milde, the Executive Secretary and his colleagues, Messrs. Pourcelet, Faller and Kakkar. Special thanks were due to the interpreters, translators and technicians and other members of the ICAO Secretariat for their professionalism.

9. It was his hope that the success of the Conference would emphasize the importance of ICAO's work and that States would ensure that ICAO's financial difficulties were overcome.

10. The Meeting was adjourned and the Conference closed.

THIS PAGE INTENTIONALLY LEFT BLANK

PART III

THIS PAGE INTENTIONALLY LEFT BLANK

I C A O

International Civil Aviation Organization

**LEGAL COMMITTEE
26TH SESSION**

Montreal, 28 April — 13 May 1987

Report

Published by authority of the Secretary General

1987

THIS PAGE INTENTIONALLY LEFT BLANK

Organization of the Meeting

LEGAL COMMITTEE - 26TH SESSION

REPORT
ON THE WORK OF THE LEGAL COMMITTEE
DURING ITS 26TH SESSION

Montreal, 28 April - 13 May 1987

Place and Duration

1. The 26th Session of the Legal Committee was held at Montreal from 28 April to 13 May 1987. Dr. A. Sciolla-Lagrange (Italy), Chairman of the Legal Committee, presided over the session. Dr. G.H. Kaunda (United Republic of Tanzania), First Vice-Chairman of the Committee, chaired the last two meetings.

Opening Address

2. The President of the Council, Dr. Assad Kotaite, addressed the opening of the session and drew to the attention of the Committee the important events in the legal work of ICAO since the last session of the Committee in 1983. He emphasized in particular the decision of the 26th Session of the ICAO Assembly (Resolution A26-4) according to which the first priority in the legal work of the Organization and the first mandate of the current session of the Legal Committee would be the preparation of a draft instrument for the suppression of unlawful acts of violence at airports serving international civil aviation.

2.1 The President of the Council also recalled that the ICAO Legal Committee was marking the fortieth anniversary of its creation and of its first session. He summarized the achievements accomplished in the field of the legal work of the Organization which enhanced considerably the development and codification of international air law. He also welcomed as the guest of honour at the opening of the session Dr. Eugène Pépin, the first Director of the ICAO Legal Bureau and the first Secretary of the Legal Committee. Dr. Pépin would be soon celebrating his one-hundredth birthday. Dr. Pépin then shared with the Committee his reminiscences of the drafting of the first constitution of the Legal Committee in 1947. The Committee paid tribute to Dr. Pépin's contribution to the development of international air law and expressed its best wishes on the forthcoming one-hundredth birthday of Dr. Pépin.

Agenda and Working Arrangements

3. The final agenda of the session adopted at the first meeting is presented in Attachment A hereto.

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

Organization of the Meeting

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

Meetings

6. The Committee held 22 meetings; all meetings were held in open session.

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

Representation of States and International Organizations

8. Sixty-nine Contracting States, 1 non-Contracting State and 4 international organizations were represented at this session of the Legal Committee. The names of the representatives and observers appear in Attachment C to this Report.

Records of Proceedings

9. The Committee decided that in application of Rule 45 of its Rules of Procedure, the minutes of the 26th Session need not be prepared; this decision was taken to respond in a constructive manner to the current financial situation of the Organization.

Expression of sympathy

10. On 11 May 1987, the Committee observed one minute of silence to honour the memory of the 183 victims of a major aircraft accident which occurred on 9 May 1987 in Warsaw. The Committee expressed its sympathy to the Delegation of Poland.

Report on Agenda Item 2

Agenda Item 2: Report of the Secretariat

2:1 The Committee noted LC/26-WP/2 presented by the Secretariat. The purpose of that paper was to draw attention of the Committee to the events and activities in the legal field of ICAO since the 25th Session of the Committee held in 1983.

2:2 The Committee noted that although the session of the Legal Committee was not held for four consecutive years, the work on the items on the work programme of the Organization in the legal field was carried out efficiently in the form of Secretariat studies on the UN Convention on the Law of the Sea and on the liability of air traffic control agencies, as well as subjects relating to interception of civil aircraft and on the model clause on aviation security for insertion into bilateral agreements on air services.

2:3 The Committee also noted the actions taken by the Chairman of the Legal Committee since the last session of the Committee, in particular the convening of two special sub-committees (one on the preparation of a draft instrument on the interception of civil aircraft and another on the development of an instrument for the suppression of unlawful acts of violence at airports serving international civil aviation). The Chairman of the Legal Committee, under the Rules of Procedure of the Committee, also appointed three rapporteurs; Mr. A. Kean (United Kingdom) prepared a report on the subject of the UN Convention on the Law of the Sea taking into account the study prepared by the Secretariat, the comments of the Council thereon as well as the comments presented by States and international organizations. Professor H. Perucchi (Argentina) prepared a report on the subject of the liability of air traffic control agencies taking into account the study prepared by the Secretariat, the comments of the Council thereon as well as the comments presented by States and international organizations. Dr. R.D. van Dam (Kingdom of the Netherlands) prepared a report on the development of an instrument for the suppression of unlawful acts of violence at airports serving international civil aviation taking into account the proposals presented to the 26th Session of the ICAO Assembly, the discussions at that Assembly and Assembly Resolution A26-4; the report prepared by Dr. van Dam served as the basis for the considerations of the special sub-committee which met at Montreal from 20 to 30 January 1987.

2:4 The Committee noted the work done since the 25th Session of the Legal Committee and expressed its appreciation to the Chairman of the Committee.

THIS PAGE INTENTIONALLY LEFT BLANK

Report on Agenda Item 4

Agenda Item 4: Development of an Instrument for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation

A. Historical background

4:1 At the 26th Session of the Assembly in September-October 1986, the Delegation of Canada presented to the Executive Committee paper A26-WP/41 on behalf of many co-sponsors. This paper expressed concern at acts of violence at international airports in recent years involving indiscriminate killing of innocent travellers and recommended that the Assembly include in the Work Programme of the Legal Committee, with the highest priority, the question of a possible instrument on the suppression of unlawful acts of violence at airports serving international air transportation. The Executive Committee referred the paper A26-WP/41 to the Legal Commission for consideration. In the Legal Commission, the proposal presented in A26-WP/41 was supported by all Delegations and it was agreed that the highest degree of priority in the Work Programme of the Legal Committee should be accorded to the item: "Development of an Instrument for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation". The recommendation of the Legal Commission with respect to this item was also the subject of Resolution A26-4 adopted unanimously by the Assembly which in its last resolving clause "CALLS UPON the Council to convene as early as possible in the first half of 1987 a meeting of the Legal Committee to prepare a draft instrument for the suppression of unlawful acts of violence at airports serving international civil aviation with a view to adoption of the instrument at a diplomatic conference as soon as practicable, preferably before the end of the 1987 calendar year, in accordance with the ICAO procedures set forth in Assembly Resolution A7-6".

Action by the Council

4:2 At the third meeting of its 119th Session, on 18 November 1986, the Council of ICAO approved the General Work Programme of the Legal Committee and decided to convene the special Sub-Committee of the Legal Committee at Montreal from 20 to 30 January 1987, to implement Resolution A26-4 which inter alia "CALLS UPON the Council to take the necessary measures for the preparation of a draft instrument for the suppression of unlawful acts of violence at airports serving international civil aviation for the consideration of the Legal Committee". During the same meeting, the Council decided to convene the 26th Session of the Legal Committee from 28 April to 13 May 1987.

Special Sub-Committee of the Legal Committee

4:3 The special Sub-Committee of the Legal Committee was established by the Chairman of the Legal Committee under Rule 12(b) of the Rules of Procedure of the Legal Committee; furthermore, in accordance with Rule 17 of the Rules of Procedure, the Chairman appointed a Rapporteur (Dr. R.D. van Dam, Kingdom of The Netherlands).

Report on Agenda Item 4

4:4 The terms of reference of the special Sub-Committee as defined by the Council were as follows: "to study, in the light of Assembly discussions and decisions and in the light of the Rapporteur's report, the subject of a draft instrument for the suppression of unlawful acts of violence at airports serving international civil aviation and to prepare a draft instrument for consideration by the 26th Session of the Legal Committee".

4:5 The Sub-Committee considered the subject on the basis of an analytical study and a draft text prepared by the Rapporteur. As a result of its deliberations, the Sub-Committee prepared a draft text for consideration by the Legal Committee. With respect to the form of the new instrument, the overwhelming majority agreed that it should be a protocol supplementing the Montreal Convention of 1971 and enlarging its scope by adding to its definitions of the "offence". The Sub-Committee agreed that it will be also necessary to ensure that substantive provisions regarding jurisdiction, prosecution and extradition would apply to these additional offences. The Sub-Committee concluded that in view of the unanimously expressed political will of States in Resolution A26-4, in the light of the full support given by the ICAO Council to this initiative and in the light of the progress of the drafting effort achieved by the Sub-Committee, the subject was ripe for consideration by the 26th Session of the Legal Committee. At its 120th Session, on 23 February 1987, the Council noted the Report of the special Sub-Committee.

B. Report of the special Sub-Committee

4:6 Ms. I.E. Howie (United States of America) in her capacity as Chairman of the special Sub-Committee introduced the Report of the Sub-Committee (LC/SC-VIA). She recalled Resolution A26-4 adopted by the 26th Session of the Assembly which guided the work of the Sub-Committee. The Report of the Rapporteur (Dr. R.D. van Dam, Kingdom of the Netherlands) constituted the basis for the discussions of the Sub-Committee which addressed the following issues: form of the new instrument, definition of airport and of critical areas of the airport, definition of offences.

4:7 The Chairman of the Sub-Committee indicated that the overwhelming majority of the Sub-Committee was in favour of a Protocol additional to the Montreal Convention of 1971. She pointed out that the Committee reached the conclusion that a definition of international airport was not necessary since there was no suitable definition in the Chicago Convention and that the concept of "airport serving international civil aviation" retained by the Sub-Committee was flexible enough and that the question whether an airport served international civil aviation was a question of fact left to the discretion of the State. With respect to the definition of offences, the Chairman of the Sub-Committee pointed out that the Sub-Committee had excluded from the scope of application of the future instrument offences which had no bearing on the safety of international civil aviation. She indicated that the majority of the Sub-Committee did not favour the inclusion of taking of hostages and kidnapping and communication of false information among the offences to be dealt with in the new instrument. Referring to the draft text 1 bis prepared by the Sub-Committee, she pointed out that few issues, in square brackets, had been left for consideration by the Legal Committee.

Report on Agenda Item 4

C. General discussion

4:8 Twenty-eight Delegations and three Observers participated in the general discussion and the following views were expressed by one or more Delegations:

- all Delegations praised the Rapporteur's report and commended the work of the Sub-Committee which was considered an excellent basis for the work of the Committee;
- with respect to the form of the instrument, many Delegations believed that the most effective and desirable solution would be a Protocol additional to the Montreal Convention of 1971 along the lines recommended by the special Sub-Committee. Such a Protocol would create a link with the Montreal Convention which had received a very wide acceptance by States and would fill the present gap which existed in the absence of specific international provisions regarding acts of violence at airports. It was stated that a Protocol, principles of which would be closely related to the Montreal Convention, would certainly attract ratifications by the vast majority of States already parties to the 1971 Convention. One Delegation pointed out that States not yet parties to the Montreal Convention might not be willing to adhere to the Protocol and in that respect it might appear useful to adopt a provision in the final clauses of the Protocol according to which States could adhere to the Protocol without becoming parties to the amended Convention;
- three Delegations and one Observer were of the view that the new instrument should take the form of a separate Convention since the offences envisaged in the new instrument were different in nature from those defined in the Montreal Convention. It was stated that the offences to be covered by the new instrument might call for more stringent rules regarding prosecution and extradition;
- one Delegation observed that the work undertaken by the Committee, whatever the form of the instrument, could serve as guidance material which would enable States to adopt provisions in their domestic penal legislation or in their bilateral agreements relating to the offences envisaged in the new instrument;
- several Delegations, while not objecting in principle to the future instrument being prepared in the form of a Protocol to the Montreal Convention, considered it preferable if the new instrument were of an independent nature, and participation in it were not conditional upon being a Party to the Montreal Convention. It was essential to take into account the fact that an instrument of a universal nature was being developed in which, in accordance with generally accepted norms of international treaty law, any State could participate;
- several Delegations proposed that in considering the question of extradition of people who have committed unlawful acts of violence at airports preference should be given to the State in which the airport is located;

Report on Agenda Item 4

- several Delegations spoke in favour of including in the new instrument provisions containing more specific obligations for States in preventing acts of unlawful interference at airports;
- several Delegations believed that the offence to be defined in the new instrument should be serious in nature and have a direct effect on the safe operation of the airport and on the safety of civil aviation;
- two Delegations stated that the new instrument should contemplate essentially acts of violence against persons; it could also be applicable to terrorist attacks on property when the means used were likely to jeopardize the safety of persons. On the other hand, acts of a minor nature did not justify the establishment of a universal competence and should continue to fall within the competence of the national penal laws of the State of occurrence;
- some Delegations stated that the concept of threat should not be retained while two Delegations were of the view that this concept was of great importance and should be maintained since threat might create chaos at an airport interfering with the safe operation of the airport;
- it was stated that the question of intent to carry out an act of violence or the attempt to perform such act deserved careful consideration by the Committee and required a further study;
- two Delegations and one Observer believed that the Committee should address the question of the critical areas of an airport where an offence would be deemed to endanger the safety of civil aviation or interfere with the safe operation of the airport. The purpose of a security zone was to prevent any acts which could endanger civil aviation and the passengers;
- some Delegations were of the view that the new instrument should also list such acts of violence which might originate from outside the territorial limits of an airport, for instance the firing of missiles from outside the area of an airport. Some Delegations believed that the new instrument should also refer to facilities and services beyond the territorial scope of the airport if they were vital for the operation of the airport (e.g., air traffic control installations and their personnel, electric power lines, etc.);
- two Delegations stated that other unlawful acts, although not violent and different from those envisaged in the draft of the Sub-Committee, such as the illicit traffic of drugs, should be included among the offences falling within the scope of application of the new instrument. Other Delegations believed that the suppression of the trafficking in narcotic drugs was a separate and distinct legal issue different from the mandate of the Legal Committee and will be addressed within the United Nations in a separate draft Convention;

Report on Agenda Item 4

- two Delegations wondered whether the concept of bodily injury encompassed also moral prejudice or mental distress caused by an act of violence and suggested that reference should be made to injury only without qualifying it;
- two Delegations and one Observer expressed the opinion that the new instrument should include in the enumeration of offences the taking of hostages and kidnapping and communication of false information.
- one Delegation expressed the view that the State in whose jurisdiction the airport is situated bears the major brunt of the consequences, has the responsibility for security and has most of the evidence and should, therefore, have the primary jurisdiction to try the offender and should have the right to obtain extradition; that Delegation also believed that the plea of the offence being political should not be available.

D. Organization of work

4:9 In accordance with Rule 28A of the Rules of Procedure of the Legal Committee, it was agreed that the Committee would take as the basis of its discussion the draft text prepared by the Sub-Committee. The Committee then proceeded to the discussion of specific issues with the understanding that decisions thereon will be taken after a full discussion of all such issues and their mutual correlation. The following issues were considered by the Legal Committee:

- International elements

4:10 There was agreement in the Committee that the applicability of the new instrument should be based on the existence of a specific international element. Such an element was, in the opinion of several Delegations, to be defined with great precision since the instrument would deal with issues of criminal law where no lack of precision would be acceptable. Several Delegations believed that the international element is to be found in the concept "airport serving international civil aviation". That term was used in Assembly Resolution A26-4 which constituted the basic mandate for the drafting of the new instrument. Many delegations believed that there was no need to define the term "airport serving international civil aviation" and supported the conclusion of the Special Sub-Committee according to which it would be a matter of fact, rather than a matter of legal definition, to determine whether an airport in fact served international civil aviation. It was also stated that the Convention on International Civil Aviation and the Annexes thereto did not contain a definition of "airport" or "international airport" or "airport serving international civil aviation" and no practical difficulties have arisen from the absence of such a definition. While it was conceivable to make a reference to an airport "designated" by a Contracting State as international airport under the terms of Article 10 or Article 68 of the Chicago Convention, such designation need not always be up to date and aircraft performing international flights may use other airports (e.g., in the case of re-routing to an alternate airport, etc.) which would make the field of applicability of the new instrument uncertain.

Report on Agenda Item 4

4:11 It was stated that in some countries an airport serving international civil aviation is also used for domestic flights or that sometimes international flights may be routed for technical purposes or otherwise to domestic airports before reaching their final destination. Examples were quoted when a domestic airport handles an occasional international flight.

4:12 One Delegation was of the opinion that a sufficient international element was present in the draft text since the instrument would apply only if the offender or alleged offender was found in the territory of a State other than the State where the act of violence took place. Some other Delegations believed that the new instrument should not be restricted to such a narrow situation but should provide for specific obligations of States to impose severe penalties, to assume jurisdiction, to take preventive measures, etc., even in situations when the alleged offender is found in the State where the act of violence took place.

4:13 Other Delegations stated that the expression "airport serving international aviation" followed the wording used in Assembly Resolution A26-4 and that any proposal which would restrict the scope of application of the new instrument might defeat the purpose of the exercise undertaken by the Legal Committee as instructed by the 26th Session of the Assembly.

4:14 Three Delegations were in favour of introducing in the draft text a provision reflecting the principle in Article 10 or Article 68 of the Chicago Convention which would stipulate that States shall notify to ICAO those airports designated, for the purpose of the new instrument, as serving international civil aviation. Two Delegations expressed the opinion that the main goal was to protect international civil aviation independently of the qualification of the airport used by an aircraft engaged in an international flight; the new instrument should apply in all cases of offences envisaged in draft Article 1 bis and the new instrument should also apply in cases where an airport has not been designated as serving international civil aviation. That Delegation suggested to include in Article 4 of the Montreal Convention a provision which would stipulate that in the cases envisaged in paragraph 1 bis of Article 1, the new instrument would apply if the offence is committed in an airport designated by a Contracting State as serving international civil aviation, and also at any other airport, if the offence was committed while measures were being taken at that airport to serve an international flight. Another Delegation maintained its proposal presented to the Sub-Committee and suggested to qualify the term "airport" by the words "if the act interferes with the services provided for international civil aviation, or has an effect on, or is linked with an international flight from or to the airport concerned".

- Definition of the "offence"

4:15 The Committee considered the definition of the offence on the basis of paragraph 1 bis (a), (b), (c) of Article 1 prepared by the Sub-Committee and twenty-seven Delegations participated in the discussion:

Report on Agenda Item 4

Text prepared by the Sub-Committee

"1 bis. Any person commits an offence, other than an offence contemplated in paragraph 1, if he unlawfully and intentionally:

- (a) performs [or threatens to perform] an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause [serious] [bodily] injury or death if such an act interferes with or is likely to interfere with the safe [or orderly] operation of the airport."

4:16 The overwhelming majority of the Delegations were of the opinion that the words within square brackets should be deleted. Virtually all Delegations agreed that "or threatens to perform" was a concept which might lead to difficulties in its interpretation and paragraph 1 bis (a) should be restricted to an offence which constitutes an actual act of violence. A minority view was that the concept should be retained because "threat" directed against persons was a daily reality which could not be overlooked and not to mention it would constitute a gap in the proposed instrument; however, it was pointed out in this context that attempts would be covered. With respect to the word "serious", it was believed that it was superfluous and ambiguous to qualify the injury; the deletion of "serious" would avoid conflicting interpretations by the courts. On the other hand, some Delegations believed that it was necessary to retain this word in order to ensure that minor acts of violence were not covered by the instrument. Some Delegations further believed that reference to "bodily" was also not necessary since it might not encompass other kinds of injuries such as mental distress or moral damage. The interpretation given in the past by the courts to the expression "bodily injury" had demonstrated a lack of uniformity and a certain confusion which were to be avoided. With respect to the term "orderly", it was also the general feeling of the Delegations that this word was redundant or too ambiguous and that reference to the safe operation of an airport was sufficient. On the other hand, some Delegations believed that a phrase in addition to "safe operation of the airport" was necessary to adequately encompass the range of acts of violence to be covered.

Text prepared by the Sub-Committee

- "(b) destroys or seriously damages, or seriously interferes with the facilities provided for the safe [or orderly] operation of an airport serving international civil aviation [or the proper handling of passengers]."

4:17 It was generally believed that the expressions within square brackets should be deleted. Two Delegations advocated the need to follow closely in paragraph 1 bis (b) the wording of paragraph 1 bis (a) by referring to the following: "if such an act interferes with or is likely to interfere with the safe operation of the airport". Some Delegations suggested to be more specific

Report on Agenda Item 4

and to take also into consideration the acts of violence hindering the safe operation of an airport when those acts originate from or occur outside the perimeter of the airport or if the facilities destroyed or damaged are beyond the narrow geographic scope of the airport (e.g., ATC installation, electric power lines to the airport, etc.).

Text prepared by the Sub-Committee

"[(c) places or causes to be placed [or delivered] upon the premises of an airport serving international civil aviation a device or substance which is likely to cause destruction or [serious] damage thereon.]"

4:18 Some Delegations considered this paragraph not essential since paragraph 1 bis (a) and (b) covered already the situation envisaged in (c) and consequently suggested its deletion. Other Delegations believed that it was essential to maintain (c) since the placing of a bomb or other similar devices was capable of causing harm to persons and of disrupting the operation of airport facilities; consequently, this kind of offence should be highlighted as a separate offence. Other Delegations believed that this act would be covered by paragraph 2 which will deal with an attempt.

4:19 During the discussion of the text prepared by the Sub-Committee, three proposals of amendment to Article 1, paragraph 1 bis (a), (b), (c) were submitted to the attention of the Committee. Those proposals were presented by the Delegations of the Kingdom of the Netherlands (LC/26-WP/4-6), Greece (LC/26-WP/4-7) and Australia (LC/26-WP/4-9), respectively.

4:19.1 The proposal presented by the Delegation of the Kingdom of the Netherlands in LC/26-WP/4-6 with respect to Article 1, paragraph 1 bis, read as follows:

"Moreover, any person commits an offence, if he unlawfully and intentionally commits an act of violence, using a bomb, grenade, rocket, automatic firearm or letter or parcel bomb, in those places or areas within the premises or on the platforms of an airport where passengers of international flights are to gather with a view to their departure or arrival, if such act causes or is likely to cause death or peril to life to someone else."

4:19.2 The proposal presented by Greece presented in LC/26-WP/4-7 read as follows:

"1 bis: Any person commits an offence, other than an offence contemplated in paragraph 1, if at an airport serving international civil aviation he unlawfully and intentionally:

- (a) performs an act of violence against a person which causes or is likely to cause injuries or death;

Report on Agenda Item 4

- (b) destroys or seriously damages its facilities or services; or
- (c) places or causes to be placed a device or substance likely to cause destruction or serious damage thereon

if such acts affect or are likely to affect the safe operation of the airport or seriously interfere with its operation."

4:19.3 The proposal presented by the Delegation of Australia in LC/26-WP/4-9 read as follows:

"1 bis (b): destroys or [seriously] damages, or [seriously] interferes with the facilities provided for the safe [or orderly] operation of an airport serving international civil aviation, whether located at such airport or elsewhere, or performs, [or threatens to perform] an act of violence against persons operating such facilities."

4:20 Eight Delegations commented on LC/26-WP/4-6. Some Delegations believed that the listing of devices used to commit an act of violence was not exhaustive and did not include all possible means which could endanger human life or destroy airport facilities. Furthermore, it was believed that the concept of critical areas of an airport was too narrowly defined, since it referred only to those places or areas within the premises or on the platforms of an airport where passengers of international flights are to gather with a view to their departure or arrival. There was also no mention of the impact of the act of violence on the safe operation of the airport. It was therefore considered that LC/26-WP/4-6 would represent a step backward compared to the text prepared by the Sub-Committee. Other Delegations were of the view that the proposal in LC/26-WP/4-6 had the merit of simplicity and took into consideration three relevant criteria: means used; geographical delimitation of the areas of an airport where the act of violence is committed; link between terrorist acts and international flights.

4:21 Some Delegations commented on the proposal contained in LC/26-WP/4-7. It was stated that although the proposal was aimed at simplifying the text of the Sub-Committee, it did not take into consideration acts of violence directed at certain facilities essential for airport operations. However, the proposal was considered a useful step in the simplification and clarity of the drafting.

4:22 With respect to the proposal contained in LC/26-WP/4-9, it was believed that the proposal was very close to that of 1 bis (b) although it brought a new dimension by referring to facilities "whether located at such airport or elsewhere".

4:23 As a result of the discussion on the text of 1 bis and on the proposals referred to in paragraph 4:19.1, 4:19.2 and 4:19.3 above, it appeared that the majority of the Delegations favoured the text of the Sub-Committee, subject to the comments indicated in paragraphs 4:16, 4:17 and 4:18 above and subject to some further drafting refinement. It was agreed that the text to be drafted should be broad and flexible enough to stand the test of time and to cover offences which might occur in the future.

Report on Agenda Item 4

- Form of the new instrument

4:24 Summarizing the long discussion relating to the form of the new instrument, the Chairman of the Legal Committee stated that it was apparent that an overwhelming majority of the Committee favored the preparation of a protocol supplementary to the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. He declared that the Committee would work on that basis.

E. Establishment of a Working Group

4:25 One Delegation suggested the establishment of a Working Group to discuss the various proposals submitted to the Committee and attempt to reach a formulation of a text which would take into consideration proposals made or views expressed by the Delegations.

4:26 In accordance with Rule 15 of the Rules of Procedure of the Legal Committee and following a vote regarding the creation of a Working Group (58 in favour, 3 against and 1 abstention), a Working Group composed of the following Delegations was established: Argentina, Australia, Austria, Bulgaria, Canada, Chile, China, Côte d'Ivoire, Czechoslovakia, France, Greece, India, Islamic Republic of Iran, Japan, Mexico, the Kingdom of the Netherlands, Pakistan, Peru, Poland, Senegal, Spain, Sweden, Switzerland, USSR, United Kingdom, United States of America and Venezuela. Acting under Rule 24 of the Rules of Procedure, the Working Group invited the Observer of IATA to participate in its work.

4:27 The terms of reference of the Working Group as agreed by the Committee were as follows:

- a) to consider the text prepared by the Sub-Committee in the light of the views expressed and proposals presented at the session of the Committee; and
- b) to attempt to narrow the scope of difference of views and to prepare a text or alternative texts for further consideration by the Committee.

F. Report of the Working Group

4:28 Between 4 and 11 May 1987, the Working Group met and held 7 meetings under the Chairmanship of Mr. P.H. Kirsch (Canada). The Working Group considered the text of paragraph 1 bis prepared by the Sub-Committee, took into account the views expressed in the Committee and, in addition to the proposals listed in paragraphs 4:19.1, 2 and 3 above, considered the proposals presented by Spain (LC/26-WP/4-12), France (LC/26-WP/4-13), Japan (LC/26-WP/4-14), Cuba (LC/26-WP/4-15), Egypt (LC/26-WP/4-16), Switzerland (LC/26-WP/4-17), Poland (LC/26-WP/4-18), Kenya (LC/26-WP/4-19), United Kingdom (LC/26-WP/4-20) and the Kingdom of the Netherlands (LC/26-WP/4-22).

Report on Agenda Item 4

4:29 On 5 May 1987, the Chairman of the Working Group presented orally a preliminary report to the Committee on the progress of discussion on the definition of offences in paragraph 1 bis. In an effort to narrow the scope of different views, the Working Group considered several formulations which would put an emphasis on the protection of persons, while avoiding too broad definitions of the offence; particular attention was given to the qualifications of the act in the draft prepared by the Sub-Committee and other proposals ("if such an act interferes or is likely to interfere with the safe [or orderly] operation of the airport"); at the time of the preliminary report, the Chairman of the Working Group had prepared a revised draft of paragraph 1 bis, which the majority of the Working Group could accept, while some others maintained their specific proposals.

4:30 Having heard the preliminary report of the Chairman of the Working Group, the Committee agreed that the Group should continue its work, taking into account the decision of the Committee regarding the form of the new instrument (paragraph 4:24 above).

4:31 The revised text of paragraph 1 bis prepared by the Chairman of the Working Group (see paragraph 4:29 above) read as follows:

"1 bis. Any person commits an offence if he unlawfully and intentionally:

- (a) performs an act of violence against a person at [an airport serving international civil aviation] which causes or is likely to cause [serious] injury or death; or
- (b) destroys or seriously damages the facilities or services of [an airport serving international civil aviation] using a dangerous device, substance or weapon; or
- [(c) places or causes to be placed at [an airport serving international civil aviation] a device or substance which is likely to cause destruction or serious damage thereon],

if such an act endangers or is likely to endanger safety at that airport."

4:32 The Working Group at its following meeting took an indicative vote on the draft text prepared by the Chairman to determine the degree of general support for that text without any additional amendments. That vote resulted in 18 votes in favour of the text as it stood, 1 opposed and 5 abstentions.

4:33 Thereafter, the Working Group took indicative votes on seven specific questions reflecting proposals for the amendment of the text in paragraph 4:31 above or for the resolution of the remaining open problems presented in the text in square brackets. The following questions were posed:

Report on Agenda Item 4

- 1) In paragraph (a) should the text refer to a "threat to perform the act of violence"?

In the indicative vote, only 5 members favoured the inclusion of that concept, 18 were opposed and 3 abstained.

- 2) In paragraph (a) of the text should the word "serious" be kept before the word "injury"?

In the indicative vote, 19 votes were affirmative, 7 negative with no abstention.

- 3) In paragraph (a) should the expression "injury" be qualified by the adjective "bodily"?

In the indicative vote, only 3 members favoured such a qualification, 23 were opposed and 1 abstained.

- 4) Should there be a qualifying expression referring to the means for the commission of the offence ("using a dangerous device, substance or weapon") referring both to sub-paragraphs (a) and (b)?

In the indicative vote, the result was inconclusive with 13 members favouring qualification for both sub-paragraphs (a) and (b), with 11 opposed and 3 abstentions.

- 5) In sub-paragraph (b) should the qualification "using a dangerous device, substance or weapon" be made more explicit by referring specifically, e.g., to the use of explosives or setting fire (Proposal of Poland in LC/26-WP/4-18).

In the indicative vote, only 4 members favoured such a further qualification, 21 were opposed and 2 abstained.

- 6) Should sub-paragraph (c) dealing with the placing of a device or substance be maintained in the text?

In the indicative vote, 7 members favoured to maintain sub-paragraph (c), 18 were opposed and 2 abstained.

- 7) Should the qualifying phrase at the end of the paragraph ("if such an act endangers or is likely to endanger safety at that airport") be maintained in the text?

In the indicative vote, 21 members answered in the affirmative, 5 were opposed and 1 abstained.

Report on Agenda Item 4

4:34 After these indicative votes, the Working Group addressed the following additional issues:

- 1) By an indicative vote of 18 in favour, 1 opposed with 8 abstentions, the Working Group expressed itself in favour of the proposal of Pakistan that sub-paragraph (b), in the English language, should specifically refer not only to destruction or serious damage to the facilities but also to the "interruption of the services".
- 2) By an indicative vote of 20 in favour, 2 opposed with 5 abstentions, the Working Group expressed support for the proposal of the Union of Soviet Socialist Republics that sub-paragraph (b) should also refer to the destruction or serious damage to "aircraft not in service located at the airport"; it was understood that the Working Group was approving the principle but that the exact wording was subject to further drafting.

4:35 As a result of the deliberations of the Working Group, the Chairman of the Working Group presented to the Committee, on 6 May 1987, a further progress report together with the following new draft text of paragraph 1 bis drafted by the Chairman of the Working Group in the light of the decisions taken by the Working Group:

"1 bis. Any person commits an offence if he unlawfully and intentionally [using a dangerous device, substance or weapon]:

- (a) performs an act of violence against a person at [an airport serving international civil aviation] which causes or is likely to cause serious injury or death;
or
- (b) destroys or seriously damages the facilities [or the services] of [an airport serving international civil aviation] [or aircraft not in service located at the airport] [using a dangerous device, substance or weapon],

if such an act endangers or is likely to endanger safety at that airport."

4:36 Presenting this text to the Committee, the Chairman of the Working Group stated that the text used still several expressions in square brackets; however, these square brackets did not in general reflect any differences of opinion in principle but were inserted for strictly drafting or technical reasons. Thus, for instance, the expression "airport serving international civil aviation" was in square brackets for the sole reason that the Working Group did not address this concept and did not consider it to be within its

Report on Agenda Item 4

mandate and the Committee itself was expected to decide whether this term required a further qualification or definition. The main problem not resolved by the Working Group and expressed in square brackets was the expression "using a dangerous device, substance or weapon", in particular the question whether it should be used with reference to both sub-paragraph (a) and (b) or only in sub-paragraph (b) or not at all.

4:37 The Working Group also discussed whether paragraph 1 bis should also cover the destruction of or damage to facilities located outside the perimeter of the airport but essential for its operation. On that subject, the views in the Working Group were split and the matter was referred to the Committee itself. The various views expressed in the Working Group were that the destruction of facilities located outside the perimeter of an airport was implicitly included in the text set forth in paragraph 4:35; others believed that such acts should be explicitly mentioned in paragraph 1 bis; several others believed that such type of damage was not implicitly covered by the text and should not be explicitly mentioned.

4:38 Thus, by 6 May 1987, the unresolved substantial questions resulting from the work of the Working Group were:

- 1) The expression "using a dangerous device, substance or weapon" and whether it would be included in the text referring both to sub-paragraphs (a) and (b) or only in sub-paragraph (b) or not at all.
- 2) The draft text of the Preamble which would, for purposes of interpretation of the text, set forth and define the protected social interests dealt with in the new instrument.
- 3) The question of destruction of or damage to facilities located outside the perimeter of an airport.

G. Further considerations and decisions by the Committee

- "Airport serving international civil aviation"

4:39 The Committee resumed substantive discussion of the international element or elements on which the new instrument would be based and in that context returned to the expression "airport serving international civil aviation" as used in paragraph 1 bis drafted by the Sub-Committee and in the texts developed by the Chairman of the Working Group (see paragraphs 4:31 and 4:35 above). The discussion was based on earlier general considerations by the Committee reported above in paragraphs 4:10 and 4:14.

4:40 The Delegation of Venezuela (LC/26-WP/4-8) proposed that for the purposes of the new instrument an airport should be considered to be serving international civil aviation if it has been so designated in conformity with Article 10 of the Chicago Convention and is in fact so utilized. The

Report on Agenda Item 4

Delegation of the Union of Soviet Socialist Republics (LC/26-WP/4-10) proposed to include in Article 4 of the Montreal Convention of 1971 a reference to "an airport designated by a Contracting State as serving international civil aviation, and also any other airport if the offence was committed while measures were being taken at that airport to service an international flight". The Delegation of Finland maintained its proposal presented at the Session of the Sub-Committee (LC/SC-VIA-REPORT, paragraph 17.1 in fine) to qualify the term "airport" by the words "if the act interferes with the services provided for international civil aviation, or has an effect on, or is linked with an international flight from or to the airport concerned". Many other Delegations believed that the Committee should confirm the conclusions of the Sub-Committee that the term "airport serving international civil aviation" should not be further qualified by reference to a "designation" by a State or by any other additional qualifications.

4:41 The Delegation of Finland formally proposed that the Committee should answer the following question: "Does the Committee wish to introduce specific wording that the application of the new instrument would be limited only to the operations and uses of international civil aviation?" It was explained that in case of a positive answer the Committee would then seek specific language to express this additional international element and in case of a negative answer the words "airport serving international civil aviation" would remain without any further qualification.

4:42 Some Delegations were prepared to give an affirmative answer to the question formulated by the Delegation of Finland; they argued that it was essential to further underline the international element on which the application of the Protocol would depend; they believed that the "airport" should be unequivocally qualified by a formal designation by a State under the terms of Article 10 or Article 68 of the Chicago Convention.

4:43 Many other Delegations confirmed the majority view of the Sub-Committee that it was not of critical importance to have a further definition or qualification of what is an "airport serving international civil aviation" and believed that any definition or qualification would be to the detriment of the necessary flexibility in the application of the new instrument, e.g., in case when an airport not designated as an international airport is in fact used as an alternate airport by international flights. They emphasized that it should be a matter of fact to be determined by the State concerned or by the judge in the proceedings whether an airport in fact served international civil aviation and that the answer may be different at different times. It was also stated that the airport should be considered indivisible, regardless whether a portion thereof is used exclusively for domestic flights; the new instrument should be applicable whenever the circumstances justify the conclusion that the airport was serving international civil aviation; moreover, paragraph 1 bis would define the offences with sufficient international elements which would make additional qualifications of the term "airport" unnecessary.

Report on Agenda Item 4

4:44 After an extensive discussion the Committee took a vote in which 18 Delegations answered affirmatively to the question formulated by the Delegation of Finland (Paragraph 4:41 above), 31 were opposed and 4 abstained. Consequently, the Committee agreed to continue its work on the assumption that there was no need for a further qualification of the words "airport serving international civil aviation". However, some Delegations wished to reserve their position until the final stage of the drafting.

- Means used in the commission of an offence

4:45 The draft text of paragraph 1 bis prepared by the Sub-Committee did not make any reference to the means used by the offender for the commission of the act of violence against persons or for the destruction of facilities. The reference to such criminal means was first introduced by the Delegation of the Kingdom of the Netherlands (LC/26-WP/4-6 - see paragraph 4:19.1 above). The wording "using a dangerous device, substance or weapon" then appeared in the first draft text presented by the Chairman of the Working Group (paragraph (b) in paragraph 4:31 above) and in the second draft text (paragraph 4:35 above). It was noted that the indicative vote taken in the Working Group was inconclusive: the Working Group did not vote on the question whether a list of means should be mentioned in paragraph 1 bis but only on the question where such reference should be placed; 13 members wished that qualifying expression to apply both to sub-paragraphs (a) on offences against persons and (b) on offences against property, but 11 members were opposed and 3 abstained.

4:46 The Delegations wishing to refer in paragraph 1 bis to the specific means used in the commission of the offence argued that it was essential that the new instrument should be applicable only to indiscriminate acts of serious nature typical of the terrorist activities; the new instrument should not apply to minor offences or to acts of "private" nature; they believed that such qualification of the offence would be achieved by reference to the specific means used; such a reference should not be restrictive but only illustrative and the proposed drafting was "using a dangerous device, substance or weapon".

4:47 Other Delegations were opposed to any reference to the means used in the commission of the offence; they argued that any such reference would unduly restrict the applicability of the new instrument and the enumeration of the means could leave loopholes not covering possible future terrorist modus operandi. Furthermore, the reference to the means used would unnecessarily complicate the definition of the offence, the serious nature of which was in any case sufficiently highlighted in the elements of the offence as drafted (unlawful, intentional, act of violence, serious injury or death, destruction or serious damage, plus the additional qualification that the act endangers or is likely to endanger safety at the airport); this drafting would rule out application to minor offences without any need to refer specifically to the means used in the commission of the offence.

4:48 Nevertheless, many Delegations who would have preferred not to make any reference to the means used were prepared to accept as a compromise solution reference to such means in sub-paragraph (b); as a reciprocal concession they expected that no reference to such means would be made in sub-paragraph (a) since violence against persons was intrinsically dangerous and the means used in such act were of no relevance.

Report on Agenda Item 4

4:49 The Delegation of Greece formally proposed to vote on the general question whether there should be in paragraph 1 bis a list of the means used in the commission of the offence; if this question was answered in the affirmative, then the Committee should decide whether such a list should be restrictive or only illustrative; the Delegation of Greece was opposed to a restrictive list and would consider general drafting along the lines "any device, substance or other criminal means" or "any means whatsoever".

4:50 The Chairman of the Working Group, speaking as Delegate of Canada, appealed to the Committee to safeguard the compromise reached by the Working Group and proposed to vote on the entire text of paragraph 1 bis set forth in paragraph 4:35 above, deleting in the introductory paragraph the text in square brackets ("[using a dangerous device, substance or weapon]") and adding in sub-paragraph (b) the words "using a dangerous device, substance or weapon or any other dangerous means".

4:51 After a procedural discussion on the relative priority in which the proposals of the Delegation of Greece and of the Delegation of Canada should be dealt with, both Delegations withdrew their proposals pending further consultations and negotiations.

4:52 Further consultations among interested Delegations produced a new compromise which was presented by the Delegation of Canada; the introductory paragraph of 1 bis would read: "Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon"; in sub-paragraph (b) the text in square brackets ("[using a dangerous device, substance or weapon]") would be deleted.

4:53 This new compromise received wide support and consensus thereon was noted by the Committee. However, one Delegation would have preferred the wording "by any means, substance or weapon" which would be all-embracing and cover even an act committed by bare hands; that Delegation preferred to formalise the consensus by a vote and formally proposed, under Rule 40 of the Rules of Procedure, to vote on paragraph 1 bis as now amended paragraph by paragraph; since other Delegations were opposed to a separate vote on each paragraph, the request for a separate vote was put to a vote and failed having obtained 3 votes in support with 42 opposed and 11 abstentions.

4:54 Thereafter the Committee took a vote on the entire text of paragraph 1 bis as amended in the light of the consensus and on the understanding that the Working Group will continue the drafting work on the remaining issues still kept in square brackets. The Committee adopted by 59 votes without opposition and with 7 abstentions the following text:

"1 bis. Any person commits an offence if he unlawfully and intentionally using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death;
- or

Report on Agenda Item 4

- (b) destroys or seriously damages the facilities [or services] of an airport serving international civil aviation [or aircraft not in service at the airport],

if such an act endangers or is likely to endanger safety at that airport."

- Attempt and complicity

4:55 The Sub-Committee endorsed the Rapporteur's text of paragraph 2 of Article 1 of the Montreal Convention relating to an attempt to commit the offence mentioned in paragraph 1 bis and complicity in the commission of such an act. The Committee agreed without opposition that an attempt to commit the offence and complicity in such offence should also constitute an offence.

4:56 The Committee agreed that sub-paragraph (a) of paragraph 2 of Article 1 of the Montreal Convention of 1971 should be amended to read:

"2. Any person commits an offence if he:

- (a) attempts to commit any of the offences mentioned in paragraph 1 or paragraph 1 bis of this Article; or"

4:57 While this wording appears to deal only with attempt and not expressly with complicity, the Committee noted that there would be no need for an amendment of sub-paragraph (b) of paragraph 2 of Article 1 of the Montreal Convention since its wording was so all-encompassing that it would cover complicity in the commission of the offences both under Article 1, paragraph 1 of the Convention and offences under paragraph 1 bis.

- Jurisdiction and extradition

4:58 The Sub-Committee agreed to insert a new paragraph 2 bis to Article 5 of the Montreal Convention to establish jurisdiction over the offences mentioned in paragraph 1 bis in the case where the alleged offender is present in the territory of the State concerned and that State does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of Article 5 of the Convention.

4:59 The Committee agreed to establish jurisdiction of the State where the alleged offender is found. However, the Committee noted that the text prepared by the Sub-Committee made reference to extradition to any of the States mentioned in paragraph 1 of Article 5 of the Montreal Convention; the Committee believed that only the State in the territory of which the offence under paragraph 1 bis was committed should be mentioned in paragraph 2 bis of Article 5; the other States mentioned in paragraphs (b), (c) and (d) of paragraph 1 of Article 5 (State of registry of the aircraft, State in whose territory the aircraft on board of which the offence is committed lands with the alleged offender still on board, State of principal place of business or permanent residence of the operator of a leased aircraft against which or on board of which the offence was committed) had no relevant link with respect to an offence defined in the new paragraph 1 bis of Article 1.

Report on Agenda Item 4

4:60 As a result of these deliberations, the Committee decided that paragraph 2 bis of Article 5 of the Montreal Convention should be drafted as follows:

"2 bis. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 bis and in Article 1, paragraph 2, insofar as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to the State mentioned in paragraph 1(a) of this Article."

The Delegation of France wished to emphasize that in view of the drafting of Article 1 bis b), which it considered to be too general in nature and not sufficiently specific to constitute a penal offence, it was not in a position to accept the inclusion of that paragraph in paragraph 2 bis of Article 5.

4:61 The Committee noted the presentation of the proposal by the Delegation of the Kingdom of the Netherlands (LC/26-WP/4-6) which would have limited the jurisdiction of the State where the alleged offender (or offender in case of a previous escape) is present only to those cases when that State does not comply with a specific request for extradition to the State in whose territory the offence was committed; it was explained that the State where the offender was present should not be obliged to exercise its jurisdiction if the State primarily concerned (State in the territory of which the act was committed) does not request extradition. This proposal was not supported by the Committee since it would depart from the principles of The Hague (1970) and Montreal (1971) Conventions, as well as numerous other conventions in similar fields, none of which made the exercise of jurisdiction by the State where the offender is found contingent on the request for extradition and refusal of such a request. The Delegation of the Kingdom of the Netherlands noted the lack of support for its proposal and stated that its Government had made reservations with respect to some instruments that it will not assume jurisdiction to prosecute certain acts unless there had been a request for extradition to which the authorities did not accede; such a reservation may be made also with respect to the new instrument.

4:62 The Delegation of the Union of Soviet Socialist Republics introduced its proposal (LC/26-WP/4-5) to include in the new instrument a provision that in considering the question of extradition of offenders preference should be given to the State in which the airport, at which the offence was committed, is situated; this could be accomplished by a new paragraph of Article 8 of the Montreal Convention. The Delegation of the Kingdom of the Netherlands suggested to add a new paragraph 4 to Article 5 according to which "when applying this Convention to an offence mentioned in Article 1 bis, Contracting States shall pay due regard to the interests and responsibilities of the Contracting State in whose territory the offence has been committed"

Report on Agenda Item 4

(LC/26-WP/4-6). The Committee noted that the State in whose territory the offence is committed is most closely linked to the offence and most interested to initiate prosecution; moreover, all evidence would be more readily available in that State rather than in the State where the offender happened to be found; however, in view of the decision of the Committee on the drafting of Article 5, paragraph 2 *bis*, there could be no competing claims for extradition since only the State where the offence was committed could request extradition; thus the priority of extradition to the State of the occurrence was absolute. Any other interpretation of the concept of priority to extradite to the State where the offence was committed would not be aimed at solving the competing priorities among different States to request extradition, but at the delicate balance between prosecution and extradition as established in the Montreal Convention. The Committee was not prepared to upset this delicate balance which was one of the cornerstones of both The Hague and Montreal Conventions.

4:63 There was extensive discussion on the question how a certain prominence or priority could be given in the new instrument to the State where the offence was committed. The Chairman summarized the discussion in the following way: the Committee noted specific proposals to introduce the element of preference to extradite to the State where the offence was committed; those views were shared by a certain number of Delegations. Several other Delegations believed that without expressing a preference for extradition to the State where the offence took place, the new instrument could contain a provision that Contracting States shall pay due regard to the interests and responsibilities of the Contracting State in whose territory the offence has been committed. Some Delegations expressed the opinion that the Protocol should give appropriate acknowledgement to other possible bases of jurisdiction, namely jurisdiction based upon the principle of passive personality and nationality of the offender. These additional bases of jurisdiction would not change the existing balance between prosecution or extradition contained in the Montreal Convention. Some Delegations also believed that in this context it might be useful to explore further the possible jurisdiction of the State of registry or of the State of the operator of the aircraft destroyed or damaged while not in service. Others felt that nonetheless there should only be two relevant States - the State where the offence was committed and that where the offender is apprehended. Many other Delegations expressed the view that the new instrument should in no way depart from the Montreal Convention of 1971, should not upset the delicate balance between prosecution and extradition and that there should be no specific provision favouring in any way the State in the territory of which the offence was committed. The Committee agreed not to go beyond the scope of this exploratory discussion and agreed that these points of view should be reflected in the report so that they can be considered by States in advance of the Diplomatic Conference; the Diplomatic Conference thereafter will be in the best position to take a final decision.

- Preventive measures

4:64 The Delegation of the Union of Soviet Socialist Republics introduced its proposal (LC/26-WP/4-5) that the new instrument should include provisions containing more specific obligations of States in preventing acts of violence at airports serving international civil aviation; the measures proposed for

Report on Agenda Item 4

possible inclusion in Article 10 of the Montreal Convention would include the presence of duly authorized and trained personnel responsible for ensuring safety at airports; inspections and monitoring of safety measures; the establishment of rules to prevent unauthorized access of persons or means of transport into a controlled zone and also into other zones important for the operation of the airport.

4:65 Some Delegations expressed interest in having some provisions relating to the preventive measures; some other Delegations believed that such provisions would require a specific definition of "controlled zones" at the airport, a course of action which was abandoned by the Committee as a component of the definition of the offence. Some other Delegations believed that the proposal was useful but believed that detailed technical preventive measures should rather remain within the ambit of Annex 17 to the Chicago Convention which was flexible and could quickly be amended to adjust to current technical needs. Some other Delegations favoured that the Diplomatic Conference may consider adopting a declaration or resolution dealing with preventive measures. The Chairman summarized the discussion by stating that the report should reflect the proposal made, the support by some Delegations and the doubts expressed by other Delegations. Prior to the Diplomatic Conference the States will have an opportunity to consider the matter further and Conference would be in the best position to take a final decision.

- Participation of States in the new instrument if they
are not parties to the Montreal Convention of 1971

4:66 During the general debate, some Delegations wished that the new instrument should contain provisions enabling participation in it also of those States who are not parties to the original Montreal Convention of 1971. The Secretary of the Committee explained that a legal technique could be found to accomplish such an aim. However, he expressed doubts whether such a course of action would be desirable; it was the policy of the Organization expressed in the Assembly Resolutions to exhort all Contracting States to become parties to the Tokyo, The Hague and Montreal Conventions; the Secretary General had been following up this policy in his correspondence and personal contacts with States not yet parties to the Montreal Convention. To adopt a provision accepting as a fact that some States would not become parties to the Montreal Convention could be interpreted as going contrary to the accepted policy of the Organization. Furthermore, no Contracting State advised the Secretary General of any substantive difficulties with the Montreal Convention; although some States have expressed opposition to a multilateral approach, they accepted the principles of the Montreal Convention either in bilateral arrangements or by unilateral application. Many of the member States of ICAO who are not yet parties to the Montreal Convention were smaller developing countries who had joined the Organization recently and expected technical assistance from the Organization in the implementation of the necessary legislation.

4:67 Some Delegations stressed that the instrument being developed was a multilateral agreement of a universal nature and, in accordance with generally accepted norms of international treaty law, all States should have the possibility of participating in it. This would correspond to the existing practice in accordance with which multilateral agreements developed within the

Report on Agenda Item 4

framework of ICAO for the suppression of unlawful acts are of a universal nature and are open for participation in them by all States without any restrictions. Such a provision would most effectively promote the policy of ICAO and the efforts it makes to ensure the participation in multilateral agreements of the widest number of States. Some other Delegations had a different understanding of the ICAO policy and believed that it required universal acceptance of the Montreal Convention and were convinced that this general policy of the Organization with respect to the Montreal Convention should not be in any way undermined or contradicted. It was agreed that both these views will be reflected in the report for further consideration by States prior to the Diplomatic Conference.

- Possible conflict between the Montreal Convention
and the new instrument

4:68 The Committee noted during the general debate a view that there might be a possible conflict between the provision of Article 1 (d) of the Montreal Convention and the proposed paragraph 1 bis. There might be a situation where an act would destroy or damage air navigation facilities and thereby endanger the safety of aircraft in flight (situation foreseen in Article 1, paragraph 1 (d) of the Montreal Convention) and at the same time destroy facilities of an airport and thereby endanger the safety at that airport. This could create difficulties since the offence in Article 1, paragraph 1 (d) of the Montreal Convention only called for severe penalties but did not create international jurisdiction (see Article 5, paragraph 2 of the Montreal Convention). On the other hand, the offence foreseen in paragraph 1 bis (b) as proposed by the Committee would create international jurisdiction.

4:69 This problem of conflict was addressed by the Working Group which considered that there were three possible approaches to its solution:

- a) to create a parallel regime in paragraph 1 bis identical with that of the Montreal Convention; this approach was considered too complicated and not viable;
- b) in case of an overlap between the two provisions, the Protocol would establish priority either for the regime under the Montreal Convention or for the regime under the new instrument; and
- c) the best course of action appeared to be not to provide for the solution of a possible conflict and leave the matter to practical interpretation of the instrument by States.

It was argued that in practice a real conflict would not arise since the provision of Article 1, paragraph 1 (d) was general in character while paragraph 1 bis (b) would contain a specific provision. It was also argued that in practical situations there could be a vast variety of specific circumstances which could not be foreseen; consequently, the best course of action would be to leave the matter for interpretation by courts. The Legal Committee agreed to this approach recommended by the Working Group.

Report on Agenda Item 4

I. Further drafting considerations by the Committee

- Paragraph 1 bis

4:70 On 11 May 1987, the Chairman of the Working Group reported on the progress of work accomplished by the Group regarding the further drafting of the text referred to that Group (see text in paragraph 4:54 above). In addition to further drafting of paragraph 1 bis, the Working Group also considered a draft text of the Preamble. With respect to paragraph 1 bis, the text agreed in the Working Group read as follows:

"1 bis. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon [or seriously interferes with] [or interrupts] the services of the airport,

if such an act endangers or is likely to endanger safety at that airport."

4:71 The Chairman of the Working Group outlined the indicative votes on some fundamental questions of the drafting as follows:

- 1) The Working Group first addressed the question whether paragraph 1 bis (b) should refer also specifically to facilities located outside an airport; the wording "facilities wherever located" would have accomplished that purpose. In an indicative vote, 9 votes were in favour of such reference, 15 were opposed and 2 abstained. Consequently, the words "wherever located" were not included in the text presented by the Working Group to the Committee.
- 2) The Working Group next addressed the words "or aircraft not in service at the airport" which, in the text approved by the Committee (see paragraph 4:54 above), was left in square brackets. The Working Group believed that the Diplomatic Conference itself should study the implications of the inclusion in the new instrument of the term "aircraft not in service located at the airport". A question of defining such an aircraft may have to be addressed by the Conference. The Working Group took an indicative vote on the following question: "On the understanding that the Legal Committee should request the Diplomatic Conference to study the implications of the inclusion in the new instrument of aircraft not in service located at the airport, should the square brackets be removed around the expression 'or aircraft not in service located thereon' in sub-paragraph (b)?" Twenty-one votes were in the affirmative, 2 in the negative and 4 abstained.

Report on Agenda Item 4

- 3) In the text approved by the Legal Committee (see paragraph 4:54 above) the expression "or interrupts the services" was left in square brackets. The Working Group took an indicative vote whether the word "interrupts" should be replaced by "seriously interferes with". Since the indicative vote led to an inconclusive 12 votes in favour, 10 against with 4 abstentions, both expressions were left as alternatives in square brackets for a final decision by the Committee.

4:72 The Committee considered which of the alternatives in paragraph (b) would be preferred (either "or seriously interferes with" or "or interrupts"). On vote, 25 Delegations favoured the first alternative and 25 favoured the other. Since the Committee was equally divided on this matter, it was believed that a final decision should be left to the Diplomatic Conference. However, the Delegation of Brazil proposed a compromise solution which would have taken care both of the qualification "wherever located" and of the qualifications "interferes" or "interrupts"; the text would refer to facilities "intended for the operation of an airport or located thereon". This proposal was widely supported but some Delegations objected that this proposal would amount to a reopening of the debate and of the decision taken by the Committee (see paragraph 4:54 above) which specifically wished to include the term "services" in addition to facilities in the English language. It was believed that the Committee had reached near unanimity to include the concept of "services". However, after a further discussion it was agreed that the proposal of Brazil and the support for it would be duly reflected in the Report for possible consideration while maintaining in the future text the concept of "services" approved by the Committee.

4:73 The Delegation of Peru wished to place on the record its statement that the text of sub-paragraph (b) should take into account the specific situations, needs and interests of particular States; in Peru some airports serving international civil aviation had some important technical facilities up to 15 km away from the perimeter of the airport; the new instrument should provide protection for such facilities and that Delegation implored the Committee to discuss this matter further. One other Delegation stated that "facilities" were clearly defined by the expression "of an airport" and that a further qualification, e.g., by reference to "wherever located" would be redundant; it was also stated that the expression "intended for the airport" would be legally ambiguous and imprecise.

4:74 On the proposal of the Delegation of Jamaica, duly seconded, the Committee took a new vote to introduce in paragraph (b) instead of the alternative texts in square brackets the wording "or disrupts the services of the airport". This proposal was adopted by 32 votes in favour, 5 opposed with 16 abstentions.

Report on Agenda Item 4

- Preamble

4:75 The Chairman of the Working Group presented to the Committee the following text of a Preamble prepared by the Group:

"Preamble

CONSIDERING that unlawful acts of violence at airports serving international civil aviation strike indiscriminately at innocent persons, cause destruction or damage at such airports, undermine the confidence of the peoples of the world in safety at such airports, disturb the safe and orderly conduct of civil aviation for all States and constitute an affront to the conscience of the world;

CONSIDERING that the occurrence of such acts is a matter of grave concern;

CONSIDERING that it is necessary to adopt provisions additional to those of international agreements in force;

CONSIDERING that it is desirable to cover unlawful acts of violence at airports serving international civil aviation in supplement to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971."

4:76 The Chairman of the Working Group explained that on the basis of preliminary alternative texts of the draft Preamble presented to the Working Group by its Chairman the following indicative votes were taken by the Group in the process of the drafting of the text of the Preamble:

- 1) Should there be a specific reference to "terrorism" in any form included in the Preamble? Nine votes were in favour, 13 opposed and 4 abstained; consequently, no reference to "terrorism" was included in the text presented by the Working Group.
- 2) Should there be a list of means used to commit an act of violence in the text of the Preamble? Eight votes favoured such an inclusion, 18 were opposed and there were no abstentions; consequently, the draft text of the Preamble did not make any reference to the specific means used in the commission of the act of violence.
- 3) Should the expression "disturb the safe and orderly conduct of civil aviation for all States" be kept in the Preamble? Twenty-two votes were in favour, one opposed and 3 abstained.
- 4) Should the last paragraphs of the Preamble be reformulated as one single paragraph along the following lines?:

"CONSIDERING that it is desirable to cover unlawful acts of violence at airports serving international civil aviation in supplement to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971".

There were 23 votes in favour, 1 opposed and 2 abstentions.

Report on Agenda Item 4

4:77 On the proposal of the Delegation of Jamaica, supported by many Delegations, the Committee decided to delete in the first Considering clause the words "strike indiscriminately at innocent persons, cause destruction or damage" and replace them by "jeopardize the safety of persons and property". It was argued that this new wording would correspond fully to the preambular clause of the Montreal Convention; furthermore, the terms "indiscriminately" and "innocent" were not considered to be legally precise and did not reflect the substantive decisions of the Committee on the definition of the offence. The new text was approved by a vote of 42 against 8 with 9 abstentions.

4:78 The Committee agreed by consensus to the proposal of the Delegation of Colombia to delete in the first Considering clause the words "and constitute an affront to the conscience of the world". One Delegation, supported by a number of others, suggested to align the wording of the first Considering clause with that of the Montreal Convention and the Assembly Resolution A26-4 by reformulating the words "undermine the confidence of the peoples of the world in safety at such airports" by "undermine the confidence of the peoples of the world in the safety of civil aviation".

4:79 With reference to the second Considering clause, the Committee accepted by consensus the proposal of the Delegations of Czechoslovakia and Greece to reflect in that clause the text of the last Considering clause of the Montreal Convention. Consequently, the second Considering clause would read:

"CONSIDERING that the occurrence of such acts is matter of grave concern and that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders."

4:80 Similarly, by consensus, the Committee agreed to the proposal of the Delegation of Canada, supported by many Delegations, to combine the third and fourth Considering clauses with a minor redraft of the text to read as follows:

"CONSIDERING that it is necessary to adopt provisions additional to those of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971, to deal with unlawful acts of violence at airports serving international civil aviation."

J. Conclusions and decisions of the Committee

4:81 As a result of its deliberations and decisions, the Committee reached the following conclusions:

4:82 The new instrument should be drafted in the form of a Protocol supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971, to deal with unlawful acts of violence at airports serving international civil aviation; such Protocol would not amend the basic principles of that Convention.

Report on Agenda Item 4

4:83. The draft text approved by the Committee for inclusion into such a Protocol reads as follows:

1) Preamble

"THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING that unlawful acts of violence at airports serving international civil aviation jeopardize the safety of persons and property at such airports, undermine the confidence of the peoples of the world in safety at such airports and disturb the safe and orderly conduct of civil aviation for all States;

CONSIDERING that the occurrence of such acts is a matter of grave concern and that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

CONSIDERING that it is necessary to adopt provisions additional to those of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971, to deal with unlawful acts of violence at airports serving international civil aviation,

HAVE AGREED AS FOLLOWS:"

2) Article 1, paragraph 1 bis

"1 bis. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

(a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

(b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport."

3) Article 1, paragraph 2

"2. Any person also commits an offence if he:

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

Report on Agenda Item 4

4) Article 5, paragraph 2 bis

"2 bis. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 bis and in Article 1, paragraph 2, insofar as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to the State mentioned in paragraph 1(a) of this Article."

4:84 The Committee considers the text set forth in paragraph 4:83 above to be the final draft ready for presentation to States under the terms of Assembly Resolution A7-6 and presents it to the Council for consideration and action under the terms of that Resolution. The Committee recommends to the Council to convene an international conference of plenipotentiaries to consider the draft with a view to its adoption as soon as possible.

4:85 The Committee wished to record its deep gratitude to the Chairman of the Working Group, Mr. P.H. Kirsch (Canada) and to the members of the Working Group through whose effort the work of the 26th Session of the Legal Committee was successfully advanced. The Committee also expressed its warm thanks and appreciation to Ms. I.E. Howie (United States of America) who served as Chairman of the Special Sub-Committee, as well as to Dr. R.D. van Dam (Kingdom of the Netherlands) who completed a pioneering work as Rapporteur.

Report on Agenda Items 3, 5, 6, 7 and 8

x:1 The Committee followed the instructions of the Council that Agenda Item 4 was the main item of the 26th Session of the Legal Committee. The Committee decided not to address any other agenda item before the discussion on Agenda Item 4 was completed and the report thereon approved.

x:2 Consequently, since the discussion on Agenda Item 4 terminated only on 12 May 1987, it was not practicable for the Legal Committee to address Agenda Item 3: "Review of the General Work Programme of the Legal Committee"; Agenda Item 5: "Consideration of the Report of the Rapporteur on 'United Nations Convention on the Law of the Sea - Implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments'"; Agenda Item 6: "Consideration of the Report of the Rapporteur on 'Liability of Air Traffic Control Agencies'"; Agenda Item 7: "Review of the Rules of Procedure of the Legal Committee (Doc 7669-LC/139/3)" and Agenda Item 8: "Date, place and agenda of the 27th Session of the Legal Committee". However, the following documents relating to Agenda Item 3 were presented to the Session of the Committee: LC/26-WP/3-1 presented by the Delegation of Peru and co-sponsored by the Delegations of Bolivia, Cuba, Chile and Ecuador proposing work on the legal aspects relating to suppression of the illicit transport of narcotics and psychotropic substances involving international civil aviation; LC/26-WP/3-2 presented by the Delegation of Cuba and co-sponsored by the Delegation of Peru proposing work on the subject "Deliberate use of civil aircraft for purposes inconsistent with the aims of the Chicago Convention". Furthermore, the Delegation of Greece presented a paper (LC/26-WP/5-42) relating to the subject of the UN Convention on the Law of the Sea. None of these papers was considered by the Committee.

x:3 The work programme of the Legal Committee had been thoroughly discussed by the Legal Commission of the 26th Session of the ICAO Assembly in October 1986. The views expressed at that Assembly and decisions taken thereby, together with the proposals presented by some Delegations to the 26th Session of the Legal Committee (see paragraph x:2 above) would form a sufficient basis for the Council to approve, in due course, the General Work Programme of the Committee and the priorities within that programme. Therefore, it was hoped that in due course the Council will take a decision on the review of the General Work Programme of the Legal Committee (Agenda Item 3) as well as on the specific points thereon, including items covered by Agenda Items 5 and 6 of the 26th Session of the Legal Committee.

x:4 With respect to Agenda Item 7, "Review of the Rules of Procedure of the Legal Committee", the Committee noted that in LC/26-WP/7 REVISED no proposal was made for any amendment of the Rules; the Secretariat drew to the attention of the Committee only some corrections of an editorial nature to be introduced in the new edition of Doc 7669-LC/139/3 and it was believed that such editorial corrections should be made under the authority of the Secretary General.

x:5 With respect to Agenda Item 8, "Date, place and agenda of the 27th Session of the Legal Committee", the Committee believed that after consideration of the General Work Programme of the Legal Committee and after the Diplomatic Conference on the new instrument for the suppression of unlawful acts of violence at airports serving international civil aviation the Council will be in the best position to determine the suitable date, place and agenda of the 27th Session of the Legal Committee.

THIS PAGE INTENTIONALLY LEFT BLANK.

Attachment A

AGENDA

FOR THE 26TH SESSION OF THE LEGAL COMMITTEE

- Item 1: Adoption of the Final Agenda of the Session
- Item 2: Report of the Secretariat
- Item 3: Review of the General Work Programme of the Legal Committee
- Item 4: Development of an Instrument for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation
- Item 5: Consideration of the Report of the Rapporteur on "United Nations Convention on the Law of the Sea - Implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments"
- Item 6: Consideration of the Report of the Rapporteur on "Liability of Air Traffic Control Agencies"
- Item 7: Review of the Rules of Procedure of the Legal Committee (Doc 7669-LC/139/3)
- Item 8: Date, place and agenda of the 27th Session of the Legal Committee
- Item 9: Report on work done at the Session

THIS PAGE INTENTIONALLY LEFT BLANK

Attachment E

LIST OF DOCUMENTS

<u>Working Paper</u>		<u>Subject</u>
LC/26-WP/	1	Provisional Agenda
	2	Report of the Secretariat
	3	Review of the General Work Programme of the Committee
	3-1	Work Programme of the Legal Committee of ICAO
	3-2	Inclusion of the subject "The deliberate use of civil aircraft for purposes inconsistent with the aims of the Convention on International Civil Aviation"
	4	Development of an Instrument for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Introductory Note)
	4-1	Comments of IFALPA
	4-2	Comments of IATA
	4-3	Comments of Israel
	4-4	Comments of the Fed. Rep. of Germany
	4-5	Presented by the Delegation of the Union of Soviet Socialist Republics
	4-6	Comments of the Kingdom of the Netherlands
	4-7	Comments of Greece
	4-8	Comments of Venezuela
	4-9	Comments of Australia
	4-10	Comments of the USSR
	4-11	Comments of Peru
	4-12	Proposal of Spain
	4-13	Comments of France
	4-14	Proposal of Japan
	4-15	Comments of Cuba
	4-16	Comments of Egypt
	4-17	Comments of Switzerland
	4-18	Comments of Poland
	4-19	Comments of Kenya
	4-20	Comments of the United Kingdom
	4-21	Draft text of Article 1 <u>bis</u> presented by the Chairman of the Working Group

Attachment B

<u>Working Paper</u>		<u>Subject</u>
LC/26-WP/	4-22	Comments of the Kingdom of the Netherlands
	4-23	Texts presented by the Chairman of the Working Group
	5	Consideration of the Report of the Rapporteur on "United Nations Convention on the Law of the Sea - Implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments" (Introductory Note)
	5-1	LOS - Secretariat Study
	5-2	Comments of Argentina
	5-3	Comments of Barbados
	5-4	Comments of Brazil
	5-5	Comments of Canada
	5-6	Comments of Chile
	5-7	Comments of Czechoslovakia
	5-8	Comments of Denmark
	5-9	Comments of Egypt
	5-10	Comments of Finland
	5-11	Comments of France
	5-12	Comments of the Fed. Rep. of Germany
	5-13	Comments of Greece
	5-14	Comments of Guatemala
	5-15	Comments of Hungary
	5-16	Comments of Indonesia
	5-17	Comments of Ireland
	5-18 & <u>Addendum</u>	Comments of Italy
	5-19	Comments of Lebanon
	5-20	Comments of Mauritius
	5-21	Comments of Mexico
	5-22	Comments of the Kingdom of the Netherlands
	5-23	Comments of Norway
	5-24	Comments of Pakistan
	5-25	Comments of Papua New Guinea.
	5-26	Comments of the Philippines
	5-27	Comments of Portugal
	5-28	Comments of Seychelles
	5-29	Comments of Singapore
	5-30	Comments of Sweden
	5-31	Comments of Switzerland
	5-32	Comments of Turkey

Attachment B

Working Paper

Subject

LC/26-WP/	5-33	Comments of Uganda
	5-34	Comments of the USSR
	5-35	Comments of the United Kingdom
	5-36	Comments of the United States
	5-37	Comments of Uruguay
	5-38	Comments of Vanuatu
	5-39	Comments of IATA
	5-40	Comments of IFALPA
	5-41	LOS - Report by the Rapporteur
	5-42	Comments of Greece
6		Consideration of the Report of the Rapporteur on "Liability of Air Traffic Control Agencies"
6-1		ATC - Secretariat Study
6-2		Comments of Argentina
6-3		Comments of Austria
6-4		Comments of Barbados
6-5		Comments of Belgium
6-6		Comments of Brazil
6-7		Comments of Canada
6-8		Comments of Chile
6-9		Comments of Cyprus
6-10		Comments of Denmark
6-11		Comments of Egypt
6-12		Comments of Ethiopia
6-13		Comments of Finland
6-14		Comments of the Fed. Rep. of Germany
6-15		Comments of Greece
6-16		Comments of Guatemala
6-17		Comments of Hungary
6-18		Comments of Ireland
6-19		Comments of Israel
6-20		Comments of Italy
6-21		Comments of Kenya
6-22		Comments of Lebanon
6-23		Comments of Maldives
6-24		Comments of Mauritius
6-25		Comments of the Kingdom of the Netherlands
6-26		Comments of Norway
6-27		Comments of Pakistan
6-28		Comments of Papua New Guinea

Attachment B

Working Paper

Subject

LC/26-WP/	6-29	Comments of Rwanda
	6-30	Comments of Singapore
	6-31	Comments of Sweden
	6-32	Comments of Switzerland
	6-33	Comments of the United Kingdom
	6-34	Comments of the United States of America
	6-35	Comments of Vanuatu
	6-36	Comments of Zambia
	6-37	Comments of ACAC
	6-38	Comments of IATA
	6-39	Comments of IFALPA
	6-40	Comments of IFATCA
	6-41	Comments of the United Nations
	6-42	ATC - Report by the Rapporteur
	7 <u>Revised</u>	Review of the Rules of Procedure of the Legal Committee (Doc 7669-LC/139/3)
	8	Date, Place and Agenda of the 27th Session of the Committee
	9	Report on work done at the Session

WORKING GROUP

LC/26-WG/	1	Text presented by the Chairman (Article 1 <u>bis</u>)
	2	Text presented by the Delegation of Greece (Provision to be inserted in the Preamble)
	3	Text presented by the Chairman (Article 1 <u>bis</u> and Preamble)

Attachment C

LIST OF PARTICIPANTS

ALGERIA:	Abada, A. Haneche, M.
ARGENTINA:	Perucchi, H.A. Ainchil, O.A. Bocalandro, R.L. Bustos Fierro, R. Dozo, F.E. Salvat, M.C. Tomas, J.P.
AUSTRALIA:	Strang, H.D. Billingsley, A.J.
AUSTRIA:	Winkler, H.
BARBADOS:	Payne, C.S.
BELGIUM:	Verstappen, J. Fobe, J.-M.
BOLIVIA:	Aparicio, M.R. Arto, J.A.
BRAZIL:	Pereira, G. Bittencourt, J.
BRUNEI DARUSSALAM:	Haji Latip, H.K.
BULGARIA:	Tepavitcharov, C. Ivanov, I.V.
CANADA:	Kirsch, P. Fiorita, D. Fauteux, P. Lauzon, G.H. Stockfish, B.E. Shaffer, B.
CHILE:	Eyzaguirre, R. Rodriguez, P. Ansted, J. Dupouy, J. Gillet, J. Zurob, R.
CHINA:	Qian Zemin Xi Zongze Xue Hangin

Attachment C

COLOMBIA:	Rodriguez Perez, L.
COSTA RICA:	Wedel, D.
CÔTE D'IVOIRE:	Koné, I. Tahou, S.R.
CUBA:	Arango, A.J. Barcelo, R.A.
CZECHOSLOVAKIA:	Vodicka, O. Kozusnik, R. Zbiralova, J.
DEMOCRATIC YEMEN:	Bahamish, A.A. Abdulkader, M.
DENMARK:	Dambaek, M.
ECUADOR:	Saenz-Merizalde, C.E.
EGYPT:	Massoud, C. Hussein, H.
ETHIOPIA:	Gebreegziabher, Y.
FINLAND:	Metsälampi, V.-M. Kantola, A.V.
FRANCE:	de la Verpillière, C. Chanet, C.S. Barbin, M. Bugnet, J.-C. Ramis, M.
GERMANY, FEDERAL REPUBLIC OF:	Roebbert, M. Graumann, H.
GREECE:	Economides, C. Korontzis, G.
HONDURAS:	Ulloa Dethuin, I.
HUNGARY:	Jereb, G.
INDIA:	Jha, B.N. Bhatt, S. Malik, S.

Attachment C

INDONESIA : Wasito
Soebagijo Soemodihardjo
Martono
Cahyo Adi
Soedjarwo
Soeparo, U.

IRAN, ISLAMIC REPUBLIC OF: Golrounia, A.A.
Najafi-Tavani, C.A.
Dastmalchi, A.
Manafi Dero, S.R.
Rahimian, H.

IRAQ: Taha, T.

IRELAND: Harper, M.

ISRAEL: Sabel, R.
Alster, J.P.
Shohamy, S.
Badash, G.
Diav, A.
Naor, G.
Oren, E.

ITALY: Sciolla-Lagrange, A.
Ferrari-Bravo, L.
Chiavarelli, E.
Barile, G.
Gaiani, M.
Pieroni, M.
Polimeni, G.
Rinaldi Baccelli, G.

JAMAICA: Rattray, K.O.

JAPAN: Mukai, M.
Kifuji, S.
Fujita, T.
Matsumoto, T.
Teranishi, T.
Kubota, Y.
Nagao, M.

KENYA: Ameyo, D.K.
Githaiga, S.W
Abwawo, A.E.

KUWAIT: Bouresli, D

LEBANON: Arsanios, ' .

Attachment C

LIBYAN ARAB JAMAHIRIYA:	El Gabsi, A.A. El-Misilati, A. Ghaddah, M.R. Uhida, H.M.
MEXICO:	Loeza T., E. Carvajal, M.
NETHERLANDS, KINGDOM OF THE:	van Dam, R.D. Schutte, J.E. Patyn, A. van Den Nieuwenhuyzen, W.J.M. van Lieshout, J.W.M.
NORWAY:	Nordeng, T.V.
PAKISTAN:	Ahmad, S. Anwar, S.M.
PANAMA:	Picardi, F.H.
PERU:	Garland, J. Contreras, A. de la Fuente, M. Ferradas Platas, J. Ramirez Roman, C.M. Salazar, D.M. Alvarado, F. Lopez, R.
POLAND:	Zylicz, M. Berezowski, M.A. Nowodworski, A.
PORTUGAL:	Espinola, S.A.A. Santos Pato, A.M. Sitima, J.C.B. Rodrigues Zincke Dos Reis, A.M.
REPUBLIC OF KOREA:	Choi, N.C. Kim, S.K. Han, Y.K.
SAUDI ARABIA:	Dabbagh, H. Al-Attas, K. Rajkhan, S.
SENEGAL:	Fall, A.K. Diallo, Y. Diop, C.M.

Attachment C

SINGAPORE:	Tan, S.C.
SPAIN:	Castejon, B. Meson, L.
SWEDEN:	Berg, U.G. Brusen, V.M. Hellners, K.V. Larsson, B.E.
SWITZERLAND:	Panchard, G. Rochat, P.
SYRIAN ARAB REPUBLIC:	Al Baaly, B. Al Youssef, M.
THAILAND:	Chinda, B. Kongpaeng, T. Piputvat, S. Tantirujanant, P.
TUNISIA:	El Hicheri, A.
TURKEY:	Targay, K.
UNION OF SOVIET SOCIALIST REPUBLICS:	Ryjenkov, B.A. Goloubov, G.D. Novossiltsew, M.M. Podberezny, V.A.
UNITED KINGDOM:	Oates, L. Kean, A. Neal, F.A.
UNITED REPUBLIC OF TANZANIA:	Kaunda, G.H. Mwakisu, B.K.
UNITED STATES:	Howie, I.E. Byerly, J.R. Maillett, L.E. Casey, J.L.
VENEZUELA:	Vera, L. Yepez, R. Fraino, C. Kaufman R., A.
YEMEN:	Al-Nashri, A.
ZAIRE:	Zambali, R. Likolo, B.

Attachment C

OBSERVERS

GERMAN DEMOCRATIC REPUBLIC (THE):

Damm, G.
Boehme, H.
Mudrack, J.

AIRPORT ASSOCIATIONS COORDINATING
COUNCIL (AACC):

Graser, A.

INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA):

Larose-Aubry, H.
Donohue, A.
Weber, L.

INTERNATIONAL FEDERATION OF AIR LINE PILOTS'
ASSOCIATIONS (IFALPA):

Kane, R.F.
Keenan, J.T.
van Wijk, A.A.

INTERNATIONAL LAW ASSOCIATION (ILA):

Matte, N.
Fitzgerald, Q.C., G.F.
Magdelénat, J.-L.

PART IV

THIS PAGE INTENTIONALLY LEFT BLANK



International Conference on Air Law

(Montreal, 9 - 24 February 1988)

Provisional Agenda

1. Opening of the Conference by the President of the ICAO Council
2. Adoption of the Agenda
3. Adoption of the Rules of Procedure
4. Establishment of the Credentials Committee
5. Election of the President of the Conference
6. Election of the Vice-Presidents of the Conference
7. Report of the Credentials Committee
8. Organization of work:
 - a) Procedure for consideration of the draft instrument on the suppression of unlawful acts of violence at airports serving international civil aviation
 - b) Establishment of the Commission of the Whole and Committees as necessary
9. Consideration of the draft instrument
10. Adoption of the instrument and of any Resolutions
11. Adoption of the Final Act of the Conference
12. Signature:
 - of the Final Act
 - of the instrument

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

PROVISIONAL RULES OF PROCEDURE

Rule 1 (Composition of the Conference)

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

Rule 2 (Credentials and Credentials Committee)

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

Rule 3 (Eligibility for participation in meetings)

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

VIA Doc No. 2

Rule 4 (Officers)

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

Rule 5 (Commissions, Committees and Working Groups)

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

Rule 6 (Public and private meetings)

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

Rule 7 (Participation of observers)

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

Rule 8 (Quorum)

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

Rule 9 (Powers of the presiding Officer)

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

Rule 10 (Speakers)

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

Rule 11 (Points of Order)

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

Rule 12 (Time limit of Speeches)

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

Rule 13 (Motions and Amendments)

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

VIA Doc No. 2

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

Rule 14 (Procedural Motions)

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

Rule 15 (Order of Procedural Motions)

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

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

Rule 16 (Reconsideration of Proposals)

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

Rule 17 (Discussions in Working Groups)

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

Rule 18 (Voting Rights)

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

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

(3) Observers shall not be entitled to vote.

Rule 19 (Voting of presiding Officer)

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

Rule 20 (Majority required)

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

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

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

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

Rule 21 (Method of Voting)

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

Rule 22 (Division of Motions)

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

Rule 23 (Voting on Amendments)

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

VIA Doc No. 2

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

Rule 24 (Voting on Alternative or Substitute Motions)

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

Rule 25 (Tie vote)

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

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

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

Rule 27 (Languages)

(1) Documents of the Conference shall be prepared and circulated in the English, French, Russian and Spanish languages.

(2) The English, French, Russian and Spanish languages shall be used in the deliberations of the Conference, Commissions, Committees and Working Groups. Speeches made in any of the four languages shall be interpreted into the other three languages, except where such interpretation is dispensed with by unanimous consent.

(3) Any representative may make a speech in a language other than the official languages. In this case he shall himself provide for interpretation into one of the working languages. Interpretation into the other working languages by the interpreters of the Secretariat may be based on the interpretation given in the first working language.

Rule 28 (Records of Proceedings)

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

Rule 29 (Amendment of the Rules of Procedure)

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

Rule 30 (Representative of a State - Definition)

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

THIS PAGE INTENTIONALLY LEFT BLANK



VIA Doc No. 3
1/12/87

International Conference on Air Law

(Montreal, 9 - 24 February 1988)

Draft Protocol

to Amend the Convention
for the Suppression of Unlawful Acts
against the Safety of Civil Aviation

Signed at Montreal
on 23 September 1971

(Presented by the Secretariat)

The 26th Session of the Legal Committee decided that "the new instrument should be drafted in the form of a Protocol supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971, to deal with unlawful acts of violence at airports serving international civil aviation; such Protocol would not amend the basic principles of that Convention" (Doc 9502-LC/186, paragraph 4:82).

The attached draft Protocol has been prepared by the Secretariat for convenience of reference and to facilitate further discussions.

The provisions marked by a vertical line in the margin reproduce the texts approved by the Committee for inclusion into such a Protocol. The final provisions follow the standard provisions of the Protocols adopted under the auspices of ICAO and are closely aligned on the final provisions of the Montreal Convention of 1971.

ATTACHMENT

DRAFT PROTOCOL

To Amend the Convention
for the Suppression of Unlawful Acts
against the Safety of Civil Aviation
Signed at Montreal
on 23 September 1971

THE GOVERNMENTS UNDERSIGNED

CONSIDERING that unlawful acts of violence at airports serving international civil aviation jeopardize the safety of persons and property at such airports, undermine the confidence of the peoples of the world in safety at such airports and disturb the safe and orderly conduct of civil aviation for all States;

CONSIDERING that the occurrence of such acts is a matter of grave concern and that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

CONSIDERING that it is necessary to adopt provisions additional to those of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971, to deal with unlawful acts of violence at airports serving international civil aviation,

HAVE AGREED AS FOLLOWS:

CHAPTER I

AMENDMENTS TO THE CONVENTION

Article I

The Convention which the provisions of the present Chapter modify is the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

Article II

1. In Article 1 of the Convention, the following shall be added as new paragraph 1 bis:

"1 bis. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death: or

(b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport."

2. Paragraph 2(a) of the Convention shall be deleted and replaced by the following:

"2. Any person also commits an offence if he:

(a) attempts to commit any of the offences mentioned in paragraph 1 or paragraph 1 bis of this Article; or."

Article III

In Article 5, the following shall be added as paragraph 2 bis:

"2 bis. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 bis, and in Article 1, paragraph 2, insofar as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to the State mentioned in paragraph 1(a) of this Article."

CHAPTER II

FINAL PROVISIONS

Article IV

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the Montreal Convention of 1971 as Amended in Montreal in 1988.

Article V

Until the date on which this Protocol comes into force in accordance with Article VII, it shall remain open for signature by any State.

Article VI

1. This Protocol shall be subject to ratification by the signatory States.

VIA Doc No. 3
Attachment

2. Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of accession to the Convention as amended by this Protocol.

3. The instruments of ratification shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, which are hereby designated the Depositary Governments.

Article VII

1. As soon as ten of the signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the thirtieth day after the date of the deposit of the tenth instrument of ratification. It shall come into force, for each State which deposits its instrument of ratification after that date on the thirtieth day after its deposit of its instrument of ratification.

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

Article VIII

1. This Protocol shall, after it has come into force, be open for accession by any non-signatory State.

2. Accession to this Protocol by any State which is not a Party to the Convention shall have the effect of accession to the Convention as amended by this Protocol.

3. Accession shall be effected by the deposit of an instrument of accession with the Depositary Governments and shall take effect on the thirtieth day after the deposit.

Article IX

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Depositary Governments.

2. Denunciation shall take effect six months after the date of receipt by the Depositary Governments of the notification of denunciation.

Article X

1. The Depositary Governments shall give notice to all States Parties to the Montreal Convention of 1971 or to that Convention as amended by this Protocol, all signatory and adhering States and to all States members of the Organization or of the United Nations:

(a) of the deposit of any instrument of ratification of, or adherence to, this Protocol and the date thereof, within thirty days from the date of the deposit, and

(b) of the receipt of any denunciation of this Protocol and the date thereof, within thirty days from the date of the receipt.

2. The Depositary Governments shall also notify these States of the date on which this Protocol comes into force in accordance with Article VII.

Article XI

This Protocol shall be open for signature at Montreal on _____ 1988 by States participating in the International Conference on Air Law from _____ to 1988. After _____ 1988, the Protocol shall be open for signature to all States in Moscow, London and Washington, until it comes into force in accordance with Article VII.

DONE at Montreal on the _____ day of _____ of the year One Thousand Nine Hundred and Eighty-Eight in four authentic texts in the English, French, Russian and Spanish languages.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol in the name of

THIS PAGE INTENTIONALLY LEFT BLANK



VIA Doc No. 4
1/12/87

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of the Niger

1. The form of the new instrument to be adopted by the International Conference on Air Law in February 1988.

After examining the report of the Sub-Committee responsible for the preparation of the new instrument, the Niger would like the text to be drafted in the form of a separate convention, separate from the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Firstly, our view takes into account the established fact that most of the existing texts relating to the protection of civil aviation have been prepared in the form of separate conventions. Among others there are:

- The Tokyo Convention of 4 September 1963 on Offences and Certain Other Acts Committed On Board Aircraft.

- The Convention of The Hague of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft.

- The Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

It would be more logical for the new text on the Suppression of Unlawful Acts at Airports Serving International Civil Aviation also to be adopted in the form of a separate convention.

Secondly, such a solution would have the advantage of not making ratification of the new instrument conditional upon ratification of the Montreal Convention of 1971.

2. If, however, the International Conference on Air Law in February 1988 decides that the new instrument should be prepared in the form of a Protocol amending the Montreal Convention, then the Niger would make the following comments on the draft proposed by the Legal Committee of ICAO.

VIA Doc No. 4

a) Article II of the draft

Here the Niger proposes that in the wording of paragraph 1 bis the word "likewise" be added. This would indicate the complementary relationship which is supposed to exist between paragraph 1 of the Montreal Convention and paragraph 1 bis of the draft instrument for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation. Thus paragraph 1 bis would read: "Likewise any person commits an offence

b) Final Provisions

The Niger believes that the final provision contained in Articles 9 to 12 of the draft text are a duplication of the provisions contained in Article 15 (paragraphs 2, 3, 4, 5 and 6) and Article 16 (paragraphs 1 and 2) of the Montreal Convention.

It is for this reason that the Niger proposes that Article 8 of the draft instrument be the final article of the Protocol and that it be formulated as follows:

Article VIII

This Protocol shall be open for signature at on by States participating in the International Conference on Air Law at from to 198 (hereinafter called the Conference). Subsequently the Protocol shall be open for signature to all States Party to the Convention at The provisions contained in the Montreal Convention of 1971 relating to the ratification of the Convention, accession to it, its entry into force, denunciation of it, etc., are likewise valid for this Protocol.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

Done at _____ on _____



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of the International Air Transport Association

1. General

The international conventions relating to unlawful acts against the safety of international civil aviation currently in force leave a gap as regards such acts committed at airports serving international civil aviation. IATA therefore welcomes and supports the work undertaken by ICAO to develop a new instrument for the suppression of such acts of violence committed at airports.

2. Text

The text prepared by the 26th Session of the ICAO Legal Committee, and in particular the definition of offences in Article 1, paragraph 1 bis, is considered appropriate to achieve the objective of protecting safety at airports serving international civil aviation, as spelled out in Assembly Resolution A26-4. The establishment of international jurisdiction over such offences, as provided for in Article 5, paragraph 2 bis, is believed to be an appropriate means of extending this protection.

It has been noted that it was the understanding of the Working Group which drafted the text that airport installations, no matter where they are located, were implicitly covered by the text of the new instrument.

3. Preventive Measures

With respect to the question left open by the ICAO Legal Committee whether the new Protocol should provide for further preventive measures to suppress unlawful acts of violence at airports, IATA takes the view that this matter should be best resolved in the framework of the review of Annex 17.

VIA Doc No. 5

It is submitted that, when further reviewing Annex 17, special provision should be made for considering possible amendments to strengthen and render more effective the measures designed to prevent unlawful acts at airports, and in particular to prevent and deter unlawful acts of violence at such airports. The need to prevent and deter acts of violence through adequate airport security measures is believed to be of great importance.

4. Final Clauses

IATA takes the view that it would be desirable that the new instrument enters into force as soon as possible. Therefore, it is submitted that the required number of ratifications for its entry into force should be set as low as possible. This would in the industry's view not only provide an incentive for States to start the ratification process, but might also help to achieve a greater number of ratifications if the Protocol has entered into force at an early date.



VIA Doc No. 6
1/12/87

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1987)

Comments of Argentina

In order to strengthen the safety of international civil aviation in the years to come, an instrument is required which refers to the suppression of acts of violence at airports. There are international elements which must be structured and regulated for the benefit of aeronautical activity. Included in this expression are airports, the interests of airlines, the user public and States.

Argentina supports the drafting of a "Protocol" which is supplementary and complementary to the Montreal Convention of 1971 for the Suppression of Unlawful Acts against Civil Aviation. Argentina also agrees that the document drafted by the Legal Committee of ICAO at its 26th Session should be taken as a basis for this "Protocol". This view was also expressed at the meetings of the Legal Sub-Committee in January 1987 and those of the Legal Committee in April-May 1987.

A "Protocol" is believed to be preferable to a separate convention not only because of the relationship between the problem and the Montreal Convention of 1971 but also because the latter will be the basis and source for solving all questions raised relating to acts of violence at airports.

Our country believes that a strong relationship should be established between the Protocol and the Montreal Convention precisely because of the similarity of the protected legal interest. Consequently, among the complementary clauses it should be stated that a State ratifying the Supplementary Protocol will at the same time ratify the Montreal Convention if it has not already done so and a State which in the future ratifies the Convention will at the same time ratify the Protocol.

Argentina also believes that some aspects of the problem which still have to be explored should be studied at the Diplomatic Conference.

The first, in our opinion, is the "act of violence". The scope of this expression should be discussed even if no definition is included in the document prepared by the Diplomatic Conference. In our view an exchange of well-founded opinions will be sufficient. These opinions would be recorded in the "records" of the Conference so that authorities and judges can be guided uniformly in interpreting the concept. We must not forget that one hundred and fifty-seven States are members of the Organization. The possibility of different interpretations is therefore great.

VIA Doc No. 6

The expression "threat" should also be introduced in the Protocol as an offence to be defined and punished. Various local legislations have introduced it in their texts and it was also introduced in the Conventions of The Hague (1970) and Montreal (1971). If it were not added there would be a lacuna which will present difficulties in the future application of the Protocol.

Argentina also supports the introduction of a definition of an international airport or else a concept which is much clearer than that which appears in paragraph 1 bis of the document approved by the Legal Committee.

Let us not forget that the norms which are being prepared are of an aeronautical nature but at the same time of a penal nature and therefore the territorial expression is of very great significance.

At the appropriate time, Argentina will propose the concept of an airport which takes into account its three aspects: administrative, geographical, functional.

We believe that the problem of the "facilities" included in the international instrument should be discussed again in order to indicate clearly whether the acts considered as offences will be only those against the facilities which are located within the geographical perimeter of the airport or also those outside the airport which serve the airport.

Our country favours the second solution, but in that case it must be stated that for the purposes of the Protocol, damaging the internal and external facilities which serve the international airport for the purposes of its operation, is also an offence.

Damage caused to aircraft not in service located at the airport must also be included as well as attacks on air transit services.

Argentina believes that the act of knowingly communicating false information which may constitute or give rise to a danger to the operation of and safety at an airport should be added as an offence. A similar type of offence appears in Article 1 of the Montreal Convention of 1971, but it only relates to when such an act endangers the safety of an aircraft in flight. This is another case which should be taken here as a precedent and should be included in the form in which we have indicated.

With respect to the enumeration of means used in committing an offence as has been proposed in the first sentence of 1 bis, Argentina favours the deletion of such a list, because there are always some means which are not listed. If, on the contrary, insistence is shown on keeping it, then Argentina believes that it should be made complete since the expression "devices, substances and weapons" is not sufficient. One should add, for example, the deliberate release of atomic energy or forming crowds which with the same purpose obstruct the orderly operation of the airport, thereby causing serious damage to the normal sequence of its functions.

In some specific laws such as the Penal Code of the Argentine Republic, intimidation of the public is included (Articles 211 and 212) and a list is even given of other means used in committing offences such as signals, voices raised in alarm, explosives, chemical agents or related materials. Also included is the circulation of communications or pictures coming from or attributed to unlawful associations or persons or groups known to be dedicated to terrorist activities. Any use of these means in an unlawful and intentional manner should be related to causing damage or to the possibility of causing damage which impairs the operation of an international airport.

Argentina is also in favour of an indepth examination at the forthcoming Diplomatic Conference of the problem of mental injury or moral damage which might be caused by criminal acts such as causing panic, seriously disturbing order or collective emotional states by intimidation. If the mental injury disrupts safety at the airport there would be no decisive reason to exclude it from being defined as an international offence or not to prosecute and try the offender in the manner provided for by the Protocol. In any event, the final phrase of Article 1 bis should be kept in this document, namely "if such an act endangers or is likely to endanger safety at that airport".

With respect to the question of jurisdiction and extradition (Article 5, paragraph 2 bis) some comments must be made. Firstly, only the jurisdiction of the country where the act occurred should be recognized. If the offender is not present in that country and it was impossible for him to be apprehended by the authorities of that country, he must be apprehended in the territory in which he is present by the authorities of that country. Subsequently, he may be brought to trial directly or extradited if extradition has been requested by the country in which the act occurred. But there should be no extradition if such extradition is requested for reasons of the nationality of the offender or the nationality of groups of persons which have been attacked while they were at the airport.

Since the international instrument which is being prepared will be a supplementary Protocol complementary to the Montreal Convention of 1971, all of the norms of the latter will be applicable to the cases which occur which are foreseen in the former. One of the most important is that of Article 3 which reads: "Each Contracting State undertakes to make the offences mentioned in Article 1 punishable by severe penalties."

The Convention does not give a definition of "severe penalty" nor can one get a very clear idea of this concept from the "Records" of the International Conference which drew up the Montreal Convention of 1971. The expression was also introduced in the Convention of The Hague of 1970, but its significance and scope were not defined. For these reasons, Argentina believes that there should be extensive discussion of this matter and consequently a decision that each State which ratifies the Protocol, in the same way as had to be done with the Conventions of The Hague (1970) and Montreal (1971), will have to introduce domestic legislation in which the legal type of offence and the severe penalties that the instrument refers to are defined. If this is not done then it will not be possible to apply the instrument in question.

VIA Doc No. 4

Finally, and as stated earlier, Argentina supports the idea that in the diplomatic clauses it should be stated that ratification of the Protocol will also signify ratification of the Montreal Convention of 1971 for those States which have not done so. The fundamental reason for this is that if this solution is not adopted, it will not be possible to apply the Protocol since the norms of the Convention are the basis and source of the Protocol.



VIA Doc No. 6
ADDENDUM
10/2/88

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of Argentina

Addendum

Proposal to amend Article II of the Draft Protocol appearing as an Attachment to VIA Doc No. 3.

In Article 1 of the Convention, the following shall be added as new paragraph 1 bis:

"1 bis. Any person commits an offence if he unlawfully and intentionally:

- (a) performs or threatens to perform an act of violence, against persons, at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the internal or external facilities and aids to approach and landing and to air navigation of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport;

(c) communicates information which he knows to be false,

if such an act endangers or is likely to endanger safety at that airport."

At the conclusion of Article 1, the following shall be added as new paragraph 2 bis:

"2 bis: For the purposes of this Protocol, an airport serving international civil aviation is considered to be the complex of installations and services permanently and necessarily associated with the execution of aircraft operations and designated as an airport open for use by aircraft involved in international air transportation or engaged in servicing an international flight departing therefrom or arriving thereat."

THIS PAGE INTENTIONALLY LEFT BLANK



VIA Doc No. 7
1/12/87

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of Peru

- We agree with the text of the Preamble.

- With respect to the introductory part of Article 1, paragraph 1 bis, we believe that the phrase ". . . commits an offence . . ." should be replaced by ". . . also commits an offence . . ." since Article 1 of the Montreal Convention of 1971 lists certain unlawful acts and therefore, at least in the wording in Spanish, the purpose now is to consider other unlawful acts.

- With respect to sub-paragraph (a) of the same Article, paragraph 1 bis, the phrase "or is likely to cause" should be deleted since this would clearly be a subjective aspect which could not be described as unlawful except when referring to an attempt to commit an offence which is a criminal aspect already contemplated in paragraph 2 (a) of the same Article.

- In the same sub-paragraph (a) of paragraph 1 bis of Article 1, we consider that the word "serious" should be deleted because it is subjective and because it might be difficult to have a uniform interpretation of this word in various States when describing an act. This is even more true when one is dealing with a multilateral convention. It was for this reason that this word was not used in the Montreal Convention of 1971. The draft Protocol is complementary to that Convention. Further the severity of the act to be punished is not related to the injury which may be caused but to the consequences of such injury insofar as safety at the airport is endangered.

- In sub-paragraph (b) of paragraph 1 bis, the word "seriously" should also be deleted for the same reasons expressed in the previous comment.

- It is clear that this sub-paragraph when referring to "an airport" or "the services of an airport" could be interpreted as including facilities which are located outside the perimeter of the airport. It is clear also that there would be room for a different interpretation. It would therefore be appropriate to have a specific reference to the related operational systems and services located outside the perimeter of the airport.

- In the last part of Article 1, paragraph 1 bis, as drafted, we consider that the phrase "or is likely to endanger" should be deleted since in accordance with penal doctrine unlawful acts must be duly described and any subjective assessment avoided.

Attached is a draft text proposed by Peru to replace the existing text. It is based on the comments made above.

ATTACHMENT

REPLACEMENT TEXT

1. Preamble

"THE STATES PARTY TO THIS PROTOCOL

CONSIDERING that unlawful acts of violence at airports serving international civil aviation jeopardize the safety of persons and property at such airports, undermine the confidence of the peoples of the world in safety at such airports and disturb the safe and orderly conduct of civil aviation for all States;

CONSIDERING that the occurrence of such acts is a matter of grave concern and that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

CONSIDERING that it is necessary to adopt provisions additional to those of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971, to deal with unlawful acts of violence at airports serving international civil aviation,

HAVE AGREED AS FOLLOWS:"

2. Article 1, paragraph 1 bis

"1 bis. Any person also commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes death or injury; or
- (b) destroys or damages the facilities of an airport serving international civil aviation or an aircraft not in service located thereon, or disrupts the services of the airport, even if the related operational systems and services of the airport are located outside the perimeter of the airport

if such an act endangers safety at that airport."

VIA Doc No. 7
Attachment

3. Article 1, paragraph 2

"2. Any person also commits an offence if he:

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

4. Article 5, paragraph 2 bis

"2 bis. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 bis and in Article 1, paragraph 2, insofar as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to the State mentioned in paragraph 1 (a) of this Article."

THIS PAGE INTENTIONALLY LEFT BLANK



VIA Doc No. 8
1/12/87

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of Ecuador

1. We agree that the new instrument should be in the form of a Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, since this will facilitate its entry into force.
2. We do not consider it appropriate for the new instrument to have a definition of what is to be understood as an "international airport" in view of the series of difficulties this presents. In any case what is of interest is to establish the legal international element of the offence and to try to emphasize the protected legal interest. The offence committed must affect international civil aviation.
3. We believe that this instrument should be applied only and exclusively when the perpetrator of an offence has managed to escape and is present in another State in which case he will be either extradited or brought to trial in the territory in which he has been captured (with severe penalties set).
4. We consider that the instrument should not contain a limitative enumeration of acts of violence since other acts of violence might be committed which are not contemplated in this enumeration. Consequently the offence would go unpunished.
5. We share the view that the list of weapons or means which may be used in committing unlawful acts, "using a dangerous device, substance or weapon", should be deleted. Such a list is very limitative. There is also the danger that it may not be possible to apply the instrument when the unlawful act is committed using means other than those listed.
6. With respect to extradition we support the system already contemplated in Article 8 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

VIA Doc No. 8

7. We consider that for States which are not a Party to the Montreal Convention of 1971 and which wish to be a Party to the new instrument, a mechanism should be set up similar to that provided in Article XXIII of the Protocol of The Hague of 1955 to Amend the Warsaw Convention of 1929, whereby a State which adheres to the Protocol and which is not a Party to the Convention automatically becomes a Party to the Convention as amended.

8. We propose that, in the new instrument, facilities located outside the airport be considered as a protected legal interest. We also propose that acts committed against aircraft which for various reasons are not in service (for example maintenance) be considered in the new instrument.



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of the International Federation
of Airline Pilots Associations

The International Federation of Air Line Pilots Associations has followed with great interest the developments leading towards the preparation by the ICAO Legal Committee at its 26th Session of a Draft Instrument for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation.

IFALPA continues to support the initiatives undertaken by the international civil aviation community in this respect and it expects that the new instrument will be a valuable and necessary expansion of the 1970 Hague and 1971 Montreal Conventions.

With regard to the texts approved by the ICAO Legal Committee for inclusion in the above-mentioned Draft Instrument the Federation wishes to make the following comments:

1. Form of a new instrument

Although an overwhelming majority of the 26th session of the ICAO Legal Committee favoured the preparation of a protocol supplementary to the 1971 Montreal Convention, IFALPA continues to believe that for purely practical purposes the new instrument should be drafted in the form of a separate convention.

2. The placing of a "bomb"

In this respect IFALPA wishes to associate itself with those members of the Legal Committee who believed that a provision related to the placing of a bomb or other similar device should be highlighted as a separate offence in the new instrument.

3. Scope of the new instrument

Apart from the above-mentioned proposals which were, in some detail, among those presented by IFALPA to the 26th session of the ICAO Legal Committee, the Federation also expresses the view that the scope of the proposed new instrument would appear to be too narrow in the sense that attacks on a town terminal or against a passenger or crew coach are not encompassed.

It is hoped that the above-mentioned proposals will be taken into consideration by the Conference.

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of Colombia

Concerning the form of the instrument, we wish to reiterate our position, i.e. that the most effective and desirable solution would be the adoption of a Protocol additional to the Montreal Convention of 1971. We believe that the Montreal Convention, on the one hand, enjoys wide acceptance by States and, on the other hand, effectively deals with subjects of great importance such as extradition, taking into custody of the offender, preventive measures to avert the commission of offences, etc.; elements which are fundamental to a Convention of this type. Therefore, the redundant inclusion of such fundamental elements as those mentioned above can be avoided by the adoption of a Protocol rather than a separate Convention independent of the Montreal Convention of 1971.

As regards content, our Delegation stated at the meeting of the Legal Committee that other unlawful acts, such as drug trafficking, although non-violent and different from those provided for the Sub-Committee's draft, ought to be included among the offences to which the new instrument would be applicable. However, that category of unlawful acts has now been studied by the Vienna Conference on Drug Abuse and Illicit Trafficking, which has defined the offence of trafficking in narcotics and psychotropic substances, the obligation upon States to impose severe penalties on the perpetrators of such activities, and the question of extradition. We therefore find that this matter, having been dealt with by the above-mentioned Conference, need not be taken into account within the instrument under consideration.

In reference to the definitive text prepared by the Legal Committee, we would like to make the following comments:

"Article 1, paragraph 1 bis

1 bis. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:"

In our view the word "unlawfully" is superfluous, since the word "intentionally" broadly covers the concept of unlawfulness; moreover, if an act of violence is performed against a person or airport, or if airport facilities or aircraft are intentionally destroyed or damaged, it is unnecessary to stipulate that such action, in addition to being intentional and harmful, is unlawful. Further reinforcement is also provided by the phrase "if such an act endangers or is likely to endanger safety at that airport". We consider that the word "unlawfully" does not add clarity and may actually lead some

VIA Doc No. 10

legislative bodies to presume that the unlawfulness of the act being judged must be proved, in addition to its intentional nature and the damage inflicted. The fact is that anyone who intentionally causes damage is committing an unlawful act from the very outset.

"(a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury of death; or".

In our opinion, the phrase "or threatens to perform" should be retained following the word "performs" since a threat can cause as much damage as, or even more damage than, an act of terrorism.

We also suggest the deletion of the word "serious" before the word "injury", because to qualify the injury might lead to difficulties of interpretation, and we consider it sufficient to refer to injury without qualification. The latter is the task of the presiding judge with a view to determining the severity of the sentence, but we do not believe it should be included in this text. Since we are dealing with an international offence which is to be prosecuted by the State where the offender is found or to which he is extradited, it would be preferable to avoid defining too rigidly the offence itself or its consequences in order to avoid future problems in reaching extradition decisions.

With regard to subparagraph b) of 1 bis, we consider that the word "seriously" appearing in that text should also be deleted for the same reason.

"Article 1, paragraph 2

"2. Any person also commits an offence if he:

(a) attempts to commit any of the offences mentioned in paragraph 1 or paragraph 1 bis of this Article, or".

In our view the reference to paragraph 1 is superfluous, since what we are examining is the text of a Protocol. Paragraph 1 belongs to the Montreal Convention of 1971, not to the text of the Protocol.

Similarly, and following the same reasoning, it would not be subparagraph (a) since in that case the result would be to amend subparagraph (a) of paragraph 2 of Article 1 of the Montreal Convention, which in our view is not the purpose of the supplementary Protocol.

"Article 5, paragraph 2 bis

Our comment aims solely at clarifying the text; for this reason we suggest replacing the phrase "mentioned in paragraph 1 (a) of this Article" by the words "in whose territory the offence was committed".

We believe that this gives greater clarity to the text, which would then read as follows:

"2 bis. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 bis, and in Article 1, paragraph 2, insofar as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to the State in whose territory the offence was committed".

Subject to the above comments, we believe that the text may be submitted for consideration by the International Conference.

THIS PAGE INTENTIONALLY LEFT BLANK



VIA Doc No. 11
1/12/87

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of the Kingdom of the Netherlands

1. In relation to the Draft Protocol as a whole, a special reference to the interests and responsibilities of the State in whose territory the offence has been committed (territorial State) would seem to be useful. Given the nature of the offence and the serious effects thereof on the legal order of the territorial State, the latter would have a primary interest in submitting the case to its competent authorities for the purpose of prosecution. Other States should take into account this position of the territorial State.

Such a reference could be drafted as follows:

"Contracting States shall, when applying this Convention to an offence covered by this Protocol, pay due regard to the interests and responsibilities of the Contracting State in whose territory the offence has been committed."

The place of such a reference in the Draft Protocol could be left for decision by the Conference.

2. In relation to the definition of the offence, as contained in Article 1, paragraph 1 bis, the Netherlands emphasize their strong preference for a more limited, or qualified definition. Consequently, they reserve the right to resubmit their proposals to that effect.

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of Chile

I. General comments

The text prepared by the Legal Committee constitutes a valuable legal instrument for the suppression of unlawful acts of violence at airports serving international civil aviation.

The text is couched in simple language and is basically limited to completing the list of offences described in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal in 1971, addressing on this occasion the issue of airport security without affecting any substantive provisions of the above-mentioned Convention, while maintaining in force its present articles, particularly those relating to jurisdiction and extradition.

II. Form of the new instrument

Our country is in favour of giving the new instrument the status of a Protocol supplementary to the Montreal Convention of 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation. This position is based on the fact that the suppression of unlawful acts of violence at airports involves, simply, new categories of offence which may easily be added to the list of offences appearing in the above-mentioned Montreal Convention of 1971 without affecting any of its substantive provisions, and this circumstance facilitates the ratification of the Protocol in preparation.

III. Analysis of the Legal Committee's draft

1) Preamble. The Preamble is simply a synthesis and preview of the contents of the Protocol, underlining its basic philosophy. It is written in language similar to that of the Preamble to the above-mentioned Montreal Convention of 1971, thus making it possible to align their contents while avoiding the use of unnecessarily complex terminology. Chile considers that this wording should be retained in the text which is to be approved by the Diplomatic Conference.

VIA Doc No. 12

2) Article 1, paragraph 1 bis

a) List of the means used in the commission of an offence

The definition of the offence includes a list of the means by which it may be committed, which was not included in the text proposed by the Sub-Committee established to carry out the preparatory work for the Legal Committee. Chile, along with other delegations, at first rejected any such list, deeming it to be unnecessary, since it had been agreed to refer to offences against persons or property at an airport serving international civil aviation provided that such acts "endangered or were likely to endanger safety at that airport". This proviso rendered such a list unnecessary, the means used being unimportant. Later, realizing the need for guidelines in defining the category of offence when dealing with terrorist acts, Chile accepted the above-mentioned list which in some sense serves to identify such terrorist acts.

The list which appears is, nevertheless, incomplete, since the offence might be committed by means other than a device, substance or weapon. The use of manual force, of a karate blow or of other methods or means not mentioned in the list referred to, is entirely within the bounds of possibility. It is therefore recommended that the colon (:) be deleted and the phrase "or other means" be added following the word "weapon" at the conclusion of the first paragraph of Article 1, paragraph 1 bis. This would allow scope for all possible means that might be used for the commission of the offence.

It must also be recalled that, in the course of the Legal Committee's deliberations, an attempt was made to apply the adjective "dangerous" to the means used, which was opposed by the Delegation of Chile on the grounds that this description is subjective and difficult to assess, and would be of little help to presiding judges in applying the Protocol when adopted.

b) Threats

The text proposed by the Legal Sub-Committee included "the threat to perform" an offence, which might certainly endanger the safety of an airport and constitute a separate category of offence. However, the prevailing opinion, supported by our country, was that a threat is not sufficiently serious to be classified as an international offence warranting mandatory extradition or jurisdiction procedures.

This is a complex subject which might be reviewed within the framework of the Diplomatic Conference and which our country wishes to study in greater depth in the light of such deliberations.

c) Bodily injury.

The Sub-Committee's text included the adjective "bodily" as applied to possible resulting injuries. The majority of countries, including our own, decided to delete this expression due to its restrictive nature, since this would exclude from the Protocol moral or mental damage, which may be as significant as bodily injuries, if not more so. Should this motion again be raised during the Diplomatic Conference, the Delegation of Chile will confirm the above position, which was not retained by the Legal Committee.

d) Serious injury

The Legal Committee's text retained this qualifier in referring to injuries, which is supported by our country since the offence being dealt with is international in nature and must be significant in its effect.

e) Definition of an airport

This subject was extensively discussed in the Sub-Committee and the Legal Committee, where consideration was given to whether or not the concepts of "airport" or "international airport" or "airport serving international aviation" should be defined. Our country was opposed to including this definition, judging it more appropriate to retain these concepts as established by time, since neither the Chicago Convention nor its Annexes have specifically defined them for purposes applicable to the Protocol under study, an omission which can scarcely be considered accidental.

In any case, should the need for a definition be once again raised during discussion of this subject at the Diplomatic Conference, our country would lean towards adopting a functional and non-geographical criterion, i.e. one based on the specific designation given to particular airports by the States concerned, by analogy with Article 10 of the Chicago Convention.

3) Article 1, paragraph 2

The text was formally amended by the Legal Committee to make it consistent with Article 1, paragraph 2, subparagraph (a) of the Montreal Convention of 1971, so as to deem included therein the new offences shown in paragraph 1 bis, which was supported by Chile.

With regard to complicity, referred to in subparagraph (b) of Article 1, paragraph 2 of the Montreal Convention of 1971, no amendment was required since the present wording, in the opinion of Chile, is broad enough to encompass it.

4) Article 5, paragraph 2 bis

In this Article it should be pointed out that as regards extradition, an attempt was made to establish preferential, priority or ancillary classes of extradition, which, in the view of the Chilean Delegation, would have introduced a serious element of confusion as well as upsetting the balance between prosecution and extradition as established in the Montreal Convention of 1971, a stand which Chile will maintain during the Diplomatic Conference.

IV. Other subjects

The Legal Committee's deliberations touched upon certain topics which should be called to mind, since they will probably be raised again at the Diplomatic Conference.

- (a) Adoption of preventive measures at airports to forestall unlawful acts of violence therein.

It was judged that such measures should remain within the ambit of Annex 17 to the Chicago Convention, on Security, and this position was approved by Chile.

- (b) Participation of States in the new Protocol if they are not parties to the Montreal Convention of 1971.

This subject will be analysed at the Diplomatic Conference and the Chilean Delegation believes the discussion should be focussed on its administrative aspects.

- (c) Possible conflicts between the Montreal Convention of 1971 and the new Protocol.

The Chilean Delegation considers in principle that such conflicts are unlikely to arise, provided that the Protocol does not modify the substance of the Montreal Convention other than to incorporate a new category of offence.



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of Australia

Australia firmly supports the early conclusion of an instrument for the suppression of unlawful acts of violence at airports serving international civil aviation, and believes that considerable progress was made towards this end at the 26th Session of the Legal Committee.

Australia remains of the view that the new instrument is best developed by the creation of a new and separate convention incorporating all applicable provisions of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. A new convention would be better able to take into account the importance and autonomy of the problem.

The offences which it is sought to prohibit internationally are qualitatively different from those in the 1971 Montreal Convention, have different effects and raise separate considerations. One example of this is the clear territorial aspect of an offence being committed in an airport. The qualifying element in the new instrument is interference with the safety of airports, not of civil aviation generally. Further, the creation of a new convention would support existing practice in following the approach taken when the two closely related regimes of the Hague and Montreal Conventions were kept separate.

In advocating a new convention rather than a protocol to the existing Montreal Convention, Australia would of course not wish to change the Montreal regime which it strongly believes should remain intact as the most effective way of dealing with the problem.

Australia would prefer there to be no specific reference to "terrorism" in the new instrument, for it believes the most effective way of gaining widespread support for the instrument and effectiveness of the controls is to concentrate on preventing the acts which are considered serious enough to warrant an international regime.

In concentrating on the unlawful acts, however, Australia would wish to have as broad a scope as possible and would for that reason prefer it if types of offences are not enumerated because to enumerate is to include some and exclude others. Australia thinks it is preferable to focus on the effect that the acts have so that new means of committing offences do not escape the scope of the instrument.

Australia believes that no further qualification or definition is required to the term "airport serving international aviation" as this provides a flexible and functional approach to the problem, and it would be impracticable to attempt to define "international airport".

However, Australia would wish to see included a specific reference to off-airport facilities and the personnel who work there, both being essential to the safe and orderly operation of airports. While Australia acknowledges that Article 1, paragraph 1(b) bis of the current draft of the text may cover off-airport facilities by reference to "the facilities of an airport serving international civil aviation", Australia would nevertheless prefer a specific reference to remove any doubt and would further wish to see personal injury of the personnel at off-airport facilities covered.

Australia supports the inclusion of "airport not in service" as consistent with drafting the instrument in the widest possible terms.

Australia would wish to see included in the new instrument the concept of threat as threats to perform acts of violence can seriously impair the safety of airports even though they do not amount to direct attempts at actual violence. To omit threats would leave a serious gap in the new instrument. There is a distinction in law between "threats" and "attempts"; Australia would therefore support that the draft be amended to include "threats" as well as "attempts" to commit offences.

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of France

France is particularly pleased with the remarkable progress made during the meeting of the Legal Committee. The draft Articles developed at that meeting represent a great improvement over the text produced in January 1987 by the Legal Sub-Committee.

Nevertheless, France believes that the Diplomatic Conference could make further progress and improve the wording of the text in several ways:

I. The first item relates to Article 1 bis b) of the draft.

1. The first comment France would like to make concerns the words "disrupts the services of the airport".

France does not object to mentioning services in the instrument but feels that the above wording is too imprecise to permit the establishment of a criminal offence.

Disruption of services is too vague and abstract a concept and is difficult to translate into criminal law.

France therefore believes that Article 1 bis of the draft Protocol should say only that it is an offence to interrupt the services of the airport.

The last phrase of Article 1 bis, sub-paragraph b) should therefore read as follows:

". . . or interrupts the services of the airport".

2. Secondly, France does not believe that it is possible to refer, in sub-paragraph b), to acts committed against aircraft not in service located on the airport.

The instrument being developed is an additional Protocol to the Montreal Convention, which only covers damage to aircraft in flight or in service. It would be inappropriate, *rationae materiae*, to change the scope of application of the Montreal Convention through a protocol on airport security, since the definition of an aircraft in service in Article 2 (b) of that Convention was the result of laborious negotiations. The very compatibility of the Convention and the Protocol is at stake.

VIA Doc No. 14

3. For the reasons stated above, France believes that if the wording of sub-paragraph b) is not improved, it will not be reasonable to establish universal jurisdiction for the offences mentioned in that paragraph (the French Delegation's statement to that effect is reflected in paragraph 4:60 of the Report of the 26th Session of the ICAO Legal Committee). France believes that sub-paragraph b) must be worded more precisely if universal jurisdiction is to be established for the offences listed therein.

II. With regard to Article 2 bis, France does not wish to give preference to extradition to the State in the territory of which the offence was committed.

As the French Delegation and others stated in the Legal Committee (paragraph 4:63 of the Report) it would be preferable to retain a more flexible formulation (which would, in particular, permit extradition to the State of nationality of the victim).

France therefore considers that in Article 2 bis the words "to the State mentioned in paragraph 1 (a) of this Article" should be deleted.

III. Finally, France would like to express the following thoughts about the link between the Montreal Convention and the future Protocol.

The fact that a State is a party to the Montreal Convention must not entail an obligation to become a party to the Protocol. The States parties to the Montreal Convention must be able to choose whether or not they will become parties to the Protocol.

On the other hand, a State cannot become a party to the Protocol if it is not a party to the Montreal Convention. The Protocol merely complements the Convention; it does not repeat its provisions. It is therefore not an independently applicable instrument.

It would therefore be appropriate to include a provision in the Protocol to the effect that adherence to the Protocol is equivalent to adherence to the Convention.



VIA Doc No. 14
12/2/88
ADDENDUM

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of France

ADDENDUM

1. During the general discussion, certain Delegations expressed the wish to delete from paragraph 1 bis to be added to Article 1 of the Montreal Convention the words "using any device, substance or weapon". Other Delegations would like, on the contrary, to add the expression "or by any other means". It must be recalled that the present wording meets the concern of the Legal Committee to exclude from the scope of the Protocol acts not involving the use of material means such as strikes or gatherings by demonstrators. The Legal Committee considered that these were not terrorist acts justifying international criminalization. For that reason, France does not wish a modification of the text which would run the risk of including strikes and gatherings by demonstrators within the scope of the Protocol.

2. Secondly, France would like to make a purely formal comment on sub-paragraph b) of paragraph 1 bis. The expression in English "disrupts the services" has been translated into French by "entrave gravement les services". This translation is not accurate and should be replaced by "interrompt les services".

3. Finally, France sees no reason to include a threat among the offences covered by the Protocol since the Montreal Convention makes no provision for a threat. Generally speaking, France wishes to avoid any disagreement between the initial text and the Protocol.

The Conference is invited to take the above proposals into consideration.

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of Chad

In the proposed formulation any idea of acting together or complicity is excluded. The target of the acts of aggression is limited to only one person. The means used are mentioned only in the singular. This is not always the case.

We therefore believe it wise to reformulate these provisions as follows:

1. Article 1, paragraph 1 bis

"1 bis. Any person or group of persons commits/commit an offence if he/they unlawfully and intentionally, using devices, substances or weapons:

(a) performs/performs an act of violence against a person or group of persons at an airport serving international civil aviation which causes or is likely to cause serious injury or death;"

2. Article 1, paragraph 2 bis

"2. Any person or group of persons also commits/commit an offence if he/they:"

3. Article 5, paragraph 2 bis

"2 bis. . . . in the case where the alleged offender/offenders is/are present in its territory . . .".

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of the Fédération Aéronautique Internationale

THE FEDERATION AERONAUTIQUE INTERNATIONALE, an accedit-ed Observer at ICAO, is represented in 71 countries of the world.

Federation objectives include the promotion of knowledge and understanding within its membership and beyond by encouraging the development of private, sporting and competitive aviation on international levels, promoting friendly interchange in a peaceful environment.

The Federation will lend its full support to any undertaking that will strengthen the existing Convention that is designed to suppress unlawful acts of violence at international airports serving civil aviation.

Therefore, the FEDERATION AERONAUTIQUE INTERNATIONALE has the honour to fully endorse the principle of a Draft Protocol proposed as a supplementary to the existing Convention dated September 23, 1971 and accepts ICAO's invitation to be present and to participate at the International Conference on Air Law that will consider the Draft in February of 1988.

Comments on the Draft Protocol

1) Throughout the draft and specifically on page 2, the third paragraph of the introductory preamble and in Article 11, 1bis, reference to perpetrators of unlawful acts is made by using the word "person" or "offender" respectively.

In Article 111, para 2bis, however, on the penultimate line, the word "him" is used, denoting a particular sex.

This is a small inconsistency but one that could possibly present problems in prosecution proceedings if the "person" or "offender" was of the opposite sex.

VIA Doc No. 16

2) Article 11, para lbis (b) states: ".....destroys or seriously damages the facilities of an airport serving....."

FAI contends that the word "facilities" is too general and in legal argument could be construed to include all facilities, the presumption being possible that all facilities would have to be destroyed or damaged before legal proceedings could be launched.

Additionally, FAI questions the need for the use of the words "not in service" unless there is in force a universally accepted definition of this condition and that definition is documented.

If such is not the case, FAI suggests that the para be rewritten to read:

- (b) destroys or seriously damages any facility of an airport serving international civil aviation or any aircraft located thereon, or disrupts any services of the airport, if such act or acts endangers or is likely to endanger safety at that airport.
-



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of the Islamic Republic of Iran

1- Combat Against Acts of Violence needs Sincere Collective

Cooperations :

1-1 Acts of violence against the safety and regularity of civil aviation, whether domestic or international, are matters of great concern to every body within the civil aviation system. Acts of violence jeopardize the safety of persons and property wherever they are perpetrated, whether on board aircraft, or at airports, or in airline offices or in special vehicles carrying air travellers back and forth to airports.

1-2 Unlawful acts of violence are normally carried out with the aims of inflicting death and total destruction, therefore, they seriously undermine the confidence of the peoples of the world in the safety and efficiency of civil air transportation.

1-3 It is therefore incumbent upon all countries of the world, particularly the contracting States of ICAO, to cooperate in the combat against all unlawful acts of violence against civil aviation wherever the place and, whoever the perpetrator.

1-4 To this end the Islamic Republic of Iran has always been prepared to cooperate with other countries that sincerely share the aforementioned points.

2- The 1988 Conference is an Excellent Opportunity for a Complementary Legal Instrument Against Acts of Violence in Civil Aviation.

The 1988 International Conference on Air Law is an excellent opportunity for the sincere cooperation called for above. The theme of this Conference, which has emanated from Assembly Resolution A 26-4, can best be adoption of provisions additional to those of the Montreal Convention of 1971 so that all aspects of unlawful acts against the safety of civil aviation are examined and an exhaustive legal instrument can become applicable to protect civil aviation against any act of violence that on the one hand, can undermine the confidence of the peoples of the world in safety and regularity of civil air transportation, and on the other hand is not covered by the three security conventions now existing.

3- The Draft Instrument Developed by the 26th session of Legal Committee.

The draft instrument which has been developed by the 26th session of the ICAO Legal Committee and is to be considered by this Conference can be an effective instrument, complementary to the existing security conventions in civil aviation, if it is examined in the light of the following considerations;

3-1. Form

The form of the new instrument should be such that would permit prompt action by governments to take necessary steps for its widespread applicability before long. The Delegation of Islamic Republic of Iran is of the opinion that the proposed form, namely a protocole to the 1971 Montreal Convention, would meet this objective. However, due account ought to be taken of the points expressed in para 3.2 here - under.

3-2 Accession

Accession to the new instrument should not be subject to prior or simultaneous accession to the Montreal Convention of 1971. Furthermore the method of accession to be adopted should not undermine the Montreal Convention of 1971. Due to the doubts expressed in the 26th session of the Legal Committee these points should be clarified by the Conference.

3-3 Content and Scope

The content and scope of the new instrument should be exhaustive, in that it should encompass all possible acts of violence in the civil aviation system which, on the one hand can have an undermining effect on the confidence of peoples of the world in the safety and regularity of civil air transportation and, on the other hand are not dealt with by the Montreal Convention of 1971. The draft instrument developed by the 26th session of the Legal Committee does not quite fulfil these objectives since it does not cover the following types of unlawful acts of violence.

- a- All kinds of attacks against civil airports, particularly air attacks . This kind of act of violence can be considered to be covered by the broad term of the proposed article 1, para 1) bis. However it warrants an explicit term.
- b- Acts of violence against airline offices located outside of airports (in towns).
- c- Acts of violence against special vehicles Transitting air travellers back and forth to airports.

VIA Doc No. 17

4- Action proposed

The Delegation of Islamic Republic of Iran proposes that the points expressed in this paper, particularly those in para 3), be taken into consideration at the Conference as appropriate.



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1987)

Comments of Cuba

1. During the 26th Session of the Legal Committee, the Republic of Cuba expressed its interest in the development within the international community of a category of offence, broad in scope and meeting with wide acceptance, which might be used as a basis not only for multilateral measures but also for domestic legislation and for the bilateral solution which the Republic of Cuba regards as the most desirable.

2. During those deliberations the Cuban Delegation voiced its concern regarding the lack of protection found at a number of very large facilities not falling under the definition of an airport. Other delegations raised similar concerns.

3. As the debate drew to an end and the minutes were approved, a proposal arose which, subject to editorial modification, might satisfy the concern expressed by several States relative to the extent of protection defined by the notion of an airport.

This proposal met with the support of a considerable number of delegations (including that of Cuba) which considered that it might offer a compromise.

4. Since the Diplomatic Conference affords an opportunity for a far more extensive study of the foregoing considerations, the Delegation of Cuba wishes to submit these comments for consideration by the Conference.

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of the United States

The United States, as a participant in the Sub-Committee of the Legal Committee that met in Montreal in January 1987 and in the 26th Session of the Legal Committee, endorses the view expressed by the Council that the text of the new instrument developed by the Legal Committee is the "product of an outstanding spirit of cooperation and understanding." The United States notes that the final draft of the offense prepared by the Legal Committee meets the principal objectives of Assembly Resolution A26-4 in that the text covers virtually all types of terrorist acts of violence likely to occur at airports serving international civil aviation. The final draft of the Protocol supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation is, accordingly, generally acceptable to the United States.

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of the United States

ADDENDUM

This is in reply to your letter LM 1/9.1-87/82, dated October 21, 1987. The United States expresses its appreciation to the Secretariat for preparing the draft Protocol enclosed with your letter.

Like the great majority of States which participated in the 26th Session of the Legal Committee, the United States strongly supports the view that the new legal instrument should take the form of a Protocol to the Montreal Convention. The United States, in responding to your letter LM 2/11.4-87/57, has already commented on the texts approved by the 26th Session of the Legal Committee for inclusion in the Protocol. Subject to the relatively minor technical drafting suggestions below, the United States is prepared to support the final provisions prepared by the Secretariat.

Technical Drafting Suggestions

1. In Article II, paragraph 2 of the draft Protocol, the U.S. suggests that the chapeau be revised to read:

"2. In Article 1 of the Convention, paragraph 2 (a) shall be deleted and replaced by the following:"

This slight revision would establish closer parallelism between paragraphs 1 and 2 of Article II of the Protocol.

2. The U.S. suggests that Article VI, paragraph 2 be revised to read:

"2. Ratification of this Protocol by any State which is not a Party to the Convention shall also have the effect of ratification of or accession to the Convention."

VIA Doc No. 19
ADDENDUM

The new words "ratification of or" would cover those few States which have signed but not yet ratified the Montreal Convention: ratification of the Protocol by such States would have the effect of ratification of (as opposed to accession to) the Montreal Convention.

The addition of the word "also" and the deletion of the words "as amended by this Protocol" have a different purpose. As drafted by the Secretariat, paragraph 2 of Article VI might be read to imply that a State, not at present a Party to the Montreal Convention, that ratified the Protocol would thereby establish treaty relations only with those States which were Parties to "the Convention as amended by this Protocol."

The U.S. believes this result would not reflect ICAO's policy to encourage the widest participation possible in multilateral agreements. The language we propose would make it absolutely clear that such a State would also establish treaty relations with States which are Parties to the Montreal Convention but have not ratified the Protocol. Of course, consistent with the principle expressed in paragraph 5, Article 40 of the Vienna Convention on the Law of Treaties, the State ratifying the Protocol would be considered as a Party to the unamended Montreal Convention in relation to this latter group of States.

3. In Article VII, paragraph 1, the United States suggests that the word "its" before the word "deposit" be deleted. Such deletion would be consistent with the wording in the parallel provision in Article 15, paragraph 4 of the Montreal Convention.

4. The U.S. suggests that the chapeau of Article X, paragraph 1 be revised to read:

"1. The Depositary Governments shall promptly inform all States Parties to the Convention (including States Parties to the Convention as amended by this Protocol), and all signatory States:"

This revision parallels the obligations of the Depositary Governments established in Article 15,

paragraph 5 of the Montreal Convention. The U.S. does not believe that the Protocol should require the notification of new classes of States or Organizations in addition to those already indicated in the Convention. The parenthetical phrase in the suggested revision seeks, for the reasons noted in paragraph 2 above, to avoid unduly strict separation of "States Parties to the Convention" and "States Parties to the Convention as amended by the Protocol." The revision also refers simply to "the Convention" (vice "the Montreal Convention of 1971") in light of the definition in Article I of the draft Protocol.

5. In Article X, subparagraph 1(a) of the draft Protocol, the U.S. suggests that the word "adherence" be replaced by "accession."

6. In the interest of maintaining parallelism with the provisions of the Montreal Convention, the U.S. suggests that the last clause in the draft Protocol be revised to read:

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

THIS PAGE INTENTIONALLY LEFT BLANK



VIA Doc No. 20
28/1/88

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of Israel

1. Format

A) The instrument should take the form of a Protocol amending the Montreal Convention.

B) The Protocol should be open for accession only for those states which are party to the Montreal Convention. Israel concurs, therefore, with the language of Article VI (2) of the proposed Protocol.

C) As a consequence of the above, the language of the Protocol should follow, whenever possible, the language of the Montreal Convention.

2. Article II - Article 1 BIS

A) It would be preferable that the qualifying clause in the first sentence of Article 1 BIS: "Unlawfully and intentionally, using any device substance or weapon" be deleted. The said clause might only serve as an escape clause for offenders.

B) Israel wishes to propose that the dissemination of false information be included as offence under the Protocol as follows:
"(c) Communicates information which he knows to be false."

3. Article III

Israel wishes to point out that the international community should recognise that there might be additional states which have a legitimate right of jurisdiction over the offender such as the state whose citizens were killed or injured by the offender.

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of Greece

Greece should like to express its satisfaction with the positive work done in the Legal Committee. The draft Protocol elaborated during the May 1987 meeting constitutes an excellent working basis for the Diplomatic Conference.

In its present form the draft seems to us to be sufficiently mature to be submitted to the Drafting Committee. It is in fact the result of extremely close scrutiny and several of the provisions represent the fruit of a laboriously achieved compromise. Moreover, this draft is complete because it encompasses all types of terrorist acts which might be committed at airports serving international civil aviation.

Nevertheless, in the interest of obviating, inter alia, any possible legal lacuna, Greece should like to suggest the following:

1. The title of the draft Protocol would be more in line with its content if it read as, "Supplementary Draft Protocol or Additional Draft Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971". In fact, this is not so much a draft Protocol to amend stricto sensu the 1971 Montreal Convention, as it is a Protocol completing it, to wit, adding to it other categories of international offences.

2. In paragraph 1 bis (b), the French article "les . . . (installations)" in the first line should be replaced by "des". The clause would then read, "(b) détruit ou endommage gravement des installations d'un aéroport . . .". This drafting change would exactly mirror the wording of Article 1 (d) of the Montreal Convention.

[Translator's Note: the corresponding change to the English text necessitates the deletion of the article "the" preceding "facilities" in the first line of paragraph 1 bis (b).]

VIA Doc No. 21.

3. In order to avoid possible confusion between the offence mentioned in sub-paragraph (b) of the draft Protocol and that in Article 1 (d) of the Montreal Convention, we wonder if it might not be necessary in paragraph 1 bis (b) of the draft Protocol to add the words "other than those mentioned in Article 1 (d) of the Montreal Convention" after "facilities of an airport serving international civil aviation". Indeed, as air navigation facilities could possibly be part of the facilities of an airport serving international civil aviation, it may be necessary to clarify the latter concept somewhat more so as not to confuse it with that of air navigation facilities which are covered by the Montreal Convention. This suggestion could prevent a possible overlap of the two provisions which otherwise establish a different legal regime in respect of international jurisdiction.

4. In the same vein and with a view to greater consistency with the Montreal Convention (see Article 5 (b)), we wonder if in Article III of the draft Protocol one should not include, among the States to which extradition is possible, the States in which aircraft not in service are registered.



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of the Airport Associations Coordinating Council

As vividly witnessed at the 26th Session of ICAO Assembly in October 1986, aviation security presents the most serious challenge now facing civil aviation. AACC repeatedly condemned all acts of terrorism against civil aviation and strongly stressed the States' unequivocal responsibility to protect civil aviation against such acts.

AACC notes that the Draft Protocol to Amend the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal in September 1971 virtually covers all acts of terrorism endangering human life at international airports, acts leading to destruction of or damage to property at international airports, and damage to security facilities and services resulting in serious interference with the operation of those facilities and services.

As a participant in the deliberations of the 26th Meeting of the ICAO Legal Committee (January 1987) that resulted in the text of the Draft Protocol, AACC welcomes and firmly supports its promulgation. AACC also supports the other treaties and agreements the international community had promulgated at Tokyo in 1963 regarding safe return of passengers of hijacked aircraft, at the Hague in 1970 regarding extradition or prosecution of hijackers, at Montreal in 1971 regarding prosecution for sabotage of aircraft, and at Bonn in 1978 regarding economic sanctions against nations that harbor those who commit criminal acts against civil aviation.

AACC urges the governments of all states to adhere to the prospective Protocol and other related international agreements, and to enact national laws or regulations required to implement such agreements.

THIS PAGE INTENTIONALLY LEFT BLANK



VIA Doc No. 23
8/2/88

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of Uruguay

A) Unfortunately our Administration will not take part in the Conference.

B) With respect to the text of the draft Protocol:

1. In the second Considering clause, it is suggested that it say ". . . is a matter of grave concern and that for the purpose of deterring them there is an urgent need . . .".

2. Article I

Where it says "The Convention which the provisions of the present Chapter modify", it is suggested that it say "The Convention which the present Protocol modifies".

3. Article II

Where it says "In Article I of the Convention, the following shall be added as new paragraph 1 bis", it is suggested that it say "In Article I of the Convention the following shall be added as paragraph 1 bis" [Translator's note: In the Spanish version, Uruguay suggests replacing the word parrafo (paragraph) by ordinal, numero or apartado.]

Where it says "Any person commits an offence if he unlawfully and intentionally", it is suggested that "unlawfully" be deleted as it is unnecessary and redundant.

It is also suggested that no reference be made to the means used to commit the offence as they may restrict the scope of the norm.

It is suggested that the text beginning "if such an act endangers . . ." which follows sub-paragraph b) of Article I be deleted. Keeping the text would deprive the norm of its effectiveness, would place a dangerous limitation on its application and would require proof of circumstances which are difficult to verify.

VIA Doc No. 23

4. Article III

It is suggested that the present text of the draft Protocol be replaced by the following:

"2 bis. The States Parties shall exercise their jurisdiction when the accused is present in their territories and they do not proceed to extradite him."

The remaining provisions do not give rise to any comments.



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of the United Kingdom

The United Kingdom appreciates the efforts of the Legal Committee to draft an acceptable text for a Protocol to the Montreal Convention. There remains, however, an important issue of substance which the UK considers needs to be specifically addressed at the Diplomatic Conference (and which, in the UK's view, will require amendment to the Legal Committee's text).

The basic question remains what unlawful acts should be made an international crime. The context in which we are working is that of terrorism at airports serving international civil aviation, but because there is no internationally accepted definition of terrorism we have to define the scope of the offences covered by reference to other criteria. Proper definition is required so as not to cover behaviour which should properly be left to the regulation of Member States' domestic laws. It is not, in the UK's view, an acceptable basis for this new international crime that an act happened to have taken place at an airport serving international civil aviation (even if this act had unintended consequences for civil aviation). Something more is required to justify the "internationalisation" of the crime.

The UK suggests that the proper basis for international jurisdiction and for drawing the line between what should and should not be covered by this instrument, is that certain acts (as described in the instrument) are committed at such an airport by persons who had the intention, not only of committing the act in question, but also of causing wider consequences in relation to the operation of the airport or civil aviation. This test should be satisfied where persons commit the acts in the knowledge that such consequences would inevitably follow.

On reflection, the UK does not consider that the qualifier agreed by the Legal Committee "if such act endangers or is likely to endanger safety at the airport" satisfactorily achieves the purpose we believe Member States have in mind. First, it does not rule out of scope of the instrument acts of violence by, for example, hooligans who cause mayhem at an airport. This should properly be a crime, but not an international crime. Secondly, depending upon how the concept of "safety at" the airport is interpreted, it may on the other hand rule out some terrorist acts which the Legal Committee considered should be caught - eg the destruction of an aircraft not in service parked in an out of the way place at the airport where no persons are present to be endangered by the act of destruction.

VIA Doc No. 24

The concept of "safety at" an airport is ambiguous. It could refer to the safety of persons generally or more specifically to the ability of the airport to perform its functions, for example, with regard to the safe take-off or landing of aircraft. Persons' safety may be affected by many minor occurrences, or by acts where this consequence is not intended. As suggested above, in the UK's view, we should rather return to the concept of the "safe operation of the airport" (both in respect of its provision of terminal facilities and its functions with regard to the safe take-off or landing of aircraft) and the criminals to be covered by this instrument should be those who intend or recognise the inevitability that their acts will have these wider consequences.

With these considerations in mind the UK suggests that the wording of the qualifier should more appropriately be expressed along the following lines:

"if such act is designed to endanger the safe operation of that airport as a place able to accommodate either persons assembling in connection with air travel or the take-off or landing of aircraft."

The UK considers that in this event the instrument would be more soundly based to cover those acts which are properly the concern of Member States in this Organisation. In the UK's view, it is only if the qualifier is expressed in this way that it would then be possible to consider further the issue raised as to the geographical extent of where acts have to be committed before they are within the scope of the instrument (eg in relation to off-airport facilities).



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of Japan

1. AMENDMENTS TO THE CONVENTION

With respect to the phrase, "airport serving international civil aviation" in Article 1 bis (a) and (b) of Article II of the Draft Protocol (Attachment to VIA Doc. No. 3), we wish to propose to redraft it as follows for the sake of convenience of reference on the scope of the instrument.

(This new draft closely follows subparagraph (d), paragraph 1 of Article 1 and paragraph 5 of Article 4 of the Montreal Convention concerning "air navigation facilities.")

1). Article 1 bis (a) and (b) shall be amended to read as follows;

"1 bis (a) performs an act of violence against a person at an airport which causes or is likely to cause serious injury or death; or

(b) destroys or seriously damages the facilities of an airport or aircraft not in service located thereon or disrupts the services of the airport,"

2). The following new paragraph shall be inserted after paragraph 5 of Article 4 of the Convention;

6. "In the cases contemplated in paragraph 1 bis of Article 1, this Convention shall apply only if the airport serves international civil aviation."

VIA Doc No. 25

3). Present paragraph 6 of Article 4 of the Convention shall be renumbered as paragraph 7.

2.. FINAL PROVISIONS

With respect to the Final Provisions, we wish to propose a draft text as per attachment.

ATTACHMENT

Proposed New Wording for Final Provisions

Articles IV and V

(To be deleted)

Article VI

1. This Protocol shall be subject to ratification by the signatory States.
2. Any State which does not sign this Protocol before its entry into force in accordance with paragraph 1 of Article VII, may accede to it at any time.
3. Instruments of ratification and instruments of accession shall be deposited with one of the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, which are hereby designated the Depositary Governments.
4. Any State which becomes a Contracting State to the Convention after the entry into force of this Protocol shall, failing an expression of a different intention at the time of the deposit of the instrument referred to in paragraph 3 of Article 15 of the Convention, be considered as a Contracting State to the Convention as amended by this Protocol

VIA Doc No. 25
Attachment

5. Any State which becomes a Contracting State to this Protocol without being a Contracting State to the Convention, shall be considered as a Contracting State to the Convention as amended by this Protocol as of the date of entry into force of this Protocol for that State.

Article VII

1. This Protocol shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Protocol.
2. For other States, this Protocol shall enter into force on the date of entry into force of this Protocol in accordance with the paragraph 1 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.
3. As soon as this Protocol comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Protocol on International Civil Aviation (Chicago, 1944).

Article VIII

(To be deleted)

Article IX

1. Any Contracting State may denounce this Protocol by written notification to one of the Depositary Governments.
2. Denunciation shall take effect six months following the date on which notification is received by one of the Depositary Governments.
3. Any Contracting State which denounces the Convention shall be considered as also having denounced this Protocol.

Article X

The Depositary Governments shall promptly inform all States Parties to the Convention and all signatory and acceding States of the dates of each signature, deposit of each instrument of ratification or accession, receipt of any denunciation of this Protocol and entry into force of this Protocol and other notices.

Article XI

This Protocol shall be open for signature at Montreal on _____ 1988 by States participating in the International Conference on Air Law held at Montreal from _____ to _____ 1988. After _____ 1988, the Protocol shall be open for signature to all States in Moscow, London and Washington, until it comes into force in accordance with Article VII.

VIA Doc No. 25
Attachment

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

DONE at Montreal, this _____ day of _____
one thousand nine hundred and eighty-eight in three
originals, each being drawn up in four authentic texts in
the English, French, Russian and Spanish languages.



VIA Doc No. 26
9/2/88

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

(Presented by the Delegation of the
Union of Soviet Socialist Republics)

1. It is proposed that in the text of the instrument being developed a separate Article be included containing specific obligations on States to take preventive measures at airports serving international civil aviation, as follows:

Art. ... "Contracting States undertake, as far as possible, to ensure at their national airports serving international civil aviation:

- a) the presence of duly authorized and trained officers responsible for ensuring security at that airport;
- b) the holding of regular inspections and continuous monitoring of aviation security measures by forces of national bodies of the State in which the airport is located;
- c) the establishment of rules to prevent unauthorized access by persons or vehicles to the air side and also to other areas which are of vital importance for the operation of the airport."

2. The need to take more specific preventive measures is explained by the fact that the provisions of paragraph 1 of Article 10 of the Montreal Convention are too general in nature and in no way direct States towards specific measures to be applied at airports serving international civil aviation.

The provisions of Annex 17 which are the most detailed regulatory measures for the prevention of acts of violence at airports are recommendatory in nature and do not have the force of obligations of the level of an international treaty.

The proposed specific preventive measures are of a universal nature and can in the future be defined specifically both in ICAO documentation, including Annex 17 and the Aviation Security Manual, and in the national practices of States.

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of the United Republic of Tanzania

1. Form of the new instrument.

Tanzania supports fully the decision of the 26th Session of the Legal Committee that the "new instrument" should assume the form of a Protocol supplementary to the Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation signed at Montreal on 23rd September, 1971 without amending the basic principles of that Convention.

This position has been reached following careful examination of the report of the Sub-Committee, that of the Rapporteur, and finally the report of the Legal Committee itself. Tanzania believes that the three [3] Conventions already promulgated under the auspices of ICAO, namely, the Tokyo Convention of 4 September, 1963 on Offences and certain other Acts committed on Board Aircraft; The Hague Convention of 16 December, 1970 for the Suppression of Unlawful Seizure of Aircraft; and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the safety of Civil Aviation, only left a small gap as regards offences and other acts of violence committed at airports serving international Civil aviation which would not warrant a separate instrument. In this regard, there is a very close relationship and similarity between this problem and the protected legal interests covered under the Montreal Convention of 1971.

VIA Doc No. 27

2.

Textual Considerations.

Having participated fully in the deliberations of the Legal Subcommittee and also during the 26th Session of the Legal Committee itself, Tanzania is satisfied that subject to wording modifications and other drafting perfections, the text prepared by the 26th Session of the ICAO Legal Committee, in particular the definition of offences in Article 1, paragraph 1 bis, is appropriate and will achieve significantly the intended objective of protecting safety at airports serving international civil aviation. The international element of these offences is further realized and established by the provision under Article 5, paragraph 2 bis of the draft instrument of international jurisdiction over such offences by all the states concerned. However, proposals for improvement of the draft Protocol also seems appropriate at this point.

(a)

Preamble:

In order to amplify the international elements of the new instruments, the second considering Clause of the preamble, after the words "matter of grave concern", should be added the words" to international Community...."

(b)

Article 1, paragraph 1 bis, (Threat).

Tanzania is of the view that the expression "threat" to perform an act of violence at airports serving international Civil aviation be introduced in the Protocol as a distinct offence punishable under the new instrument. Penal codes and various legislations in many

countries of the world have incorporated this expression as a criminal act posing danger to life or property. "Threats" to commit offences contemplated under paragraph 1 bis of Article 1 at airports serving international Civil aviation will inevitably undermine the confidence of the peoples of the world in the safety at such airports and eventually inhibit the orderly development of civil aviation.

(c) Definition of an "international airport"

For reasons advanced by the majority of state representatives in the Legal Committee, Tanzania does not render support to the various proposals that an international airport should be defined. There will always be quite a number of administrative, legislative, geographical and functional problems within the states concerned which will render any such definition difficult to implement or comply with.

(d) List of means used in the Commission of the Offences.

With the continuous developments in science and technology, the list of means enumerated under paragraph 1 bis of Article 1 is by no means exhaustive and will never be exhaustive. However, in order to allay the concern of most states which consider the means so far enumerated not exhaustive enough, it is recommended that the phrase "or other means" be added following the word "weapon" in order to cover other unforeseen methods of committing the offences.

THIS PAGE INTENTIONALLY LEFT BLANK



VIA Doc No. 28
15/2/88

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Text prepared by the Drafting Committee

Title of the Protocol

Protocol for the Suppression of Unlawful Acts of Violence
[at] Airports Serving International Civil Aviation,
Supplementary to the Convention for the Suppression of
Unlawful Acts against the Safety of Civil Aviation, Done at
Montreal on 23 September 1971

Signed at Montreal on February 1988.

THIS PAGE INTENTIONALLY LEFT BLANK



VIA Doc No. 29
15/2/88

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Article III of the Draft Protocol

(Proposal presented by Italy)

Article III

In Article 5 of the Convention, paragraph 2 shall be deleted and replaced by the following:

"2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraphs 1(a), (b) and (c), in Article 1, paragraph 1 bis and in Article 1, paragraph 2, insofar as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article."

THIS PAGE INTENTIONALLY LEFT BLANK



VIA Doc No. 30
16/2/88

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Alternative Text for the First Two Preambular Paragraphs

(Proposal presented by the Kingdom of the Netherlands)

CONSIDERING that unlawful acts of violence which endanger or which are likely to endanger indiscriminately the safety of persons at airports serving international civil aviation or which jeopardize the safe operation of such airports, undermine the confidence of the peoples of the world in safety at such airports and disturb the safe and orderly conduct of civil aviation for all States;

CONSIDERING that the world-wide escalation of acts of terrorism in all its forms is a matter of grave concern and that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Draft Final Clauses

(presented by the Drafting Committee)

Article V

This Protocol shall be open for signature at Montreal on 1988 by States participating in the International Conference on Air Law held at Montreal from 1988. After 1988, the Protocol shall be open for signature to all States in Moscow, London, Washington and Montreal, until it enters into force in accordance with Article VII.

Article VI

1. This Protocol shall be subject to ratification by the signatory States.
2. Any State which is not a Contracting State to the Convention may ratify this Protocol if at the same time it ratifies or accedes to the Convention in accordance with Article 15 thereof.
3. Instruments of ratification shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America or with the International Civil Aviation Organization, which are hereby designated the Depositaries.

Article VII

1. As soon as ten of the signatory States have deposited their instruments of ratification of this Protocol, it shall enter into force between them on the thirtieth day after the date of the deposit of the tenth instrument of ratification. It shall enter into force for each State which deposits its instrument of ratification after that date on the thirtieth day after deposit of its instrument of ratification.
2. As soon as this Protocol enters into force, it shall be registered by the Depositaries pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article VIII

1. This Protocol shall, after it has entered into force, be open for accession by any non-signatory State.
2. Any State which is not a Contracting State to the Convention may accede to this Protocol if at the same time it ratifies or accedes to the Convention in accordance with Article 15 thereof.
3. Instruments of accession shall be deposited with the Depositaries and accession shall take effect on the thirtieth day after the deposit.

Article IX

1. Any Party to this Protocol may denounce it by written notification addressed to the Depositaries.
2. Denunciation shall take effect six months following the date on which notification is received by the Depositaries.
3. Denunciation of this Protocol shall not of itself have the effect of denunciation of the Convention.
4. Denunciation of the Convention by a Contracting State to the Convention as supplemented by this Protocol shall also have the effect of denunciation of this Protocol.

Article X

1. The Depositaries shall promptly inform all signatory and acceding States to this Protocol and all signatory and acceding States to the Convention:
 - (a) of the date of each signature and the date of deposit of each instrument of ratification of, or accession to, this Protocol, and
 - (b) of the receipt of any notification of denunciation of this Protocol and the date thereof.
2. The Depositaries shall also notify the States referred to in paragraph 1 of the date on which this Protocol enters into force in accordance with Article VII.

DONE at Montreal on the _____ day of _____ of the year One Thousand Nine Hundred and Eighty-Eight, in four originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

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



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

RESOLUTION OF THE INTERNATIONAL CONFERENCE ON AIR LAW

(Proposal of the Delegation of the Union of Soviet Socialist Republics)

WHEREAS unlawful acts of violence against international civil aviation continue seriously to compromise the safety, regularity and efficiency of air services;

WHEREAS the safety of persons and property at airports serving international civil aviation requires continued vigilance, development and implementation of positive safeguards and actions by the International Civil Aviation Organization and all States to prevent and suppress unlawful acts of violence at such airports;

CONFIRMING that the implementation of the security measures adopted by ICAO is an effective means of preventing acts of violence at airports serving international civil aviation;

AWARE that notwithstanding assistance given to States in need some States face difficulties in implementing preventive measures because of insufficient financial and technical resources;

THE CONFERENCE:

1. Urges all States on an individual basis and in cooperation with other States to take all possible steps for the suppression of acts of violence at airports serving international civil aviation including such preventive measures as are required under Annex 17 to the Convention on International Civil Aviation and by conforming promptly, effectively and completely with their responsibilities and obligations under the Tokyo, The Hague and the Montreal Conventions and the relevant ICAO Assembly and Council Resolutions relating to the suppression of unlawful acts against the safety of civil aviation.
 2. Urges the Council of ICAO to continue to attach top priority to the adoption of effective measures for the prevention of acts of unlawful interference and to keep up-to-date the provisions of Annex 17 to the Chicago Convention to this end.
 3. Urges the international community to [continue] [increase] to extend technical, financial and material assistance to States in need of such assistance to improve security at their airports through bilateral and multilateral effort, in particular, through the ICAO Technical Assistance mechanism.
-

THIS PAGE INTENTIONALLY LEFT BLANK



VIA Doc No. 33
17/2/88

International Conference on Air Law

(Montreal, 9 - 24 February 1988)

Text prepared by the Drafting Committee

Article I

This Protocol supplements the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 (hereinafter referred to as the Convention), and, as between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument.

THIS PAGE INTENTIONALLY LEFT BLANK



VIA Doc No. 34
17/2/88

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

REPORT OF THE CREDENTIALS COMMITTEE

1. At its First Meeting held on 9 February 1988 the Conference established a Credentials Committee and the Delegations of Colombia, Côte d'Ivoire, Finland, Hungary and Indonesia were invited to nominate members for this Committee.

2. On 9 February 1988 at 1230 hours there was the First Meeting of the Credentials Committee which was composed as follows:

Mrs. I. Rodriguez Perez (Colombia)
Mr. S. R. Tahou (Côte d'Ivoire)
Ms. P. K. Hillo (Finland)
Ms. E. Kecskeméti (Hungary)
Mr. Cahyo Adi (Indonesia)

2.1 On the proposal made by the Delegate of Côte d'Ivoire, the Delegate of Colombia was elected Chairman of the Committee.

3. At the Second Meeting of the Plenary of the Conference, the Chairman of the Credentials Committee presented a preliminary report and informed the Conference that as of 9 February 1988 (1400 hours) 67 Delegations had registered for the Conference, and credentials in due and proper form had been submitted by 45 of these Delegations.

4. The Committee recommended to the Conference, in conformity with Rule 3 of the Rules of Procedure, that all the Delegations registered be permitted to participate in the Conference pending receipt of their credentials in due form; the Conference accepted this recommendation.

5. On 16 and 17 February 1988 the Credentials Committee met again and examined the credentials issued by the Governments of the following 78 States and found them to be in due and proper form:

Argentine Republic, the
Australia
Austria, the Republic of
Belgium, the Kingdom of
Brazil, the Federative Republic of
Bulgaria, the People's Republic of
Byelorussian Soviet Socialist
Republic, the
Canada
Chile, the Republic of
China, the People's Republic of
Colombia, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of

Cuba, the Republic of
Czechoslovak Socialist Republic, the
Democratic People's Republic of Korea, the
Denmark, the Kingdom of
Ecuador, the Republic of
Egypt, the Arab Republic of
Ethiopia
Finland, the Republic of
French Republic, the
German Democratic Republic, the
Germany, the Federal Republic of
Ghana, the Republic of
Guinea, the Republic of
Hellenic Republic, the

VIA Doc No. 34

Hungarian People's Republic, the	Norway, the Kingdom of
Iceland, the Republic of	Oman, the Sultanate of
India, the Republic of	Pakistan, the Islamic Republic of
Indonesia, the Republic of	Panama, the Republic of
Iran, the Islamic Republic of	Peru, the Republic of
Iraq, the Republic of	Polish People's Republic, the
Ireland	Portuguese Republic, the
Israel, the State of	Republic of Korea, the
Italian Republic, the	Romania, the Socialist Republic of
Jamaica	Saudi Arabia, the Kingdom of
Japan	Senegal, the Republic of
Jordan, the Hashemite Kingdom of	Spain, the Kingdom of
Kenya, the Republic of	Sweden, the Kingdom of
Kuwait, the State of	Swiss Confederation, the
Lebanese Republic, the	Tunisia, the Republic of
Liberia, the Republic of	Turkey, the Republic of
Libyan Arab Jamahiriya, the Socialist People's	Ukrainian Soviet Socialist Republic, the
Madagascar, the Democratic Republic of	Union of Soviet Socialist Republics, the
Malawi, the Republic of	United Arab Emirates, the
Malaysia	United Kingdom of Great Britain and Northern Ireland, the
Malta, the Republic of	United Republic of Tanzania, the
Mexican States, the United	United States of America, the
Netherlands, the Kingdom of the	Venezuela, the Republic of
New Zealand	Yugoslavia, the Socialist Federal Republic of
Niger, the Republic of the	Zaire, the Republic of
Nigeria, the Federal Republic of	

Three additional Delegations have not submitted credentials at this time.

Furthermore, the following eight Observer Delegations have registered and presented proper evidence of accreditation to the Conference:

- The United Nations (UN)
- The Palestine Liberation Organization (PLO)
- Airport Associations Coordinating Council (AACC)
- Arab Civil Aviation Council (ACAC)
- International Aeronautical Federation (FAI)
- International Air Transport Association (IATA)
- International Federation of Air Line Pilots' Associations (IFALPA)
- International Law Association (ILA)



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

DRAFT FINAL ACT

of the International Conference on Air Law
held under the auspices of the
International Civil Aviation Organization in February 1988

The Plenipotentiaries at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization met at Montreal from 9 to 24 February 1988 for the purpose of considering draft articles prepared by the Legal Committee of the International Civil Aviation Organization to supplement the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

The Governments of the following 81 States were represented at the Conference:

Algeria, the People's Democratic Republic of
Argentine Republic, the
Australia
Austria, the Republic of
Belgium, the Kingdom of
Brazil, the Federative Republic of
Bulgaria, the People's Republic of
Byelorussian Soviet Socialist Republic, the
Canada
Chile, the Republic of
China, the People's Republic of
Colombia, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of
Cuba, the Republic of
Czechoslovak Socialist Republic, the
Democratic People's Republic of Korea, the
Denmark, the Kingdom of
Ecuador, the Republic of
Egypt, the Arab Republic of
Ethiopia
Finland, the Republic of
French Republic, the
German Democratic Republic, the
Germany, Federal Republic of
Ghana, the Republic of
Guinea, the Republic of

VIA Doc No. 35

Hellenic Republic, the
Hungarian People's Republic, the
Iceland, the Republic of
India, the Republic of
Indonesia, the Republic of
Iran, the Islamic Republic of
Iraq, the Republic of
Ireland
Israel, the State of
Italian Republic, the
Jamaica
Japan
Jordan, the Hashemite Kingdom of
Kenya, the Republic of
Kuwait, the State of
Lebanese Republic, the
Liberia, the Republic of
Libyan Arab Jamahiriya, the Socialist People's
Luxembourg, the Grand Duchy of
Madagascar, the Democratic Republic of
Malawi, the Republic of
Malaysia
Malta, the Republic of
Mexican States, the United
Netherlands, the Kingdom of the
New Zealand
Niger, the Republic of the
Nigeria, the Federal Republic of
Norway, the Kingdom of
Oman, the Sultanate of
Pakistan, the Islamic Republic of
Panama, the Republic of
Peru, the Republic of
Polish People's Republic, the
Portuguese Republic, the
Republic of Korea, the
Romania, the Socialist Republic of
Saudi Arabia, the Kingdom of
Senegal, the Republic of
Spain, the Kingdom of
Sweden, the Kingdom of
Swiss Confederation, the
Togolese Republic, the
Tunisia, the Republic of
Turkey, the Republic of
Ukrainian Soviet Socialist Republic, the
Union of Soviet Socialist Republics, the
United Arab Emirates, the
United Kingdom of Great Britain and Northern Ireland, the
United Republic of Tanzania, the
United States of America, the
Venezuela, the Republic of
Yugoslavia, the Socialist Federal Republic of
Zaire, the Republic of

The Palestine Liberation Organization was represented by an Observer.
The United Nations was represented by an Observer.

The following International Organizations were represented by Observers:

- Airport Associations Coordinating Council (AACC)
- Arab Civil Aviation Council (ACAC)
- International Aeronautical Federation (FAI)
- International Air Transport Association (IATA)
- International Federation of Air Line Pilots' Associations (IFALPA)
- International Law Association (ILA)

The Conference unanimously elected as President Mr. P. Kirsch (Canada) and further unanimously elected as Vice-Presidents Messrs. D.K. Ameyo (Kenya), J. Sobieraj (Poland), Z. Abdul (Malaysia) and A. Sanchez Gutierrez (Cuba).

The Secretary General of the Conference was Mr. Yves Lambert, Secretary General of the International Civil Aviation Organization. Dr. M. Milde, Director of the Legal Bureau of the International Civil Aviation Organization, was the Executive Secretary of the Conference; he was assisted by Dr. M. Pourcélet, Principal Legal Officer, Dr. E.W. Faller, Senior Legal Officer and Mr. G.M. Kakkar, Legal Officer of the Organization and by other officials of the Organization.

The Conference established a Commission on the Whole and the following Committees:

CREDENTIALS COMMITTEE

Chairman: Mrs. L. Rodriguez Perez (Colombia)

Members: Mr. S.R. Tahou (Côte d'Ivoire)
Ms. P.K. Hillo (Finland)
Ms. E. Kecskeméti (Hungary)
Mr. C. Adi (Indonesia)

DRAFTING COMMITTEE

Chairman: Mr. L. Oates (United Kingdom)

Members: Mr. F.E. Dozo (Argentina)
Mr. R.L. Bocalandro (Argentina)
Mr. H. Winkler (Austria)
Mr. C. Tepavitcharov (Bulgaria)
Mr. J. Ansted (Chile)
Mr. J. Dupouy (Chile)
Mrs. Xue Hanqin (China)
Mr. G. Ortega Hernandez (Colombia)
Mrs. M. Barbin (France)
Mrs. M. Ramis (France)
Mr. H.W. Thau (Federal Republic of Germany)

VIA Doc No. 35

Mr. H. Graumann (Federal Republic of Germany)
Mr. A.A. Golrounia (Islamic Republic of Iran)
Mr. K.O. Rattray (Jamaica)
Mr. T. Fujita (Japan)
Mr. A. Bos (the Netherlands)
Mr. M. Ruud (Norway)
Mrs. L.H. Garcia (Peru)
Mr. A. Contreras (Peru)
Mr. Y. Diallo (Senegal)
Mr. B. Castejon (Spain)
Mr. A. Ben Guirat (Tunisia)
Mr. A.R. El Hicheri (Tunisia)
Mr. V.A. Podberezny (USSR)
Mr. J. Siddle (United Kingdom)
Mr. B.K. Mwakisu (United Republic of Tanzania)
Mr. S.M. Witten (United States)
Ms. I.E. Howie (United States)
Mr. R. Yopez (Venezuela)
Mr. C. Fraino (Venezuela)

Following its deliberations, the Conference adopted [by consensus] the text of a Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971. The said Protocol has been opened for signature at Montreal on this day.

The Conference furthermore adopted [by consensus] the following Resolutions:

A

B

C

DONE at Montreal on the twenty-fourth day of February of the year One Thousand Nine Hundred and Eighty-eight in four authentic texts in the English, French, Russian and Spanish languages in a single copy which shall be deposited with the International Civil Aviation Organization and a certified copy of which shall be delivered by the said Organization to each of the Governments represented at the Conference.

IN WITNESS WHEREOF the Delegates have signed this Final Act.



VIA Doc No. 36
17/2/88

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Draft Resolution

presented by Argentina and co-sponsored by Brazil,
Chile, Colombia, Costa Rica, Ecuador, Panama, Peru and Spain

Recommendation to Contracting States relative to the adoption of domestic
legislation aimed at the classification of offences committed at airports
serving international civil aviation and the establishment of severe penalties
therefor.

CONSIDERING that the Protocol to amend the Convention for the
Suppression of Unlawful Acts against the Safety of Civil
Aviation (Montreal, 1971) adopted at Montreal on ___ February
1988, provides for the classification of offences committed at
airports serving international civil aviation;

CONSIDERING that Article 3 of the Montreal Convention of 1971
provides that: "Each Contracting State undertakes to make the
offences mentioned in Article 1 punishable by severe
penalties.";

CONSIDERING that the precept set forth in the foregoing Considering
clause is equally applicable to the offences contemplated in the
above-mentioned Protocol,

THE INTERNATIONAL CONFERENCE ON AIR LAW

RESOLVES

1. TO RECOMMEND to Contracting States that they adopt appropriate
measures to establish in their domestic legislation a classification of the
offences contemplated in the Protocol to amend the Convention for the
Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal,
1971) adopted at Montreal on ___ February 1988, and to impose penalties
proportional to the seriousness of these offences.

2. TO INSTRUCT the Secretary General of ICAO to bring this Resolution
to the attention of the Contracting States and the Council of ICAO as soon as
possible.

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Comments of Kenya

The delegation of the Republic of Kenya offers the comments appearing hereunder on the issues before this Conference.

1. Form of the Instrument

The 26th Session of the Legal Committee recommended that the new Instrument should take the form of an additional protocol to the Montreal Convention of 1971. Our delegation supports this recommendation. We feel that the Montreal Convention left a Lacuna with respect to safety of airports serving international civil aviation. To the extent that the new instrument aims at covering the aforesaid lacuna, we feel that both the title and the preambular provisions of the Instrument should be adjusted to reflect this objective and to show that it is additional to and not an amendment of the Montreal Convention.

2. The Qualifier at the end of Article 1 bis

This delegation does not support the proposal put forward by the United Kingdom delegation that the intention of the offender to endanger the safety of airport should be reflected in the qualifier. Our delegation is of the view that all the necessary legal elements of a crime are contained in Article 1 bis as drafted by the Legal Committee. In our view, the unlawful and intentional commission of an act of violence against persons at an airport or the unlawful and intentional destruction of facilities at such airport constitutes crimes in themselves irrespective of the intention as to consequences of such act or destruction. In our criminal jurisprudence a person must be presumed to have intended the natural consequences flowing from his action. We cannot envisage any other consequence that will flow from an intended violent act at an airport serving international civil aviation targeting the persons or facilities thereat except endangering the safe operation of that airport. The proposal of the United Kingdom in our view puts the burden on the prosecution to prove the intention to commit the offence and also the intention to endanger the safe operation of the

VIA Doc No. 37

airport. Our delegation sees no legal justification for such double-intention. In any case this will make the burden of proof heavy and tilt the scale in favour of the offender.

3. Jurisdiction and Extradition

This delegation supports the Legal Committee's observation that the delicate balance between prosecution and extradition established by the Montreal Convention of 1971 should not be upset by an instrument which is an additional protocol to that Convention. To the extent that the new instrument creates offences additional to those existing in the Montreal Convention, it is inevitable, from the legal point of view, that jurisdiction on the new offences should be established by the new instrument. Our interpretation of the proposed paragraph 2 bis of Article 5 is to place an obligation on the Contracting States to establish jurisdiction in respect of the new offences in the draft Protocol. This, too, is our interpretation of Article 5 of the Montreal Convention that it creates an obligation on Contracting States to establish appropriate jurisdiction in respect of the offences created by that Convention.

In our view, the draft protocol should be interpreted in accordance with the established principles of treaty interpretation. Such principles require that the new instrument be interpreted in the light of its objectives. The objective of the new instrument is to create new offences committed at an airport serving international civil aviation. Such an airport has a clear geographical location situated in a particular jurisdiction. It is in this context that the Legal Committee arrived at the formulation of the present Article III of the draft Protocol. We feel that the two jurisdictions envisaged by that article are practical and indeed necessary if the new instrument has to achieve its desired goal of no-safe-heaven for potential perpetrators of the offences envisaged in the instrument. To enlarge the number of jurisdictions will inevitably bring into play the issue of priorities in the jurisdictions. In our view, if priorities are introduced,

delays in dealing with the offender will be inevitable. Indeed, the introduction of such priorities will leave it to the State where the offender is apprehended to decide, subjectively, if, when, and where to extradite the offender if that State does not prefer to prosecute him/her. Should this happen, the balance on jurisdiction and extradition will be disturbed.

In our view, the introduction of an aircraft not in service in the new instrument does not alter the focus of the new instrument viz safety at airports. Montreal Convention too, has its focus point and hence its jurisdictional basis and emphasis should surely be different from that envisaged in the new instrument.

4. Preventive measures

Our delegation has given careful thought to this issue. We are convinced that there is no necessity of transforming the detailed technical preventive measures spelt out in Annex 17 to the Chicago Convention into specific treaty obligations of Contracting States. We believe that airport security is a primary concern of all Member States, and therefore Member States should only be urged to ensure airport security by, inter alia, complying with the provisions of Annex 17 and the relevant security manuals. The flexibility of these two are indeed desirable for they can accommodate new security requirements without the necessity of amending existing and binding legal instruments.

It is the view of this delegation, however, that co-ordinated technical assistance should be given to Contracting States who so desperately need it to improve aviation security. We propose that the issue of preventive measures and increased technical assistance to developing countries should be covered in a Resolution of this Conference.

5. Participation of States not parties to the Montreal Convention

Our delegation is of the view that a State which accedes to this protocol should likewise accede to the Montreal Convention. We therefore welcome the proposed drafting of article VI(2) of the protocol as put forward by the Secretariat. We agree with the advice given by the Director of the Legal Bureau at the 26th Session of the Legal Committee that it is the policy of this Organization to exhort all Contracting States to become parties to the Tokyo, Hague and Montreal Conventions. Our delegation considers it a departure from that policy if we were to allow a Member State to ratify or accede to the new instrument without at the same time ratifying or acceding to the Montreal Convention.

6. Aircraft not in service at an airport

Our delegation considers safety of airports serving international civil aviation the primary focus of the new instrument. In our view, we are therefore talking of the safety not only of passengers and other persons present at such airport but also of the facilities and equipment thereat including an aircraft not in service. The smooth and efficient functioning of the airport will surely be disrupted if an attack were to be mounted to any aircraft not in service at that airport. It is for this reason that this delegation will support such drafting that will make attacks on such aircrafts an international crime within the ambit of the new Instrument. We must focus on the safety of persons and property at airports serving international civil aviation.

7. Threats

Our delegation believes that there is a marked difference, in law, between an attempt and a threat. We also believe that in criminal jurisprudence, a threat to commit a crime manifested with sufficient intention to carry the same out, constitutes a distinct criminal offence. We therefore support the view that threats should be sufficiently and separately covered as a crime in the new instrument.



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

DRAFT RESOLUTION OF THE INTERNATIONAL CONFERENCE ON AIR LAW

(Text resulting from the discussion in the Commission of the Whole)

WHEREAS unlawful acts of violence against international civil aviation continue seriously to compromise the safety, regularity and efficiency of air services;

WHEREAS the safety of persons and property at airports serving international civil aviation requires continued vigilance, development and implementation of positive safeguarding actions by the International Civil Aviation Organization and all States to prevent and suppress unlawful acts of violence at such airports;

CONFIRMING that the implementation of the security measures adopted by ICAO is an effective means of preventing acts of violence at airports serving international civil aviation;

AWARE that notwithstanding assistance given to States in need, some States, in particular developing States, still face difficulties in implementing preventive measures because of insufficient financial and technical resources;

THE CONFERENCE:

1. Urges all States on an individual basis and in cooperation with other States to take all possible measures for the suppression of acts of violence at airports serving international civil aviation including such preventive measures as are required or recommended under Annex 17 to the Convention on International Civil Aviation and by conforming promptly, effectively and completely with their responsibilities and obligations under the Tokyo, The Hague and the Montreal Conventions and the relevant ICAO Assembly and Council Resolutions relating to the suppression of unlawful acts against the safety of civil aviation.
2. Urges the Council of ICAO to continue to attach top priority to the adoption of effective measures for the prevention of acts of unlawful interference and to keep up-to-date the provisions of Annex 17 to the Chicago Convention to this end.
3. Urges the international community to consider increasing technical, financial and material assistance to States in need of such assistance to improve security at their airports through bilateral and multilateral effort, in particular, through the ICAO Technical Assistance mechanism.

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

DRAFT FINAL ACT

of the International Conference on Air Law
held under the auspices of the
International Civil Aviation Organization in February 1988

(Text resulting from the discussion in the Commission of the Whole)

The Plenipotentiaries at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization met at Montreal from 9 to 24 February 1988 for the purpose of considering draft articles prepared by the Legal Committee of the International Civil Aviation Organization to supplement the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

The Governments of the following 81 States were represented at the Conference:

Algeria, the People's Democratic Republic of
Argentine Republic, the
Australia
Austria, the Republic of
Belgium, the Kingdom of
Brazil, the Federative Republic of
Bulgaria, the People's Republic of
Byelorussian Soviet Socialist Republic, the
Canada
Chile, the Republic of
China, the People's Republic of
Colombia, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of
Cuba, the Republic of
Czechoslovak Socialist Republic, the
Democratic People's Republic of Korea, the
Denmark, the Kingdom of
Ecuador, the Republic of
Egypt, the Arab Republic of
Ethiopia, People's Democratic Republic of
Finland, the Republic of
French Republic, the
German Democratic Republic, the
Germany, the Federal Republic of
Ghana, the Republic of
Guinea, the Republic of

VIA Doc No. 39

Hellenic Republic, the
Hungarian People's Republic, the
Iceland, the Republic of
India, the Republic of
Indonesia, the Republic of
Iran, the Islamic Republic of
Iraq, the Republic of
Ireland
Israel, the State of
Italian Republic, the
Jamaica
Japan
Jordan, the Hashemite Kingdom of
Kenya, the Republic of
Kuwait, the State of
Lebanese Republic, the
Liberia, the Republic of
Libyan Arab Jamahiriya, the Socialist People's
Luxembourg, the Grand Duchy of
Madagascar, the Democratic Republic of
Malawi, the Republic of
Malaysia
Malta, the Republic of
Mexican States, the United
Netherlands, the Kingdom of the
New Zealand
Niger, the Republic of the
Nigeria, the Federal Republic of
Norway, the Kingdom of
Oman, the Sultanate of
Pakistan, the Islamic Republic of
Panama, the Republic of
Peru, the Republic of
Polish People's Republic, the
Portuguese Republic, the
Republic of Korea, the
Romania, the Socialist Republic of
Saudi Arabia, the Kingdom of
Senegal, the Republic of
Spain, the Kingdom of
Sweden, the Kingdom of
Swiss Confederation, the
Togolese Republic, the
Tunisia, the Republic of
Turkey, the Republic of
Ukrainian Soviet Socialist Republic, the
Union of Soviet Socialist Republics, the
United Arab Emirates, the
United Kingdom of Great Britain and Northern Ireland, the
United Republic of Tanzania, the
United States of America, the
Venezuela, the Republic of
Yugoslavia, the Socialist Federal Republic of
Zaire, the Republic of

The Palestine Liberation Organization was represented by an Observer.
The United Nations was represented by an Observer.

The following International Organizations were represented by Observers:

Airport Associations Coordinating Council (AACC)
Arab Civil Aviation Council (ACAC)
International Aeronautical Federation (FAI)
International Air Transport Association (IATA)
International Federation of Air Line Pilots' Associations (IFALPA)
International Law Association (ILA)

The Conference unanimously elected as President Mr. Philippe Kirsch (Canada).
It further unanimously elected as Vice-Presidents Messrs. D.K. Ameyo (Kenya),
J. Sobieraj (Poland), Z. Abdul (Malaysia) and A. Sanchez Gutierrez (Cuba).

The Secretary General of the Conference was Mr. Yves Lambert, Secretary
General of the International Civil Aviation Organization. Dr. M. Milde, Director
of the Legal Bureau of the International Civil Aviation Organization, was the
Executive Secretary of the Conference; he was assisted by Dr. M. Pourcelet,
Principal Legal Officer, Dr. E.W. Faller, Senior Legal Officer and Mr. G.M.
Kakkar, Legal Officer of the Organization and by other officials of the
Organization.

The Conference established a Commission of the Whole, whose Chairman was the
President of the Conference, and the following Committees:

CREDENTIALS COMMITTEE

Chairman: Mrs. L. Rodriguez Perez (Colombia)

Members: Côte d'Ivoire
Finland
Hungary
Indonesia

DRAFTING COMMITTEE

Chairman: Mr. L. Oates (United Kingdom)

Members: Argentina
Austria
Bulgaria
Chile
China
Czechoslovak Socialist Republic
Egypt
France
Federal Republic of Germany

VIA Doc No. 39

India
Islamic Republic of Iran
Jamaica
Japan
the Kingdom of the Netherlands
Norway
Peru
Senegal
Spain
Tunisia
Union of Soviet Socialist Republics
United Kingdom
United Republic of Tanzania
United States
Venezuela

Following its deliberations, the Conference adopted [by consensus] the text of a Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971. The said Protocol has been opened for signature at Montreal on this day.

The Conference furthermore adopted [by consensus] the following Resolutions:

A

B

C

IN WITNESS WHEREOF the Delegates of States duly authorized thereto have signed this Final Act.

DONE at Montreal on the twenty-fourth day of February of the year One Thousand Nine Hundred and Eighty-eight in four authentic texts in the English, French, Russian and Spanish languages in a single copy which shall be deposited with the International Civil Aviation Organization and a certified copy of which shall be delivered by the said Organization to each of the Governments represented at the Conference.



VIA Doc No. 40
18/2/88

INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

Texts prepared by the Drafting Committee

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971

THE STATES PARTIES TO THIS PROTOCOL

[CONCERNED about the escalation of terrorist activities in the world;]

CONSIDERING that unlawful acts of violence which endanger or are likely to endanger the safety of persons at airports serving international civil aviation or which jeopardize the safe operation of such airports undermine the confidence of the peoples of the world in safety at such airports and disturb the safe and orderly conduct of civil aviation for all States;

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community and that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

CONSIDERING that it is necessary to adopt provisions supplementary to those of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, to deal with such unlawful acts of violence at airports serving international civil aviation,

HAVE AGREED AS FOLLOWS:

Article I

This Protocol supplements the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (hereinafter referred to as "the Convention"), and, as between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument.

VIA Doc No. 40

Article II

1. In Article 1 of the Convention, the following shall be added as new paragraph 1 bis:

"1 bis. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

(a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

(b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport."

2. In paragraph 2(a) of Article 1 of the Convention, the following words shall be added after the words "paragraph 1":

"or paragraph 1 bis".



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

DRAFT FINAL ACT

of the International Conference on Air Law
held under the auspices of the
International Civil Aviation Organization in February 1988

The Plenipotentiaries at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization met at Montreal from 9 to 24 February 1988 for the purpose of considering draft articles prepared by the Legal Committee of the International Civil Aviation Organization to supplement the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

The Governments of the following 81 States were represented at the Conference:

Algeria, the People's Democratic Republic of
Argentine Republic, the
Australia
Austria, the Republic of
Belgium, the Kingdom of
Brazil, the Federative Republic of
Bulgaria, the People's Republic of
Byelorussian Soviet Socialist Republic, the
Canada
Chile, the Republic of
China, the People's Republic of
Colombia, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of
Cuba, the Republic of
Czechoslovak Socialist Republic, the
Democratic People's Republic of Korea, the
Denmark, the Kingdom of
Ecuador, the Republic of
Egypt, the Arab Republic of
Ethiopia, People's Democratic Republic of
Finland, the Republic of
French Republic, the
German Democratic Republic, the
Germany, the Federal Republic of
Ghana, the Republic of
Guinea, the Republic of

VIA Doc No. 41

Hellenic Republic, the
Hungarian People's Republic, the
Iceland, the Republic of
India, the Republic of
Indonesia, the Republic of
Iran, the Islamic Republic of
Iraq, the Republic of
Ireland
Israel, the State of
Italian Republic, the
Jamaica
Japan
Jordan, the Hashemite Kingdom of
Kenya, the Republic of
Kuwait, the State of
Lebanese Republic, the
Liberia, the Republic of
Libyan Arab Jamahiriya, the Socialist People's
Luxembourg, the Grand Duchy of
Madagascar, the Democratic Republic of
Malawi, the Republic of
Malaysia
Malta, the Republic of
Mexican States, the United
Netherlands, the Kingdom of the
New Zealand
Niger, the Republic of the
Nigeria, the Federal Republic of
Norway, the Kingdom of
Oman, the Sultanate of
Pakistan, the Islamic Republic of
Panama, the Republic of
Peru, the Republic of
Polish People's Republic, the
Portuguese Republic, the
Republic of Korea, the
Romania, the Socialist Republic of
Saudi Arabia, the Kingdom of
Senegal, the Republic of
Spain, the Kingdom of
Sweden, the Kingdom of
Swiss Confederation, the
Togolese Republic, the
Tunisia, the Republic of
Turkey, the Republic of
Ukrainian Soviet Socialist Republic, the
Union of Soviet Socialist Republics, the
United Arab Emirates, the
United Kingdom of Great Britain and Northern Ireland, the
United Republic of Tanzania, the
United States of America, the
Venezuela, the Republic of
Yugoslavia, the Socialist Federal Republic of
Zaire, the Republic of

The Palestine Liberation Organization was represented by an Observer.
The United Nations was represented by an Observer.

The following International Organizations were represented by Observers:

Airport Associations Coordinating Council (AACC)
Arab Civil Aviation Council (ACAC)
International Aeronautical Federation (FAI)
International Air Transport Association (IATA)
International Federation of Air Line Pilots' Associations (IFALPA)
International Law Association (ILA)

The Conference unanimously elected as President Mr. Philippe Kirsch (Canada). It further unanimously elected as Vice-Presidents Messrs. D.K. Ameyo (Kenya), J. Sobieraj (Poland), Z. Abdul (Malaysia) and A. Sánchez Gutiérrez (Cuba).

The Secretary General of the Conference was Mr. Yves Lambert, Secretary General of the International Civil Aviation Organization. Dr. M. Milde, Director of the Legal Bureau of the International Civil Aviation Organization, was the Executive Secretary of the Conference; he was assisted by Dr. M. Pourcelet, Principal Legal Officer, Dr. E.W. Faller, Senior Legal Officer and Mr. G.M. Kakkar, Legal Officer of the Organization and by other officials of the Organization.

The Conference established a Commission of the Whole, whose Chairman was the President of the Conference, and the following Committees:

CREDENTIALS COMMITTEE

Chairman: Mrs. L. Rodríguez Pérez (Colombia)

Members: Côte d'Ivoire
Finland
Hungary
Indonesia

DRAFTING COMMITTEE

Chairman: Mr. L. Oates (United Kingdom)

Members: Argentina
Austria
Bulgaria
Chile
China
Czechoslovak Socialist Republic
Egypt
France
Federal Republic of Germany

VIA Doc No. 41

India
Islamic Republic of Iran
Jamaica
Japan
the Kingdom of the Netherlands
Norway
Peru
Senegal
Spain
Tunisia
Union of Soviet Socialist Republics
United Kingdom
United Republic of Tanzania
United States
Venezuela

Following its deliberations, the Conference adopted [by consensus] the text of a Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971. The said Protocol has been opened for signature at Montreal on this day.

The Conference furthermore adopted by consensus the following Resolution:

WHEREAS unlawful acts of violence against international civil aviation continue seriously to compromise the safety, regularity and efficiency of air services;

WHEREAS the safety of persons and property at airports serving international civil aviation requires continued vigilance, development and implementation of positive safeguarding actions by the International Civil Aviation Organization and all States to prevent and suppress unlawful acts of violence at such airports;

CONFIRMING that the implementation of the security measures adopted by ICAO is an effective means of preventing acts of violence at airports serving international civil aviation;

AWARE that notwithstanding assistance given to States in need, some States, in particular developing States, still face difficulties in fully implementing preventive measures because of insufficient financial and technical resources;

THE CONFERENCE:

1. Urges all States on an individual basis and in cooperation with other States to take all possible measures for the suppression of acts of violence at airports serving international civil aviation including such preventive

measures as are required or recommended under Annex 17 to the Convention on International Civil Aviation and by conforming promptly, effectively and completely with their responsibilities and obligations under the Tokyo, The Hague and the Montreal Conventions and the relevant ICAO Assembly and Council Resolutions relating to the suppression of unlawful acts against the safety of civil aviation.

2. Urges the Council of ICAO to continue to attach top priority to the adoption of effective measures for the prevention of acts of unlawful interference and to keep up-to-date the provisions of Annex 17 to the Chicago Convention to this end.
3. Urges the international community to consider increasing technical, financial and material assistance to States in need of such assistance to improve security at their airports through bilateral and multilateral effort, in particular, through the ICAO Technical Assistance mechanism.

IN WITNESS WHEREOF the Delegates of States duly authorized thereto have signed this Final Act.

DONE at Montreal on the twenty-fourth day of February of the year One Thousand Nine Hundred and Eighty-eight in four authentic texts in the English, French, Russian and Spanish languages in a single copy which shall be deposited with the International Civil Aviation Organization and a certified copy of which shall be delivered by the said Organization to each of the Governments represented at the Conference.

THIS PAGE INTENTIONALLY LEFT BLANK



INTERNATIONAL CONFERENCE ON AIR LAW

(Montreal, 9 - 24 February 1988)

DRAFT PROTOCOL

for the Suppression of Unlawful Acts of Violence
at Airports Serving International Civil Aviation,
Supplementary to the Convention for the Suppression of Unlawful Acts
against the Safety of Civil Aviation, Done at Montreal on 23 September 1971

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING that unlawful acts of violence which endanger or are likely to endanger the safety of persons at airports serving international civil aviation or which jeopardize the safe operation of such airports undermine the confidence of the peoples of the world in safety at such airports and disturb the safe and orderly conduct of civil aviation for all States;

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community and that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

CONSIDERING that it is necessary to adopt provisions supplementary to those of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, to deal with such unlawful acts of violence at airports serving international civil aviation,

HAVE AGREED AS FOLLOWS:

Article I

This Protocol supplements the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (hereinafter referred to as "the Convention"), and, as between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument.

VIA Doc No. 42

Article II

1. In Article 1 of the Convention, the following shall be added as new paragraph 1 bis:

"1 bis. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport."

2. In paragraph 2(a) of Article 1 of the Convention, the following words shall be added after the words "paragraph 1":

"or paragraph 1 bis".

Article III

In Article 5 of the Convention, the following shall be added as paragraph 2 bis:

"2 bis. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 bis, and in Article 1, paragraph 2, insofar as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to the State mentioned in paragraph 1(a) of this Article."

Article IV

This Protocol shall be open for signature at Montreal on 24 February 1988 by States participating in the International Conference on Air Law held at Montreal from 9 to 24 February 1988. After 1 March 1988, the Protocol shall be open for signature to all States in London, Moscow, Washington and Montreal, until it enters into force in accordance with Article VI.

Article V

1. This Protocol shall be subject to ratification by the signatory States.
2. Any State which is not a Contracting State to the Convention may ratify this Protocol if at the same time it ratifies or accedes to the Convention in accordance with Article 15 thereof.
3. Instruments of ratification shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America or with the International Civil Aviation Organization, which are hereby designated the Depositaries.

Article VI

1. As soon as ten of the signatory States have deposited their instruments of ratification of this Protocol, it shall enter into force between them on the thirtieth day after the date of the deposit of the tenth instrument of ratification. It shall enter into force for each State which deposits its instrument of ratification after that date on the thirtieth day after deposit of its instrument of ratification.
2. As soon as this Protocol enters into force, it shall be registered by the Depositaries pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article VII

1. This Protocol shall, after it has entered into force, be open for accession by any non-signatory State.
2. Any State which is not a Contracting State to the Convention may accede to this Protocol if at the same time it ratifies or accedes to the Convention in accordance with Article 15 thereof.
3. Instruments of accession shall be deposited with the Depositaries and accession shall take effect on the thirtieth day after the deposit.

Article VIII

1. Any Party to this Protocol may denounce it by written notification addressed to the Depositaries.
2. Denunciation shall take effect six months following the date on which notification is received by the Depositaries.
3. Denunciation of this Protocol shall not of itself have the effect of denunciation of the Convention.

VIA Doc No. 42

4. Denunciation of the Convention by a Contracting State to the Convention as supplemented by this Protocol shall also have the effect of denunciation of this Protocol.

Article IX

1. The Depositaries shall promptly inform all signatory and acceding States to this Protocol and all signatory and acceding States to the Convention:

(a) of the date of each signature and the date of deposit of each instrument of ratification of, or accession to, this Protocol, and

(b) of the receipt of any notification of denunciation of this Protocol and the date thereof.

2. The Depositaries shall also notify the States referred to in paragraph 1 of the date on which this Protocol enters into force in accordance with Article VI.

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

DONE at Montreal on the twenty-fourth day of February of the year One Thousand Nine Hundred and Eighty-Eight, in four originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

PART V

THIS PAGE INTENTIONALLY LEFT BLANK

PROTOCOL

for the Suppression of Unlawful Acts of Violence
at Airports Serving International Civil Aviation,
Supplementary to the Convention for the Suppression of Unlawful Acts
against the Safety of Civil Aviation, Done at Montreal on 23 September 1971

Signed at Montreal on 24 February 1988

PROTOCOLE

pour la répression des actes illicites de violence
dans les aéroports servant à l'aviation civile internationale,
complémentaire à la Convention pour la répression d'actes illicites
dirigés contre la sécurité de l'aviation civile,
faite à Montréal le 23 septembre 1971

Signé à Montréal le 24 février 1988

ПРОТОКОЛ

о борьбе с незаконными актами насилия в аэропортах, обслуживающих
международную гражданскую авиацию, дополняющий Конвенцию о борьбе
с незаконными актами, направленными против безопасности гражданской
авиации, принятую в Монреале 23 сентября 1971 года

Подписано в Монреале 24 февраля 1988 г.

PROTOCOLO

para la represión de actos ilícitos de violencia
en los aeropuertos que presten servicio a la aviación civil internacional,
complementario del Convenio para la represión de actos ilícitos
contra la seguridad de la aviación civil,
hecho en Montreal el 23 de septiembre de 1971

Firmado en Montreal el 24 de febrero de 1988



1988

INTERNATIONAL CIVIL AVIATION ORGANIZATION
ORGANISATION DE L'AVIATION CIVILE INTERNATIONALE
МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ГРАЖДАНСКОЙ АВИАЦИИ
ORGANIZACION DE AVIACION CIVIL INTERNACIONAL

PROTOCOL

**for the Suppression of Unlawful Acts of Violence
at Airports Serving International Civil Aviation,
Supplementary to the Convention for the Suppression of Unlawful Acts
against the Safety of Civil Aviation, Done at Montreal on 23 September 1971**

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING that unlawful acts of violence which endanger or are likely to endanger the safety of persons at airports serving international civil aviation or which jeopardize the safe operation of such airports undermine the confidence of the peoples of the world in safety at such airports and disturb the safe and orderly conduct of civil aviation for all States;

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community and that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

CONSIDERING that it is necessary to adopt provisions supplementary to those of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, to deal with such unlawful acts of violence at airports serving international civil aviation;

HAVE AGREED AS FOLLOWS:

Article I

This Protocol supplements the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (hereinafter referred to as "the Convention"), and, as between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument.

Article II

1. In Article 1 of the Convention, the following shall be added as new paragraph 1 *bis*:

"1 *bis*. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

(a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

(b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport."

2. In paragraph 2 (a) of Article 1 of the Convention, the following words shall be inserted after the words "paragraph 1":

"or paragraph 1 *bis*".

Article III

In Article 5 of the Convention, the following shall be added as paragraph 2 *bis*:

"2 *bis*. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 *bis*, and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to the State mentioned in paragraph 1 (a) of this Article."

Article IV

This Protocol shall be open for signature at Montreal on 24 February 1988 by States participating in the International Conference on Air Law held at Montreal from 9 to 24 February 1988. After 1 March 1988, the Protocol shall be open for signature to all States in London, Moscow, Washington and Montreal, until it enters into force in accordance with Article VI.

Article V

1. This Protocol shall be subject to ratification by the signatory States.
2. Any State which is not a Contracting State to the Convention may ratify this Protocol if at the same time it ratifies or accedes to the Convention in accordance with Article 15 thereof.
3. Instruments of ratification shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America or with the International Civil Aviation Organization, which are hereby designated the Depositaries.

Article VI

1. As soon as ten of the signatory States have deposited their instruments of ratification of this Protocol, it shall enter into force between them on the thirtieth day after the date of the deposit of the tenth instrument of ratification. It shall enter into force for each State which deposits its instrument of ratification after that date on the thirtieth day after deposit of its instrument of ratification.
2. As soon as this Protocol enters into force, it shall be registered by the Depositaries pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article VII

1. This Protocol shall, after it has entered into force, be open for accession by any non-signatory State.
2. Any State which is not a Contracting State to the Convention may accede to this Protocol if at the same time it ratifies or accedes to the Convention in accordance with Article 15 thereof.
3. Instruments of accession shall be deposited with the Depositaries and accession shall take effect on the thirtieth day after the deposit.

Article VIII

1. Any Party to this Protocol may denounce it by written notification addressed to the Depositaries.
2. Denunciation shall take effect six months following the date on which notification is received by the Depositaries.
3. Denunciation of this Protocol shall not of itself have the effect of denunciation of the Convention.
4. Denunciation of the Convention by a Contracting State to the Convention as supplemented by this Protocol shall also have the effect of denunciation of this Protocol.

Article IX

1. The Depositaries shall promptly inform all signatory and acceding States to this Protocol and all signatory and acceding States to the Convention:
 - (a) of the date of each signature and the date of deposit of each instrument of ratification of, or accession to, this Protocol, and
 - (b) of the receipt of any notification of denunciation of this Protocol and the date thereof.
2. The Depositaries shall also notify the States referred to in paragraph 1 of the date on which this Protocol enters into force in accordance with Article VI.

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

DONE at Montreal on the twenty-fourth day of February of the year One Thousand Nine Hundred and Eighty-eight, in four originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

PART VI

THIS PAGE INTENTIONALLY LEFT BLANK

FINAL ACT

of the International Conference on Air Law
held under the auspices of the
International Civil Aviation Organization in February 1988

ACTE FINAL

de la Conférence internationale de droit aérien
tenue sous les auspices de
l'Organisation de l'Aviation civile internationale
en février 1988

ЗАКЛЮЧИТЕЛЬНЫЙ АКТ

Международной конференции по воздушному праву,
проводившейся под эгидой
Международной организации гражданской авиации
в феврале 1988 года.

ACTA FINAL

de la Conferencia Internacional de Derecho Aéreo
celebrada en Montreal en el mes de febrero de 1988,
bajo el patrocinio de la Organización de Aviación Civil Internacional

Certified to be a true and complete copy
Copie certifiée conforme
Копия точная и полная
Es copia fiel y auténtica



M. N. P. J. E.
Legal Bureau
Direction des Affaires juridiques
Юридическое управление
Dirección de Asuntos Jurídicos
ICAO OACI ИКАО

THIS PAGE INTENTIONALLY LEFT BLANK

FINAL ACT

**of the International Conference on Air Law
held under the auspices of the
International Civil Aviation Organization in February 1988**

The Plenipotentiaries at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization met at Montreal from 9 to 24 February 1988 for the purpose of considering draft articles prepared by the Legal Committee of the International Civil Aviation Organization to supplement the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

The Governments of the following 81 States were represented at the Conference:

Algeria, the People's Democratic Republic of
Argentina Republic, the
Australia
Austria, the Republic of
Belgium, the Kingdom of
Brazil, the Federative Republic of
Bulgaria, the People's Republic of
Byelorussian Soviet Socialist Republic, the
Canada
Chile, the Republic of
China, the People's Republic of
Colombia, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of
Cuba, the Republic of
Czechoslovak Socialist Republic, the
Democratic People's Republic of Korea, the
Denmark, the Kingdom of
Ecuador, the Republic of
Egypt, the Arab Republic of
Ethiopia, the People's Democratic Republic of
Finland, the Republic of
French Republic, the
German Democratic Republic, the
Germany, the Federal Republic of
Ghana, the Republic of
Guinea, the Republic of
Hellenic Republic, the
Hungarian People's Republic, the
Iceland, the Republic of
India, the Republic of
Indonesia, the Republic of
Iran, the Islamic Republic of
Iraq, the Republic of
Ireland
Israel, the State of
Italian Republic, the
Jamaica

Japan
Jordan, the Hashemite Kingdom of
Kenya, the Republic of
Kuwait, the State of
Lebanese Republic, the
Liberia, the Republic of
Libyan Arab Jamahiriya, the Socialist People's
Luxembourg, the Grand Duchy of
Madagascar, the Democratic Republic of
Malawi, the Republic of
Malaysia
Malta, the Republic of
Mexican States, the United
Netherlands, the Kingdom of the
New Zealand
Niger, the Republic of the
Nigeria, the Federal Republic of
Norway, the Kingdom of
Oman, the Sultanate of
Pakistan, the Islamic Republic of
Panama, the Republic of
Peru, the Republic of
Polish People's Republic, the
Portuguese Republic, the
Republic of Korea, the
Romania, the Socialist Republic of
Saudi Arabia, the Kingdom of
Senegal, the Republic of
Spain, the Kingdom of
Sweden, the Kingdom of
Swiss Confederation, the
Togolese Republic, the
Tunisia, the Republic of
Turkey, the Republic of
Ukrainian Soviet Socialist Republic, the
Union of Soviet Socialist Republics, the
United Arab Emirates, the
United Kingdom of Great Britain and Northern Ireland, the
United Republic of Tanzania, the
United States of America, the
Venezuela, the Republic of
Yugoslavia, the Socialist Federal Republic of
Zaire, the Republic of

The Palestine Liberation Organization was represented by an Observer.
The United Nations was represented by an Observer.

The following International Organizations were represented by Observers:

Airport Associations' Co-ordinating Council (AACC)
Arab Civil Aviation Council (ACAC)
International Aeronautical Federation (FAI)
International Air Transport Association (IATA)
International Federation of Air Line Pilots' Associations (IFALPA)
International Law Association (ILA)

The President of the Council of the International Civil Aviation Organization, Dr. Assad Kotaite, opened the Conference.

The Conference unanimously elected as President Mr. Philippe Kirsch (Canada). It further unanimously elected as Vice-Presidents Messrs. D.K. Ameyo (Kenya), J. Sobieraj (Poland), Z. Abdul (Malaysia) and A. Sánchez Gutiérrez (Cuba).

The Secretary General of the Conference was Mr. Yves Lambert, Secretary General of the International Civil Aviation Organization. Dr. M. Milde, Director of the Legal Bureau of the International Civil Aviation Organization, was the Executive Secretary of the Conference; he was assisted by Dr. M. Pourcelet, Principal Legal Officer, Dr. E.W. Faller, Senior Legal Officer and Mr. G.M. Kakkar, Legal Officer of the Organization and by other officials of the Organization.

The Conference established a Commission of the Whole, whose Chairman was the President of the Conference, and the following Committees:

CREDENTIALS COMMITTEE

Chairman: Mrs. L. Rodríguez Pérez (Colombia)

Members: Côte d'Ivoire
Finland
Hungary
Indonesia

DRAFTING COMMITTEE

Chairman: Mr. L. Oates (United Kingdom)

Members: Argentina
Austria
Bulgaria
Chile
China
Czechoslovak Socialist Republic
Egypt
France
Federal Republic of Germany
India
Islamic Republic of Iran
Jamaica
Japan
Kingdom of the Netherlands
Norway
Peru
Senegal
Spain
Tunisia
Union of Soviet Socialist Republics
United Kingdom
United Republic of Tanzania
United States
Venezuela

Following its deliberations, the Conference adopted by consensus the text of a Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971. The said Protocol has been opened for signature at Montreal on this day.

The Conference furthermore adopted by consensus the following Resolution:

WHEREAS unlawful acts of violence against international civil aviation continue seriously to compromise the safety, regularity and efficiency of air services;

WHEREAS the safety of persons and property at airports serving international civil aviation requires continued vigilance, development and implementation of positive safeguarding actions by the International Civil Aviation Organization and all States to prevent and suppress unlawful acts of violence at such airports;

CONFIRMING that the implementation of the security measures adopted by ICAO is an effective means of preventing acts of violence at airports serving international civil aviation;

AWARE that notwithstanding assistance given, some States, in particular developing States, still face difficulties in fully implementing preventive measures because of insufficient financial and technical resources;

THE CONFERENCE:

1. Urges all States on an individual basis and in co-operation with other States to take all possible measures for the suppression of acts of violence at airports serving international civil aviation including such preventive measures as are required or recommended under Annex 17 to the Convention on International Civil Aviation and by conforming promptly, effectively and completely with their responsibilities and obligations under the Tokyo, The Hague and the Montreal Conventions and the relevant ICAO Assembly and Council Resolutions relating to the suppression of unlawful acts against the safety of civil aviation.
2. Urges the Council of ICAO to continue to attach top priority to the adoption of effective measures for the prevention of acts of unlawful interference and to keep up to date the provisions of Annex 17 to the Chicago Convention to this end.
3. Urges the international community to consider increasing technical, financial and material assistance to States in need of such assistance to improve security at their airports through bilateral and multilateral effort, in particular, through the ICAO Technical Assistance mechanism.

IN WITNESS WHEREOF the Delegates of States duly authorized thereto have signed this Final Act.

DONE at Montreal on the twenty-fourth day of February of the year One Thousand Nine Hundred and Eighty-eight in four authentic texts in the English, French, Russian and Spanish languages in a single copy which shall be deposited with the International Civil Aviation Organization and a certified copy of which shall be delivered by the said Organization to each of the Governments represented at the Conference.

© ICAO 2003
9/03, E/P1/1300

Order No. 9823
Printed in ICAO

ISBN 92-9194-169-7



9