

The prevention and suppression of drug abuse and
illicit traffic in international civil aviation

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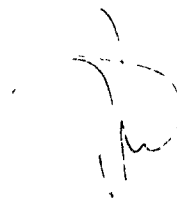
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Shortened version of the title:

Prev. & supp. of drug abuse & illicit traffic in intl. civil aviation.

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A B S T R A C T

Drug control has important connotations in the field of civil aviation. In the first place, substance consumption by aviation personnel may have disastrous effects given the level of alertness required in the performance of their duties. Furthermore, a significant portion of the illicit traffic in drugs is performed by air. Hence, the International Civil Aviation Organization has been called upon to participate actively in the international campaign against traffic in drugs. This paper explores ICAO's response to the international call for action.

The first chapter presents ICAO within the context of the international system of drug control and provides background information on the drug control activity performed by the international community during the present century.

The second chapter reviews in detail ICAO's role and activity, which have touched three main subject areas: air transport aspects, technical aspects and legal aspects of the prevention and suppression of drug abuse and illicit traffic in international civil aviation.

The conclusions contain the author's personal assessment of the issues reviewed and make reference to the future challenges of the international community in the subject.

A B S T R A I T

Le contrôle des narcotiques a des importantes connotations dans le domaine de l'aviation civile. D'abord, la consommation de substances par le personnel aérien peut avoir des effets désastreux étant donné le niveau d'attention requis dans la performance de leurs tâches. D'autre part, une portion significative du trafic de narcotiques utilise les moyens aériens. En conséquence, l'Organisation d'aviation civile internationale a été appelé à participer activement dans la campagne internationale contre le trafic de drogues. Cette thèse explore la réponse de l'OACI à cet appel.

Le premier chapitre présente l'OACI dans le contexte du système international de contrôle des drogues et donne information générale de l'activité réalisée par la communauté internationale durant le XXème. siècle.

Le deuxième chapitre étudie en détail la participation de l'OACI, qui a touché trois sujets principaux: des aspects de transport aérien, des aspects techniques et des aspects légaux de la prévention et suppression de l'abus de drogues et du trafic illicite dans l'aviation civile internationale.

Les conclusions donnent la réflexion personnelle de l'auteur sur les sujets traités et font référence aux défis futurs de la communauté internationale.

A B S T R A C T O

El control de narcóticos tiene importantes connotaciones en el dominio de la aviación civil. En primer lugar, el consumo de sustancias por parte del personal aéreo puede tener efectos desastrosos dado el alto nivel de atención requerido en el desarrollo de sus tareas. En segundo lugar, una porción significativa del tráfico de estupefacientes utiliza los medios aéreos. En consecuencia, la Organización de Aviación Civil Internacional a sido llamada a participar activamente en la campaña internacional contra el tráfico de drogas. Esta tesis explora la respuesta de la OACI a tal llamado.

El primer capítulo presenta a la OACI en el contexto del sistema internacional de control de narcóticos y suministra información general de la actividad realizada por la comunidad internacional durante el siglo XX.

El segundo capítulo estudia en detalle la participación de la OACI, que ha tocado tres áreas principales: los aspectos de transporte aéreo, los aspectos técnicos y los aspectos legales de la prevención y de la supresión del abuso y del tráfico ilícito de drogas en el dominio de la aviación civil internacional.

Las conclusiones ofrecen la reflexión personal del autor sobre los asuntos tratados y hacen referencia a los futuros desafíos de la comunidad internacional en este tema.

To

S. D. B.

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I N T R O D U C T I O N

During the present century, the international community has committed itself towards the establishment of an international system of drug control as a response to the growing threat caused by the spread of drug abuse. Over the decades, States have recognized the importance of international co-operation in dealing with this problem and have concluded numerous international instruments directed at the criminalization of illicit production, trade and use of narcotic drugs.

Since the establishment of the United Nations, this organization assumed all international drug control functions and responsibilities, and structured the international system with the involvement of all its relevant organs, bodies, programmes and specialized agencies.

Drug control has important connotations in the field of civil aviation. In the first place, substance consumption by aviation personnel (i.e., flight personnel, air traffic controllers, maintenance personnel, security personnel, etc.) may have disastrous effects given the level of alertness required in the performance of their duties. Secondly, a significant portion of the illicit traffic in drugs is performed by air. Hence, the International Civil Aviation Organization - ICAO, in its capacity as a specialized agency of the United Nations, was called upon to participate actively in the international campaign against traffic in drugs.

This paper is descriptive in nature and explores the response of ICAO to the United Nations' call for action. We will review the subject in two chapters. The first has the purpose of presenting ICAO within the context of the international system of drug control. In doing so, we will provide background information on the drug control activity performed by the international community during the present century and will present the different international instruments that have been concluded on the subject. We will also review the action of the United Nations through its General Assembly, which has defined the participation of the specialized agencies, and will make reference to the parallel work that has been performed by the relevant bodies within the United Nations' system. This chapter will also contain background information on ICAO, its structure, relationship with the United Nations, and will make reference to the provisions relevant to drug control, contained in the Convention on International Civil Aviation (Chicago Convention).

Our second chapter will review in detail ICAO's role and activity. This organization has been studying for several years, the way in which it can contribute to the creation of a drug free environment in international civil aviation. These efforts have required a substantial amount of work, which has been performed by different organs within the Organization's structure. Our intention is to make an overall review of such work.

ICAO's relevant activities have touched three main subject areas: air transport aspects, technical aspects and legal aspects of the prevention and suppression of drug abuse and illicit traffic in international civil aviation. Given the wide range of documents that have been produced in relation to these subjects, to allow a follow up of the entire activity, we have been careful to include the appropriate references of the chronological process performed within the Organization's organs. We have also considered it pertinent to include, wherever possible, the texts of the material

contained in ICAO's documents, which have provided regulation and guidance on the subject.

Our conclusions will contain our personal assessment of the issues reviewed and will make reference to the future challenges of the international community in our subject matter.

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Chapter I. The International System of Drug Control.

A. The International Drug Control Efforts.

1. Early Work. The League of Nations' Conventions.

International efforts for drug control began early in the present century with the concern of the international community about the spread of opium addiction. In 1909, thirteen States met in Shanghai to develop international regulation in order to deal with this major narcotic problem. By then, about ten million Chinese had become opium addicts, and such vice was rapidly being spread to the United States and Western Europe.¹

In January of 1912, the International Opium Convention was signed at the Hague in an effort to arrest and control the global spread of opium addiction; State parties committed themselves to restrict the production, sale and use of specified manufactured drugs (medicinal opium, morphine, cocaine, etc.), to legitimate medical requirements and to regulate imports and exports of these drugs. With this instrument, the international community recognized, for the first time, the importance of concerted action against the abuse and traffic of drugs.²

¹See Bassiouni, M. Cherif. Critical Reflections on International and National Control of Drugs. (International Narcotics Trafficking Symposium). Denver Journal of International Law and Policy. Vol. 18:3, Spring 1990. Pg. 312. See Stewart, David. Internationalizing the War on Drugs: The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (International Narcotics Trafficking Symposium). Denver Journal of International Law and Policy. Vol. 18:3, Spring 1990. Pg. 388.

²See Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987. Chapter II, Historical Background of the Conference. A/CONF.133/12. Pg. 92.

Soon after, the measures adopted by the 1912 Convention were deemed insufficient, since it was considered that the drug problem should not be addressed only by attacking the sources of production of the raw and processed materials, but that a form of permanent international control should be established to restrict the commerce of narcotic drugs to the needs and purposes of medicine and science.³

The establishment of the League of Nations in 1919 enabled the development of such an initiative. Art. 23 (c) of the Covenant entrusted the League with the duty of exercising general supervision over the compliance to the agreements related to the traffic of opium and other harmful drugs.⁴ This task was undergone in several stages.

First, the Agreement Concerning the Suppression of the Manufacture of, Internal Trade in and Use of, Prepared Opium, was signed at Geneva in February 11, 1925, as a result of the First Opium Conference of the League of Nations.⁵ It improved the stipulations of the 1912 Convention ruling that the production and commerce of finished opium should be the monopoly of the producing State. Accordingly, the League directed its action towards the restriction of the production and consumption of such drugs, to the limits of their lawful use.⁶

With this purpose, the League had convened in Geneva a Second Opium Conference that resulted in the signing of the

³See Podesta Costa, L.A.; Ruda, José María. Derecho Internacional Público. Buenos Aires, 1985. Pg. 303.

⁴See *idem*.

⁵See Agreement Concerning the Suppression of the Manufacture of, Internal Trade in and Use of, Prepared Opium, Geneva, 11 Feb., 1925 (First Opium Conference of the League of Nations). 51 U.N.T.S. 337.

⁶See *supra* note 3.

International Opium Convention of February 19, 1925.⁷ This international instrument established a procedure for the international control of the exportation, importation and distribution of opium, cocaine, cocaine derivatives, and of the Indian hemp. The control was to be undertaken in the first hand by national authorities, which always to require export licenses, and by a Central Permanent Committee designated by the League of Nations, to which the consumer States were to report on a yearly basis with an estimate of the quantities expected to be consumed for medical and scientific purposes, and to which producing States were to send statistics of production, existence and consumption.⁸

International control was rendered even more severe on July 13, 1931, with the signature in Geneva, of the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs.⁹ The control was organized in such form as to limit the international production and distribution of narcotic drugs to the amount strictly required for their licit consumption. The Central Committee was requested to prepare a plan with an estimation of the national needs, to which each Government should adjust its production and consumption. In addition, for each year a national and international control of manufacture and distribution was agreed. The Central Permanent Committee examined every third month the scheme of importation and exportation, and could decide a universal embargo over drug exportation performed by a country that exceeded the approved

⁷See International Opium Convention, Geneva, 19 Feb., 1925 (Second Opium Conference of the League of Nations). 81 L.N.T.S. 317.

⁸See *supra* note 3.

⁹See Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, Geneva, 13 July, 1931. 139 L.N.T.S. 301.

quantities.¹⁰ The provisions of this Convention were further adjusted by a protocol signed in Bangkok in 1931.¹¹

In June 26, 1936, the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, was concluded in Geneva.¹² This instrument gave more precision to the obligations that were assumed by contracting States to develop national legislation aimed at the suppression of the illicit production, commerce and consumption of narcotic drugs.¹³

All these efforts finally began to bear fruit. By 1936, drug production had been reduced by 90%, which reveals the immense amounts that were previously produced for non-medicine or non-scientific purposes.¹⁴

2. The United Nations' Conventions.

By a Protocol signed at Lake Success, New York, in December 11, 1946,¹⁵ and according to Resolution 24 (I) of the General Assembly, the United Nations assumed the international drug control functions and responsibilities, that had been performed by the League of Nations.¹⁶

¹⁰See *supra* note 3.

¹¹See Agreement Concerning the Suppression of Opium-Smoking, Bangkok, 27 Nov., 1931. 177 U.N.T.S. 373.

¹²See Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, Geneva, 26 June, 1936. 198 L.N.T.S. 299.

¹³See *supra* note 3.

¹⁴See *idem*.

¹⁵See Protocol Amending the Agreements, Conventions and Protocols on Narcotic Drugs Concluded at the Hague on 23 Jan., 1912 at Geneva on 11 Feb., 1925 and 19 Feb., 1925, and 13 July, 1931, at Bangkok on 27 Nov., 1931, at Geneva on 26 June, 1936, Lake Success, New York, 11 Dec., 1946. 12 U.N.T.S. 179.

¹⁶See *supra* note 3.

Under its auspices, several instruments were concluded for the development of the international control system: the Protocol amending the 1931 Convention;¹⁷ the Protocol Bringing under International Control Drugs Outside the Scope of the Convention of 1931;¹⁸ and the Protocol Limiting the Manufacture and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium.¹⁹

These conventions, as their predecessors, aimed at the supervision and regulation of the production, control and shipment of narcotic drugs for licit (i.e., medical and scientific) purposes.²⁰ Nevertheless, they had created a very complex and overlapping system of regulation and control, which called for an important intervention of the United Nations to simplify and unify the narcotics' regulation.²¹

As a result, the Single Convention on Narcotic Drugs (Narcotics Convention) was concluded at New York, in March 30, 1961.²² This Convention has been noted as the most universally accepted international agreement in the field of drug control.²³ It consolidated the previous instruments into a simpler regime, by merging the most important substantive provisions of earlier treaties and by establishing a single

¹⁷See Protocol amending the 1931 Convention, Paris, 30 March 1948. T.I.A.S. No. 1895.

¹⁸See Protocol Bringing under International Control Drugs Outside the Scope of the Convention of July 13, 1931, Paris, 19 Nov., 1948. 44 U.N.T.S. 277.

¹⁹See Protocol Limiting the Manufacture and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, New York, 23 June, 1953. 456 U.N.T.S. 3.

²⁰See *supra* note 1. Stewart, David.

²¹See *ibid.* Pg. 389.

²²See Single Convention on Narcotic Drugs (Narcotics Convention), New York, Mar. 30, 1961. 520 U.N.T.S. 204.

²³See *supra* note 1. Bassiouni, Cherif. Pg. 313.

control body in the form of the International Narcotics Control Board.²⁴

A decade later, with the intention of strengthening the provisions related to the prevention on, the illicit production of, traffic in, and use of narcotics of the Single Convention, and to render it more effective, a Protocol Amending the Convention was signed at Geneva in March 25, 1972. This was the result of the United Nations Conference held in March 6-25, 1972, to Consider Amendments to the Single Convention on Drugs of 1961.²⁵

In addition, in February 21, 1971, the Convention on Psychotropic Substances (Psychotropic Convention), was signed in Vienna, as a result of the United Nations Conference for the Adoption of a Protocol on Psychotropic Substances, held between January 11 and February 21, 1971.²⁶ It responded to the need for specific controls over chemical and pharmaceutical drugs that were hallucinogens, stimulants and sedatives.²⁷

These last two conventions, which for some should have been logically integrated into a single instrument,²⁸ regulate the legal production and distribution of controlled substances for medical and scientific purposes and makes all other production illegal. They are primarily regulatory in nature and do not provide a basis for comprehensive national action aimed at curtailing and punishing distribution and use.²⁹

²⁴See *supra* note 1. Stewart, David. Pg. 389.

²⁵See Protocol Amending the Single Convention, Geneva, Mar. 25, 1972. 976 U.N.T.S. 3.

²⁶See Convention on Psychotropic Substances (Psychotropic Convention), Vienna, Feb. 21, 1971. 1019 U.N.T.S. 175.

²⁷See *supra* note 1. Bassiouni, Cherif. Pg. 314.

²⁸See *idem*.

²⁹See *supra* note 1. Stewart, David. Pg. 390.

On the basis of the provisions contained in the above mentioned conventions, the United Nations was called to exercise international control by three major means: in the first place, through information sent every year by national governments, in respect to the fulfillment of their conventional obligations; furthermore, through the national information sent regarding the seizure of illicit drugs; moreover, through the provisions in force in each country that regulate the subject, and which should abide to the international obligations assumed by the State.³⁰

Accordingly, these conventions establish an international narcotic control system that is structured as a licit system of cultivation and production and only those activities that exceed the licit quota system become illicit; and as an indirect control system, by which States undertake certain international obligations arising out of international conventions, and assume the compromise to translate them to their national legal systems.³¹ This has generated criticism when observed that the international system, which should presumably operate at the top of the pyramid, ultimately winds up distributing the legal enforcement to the States, as none of the international organs that have been established have any effective enforcement powers.³²

Finally, it should also be noted that the major United Nations international maritime conventions have also prohibited traffic in drugs.³³

³⁰See *supra* note 3. Pg. 304.

³¹See *supra* note 1. Bassiouni, Cherif. Pg. 317.

³²See *idem*. We will review later the activity of the organs that have been established to participate in the international drug control system.

³³See Convention on the Territorial Sea and Contiguous Zone, Geneva, April 29, 1958 (United Nations Conference on the Law

3. United Nations General Assembly Resolutions.

Over the decade of the 1970's, drug traffic grew and the techniques used became more sophisticated. This made evident the need for new and more stringent international measures, and called for a dedicated attention by the United Nations to focus its efforts in the formulation and adoption of a long range approach to the drug problem at the international level.³⁴

Under the recommendation of the Economic and Social Council, the United Nations General Assembly adopted several resolutions that reflected the concern of the national governments over the deteriorating effects of drug abuse and illicit trafficking, and which defined the participation of the specialized agencies in the international drug control system.³⁵

- Resolution 34/177 (December 17, 1979).

With the adoption of this Resolution, the General Assembly requested

...the organs of the United Nations and the specialized agencies with programmes having an impact on narcotics, as a mean of expediting a concerted international effort substantially to reduce illicit drug activities, to report

of the Sea, February 24 - April 27, 1958). 516 U.N.T.S. 205. See Convention on the Law of the Sea, Montego Bay, Dec. 10, 1982 (Third United Nations Conference on the Law of the Sea). U.N. Doc. A/CONF. 62/122.

³⁴See supra note 1. Stewart, David. Pg. 390.

³⁵As several of these resolutions make specific reference to the role that must be performed by the specialized agencies, we will study their relevant texts; the legal character of the specialized agencies will be discussed later, when studying the relationship between the United Nations and International Civil Aviation Organization.

annually to the General Assembly on their activities and proposed projects in this field...³⁶

The implementation of this Resolution was entrusted in January 1980 to the Commission on Narcotic Drugs by the Organizational Committee of the Administrative Committee on Organization. In addition, the Committee requested the Director of the Division of Narcotic Drugs to pursue consultations with the organizations concerned to co-ordinate related international drug control matters within the United Nations system.³⁷

- Resolution 35/195 (December 15, 1980).

By adopting this Resolution, the United Nations General Assembly noted the

...growing threat caused by the spread of drug abuse, its serious impact on human health, its adverse effect on social development (social disintegration, increasing criminality), economic advancement and national security in a number of countries...³⁸

- Resolution 36/168 (December 16, 1981).

With this Resolution, the General Assembly, considering that the "scourge" of drug abuse continued to spread and had reached epidemic proportions in many parts of the world, adopted the International Drug Abuse Control Strategy and a

³⁶International co-operation in drug abuse control. UN GAOR, A/RES/34/177. December 17, 1979. Para. 8.

³⁷See The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air, Air Navigation Commission Task No. SEC-8602. ICAO Doc. AN-WP/5918. April 5, 1986. Para. 7. Pg. 4. As a result of this task, the Division convened several interagency meetings at the United Nations office at Vienna or at the headquarters of specialized agencies.

³⁸International Co-operation in Drug Abuse Control. UN GAOR, A/RES/35/195. December 15, 1980.

basic five year programme of action recommended by the Commission on Narcotic Drugs.³⁹ In paragraph 3, it requested

...the Commission on Narcotic Drugs, within available resources, to establish a task force, in consultation with the Directors-General of the appropriate specialized agencies and other United Nations drug-related bodies, composed of representatives of these agencies and bodies and representatives of Member States most interested in and affected by the licit production of drugs, to review, monitor and co-ordinate the implementation of the International Drug Abuse Strategy and the programme of action and to submit a report to the Commission at each session on the progress made in implementing the Strategy and programme of action and to provide any recommendations it deems necessary regarding future revision of such Strategy and Programme of action...⁴⁰

and further urged

...all Member States and non-member States parties to the international drug control treaties, specialized agencies and other international organizations and private institutions concerned with the drug abuse problem to participate in and support activities related to international drug abuse control strategy and policies...⁴¹

- Resolution 38/93 (December 16, 1983).

Recalling previous resolutions, the UN General Assembly urged

... the specialized agencies and other organizations and programmes of the United Nations system to identify special drug control activities in their respective fields and to

³⁹See International Drug Abuse Control Strategy. UN GAOR, A/RES/36/168. December 16, 1981. Para. 1. The basic five year programme of action was dealt with in the Commission on Narcotic Drugs Resolution 1 (XXIX) which the Economic and Social Council, in its decision 1981/113 of 6 May 1981, decided to transmit to the General Assembly. For the Programme see Official Records of the Economic and Social Council, 1981 Supplement No. 4. (E/1981/24), annex II.

⁴⁰Idem. Para. 3.

⁴¹Idem. Para. 5.

accord higher priority to such activities in their programme budgets...⁴²

It also requested

... the Secretary General to report to the Assembly at its fortieth session, through the Commission on Narcotic Drugs and the Economic and Social Council, on the drug control activities carried out by the specialized agencies and other organizations and programmes concerned...⁴³

At its thirty-ninth session the United Nations General Assembly adopted three important resolutions related to the international drug control:

- Resolution 39/141 (December 14, 1984).

With this Resolution, the General Assembly requested

... the Economic and Social Council..., to request the Commission on Narcotic Drugs to initiate at its thirty-first session, to be held in February 1985, as a matter of priority, the preparation of a draft convention against illicit traffic in narcotic drugs which considers the various aspects of the problem as a whole and, in particular, those not envisaged in existing international instruments...⁴⁴

- Resolution 39/142 (December 14, 1984).

With this Resolution, the General Assembly adopted the Declaration on Control of Drug Trafficking and Drug Abuse, by which it declared that:

⁴²Measures to improve co-ordination and co-operation in the international struggle against illegal production of drugs, illicit drug traffic and drug abuse. UN GAOR, A/RES/38/93. December 16, 1983. Para. 7.

⁴³*Idem.* Para. 8.

⁴⁴Draft Convention against Traffic in Narcotic Drugs and Psychotropic Substances and Related Activities. UN GAOR, A/RES/39/141. December 14, 1984. This Resolution contained a draft Convention prepared by the UN Secretary General annexed as a working paper for the Economic and Social Council.

1. Drug trafficking and drug abuse are extremely serious problems which, owing to their magnitude, scope and widespread pernicious effects have become an international criminal activity demanding urgent attention and maximum priority.

2. The illegal production of, illicit demand for, abuse of and illicit trafficking in drugs impede economic and social progress, constitute a grave threat to the security and development of many countries and peoples and should be combated by all moral, legal and institutional means, at the national, regional and international levels.

3. The eradication of trafficking in narcotic drugs is the collective responsibility of all States, especially those affected by problems relating to illicit production, trafficking or abuse.

4. States Members shall utilize the legal instruments against the illicit production of and demand for, abuse of and illicit traffic in drugs and adopt additional measures to counter new manifestations of this shameful and heinous crime.

5. States Members undertake to intensify efforts and to co-ordinate strategies at the control and eradication of the complex problem of drug trafficking and drug abuse through programmes including economic, social and cultural alternatives.⁴⁵

- Resolution 39/143 (December 14, 1984).

With the adoption of this Resolution, the General Assembly reiterated

...that urgent attention and highest priority should be given to the struggle against the illicit production, demand for, use of and traffic in drugs...(as well as)...the importance of integrated action, co-ordinated at the regional and international levels...⁴⁶

It further requested

...the Economic and Social Council, through the Commission on Narcotic Drugs, to consider the legal, institutional and

⁴⁵Declaration on the Control of Drug Trafficking and Drug Abuse. UN GAOR, A/RES/39/142. December 14, 1984.

⁴⁶International Campaign against Traffic in drugs. UN GAOR, A/RES/39/143. December 14, 1984. Para. 2 and 4.

social elements relevant to all aspects of combating drug trafficking, including the possibility of convening a specialized conference...⁴⁷

- Resolution 40/121 (December 13, 1985).

This Resolution reaffirmed

...that maximum priority must be given to the fight against the illicit production of, demand for and traffic in drugs and related international criminal activities, such as the illegal arm's trade and terrorist practices, which also have an adverse effect not only on the well being of peoples but also on the stability of institutions, as well as posing a threat to the sovereignty of States...⁴⁸

4. International Conference on Drug Abuse and Illicit Trafficking .

In response to growing, world-wide concern about the illicit traffic in and abuse of narcotic drugs and psychotropic substances, the Secretary General of the United Nations, on a personal and unprecedented initiative proposed in May 1985 to the Economic and Social Council that a world conference at the ministerial level should be held in 1987.⁴⁹

The General Assembly, by Resolution 40/122 (December 13, 1985), endorsed the Secretary General's proposal and decided

...to convene, in 1987, an International Conference on Drug Abuse and Illicit Trafficking at the ministerial level at the Vienna International Centre as an expression of the political will of nations to combat the drug menace, with the mandate to generate universal action to combat the drug problem in all its forms at the national, regional and international levels and to adopt a comprehensive multidisciplinary outline of

⁴⁷Idem. Para. 9.

⁴⁸International Campaign against Traffic in Drugs. UN GAOR, A/RES/40/121. December 13, 1985. Para. 2.

⁴⁹See *supra* note 2. Pg. 94

future activities relevant to the problems of drug abuse and illicit trafficking...⁵⁰

The General Assembly determined that the 40-member Commission on Narcotic Drugs should act as the preparatory body for the Conference and through consultation with States and international organizations, drafted the instruments that were further adopted.⁵¹

The Conference was held in Vienna, between June 17 and 26, 1987. It was attended by representatives of 138 States, all the UN Programmes and specialized agencies, 20 inter-governmental organizations and about 200 non-governmental organizations. The International Civil Aviation Organization - ICAO participated as one of the specialized agencies in the UN system.⁵²

- Declaration of the International Conference on drug abuse and illicit trafficking.

As a result of its deliberations, the Conference adopted the "Declaration of the International Conference on drug abuse and illicit trafficking", which is an expression of the political will of the States participating at the Conference and of the strong international commitment to vigorous

⁵⁰International Conference on Drug Abuse and Illicit Trafficking. UN GAOR, A/RES/40/122. December 13, 1985. Para. 4.

⁵¹See Backgrounder No. 1. United Nations International Conference on Drug Abuse and Illicit Trafficking (Vienna, Austria, 17-26 June 1987). July, 1986. Pg. 3.

⁵²The representative of ICAO made a statement about the work undergone by the Organization and about its future participation in the drug control efforts. See International Conference on Drug Abuse and Illicit Trafficking. ICAO Council President's Memorandum E/2/2.7. May 28, 1987.

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international actions against drug abuse and illicit trafficking as an important goal of their policies.⁵³

In brief, the participating States expressed their determination to pursue the goals set by them at various levels of government and to adopt urgent measures to strengthen international co-operation; they emphasized the need to adopt measures to treat all aspects and causes of the problem; affirmed the importance of a wider adherence to the international instruments dealing with the subject of drug control and called for an urgent but careful preparation of a draft convention to complement the existing instruments; recognized the important role of the whole United Nations system, the efforts of Governments at the national, regional and international levels. They also recognized the efforts of non-governmental organizations; welcomed the compilation of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control; agreed to promote inter-regional and international co-operation; and affirmed their determination to continue their efforts in the field and requested the UN Secretary General to keep under constant review the activities referred to in the Declaration and in the Comprehensive Multidisciplinary Outline.⁵⁴

- The Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control.

The Conference also adopted the text of the "Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control (CMO)." The CMO is a repertory of recommendations addressed to Governments and to organizations setting forth practical measures that can contribute to the

⁵³See Milde, Michael. The Role of ICAO in the Suppression of Drug Abuse and Illicit Trafficking. Annals of Air and Space Law. Vol. XIII, 1988. Pg. 136.

⁵⁴See supra note 2. Pg. 90.

fight against drug abuse and to the suppression of illicit trafficking. It was not designed to be a formal legal instrument; consequently, it does not create either rights or obligations of an international character. It was drafted as a handbook to be used by governments and by interested organizations; as a source of ideas to be selected and translated into the action appropriate to local circumstances and in the manner that such authorities or organizations consider fit.⁵⁵

The CMO has a structure that comprises four chapters that cover the main elements involved in the fight against drug abuse and illicit trafficking: the prevention and reduction of illicit demand, the control of the supply, action against illicit trafficking, and treatment and rehabilitation. Each of these chapters contains specific targets and particularizes the objectives to be attained and the action to be taken at the national level (by Governments, professional associations, academic institutions), at the regional level (by regional intergovernmental and non-governmental organizations and bodies), and at the international level (by international organizations, especially those of the United Nations).⁵⁶

This catalogue of proposed actions, which is not exhaustive and does not follow a particular order of priority,⁵⁷ was outlined as follows:⁵⁸

*I. Prevention and Reduction of the Illicit Demand for
Narcotic Drugs and Psychotropic Substances.*

Target 1. Assessment of the extent of drug misuse and abuse.

⁵⁵ See *ibid.* Pg. 7.

⁵⁶ See *ibid.* Pg. 9.

⁵⁷ See *idem.*

⁵⁸ See *ibid.* Pg. 3. We will discuss later the role of ICAO in the implementation of the CMO.

- Target 2. Organization of comprehensive systems for the collection and evaluation of data.
- Target 3. Prevention through education.
- Target 4. Prevention of drug abuse in the workplace.
- Target 5. Prevention programmes by civic, community and special interest groups and law enforcement agencies.
- Target 6. Leisure-time activities in the service of the continuing campaign against drug abuse.
- Target 7. Role of the media.

II. Control of Supply.

- Target 8. Strengthening of the international system of control of narcotic drugs and psychotropic substances.
- Target 9. Rational use of pharmaceuticals containing narcotic drugs or psychotropic substances.
- Target 10. Strengthening the control of international movements of psychotropic substances.
- Target 11. Action related to the increase in the number of controlled psychotropic substances.
- Target 12. Control of the commercial movement of precursors, specific chemicals and equipment.
- Target 13. Control of analogues of substances under international control.
- Target 14. Identification of illicit narcotic plant cultivation.
- Target 15. Elimination of illicit plantings.
- Target 16. Redevelopment of areas formerly under illicit drug crop cultivation.

III. Suppression of Illicit Trafficking.

- Target 17. Disruption of major trafficking networks.
- Target 18. Promoting use of the technique of controlled delivery.
- Target 19. Facilitation of extradition.
- Target 20. Mutual judicial and legal assistance.
- Target 21. Admissibility in evidence of samples of bulk seizures of drugs.
- Target 22. Adequacy with a view to improved efficacy of penal provisions.
- Target 23. Forfeiture of the instruments and proceeds of illicit drug trafficking.
- Target 24. Tightening of controls of movement through official points of entry.
- Target 25. Strengthening of external border controls and of mutual assistance machinery within economic unions of sovereign States.
- Target 26. Surveillance of land, water and air approaches to the frontier.
- Target 27. Controls over the use of the international mails for drug trafficking.

Target 28. Controls over ships on the high seas and aircraft in international airspace.

IV. Treatment and Rehabilitation.

Target 29. Towards a policy of treatment.

Target 30. Inventory of available modalities and techniques of treatment and rehabilitation.

Target 31. Selection of appropriate treatment programmes.

Target 32. Training for personnel working with drug addicts.

Target 33. Reduction of the incidence of diseases and the number of infections transmitted through drug-using habits.

Target 34. Care for drug-addicted offenders within the criminal justice and prison system.

Target 35. Social reintegration of persons who have undergone programmes for treatment and rehabilitation.

5. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

The necessary work for the further adoption of this Convention was initiated, as mentioned, by UN General Assembly Resolution 39/141 of December 14, 1984, which recommended to the UN Economic and Social Council that it request to the Commission on Narcotic Drugs, the preparation of a draft convention that would complement the international instruments in force, namely: the Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971.⁵⁹

Work on a draft text prepared by the UN Secretary General, began at the thirty-first session of the Commission, in February 1985, with the adoption of a resolution that contained fourteen fundamental points to be included in the instrument. In June 1986, a first draft was circulated for governmental comment and during the summer and fall of 1987, a revision was considered in detail by an open-ended inter-governmental expert group, meeting within the Commission's

⁵⁹See *supra* note 44.

framework. This expert group was not able to complete a thorough revision of all the proposed articles in the time available; therefore, the General Assembly gave further instructions regarding the preparation of the draft Convention and by Resolution 42/111 of December 7, 1987, requested the Secretary General

...to consider the possibility of convening the Intergovernmental Expert Group for a period of three weeks immediately prior to the tenth special session of the Commission on Narcotic Drugs in order to continue the revision of the working paper on the draft convention...and if possible, to reach agreement on the convention...⁶⁰

The preparatory work further progressed at the tenth special session of the Commission on Narcotic Drugs, held in Vienna between February 8 and 19, 1988. Accordingly, the Economic and Social Council, by Resolution 1988/8 of 25 May 1988, decided to convene a conference of plenipotentiaries for the adoption of a Convention against illicit traffic in narcotic drugs and psychotropic substances.⁶¹

This Conference met at the Neue Hofburg at Vienna from November 25 to December 20, 1988; it was attended by representatives on 106 States, and on invitation of the Secretary General of the United Nations, by representatives from five specialized agencies, several national liberation movements, intergovernmental organizations, interested United

⁶⁰Preparation of a draft convention against illicit traffic in narcotic drugs and psychotropic substances. UN GAOR, A/RES/42/111. December 7, 1987. Para. 4. See *supra* note 1. Stewart, David. Pg. 390.

⁶¹For details see Final Act of the United Nations Conference for the Adoption of a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. U.N. Doc. E/CONF. 82/14. December 19, 1988. Pg. 2.

Nations organs, related bodies and non-governmental organizations.⁶²

On December 19, 1988, it adopted by consensus and further opened for signature the Convention Against Illicit Traffic in Narcotic Drugs. This Convention is subject to ratification, acceptance, approval or act of formal confirmation. It remains open for accession at the United Nations in New York, where the Secretary General is its depository.⁶³

The Convention establishes a new international legal regime and constitutes one of the most detailed and far reaching instruments ever adopted in the field of international criminal law.⁶⁴ It starts by expressing the deep concern of the States Parties

...by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society, ...⁶⁵

and further explicitly recognizing

...that illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority, ...⁶⁶

The 1988 Convention lists a number of activities related to drug trafficking and requires that

⁶²For the complete list of participants see *ibid.* Pg. 3. ICAO's observer made statement that was noted by the Conference without objection.

⁶³See *supra* note 61. Pgs. 2, 6.

⁶⁴See *supra* note 1. Stewart, David.

⁶⁵United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. UN Doc. E/CONF. 82/15 & Corr. 1. December 19, 1988. Pg. 1. Preamble.

⁶⁶*Idem.*

...Each Party shall adopt such measures as may be necessary to establish (them) as criminal offenses under its domestic law, when committed intentionally...⁶⁷

and further obliges the States parties to co-operate in taking broad measures to suppress illicit trafficking across national boundaries and, within their own jurisdictions, to enact and enforce specific domestic laws aimed at suppressing the drug trade.⁶⁸

We will review the rules relevant to international civil aviation when discussing ICAO's participation in its drafting.

Finally, we must state that the Conference also adopted three resolutions, which were annexed to its final act:

1. Exchange of information.

2. Provisional application of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

3. Provision of necessary resources to the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board to enable them to discharge the tasks entrusted to them under the International Drug Control Treaties.⁶⁹

6. Political Declaration and Global Programme of Action .

From February 20 to 23, 1990, the General Assembly of the United Nations held a special session attended by officials at high political level to consider the question of international co-operation against illicit production, supply, demand, trafficking and distribution of narcotic

⁶⁷Ibid. Art. 3. Pg. 5.

⁶⁸See *supra* note 1. Stewart, David.

⁶⁹See *supra* note 61. Pg. 6 and Annexes.

drugs in order to expand the scope and increase the effectiveness of such co-operation. In this session, the General Assembly adopted a Political Declaration and Global Programme of Action.⁷⁰

Both the Political Declaration and the Programme made reference to the work performed by the specialized agencies of the United Nations and consequently are of relevance to our study.

- Political Declaration.

The Political Declaration commended the work undertaken by the organizations of the United Nations system in the field,⁷¹ and further called

...upon the United Nations, the specialized agencies and other organizations of the United Nations system to give higher priority in their programmes of work, in accordance with existing procedures, to international measures to combat illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances.⁷²

It further proclaimed the period of time from 1991 to 2000 the United Nations' Decade against Drug Abuse.⁷³

⁷⁰See Political Declaration and Global Programme of Action adopted by the General Assembly at its seventeenth special session, devoted to the question of international co-operation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances. United Nations Doc. A/RES/S-17/2. March 15, 1990. As referred in Progress Report on the Implementation of Assembly Resolutions A27-12 and A27-13 and Information of the Special Session of the UN General Assembly - February 1990. ICAO Doc. C-WP/9098. May 16, 1990. and Appendix 1.

⁷¹See *supra* note 69. United Nations Doc. A/RES/S-17/2. Para. 21; ICAO Doc. C-WP/9098. Para. 5.

⁷²See *supra* note 69. United Nations Doc. A/RES/S-17/2. Para. 23; ICAO Doc. C-WP/9098. Para. 5.

⁷³See *supra* note 69. United Nations Doc. A/RES/S-17/2. Para. 29; ICAO Doc. C-WP/9098. Para. 5.

- *Global Programme of Action.*

With the adoption of the Global Programme of Action, the General Assembly intended to achieve the goal of an international society free of illicit drugs and drug abuse. In addition, it decided to accord a higher priority to the allocation of the necessary financial, personnel and other resources, within the United Nations system.⁷⁴

This Global Programme of Action determined that the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control (CMO), should be used as the basis for developing and translating into action balanced strategies aimed at combating all aspects of drug abuse and illicit trafficking,⁷⁵ and further stated that

...Specialized agencies such as the International Civil Aviation Organization and the International Maritime Organization, in collaboration with member States and intergovernmental and non-governmental organizations, shall be invited to expand the development of programmes whereby such organizations and member States work with the transportation industry to suppress illicit trafficking in narcotic drugs and psychotropic substances.⁷⁶

7. Further activity.

We should note in conclusion Resolution 44/141 (December 15, 1989),⁷⁷ by which the United Nations General Assembly, alarmed by the increase in drug abuse and illicit trafficking resolved that combative action should be accorded the highest possible priority and agreed to strengthen the capability of

⁷⁴See *supra* note 69. ICAO Doc. C-WP/9098. Para. 7.

⁷⁵See *ibid.* Para. 5.

⁷⁶See *supra* note 69. United Nations Doc. A/RES/S-17/2. Para. 58; ICAO Doc. C-WP/9098. Para. 6.

⁷⁷See Global programme of action against illicit narcotic drugs. UNGA RES 44/142. December 15, 1989. Clause 3, d).

the United Nations to achieve a more efficient and coordinated co-operation in that campaign.⁷⁸

B. United Nations Drug Control Bodies.

Several of the United Nations organs, programmes and specialized agencies perform drug control activities within the framework of their activity.⁷⁹

1. United Nations Organs.

- *United Nations Commission on Narcotic Drugs.*

The United Nations Commission on Narcotic Drugs (CND), was established in 1946 by the Economic and Social Council (ECOSOC) as the policy-making body of the United Nations system with respect to all drug related matters. Its membership consists of forty experts elected by the Economic and Social Council. It holds annual sessions that are also attended by various observer governments, by United Nations specialized agencies and by non-governmental organizations. The CND reviews the overall drug control situation, makes recommendations to strengthen drug control activities, including proposals for new conventions and international instruments, monitors the application of international conventions and agreements, and takes decisions on the recommendation of the World Health Organization (WHO) with

⁷⁸See Resolutions of the 44th Session of the United Nations General Assembly . ICAO Doc. C-WP/9077. April 25, 1990.

⁷⁹For the purpose of the present study, we shall review briefly the participation of these UN bodies in the international control system. It must be noted, however, that a multiple and interdisciplinary activity also aimed at the suppression of drug abuse and illicit traffic is performed by numerous intergovernmental and non-governmental organizations, which usually have attended as observers to the different Conferences that have been held.

regard to the substances that should be placed under international control.⁸⁰

- The International Narcotics Control Board.

The International Narcotics Control Board (INCB) was established by the 1961 Single Convention on Narcotic Drugs and consists of thirteen members elected from State Parties. Its mandate is to monitor the cultivation, production, manufacture, trade and use of drugs, and to identify the amounts required for medical and scientific purposes; at the same time, it ensures the availability of the substances for these legitimate purposes. In order to accomplish its task, the Board administers a strict quota system and an estimates' system applicable to all narcotics under international control. The INCB works closely with the Commission on Narcotic Drugs and cooperates with other bodies, such as the World Health Organization and the United Nations Fund for Drug Abuse Control. Nevertheless, the cooperative undertakings are purely dependent upon its will, since it was created by treaty and operates with total and complete independence from the CND.⁸¹

- United Nations Division of Narcotic Drugs.

The United Nations Division of Narcotic Drugs derives its mandate from various international drug control conventions and from the General Assembly, the ECOSOC and the Commission on Narcotic Drugs. Essentially, it serves as the

⁸⁰See Backgrounder No. 2. United Nations International Conference on Drug Abuse and Illicit Trafficking (Vienna, Austria, 17-26 June 1987). August, 1986. Pg. 2. See *supra* note 1. Bassiouni, Cherif. Pg. 317.

⁸¹See *supra* note 64. Pg. 3. See *supra* note 1. Bassiouni, Cherif. Pg. 318.

administrative body and executive arm of the Commission on Narcotic Drugs.⁸²

...It provides advice and assistance to Governments and UN specialized agencies on the application of the international drug control treaty system, and provides them with information and advice on supply and demand reduction; gives professional and technical advice to the UN Fund for Drug Abuse Control in matters relating to narcotic drugs and carries out projects for the Fund; contributes to the improvement of drug law enforcement through strengthening of national and/or regional narcotics laboratories and by organizing regional training seminars and workshops for drug law enforcement officials; analyzes and publishes data on illicit drug traffic, seizures, countermeasures and trends; and serves as the secretariat to the Commission on Narcotic Drugs.⁸³

- The United Nations Fund for Drug Abuse Control.

The United Nations Fund for Drug Abuse Control (UNFDAC) was created in 1971 by the UN Secretary General as a multilateral body to provide the assistance necessary to counteract the drug problem. Its projects include integrated rural development/crop substitution, treatment and rehabilitation of drug addicts, preventive education and information, law enforcement assistance and training and research. The Fund is financed entirely by voluntary contributions.⁸⁴

- Other organs.

In addition, several other organs within the United Nations system contribute to the development of the international system of drug control, namely: the Crime Prevention and Criminal Justice Branch of the United Nations, which deals with crime related aspects of drugs; the Center for Human Rights, the Commission on Human Rights and the

⁸²See supra note 1. Bassiouni, Cherif. Pg. 317.

⁸³See supra note 64. Pg. 3.

⁸⁴See ibid. Pg. 4.

Subcommittee on the Prevention of Discrimination and Protection of Minorities, which deal with the human rights related aspects of drug use, abuse and illicit traffic.⁸⁵

2. United Nations Programmes.

- *The United Nations Development Programme.*

The United Nations Development Programme (UNDP), pursues the incorporation of drug abuse control programmes within the framework of overall development, and acts as the main executing agent for the UNFDAC-financed projects, which are carried out mainly in Asia and the Pacific, and in Latin America and the Caribbean.⁸⁶

- *The United Nations Children's Fund.*

The United Nations Children's Fund (UNICEF) is primarily concerned with drug abuse in its relation with the 100,000 million abandoned and "street children" that exist around the world, who are often drug abusers and/or drug sellers. The work of UNICEF is aimed at the improvement of life conditions within the community, the strengthening of the family and the provision of services to children in need.⁸⁷

- *World Food Programme.*

The World Food Programme (WFP) directs its work in the area of drug control to provide support for integrated rural development programmes aimed at crop substitution, by making

⁸⁵See *supra* note 1. Bassiouni, Cherif. Pg. 318.

⁸⁶See Backgrounder No. 3. United Nations International Conference on Drug Abuse and Illicit Trafficking (Vienna, Austria, 17-26 June 1987). October, 1986. Pg. 2.

⁸⁷See *idem*.

available supplementary food rations to local farmers, financing labor cost or supporting law enforcement measures.⁸⁸

3. Specialized agencies.⁸⁹

The United Nations specialized agencies carry out drug control activities related to their specific fields of competence. They have often worked jointly or in co-operation with other UN bodies, and have intensified their efforts in order to deal with the growing hazards of drug abuse and illicit trafficking.⁹⁰

- *International Labor Organization.*

The International Labour Organization (ILO) carries activities related directly to the question of employment and the well-being of workers by focusing its attention to drug related problems in the workplace and on the areas of vocational rehabilitation and social reintegration of drug-dependent persons.⁹¹

- *World Health Organization.*

The World Health Organization (WHO) conducts its activities in relation to drug dependence and carries out the responsibilities that have been assigned to it by international drug control conventions. It plays a major role by determining which substances should be placed under

⁸⁸See *idem*.

⁸⁹As stated earlier, the definition and legal character of the specialized agencies will be discussed later, when studying the relationship between the United Nations and International Civil Aviation Organization.

⁹⁰See *supra* note 80. Backgrounder No. 2. Pg. 2.

⁹¹See *idem*.

international control, in accordance to the provisions of the Single Convention on Narcotic Drugs of 1971.⁹²

- *United Nations Educational, Scientific and Cultural Organization.*

The United Nations Educational, Scientific and Cultural Organization (UNESCO), is in charge of the prevention of drug abuse through public education and awareness, as this has been regarded as the most effective measure for averting serious consequences of drug abuse among young people and adults.⁹³

- *International Maritime Organization.*

Together with the Customs Co-operation Council (CCC) and the International Chamber of Shipping, the International Maritime Organization (IMO) works to develop guidelines for the suppression of illicit traffic of drugs on the seas.⁹⁴

- *Universal Postal Union.*

The Universal Postal Union (UPU), in conjunction with the Customs Co-operation Council has performed studies aimed at the establishment of international measures for the suppression of illicit transport of narcotic drugs by mail, as it has been noted that this activity has increased considerably in the recent years.⁹⁵

⁹²See *idem.*

⁹³See *ibid.* Pg. 3.

⁹⁴See *idem.*

⁹⁵See *idem.*

- *Food and Agriculture Organization.*

The major concern of the Food and Agriculture Organization (FAO) in the area of drug control is crop substitution, carried out within a framework of integrated rural development. FAO has promoted projects in a number of countries and has been involved lately in the study of the potential use of remote sensing satellite technology for the detection of illicit crops.⁹⁶

- *United Nations Industrial and Development Organization.*

The United Nations Industrial and Development Organization (UNIDO) carries out projects aimed at the enhancement of the technological capabilities of developing countries in the synthetic conversion of narcotic substances into established pharmaceutical chemicals and medicines, and in the development of crops that are industrially usable and that bear a potential for crop substitution.⁹⁷

- *International Civil Aviation Organization.*

The participation of the International Civil Aviation (ICAO) in the international drug control system is our major concern in the present study. The subject of drug control has been of the interest of this Organization due to two major facts: in the first place, a considerable proportion on illicit drugs travels internationally by air; secondly, substance abuse by civil aviation personnel may have disastrous consequences. For these two reasons, ICAO has performed an important and extensive work that will be reviewed in the course of this study.

⁹⁶See *idem.*

⁹⁷See *ibid.* Pg. 4.

C. The International Civil Aviation Organization.⁹⁸

On December 7, 1944, the Convention on International Civil Aviation was signed at Chicago, with the purpose of establishing

...certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically...⁹⁹

As a result of this Convention, the International Civil Aviation Organization - ICAO, was created with the main purpose of developing

...the principles and techniques of international civil aviation and to foster the planning and development of international air transport...¹⁰⁰

so as to fulfill the objectives listed in Article 44 of the Convention.¹⁰¹

⁹⁸For general background on the Organization see Matte, Nicolas M. Treatise on Air-Aeronautical Law. Montreal, 1981. Pgs. 187-201.

⁹⁹See Convention on International Civil Aviation. (Chicago Convention). 6th ed. ICAO Doc. 7300/6. 1980. Preamble.

¹⁰⁰See *ibid.* Art. 44.

¹⁰¹(a) Insure the safe and orderly growth of international civil aviation throughout the world; (b) Encourage the arts of aircraft design and operation for peaceful purposes; (c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation; (d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport; (e) Prevent economic waste caused by unreasonable competition; (f) Insure that the rights of contracting States are fully respected and that every contracting State has fair opportunity to operate international airlines; (g) Avoid discrimination between contracting States; (h) Promote safety of flight in international air navigation; (i) Promote generally the development of all aspects of international aeronautics. See *idem.*

This Organization, by the invitation of the Government of Canada, presently has its permanent seat in the city of Montreal.¹⁰²

1. Structure .

According to the Convention, the International Civil Aviation Organization is formed by an Assembly, a Council, and other bodies as they may be considered necessary.¹⁰³

- *The Assembly.*

The Assembly is the sovereign and supreme body and meets at least once every third year. It may hold extraordinary meetings upon the call of the Council or upon the request of not less than one-fifth of the total number of contracting States. In its sessions, the overall work of the Organization is reviewed in detail and guidance for future work is given to the other bodies.¹⁰⁴

- *The Council.*

The Council is a permanent executive body, responsible to the Assembly, and carries out administrative, legislative, quasi-legislative and judicial functions.¹⁰⁵ It is composed presently by 33 Contracting States elected by the Assembly observing a criterion of adequate participation contained in the Convention.¹⁰⁶ One of its major duties is to adopt International Standards and Recommended Practices and to

¹⁰²See *ibid.* Art. 45.

¹⁰³See *ibid.* Art. 43.

¹⁰⁴See *ibid.* Art. 43, 48, 49.

¹⁰⁵See *ibid.* Arts. 54, 55, 84-88.

¹⁰⁶See *ibid.* Art. 50 (b).

incorporate these as Annexes to the Convention on International Civil Aviation.¹⁰⁷

- *The Air Navigation Commission.*¹⁰⁸

The Chicago Convention also provides for the creation of the Air Navigation Commission, which is composed of fifteen members appointed by the Council from among the representatives nominated by the contracting States.¹⁰⁹ This is a body of experts whose main duty is to consider and recommend to the Council for adoption, modifications of the Annexes to the Convention.¹¹⁰

The Air Navigation Commission has played a major role in the study of the Organization's technical provisions aimed at the prevention and suppression of drug abuse and illicit traffic in the field of international civil aviation.

- *The Air Transport Committee.*

The Air Transport Committee was created to advise the Council on economic matters; its membership is open to any Council Member State. Its activity has concentrated mainly in the preparation of standards and procedures concerning Annex 9 to the Chicago Convention and with the general development of the facilitation programme of the Organization. This Committee has had also an important input in the development of the drug control efforts that have been carried out by the Organization.¹¹¹

¹⁰⁷See *ibid.* Art. 54 (1).

¹⁰⁸For details see *supra* note 98. Pg. 196.

¹⁰⁹See *supra* note 99. Art. 56.

¹¹⁰See *ibid.* Art. 57.

¹¹¹See *supra* note 98. Pg. 196.

- *The Legal Committee.*

The Legal Committee was created in the First Session of the Assembly, to study and prepare draft international air law conventions, to provide to the Council or to the Assembly any legal advice on subjects of particular importance for the Organization, to provide advice in the interpretation of, and amendments to the Chicago Convention, and to collaborate with any other international organizations pursuing the unification and codification of international law.¹¹²

The Legal Committee's efforts in our subject matter, have mainly aimed at the co-operation with the United Nations in the preparation of the draft of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

- *Other committees.*

The Organization has, within its structure, four other committees, namely: the Personnel Committee, the Committee on Joint Support of Air Navigation Services, the Finance Committee and the Committee on Unlawful Interference that carry out specialized work in the areas of their competence and which have not been involved, as for the moment, in the activities performed by the Organization in the field of drug control.

- *The Secretariat.*

Besides the above mentioned representative bodies, the Organization has a Secretariat, which in turn has five main divisions: the Air Navigation Bureau, the Air Transport Bureau, the Technical Assistance Bureau, the Legal Bureau and

¹¹²See *ibid.* Pg. 198.

the Bureau of Administration and Services. The Secretariat's work in the field of drug control has been very important as it has provided all the technical and administrative support that has been required by the contracting States and by the other bodies of the Organization.

2. Relationship with the United Nations.

The International Civil Aviation Organization falls into the category described in Article 57 of the Charter of the United Nations which provides that

1. The various specialized agencies, established by intergovernmental agreement and having international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.¹¹³

The Charter further provides in Article 63:

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

On the other hand, the Convention on International Civil Aviation provides in its Article 64 that:

The Organization may, with respect to air matters within its competence directly affecting world security, by vote of the Assembly enter into appropriate arrangements with any general organization set up by the nations of the world to preserve peace.¹¹⁴

¹¹³Charter of the United Nations and Statute of the International Court of Justice. United Nations Doc. DPI/511-40108 (3-90) 100M, New York.

¹¹⁴*Supra* note 99. Art. 64.

It further states in Article 65 that:

The Council, on behalf of the Organization, may enter into agreements with other international bodies for the maintenance of common services and for common arrangements concerning personnel and, with the approval of the Assembly, may enter into such arrangements as they may facilitate the work of the Organization.¹¹⁵

On June 21, 1946, the Economic and Social Council directed its Committee on Negotiations with Specialized Agencies to enter into negotiations with the Provisional International Civil Aviation Organization for the purpose of bringing it to relationship with the United Nations.¹¹⁶ As a result of such negotiations, an Agreement was signed, which came into force on May 13, 1947.

This agreement provides in Article V:

1. The International Civil Aviation Organization... agrees to arrange for the submission, as soon as possible, to its appropriate organ of all formal recommendations which the United Nations may make to it.
2. The International Civil Aviation Organization agrees to enter in consultation with the United Nations upon request, with respect to such recommendations, and in due course to report to the United Nations on the action taken by the Organization or by its members to give effect to such recommendations, or on the other results of their consideration.
3. The International Civil Aviation Organization affirms its intention of co-operating in whatever measures may be necessary to make co-ordination of the activities of specialized agencies and those of the United Nations fully effective...¹¹⁷

¹¹⁵*Ibid.* Art. 65.

¹¹⁶See Agreement between the United Nations and the International Civil Aviation Organization. ICAO Doc. 7970. Pg. 2.

¹¹⁷*Ibid.* Art. V. Pg. 8.

D. The Chicago Convention and Drug-related issues.

The Chicago Convention contains several provisions referring to elements of international air law that are relevant for our study:¹¹⁸

- Article 5 - Right of non-scheduled flight.

Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right...to make flights into or in transit non-stop across its territory and to make stops for non traffic purposes without the necessity of obtaining prior permission, and subject to right of the State flown to require landing.¹¹⁹

This is an important provision that establishes the right of the State to require the landing of non-scheduled flight, in the development of its drug enforcement activities.

- Article 10 - Landing at customs airport.

Except in a case where, under the terms of (the) Convention or a special authorization, aircraft are permitted to cross the territory of a contracting State without landing, every aircraft which enters the territory of a contracting State shall, if the regulations of that State so require, land at an airport designated by that State for the purpose of customs and other examination. On departure from the territory of a contracting State, such aircraft shall depart from a similarly designated customs airport...¹²⁰

With the compliance of this disposition, the control of illicit drug traffic can be greatly facilitated.¹²¹

¹¹⁸As referred in The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. C-WP/8099. October 21, 1985. Pg. 2.

¹¹⁹See *supra* note 99. Art. 5.

¹²⁰See *ibid*. Art. 10.

¹²¹See *supra* note 118.

- *Article 13 - Entry and clearance regulations.*

The laws and regulations of a contracting State as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that State.¹²²

Consequently, the movement of any specific cargo is subject to the legal regulations and effective control of the States whose territories are involved.¹²³

- *Article 16 - Search of Aircraft.*

...The appropriate authorities of each of the contracting States shall have the right, without unreasonable delay, to search aircraft of the other contracting States on landing or departure, and to inspect the certificates and other documents prescribed in (the) Convention.¹²⁴

This disposition refers to international air transport, and is complemented by the fact that any State has an obvious right to search aircraft of their own registry.¹²⁵

- *Article 22 - Facilitation of formalities.*

Each contracting State agrees to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territories of contracting States, and to prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance.¹²⁶

¹²²See *supra* note 99. Art. 13.

¹²³See *supra* note 118.

¹²⁴See *supra* note 99. Art. 16.

¹²⁵See *supra* note 118.

¹²⁶See *supra* note 99. Art. 22. This provision is further specified in Annex 9 of the Chicago Convention, and in its conjunction will be further studied. See Facilitation - Annex 9 to the Convention on International Civil Aviation. 9th. ed. Montreal, ICAO, July 1990.

- Article 23 - Customs and immigration procedures.

Each contracting State undertakes, so far as it may find practicable, to establish customs and immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended from time to time, pursuant to (the) Convention. Nothing in (the) Convention shall be construed as preventing the establishment of customs-free airports.¹²⁷

This disposition is reflected in the procedures contained in Annex 9 to the Convention,¹²⁸ mainly in order to ensure that the procedures used are efficient and do not interfere with the speedy clearance of aircraft and their loads. However, the task of enacting the major provisions in this field is performed by the different States through their immigration and customs legislation.¹²⁹

- Article 35 (b) - Cargo restrictions.

...Each contracting State reserves the right, for reasons of public order and safety, to regulate or prohibit the carriage in or above its territory of articles other than those enumerated in paragraph (a):¹³⁰ provided that no distinction is made in this respect between its national aircraft engaged in international navigation and the aircraft of the other States so engaged; and provided further that no restriction shall be imposed which may interfere with the carriage and use on aircraft of apparatus necessary for the operation or navigation of the aircraft or the safety of the personnel or passengers.¹³¹

¹²⁷See *supra* note 99. Art. 23.

¹²⁸See *supra* note 126.

¹²⁹See *supra* note 118. Customs legislation is co-ordinated at the international level by the Customs Co-operation Council, which is an inter-governmental organization that has been concerned with the suppression of drugs' traffic within its general competence to deal with customs matters.

¹³⁰Munitions of war or implements of war that are banned from international air transport and whose carriage requires express permission by the concerned State. See *supra* note 99. Art. 35 (a).

¹³¹See *ibid.* Art. 35 (b).

Consequently, within the legislative powers of the contracting States, they may adopt national legislation establishing unconditional interdiction on the carriage of narcotic drugs and narcotic substances into or over their territory, and to establish the corresponding measures to ensure the enforcement of such legislation.¹³²

- Article 37 (j) - Adoption of international standards and procedures.

Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

To this end, the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with ... (j) Customs and immigration procedures...¹³³

Therefore, within the quasi-legislative functions of the Council of the Organization, it may deal with customs, and thus, with the import and export activity of specific articles.¹³⁴

¹³²See *supra* note 118.

¹³³See *supra* note 99. Art. 37 (j). This article contains a non-exhaustive list of matters related to the safety, regularity and efficiency of air navigation, which the international standards, recommended practices and procedures may deal with. It has been the basis for the adoption of 18 Annexes to the Convention on International Civil Aviation, some of which will be reviewed in the course of our study in their relation to our subject matter.

¹³⁴See *supra* note 118.

Chapter II. ICAO'S Role in the Prevention and Suppression of Drug Abuse and Illicit Traffic in International Civil Aviation.

A. ICAO's preliminary action.

In the 115th Session of the Council, its President and the Secretary General of the Organization presented the Resolutions that had been adopted in the 39th Session of the United Nations General Assembly, which contained clauses addressed to the Specialized Agencies of the United Nations system and which were consequently of interest to ICAO.¹³⁵ In particular, Resolution 39/143, made reference to the international campaign against traffic in drugs and called upon specialized agencies and all relevant bodies of the United Nations system to participate actively in the implementation of such resolution.¹³⁶

It was then informed to the Council members that ICAO was following relevant work to combat illicit drug traffic as part of its duties in the aviation security and facilitation fields, and that the Organization had participated in several international meetings on the subject.¹³⁷ It was also pointed out that in the Air Transport Committee, States had expressed the need for a policy decision and had questioned ICAO's mandate and participation in the campaign against drug trafficking, as it appeared that a high volume of the international movement of drugs was taking place by air.¹³⁸

¹³⁵Resolutions of the 39th Session of the United Nations General Assembly. ICAO Doc. C-WP/8004. May 8, 1985. See *supra* notes 44, 45, 46.

¹³⁶See *supra* note 46.

¹³⁷See *supra* note 118. Introduction.

¹³⁸See *idem*.

In December of 1984, the Secretary General of the United Nations addressed a letter to the Executive Heads of the specialized agencies requesting their co-operation in the efforts directed to control the abuse and illicit trafficking of narcotic drugs. ICAO's co-operation in this field was necessary as the Commission on Narcotic Drugs had expressed its belief that a very large percentage of illicit narcotic drugs and psychotropic substances was carried by air.¹³⁹

The Council held an informal meeting on June 11, 1985, where a preliminary consideration was given to the constitutional mandate of ICAO in the field of suppression of illicit transport of narcotic drugs and psychotropic substances by air. It was then recognized that according to ICAO's agreement with the United Nations,¹⁴⁰ the Organization derived the responsibility to undertake a study on the subject.¹⁴¹

During its 116th Session, the Council considered a report of the Secretary General on the possible role of ICAO. After reviewing the relevant provisions of the Convention on International Civil Aviation,¹⁴² the Secretary General noted in relation to the facilitation issue, that ICAO's co-operation in the drug traffic control could be done by the inclusion of text in Annex 9, in order to:

1) Provide that any special inspection procedures in the control of narcotics traffic be accomplished speedily, with efficient equipment, without inconvenience to passengers and in such way as to ensure the timely clearance of aircraft and their loads on arrival and departure.

2) Point out that most seizures of narcotics and related substances in illicit traffic result from police and drug enforcement intelligence rather than from routine inspection

¹³⁹See *idem*.

¹⁴⁰See *supra* note 116.

¹⁴¹See *supra* note 118. Para. 3 a).

¹⁴²See *ibid*. Para. 3 b). Studied in our first chapter.

and consequently that sampling rather than exhaustive methods of inspection are to be preferred.¹⁴³

Additionally, the report mentioned that the Aviation Security Programme had a bearing on or could be affected by any ICAO's activities related to the campaign against illicit trafficking,¹⁴⁴ and informed about the work undertaken by other organizations of the UN System such as the Joint Inspection Unit and by other International Organizations such as the ICPO-INTERPOL and the Customs Co-operation Council.¹⁴⁵ It further discussed ICAO's participation in the preparation of a draft Convention against the Illicit Traffic in Narcotic Drugs.

Accordingly, the Council adopted the following action, which had been proposed by the Secretary General, and which set the preliminary tasks that had to be undertaken by the Air Navigation Commission and by the Air Transport Committee:¹⁴⁶

a) Co-operate with the United Nations Division of Narcotic Drugs and other international organizations through consultation and attendance at meetings;

b) Monitor the preparation of the draft convention against the illicit traffic in narcotic drugs and psychotropic substances in order to ensure inter alia that international civil aviation interests are not penalized by objective liability or responsibility unless there is a specific criminal involvement of the carrier or his staff;

c) Formulate and adopt as required technical specifications related to civil flight operations;

d) Develop as required guidance materials;

e) Ensure that facilitation measures and measures directed against the illicit traffic in drugs do not have an

¹⁴³Ibid. Para. 3 c), d).

¹⁴⁴See *ibid.* Para. 3 e).

¹⁴⁵See *ibid.* Para. 4, 5.

¹⁴⁶See *ibid.* Para. 28 c), d).

unnecessarily negative impact which would hamper progress in implementation of the two programmes.¹⁴⁷

1. Air Transport aspects .

- *Third Air Transport Conference.*

ICAO's early action reflected the growing concern of the international community towards the impact over air transport of the illicit drug trafficking. In the Third Air Transport Conference, which was celebrated in Montreal between October 22 and November 7, 1985, a particular subject was brought to the attention of the Conference by several Latin-American States:

...a few States when they discover illegal trafficking in (drugs) take action directly against the carrier, whom they hold responsible for this traffic solely by virtue of the fact that the articles were carried in one of his aircraft; in some cases this action goes as far as the imposition of fines and the physical seizure, embargo, detention or confiscation of the aircraft, until such time as the carrier's innocence is demonstrated.¹⁴⁸

Accordingly, they felt that

...the seizure or detention of public transport aircraft without any prima facie demonstration that the carriage of controlled drugs took place with the consent or complicity of the carrier contravenes the 1929 Warsaw Convention, and the general principles of transport law.¹⁴⁹

¹⁴⁷*Ibid.* Para. 9 as revised by the Council. See ICAO Doc. C-Min. 116/18. December 2, 1985. Para 27.

¹⁴⁸Detention of Public Transport Aircraft Due to Carriage of Drugs and Prohibited Goods. ICAO Doc. AT Conf/3-WP/20. September 23, 1985. Presented by Colombia, Costa Rica, Chile, Cuba, Dominican Republic, Peru, Uruguay and Venezuela.

¹⁴⁹*Idem.* It was stated that under the Warsaw Convention, the responsibility for the character of the cargo carried is nowhere vested in the carrier, who in this regard is referred to the declaration by the shipper. Furthermore, it was argued that since the Warsaw Convention's rules were used in developing the domestic regulation in many States, that this

In this regard, the Conference adopted a recommendation that states:

THE CONFERENCE STRONGLY SUPPORTS the Council in its study of the prevention and suppression of illicit drug trafficking by air, assuming a role which is consistent with its responsibilities under the Chicago Convention and ICAO's responsibilities as a member/of the UN family, noting also the need for air carriers to try to prevent by all reasonable measures the use of their aircraft for smuggling of drugs as well as the need to protect air carriers against detention or seizure of their aircraft when there is no evidence or presumption of negligence or guilt in this respect.¹⁵⁰

- Air Transport Committee's work and Council action.

When reviewing the organization's role at its 116th Session,¹⁵¹ the Council had requested the Air Transport Committee to report to the 117th Session on the need for guidance material in the suppression of illicit transport of narcotic drugs, bearing in mind the considerations expressed in the preliminary report of the Secretary General, and taking into account Recommendation 9 of the Third Air Transport Conference.¹⁵²

In the 10th meeting of its 117th Session the Council began its review of the need for guidance material in the facilitation field, related to ICAO's contribution in the international co-operative efforts to suppress narcotics trafficking.¹⁵³ Later during its 117th and in the 118th Sessions,¹⁵⁴ it considered a report on the subject presented

provisions should be regarded as principles of international law.

¹⁵⁰Report of the Third Air Transport Conference. ICAO Doc. 9470. October 22 - November 7, 1985. Recommendation 9.

¹⁵¹See *supra* note 146. ICAO Doc. C-Min. 116/18.

¹⁵²See *supra* note 118. Para. 9 e) and *supra* note 150.

¹⁵³See ICAO Doc. C-Min. 117/10. March 5, 1986.

¹⁵⁴See ICAO Doc. C-Min. 117/23. March 27, 1986; See ICAO Doc. C-Min. 118/5. May 30, 1986.

by the Air Transport Committee.¹⁵⁵ This report was based on a paper prepared by the Committee's Secretariat,¹⁵⁶ which contained a preliminary study of the conflict between the measures for controlling the illicit traffic of drugs by air and the provisions of Annex 9, regarding ICAO's facilitation programme, essentially aimed at the rapid and efficient clearance of aircraft and their loads and at the simplification, standardization and improvement of all formalities and paperwork required in effecting border control.¹⁵⁷

The report first reviewed the methods used to control, deter and suppress narcotics trafficking and their effect on facilitation. Regarding this subject, the Air Transport Committee noted that:

...State authorities concerned with the suppression of narcotics trafficking in general recognize the impracticability of effecting exhaustive searches and controls of all movements of passengers and cargo. Their strategy is based on random checks of passengers, baggage and cargo, as a deterrent, associated with thorough examinations and searches directed at specific targets on the basis of intelligence reports and the observation of anomalies.¹⁵⁸

The Committee also noted that this approach had been considered the most cost-effective, with the very large majority of seizures invariably resulting from intelligence reports rather than from routine inspections, and cited a recommendation formulated by the Customs Co-operation Council (CCC) that stated that

... the proper balance between the needs of customs enforcement and the facilitation of legitimate trade and

¹⁵⁵See Facilitation Aspects of Narcotic Control. ICAO Doc. C-WP/8216. March 17, 1986.

¹⁵⁶See Facilitation Aspects of Narcotic Control. ICAO Doc. AT-WP/1481. March 4, 1986; and Corrigendum No. 1. March 11, 1986.

¹⁵⁷See *idem*. Para. 2.

¹⁵⁸See *ibid*. Para. 7. Reworded in ICAO Doc. C-WP/8216. Para. 3. See *supra* note 155.

travel can best be achieved if customs enforcement is selective and intelligence based and (it) is therefore essential that every effort be made to develop and exploit the best possible intelligence.¹⁵⁹

The Air Transport Committee further indicated that the practice of effecting random and exceptional checks rarely gave rise to facilitation problems and that this procedure is recommended throughout several provisions of Annex 9 dealing with passengers,¹⁶⁰ cargo,¹⁶¹ and transit traffic.¹⁶² The report also pointed out, that other pertinent provisions of Annex 9 deal with the use of effective search and screening equipment for passengers and their baggage,¹⁶³ and further indicated that several of the provisions of this were supported by the Customs Co-ordination Council (CCC) Kyoto Convention,¹⁶⁴ and that this organism had provided for the development of procedures following its concern for facilitation requirements.¹⁶⁵

Additionally, the report indicated that a question arose regarding whether the actions of Customs and other authorities concerned with the suppression of narcotics trafficking could interfere with facilitation requirements when such actions were based on intelligence rather than on routine sample inspections.¹⁶⁶ In dealing with this concern, the Air Transport Committee studied separately the actions carried over passengers and over cargo.

¹⁵⁹See *supra* note 156. Para. 7.

¹⁶⁰See *supra* note 126. Annex 9. Para. 3.17, 3.17.1, 3.19, 3.30, 6.27.

¹⁶¹See *ibid.* Para. 4.12, 4.13, 4.22, 4.28, 4.46.

¹⁶²See *ibid.* Para. 5.1, 5.5., 5.8.

¹⁶³See *ibid.* Para. 6.15, 6.16.

¹⁶⁴See International Convention on the Simplification and Harmonization of Customs Procedures, Kyoto, 1973.*

¹⁶⁵See *supra* note 156. Para. 9.

¹⁶⁶See *ibid.* Para. 10.

It was reviewed that the methods practiced over passengers involve the maintenance of lists of names of persons closely or remotely connected with narcotics trafficking as well as the determination and recognition of personality profiles, origins, destinations, itineraries, routes and carriers often used by smugglers, places of concealment and methods of smuggling;¹⁶⁷ accordingly, drug enforcement authorities need to match the names of travellers with lists of suspected persons, activity that can lead in some cases to demands for passenger manifests, which have already been eliminated as a requirement for aircraft clearance.¹⁶⁸ It was pointed out that such passenger manifests have certain limitations (only family names are shown, which can result in a number of unrelated people with the same family name travelling in the same aircraft) and inaccuracies (spelling, last minute changes - and last minute boarding often practiced by smugglers, and the fact that suspect passengers seldom travel with their real names). These arguments were said to counter the requirement of the passenger manifest, according to the recognition of the Customs Co-operation Council in one of its Recommended Practices,¹⁶⁹ which states that

...regardless of the mode of transport used, list of travellers or a list of their accompanying baggage should not be required for Customs purposes.¹⁷⁰

Accordingly, the Air Transport Committee stated that with the examination of E/D Cards and passports, and wherever possible, by the use of machine readable passports, the

¹⁶⁷See *idem*.

¹⁶⁸See *supra* note 126. Annex 9. Standards 2.6, 2.6.1, 2.3 and 2.4.2. See *supra* note 156. Para. 11.

¹⁶⁹See *supra* note 156. Para. 11.

¹⁷⁰Customs Co-operation Council Recommended Practice 13 of Annex F.3 to the Kyoto Convention. *Idem*.

requirements of drug enforcement authorities for passenger lists would be more satisfactorily met.¹⁷¹

The methods applied to cargo,

involve the cataloguing of suspect shippers and consignees, the identification of controlled or prohibited substances, the detection of unusual or improbable trade relationships (such as the shipment of chemical substances by industrial equipment or parts manufacturers); and the detection of evidence of tampering with aircraft or shipments.¹⁷²

These methods could lead to demands for cargo manifests, baggage lists, store lists and detailed mail lists, the use of which had been discouraged or eliminated by Annex 9.¹⁷³ The Air Transport Committee stated that the requirements of the corresponding authorities would be more satisfactorily met by the examination of commercial invoices, export declarations and air waybills.¹⁷⁴

In conclusion, the Air Transport Committee noted that

...as regards detection practices based on intelligence, efforts would have to be directed at avoiding the use of documentation that was discouraged in Annex 9 when the information required could be provided by other acceptable sources.¹⁷⁵

The study undergone by the Air Transport Committee also addressed other subjects such as the difficulty presented with the diversion of listed drugs, precursors and essential chemicals from international commerce,¹⁷⁶ and with the control

¹⁷¹See *supra* note 156. Para. 11.

¹⁷²*Ibid.* Para. 12.

¹⁷³See *supra* note 126. Annex 9. Para. 2.7, 2.8, 2.8.1, 2.9, 2.10 and 2.11. See *supra* note 156. Para. 13.

¹⁷⁴See *supra* note 156. Para. 13. The question of mail is addressed in Annex F.4 to the Kyoto Convention.

¹⁷⁵See *supra* note 155. Para. 3.

¹⁷⁶Most of these substances have industrial applications for legitimate trade but can be also used for the clandestine

of "designer drugs".¹⁷⁷ It was stated that these preoccupations had increased the pressure on the corresponding authorities to require advance documentation giving detailed information on the particulars in all shipments,¹⁷⁸ which did not pose a major problem with surface transportation, such as shipping, where documents arrived far ahead of the consignments, but which in air transport required the use of electronic data processing.¹⁷⁹

The Committee also addressed the subject of circumstances of high volume operations, where the amount of suspected smuggling was such that random or sampling checking could not be relied upon and exhaustive inspections were required.¹⁸⁰ The Committee indicated that the only effective methods for the systematic inspection of high volume passenger and cargo operations (apart from the use of trained dogs), required the use of modern and sophisticated techniques some of which were very expensive.¹⁸¹

The report further referred to Recommendation 9 of the Third Air Transport Conference. When studying this subject, the Air Transport Committee noted that the action taken by the Council in its 116th Session,¹⁸² referred to the concerns expressed in the Recommendation, where it stated that the Council's role should be consistent with its responsibilities under the Chicago Convention and ICAO's responsibilities as a member of the United Nations family.¹⁸³

manufacture of narcotic drugs. They usually have complex names meaningless to Customs officials and are difficult to identify. See *supra* note 156. Para. 14.

¹⁷⁷See *ibid.* Paragraph 15.

¹⁷⁸See *ibid.* Para. 16.

¹⁷⁹See *ibid.* Para. 17.

¹⁸⁰See *ibid.* Para. 21.

¹⁸¹See *ibid.* Para. 21, 22.

¹⁸²See *supra* note 146. ICAO Doc. C-Min. 116/18.

¹⁸³See *supra* note 156. Para. 24.

The Committee considered that the last two parts of the Recommendation, which deal with air carriers, had already been addressed for action. First, the need for air carriers to try to prevent by all reasonable measures the use of their aircraft for smuggling of drugs, was an objective of the Industry Guidelines on the Prevention on Narcotic Smuggling, which IATA proposed to the Customs Co-operation Council (CCC) as a model protocol of agreement between member Customs administrations and airlines.¹⁸⁴ In the second hand, the need to protect air carriers against detention or seizure of their aircraft when there was no evidence or presumption of negligence or guilt in this respect, had already been addressed for action by the Council by stating that the preparation of the new draft convention against illicit traffic in narcotic drugs and psychotropic substances was to be monitored in order to ensure, inter alia, that international civil aviation interests were not penalized by objective liability or responsibility unless there was specific criminal involvement of the carrier or his staff.¹⁸⁵

Accordingly, the Air Transport Committee concluded that no further action was required, other than the measures taken or recommended, and the monitoring of developments.¹⁸⁶

Following the Committee's recommendations with minor changes, the Council first noted that Annex 9 already contained certain relevant and compatible provisions. Second, it referred to the Tenth Session of the Facilitation Division, to be held in 1987, the question of developing additional material related to narcotics control that could be required, so that this matter could be taken into account

¹⁸⁴See *supra* note 156. Para. 25. See *supra* note 118. Para. 5 c).

¹⁸⁵See *supra* note 156. Para. 25. See *supra* note 118. Para. 7, 8, 9 (a) and 10 (b).

¹⁸⁶See *supra* note 155. Paragraph 4.

when Annex 9 would be reviewed.¹⁸⁷ Finally, the Council instructed the Secretary General to monitor developments by means of effective liaison with the United Nations, the Customs Co-operation Council, ICPO/INTERPOL, and other concerned organizations, with the view, inter alia, to presenting the session of the Facilitation Division with a review of the situation, including any necessary proposals.¹⁸⁸

2. Technical aspects .

When reviewing ICAO's role in the subject during its 116th session, the Council also had requested the Air Navigation Commission to study the need for technical specifications and/or guidance material related to civil flight operations and to report thereon to the Council.¹⁸⁹

In response to this task, the Air Navigation Bureau developed a detailed "backgrounder" which gathered all the relevant information that was available to the Secretariat.¹⁹⁰ Over the basis of this background information, the Air Navigation Commission reported to the Council in its eighteenth session.¹⁹¹

The following preliminary conclusions were drawn:

¹⁸⁷See *ibid.* Para. 6. The FAL 10 took place in 1988. See *supra* note 154. ICAO Doc. C-Min. 118/5.

¹⁸⁸See *supra* note 155. Para. 6. Rephrased in ICAO Doc. C-Min 118/5.

¹⁸⁹See *supra* note 146. ICAO Doc. C-Min. 116/18.

¹⁹⁰See The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air, Air Navigation Commission Task No. SEC-8602. ICAO Doc. AN-WP/5918. April 5, 1986. Attachment: Backgrounder - The Drug Problem - Narcotic Smuggling Via Commercial Aircraft.

¹⁹¹See The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. C-WP/8246. May 27, 1986. See *supra* note 154. C-Min. 118/5.

a) While a significant quantity of illicit narcotic drugs is being conveyed by commercial air carriers, through cargo, luggage, passengers or otherwise, the total percentage by volume is relatively small (except, perhaps, for general aviation) when compared to total seizures from other modes, particularly maritime.

b) The increase in narcotic drugs trafficking by commercial air carrier noted by the United Nations Division Narcotic Drugs (UNDND), the International Criminal Police (ICPO)-INTERPOL, El Paso Intelligence Centre (EPIC) (United States) reflects an increased number of seizures which, to a considerable degree, is associated with an environment (airports) better suited for customs and law enforcement intervention, and an ever-increasing knowledge of smuggler's modus operandi.

c) Different types of narcotic drugs suggest the likelihood of transport by certain modes of transportation. High volume usually involves sea or land transportation while high density is more likely via air in luggage, persons or mail.

d) Illicit narcotic drugs via commercial air carriers tend to be transported on certain routes, thus on specific carriers, from known source countries to markets. Interdiction efforts can therefore be deployed on a systematic basis covering specific routes and airports, and on a sampling basis elsewhere.

e) The customers of the commercial air carriers: passengers, luggage, cargo, are directly involved in 98 per cent of the seizures, both in terms of occurrences and amounts.

f) The percentage of cases whereby responsibility / liability through either commission or gross omission by the carrier, its servants and employees is a factor, is less than 2 per cent...¹⁹²

It was also reported that drugs are most often concealed in baggage (66.5 per cent), followed by concealment on the person (23 per cent), internal concealment in body cavities or ingestion (9 per cent) and "other", covering concealment in air frames and locations accessible only to the carriers' personnel (1.2 per cent).¹⁹³

¹⁹²Supra note 191. ICAO Doc. C-WP/8246. Para. 3.1.

¹⁹³See *ibid.* Para. 3.2.

Consequently, two problem areas were identified in relation to the technical work of the Air Navigation Commission; namely, the concealment within the airframe of the aircraft, and improper flight operation practices.¹⁹⁴

In the first hand, the concealment of illicit drugs in the airframe, necessarily involving the covert tampering and removal of panels and other components, as well as systematic searches performed by unqualified personnel, could affect air safety.¹⁹⁵ In this sense, the Air Navigation Commission noted that the existing ICAO documents had been developed mainly with the objectives of safety, regularity and efficiency of flight. It further recognized the importance of developing material to assist States in the suppression of illicit transport of narcotic drugs by air, and of encouraging States to apply the corresponding provisions, and agreed that there was an apparent need to develop guidance material regarding the implementation and more stringent adherence by States to the relevant provisions.¹⁹⁶

Consequently, in regard to the concealment of illicit drugs in the airframe, the Commission submitted its intention to consider technical aspects of possible actions in the air navigation field, such as the development of recommendations and guidance material.¹⁹⁷

In the other hand, the Commission stated that general aviation, which accounted for more than 80 per cent of the total estimated transport of illicit narcotic drugs by air, is the sector where air navigation is directly at risk, since smugglers frequently fly in an unsafe manner, along unpublished or unpredictable routes often too low, to evade

¹⁹⁴See *ibid.* Para. 4.1.

¹⁹⁵See *ibid.* Para. 4.2.

¹⁹⁶See *ibid.* Para. 5.

¹⁹⁷See *ibid.* Para. 6.1.

detection, steal airplanes or rent them under false pretenses, misrepresent or use bogus airman certificates, all these in violation of the rules of the air and other provisions of the Chicago Convention and its Annexes.¹⁹⁸

Referring to the problem of improper flight operation practices, the Commission submitted its intention to consider, in relation to Annexes 2, 11 and PANS-RAC, the development of guidelines regarding information on, and control or monitoring of flights, as well as co-ordination between air traffic services units and law enforcement agencies.¹⁹⁹ The Commission then stated that this could reflect the need to:

- a) ensure that Annex 2 provisions concerning the submission of flight plans are contained in national legislations, as well as provisions for the closing of flight plans and arrival reports;
- b) examine more critically the details in submitted flight plans and any deviations therefrom, in view of possible air-drop activity;
- c) re-examine the national provisions concerning air-ground communications and position reporting for VFR and IFR flight operations, with a view to strengthening and tightening the requirements;
- d) consider provisions for air traffic services co-ordination with law enforcement agencies and customs, to ensure that these non-aviation bodies will be informed of questionable or suspicious activities associated with flight operations;
- e) formulate technical air navigation related procedures for inclusion in "letters of agreement" covering the inter-related activities of agencies of government involved in the suppression of illicit transport of narcotic drugs;
- f) consider the feasibility of developing additional measures for particular areas where the illicit drug traffic reaches certain levels or a threat thereof is deemed imminent.²⁰⁰

¹⁹⁸See *ibid.* Para. 4.3.

¹⁹⁹See *ibid.* Para. 6.2.

²⁰⁰*Ibid.* Para. 6.2.

The Council then took the action suggested by the Commission's report, endorsed its preliminary views and requested it to have a closer look at the relevant documents and to present a progress report to the Council during the 119th or 120th Session, and requested the Secretary General to prepare a report on the actions and decisions taken to that date, in order to inform the Assembly in its 26th Session.²⁰¹

3. Legal aspects .

In the fourth meeting of the Council's 117th Session, when discussing a report of the Air Navigation Commission which contained a proposal for amendment of Annex 2 related to provisions on identification and interception of civil aircraft, and discussion papers on the subject,²⁰² concerns were raised over the problem of misuse of civil aviation . Responding to a formal proposal, the Council agreed to include it as an item of its work programme and requested the Secretary General to prepare a paper on the subject for its further consideration.²⁰³

At the second meeting of the Council's 118th Session, the Director of the Legal Bureau introduced a legal study that had been prepared at the request of the Council to the Secretary General, and that dealt with the subject of the "misuse" of civil aviation. Discussions over its content were also run in the ninth meeting of that session, where the corresponding action was taken.²⁰⁴

²⁰¹Supra note 154. ICAO Doc. C-Min. 118/5. Para. 12.

²⁰²See Adoption of Amendment 27 to Annex 2 - Rules of the Air. ICAO Doc. C-WP/8028. June 19, 1985; See ICAO Doc. C-Min. 117/4. February 7, 1986. Subject No. 14.1.1.

²⁰³See supra note 202. ICAO Doc. C-Min. 117/4.

²⁰⁴See ICAO Doc. C-Min. 118/9. June 9, 1986.

- *Scope of the Problem.*

The problem was raised by several delegations attending the 25th Session (Extraordinary) of the ICAO Assembly and further in the above mentioned meeting of the Council,²⁰⁵ where concern had been expressed over the need for procedures to prevent the use of civil aviation for unlawful purposes, in particular for drug trafficking.²⁰⁶

The Secretariat indicated in its paper that the problem to be addressed was essentially how to reconcile the protection of civil aircraft in situations of interception, with the protection of the law order of the States concerned and with the enforcement of such applicable law.²⁰⁷ It was informed that at a preliminary stage it appeared essential to analyze first all the legal aspects of the problem, and leave for a later stage the exploration of air transport and air navigation aspects, if considered necessary, and that the purpose of the study was to find whether the existing framework of the Convention on International Civil Aviation offered any solution to the problem of treatment of civil aircraft engaged in an activity violating the laws of States in the airspace of which the aircraft was flying.²⁰⁸

²⁰⁵See *supra* note 202. ICAO Doc. C-Min. 117/4.

²⁰⁶When discussing the particular reference that the study of the Secretariat made to drug trafficking it was understood that the scope of the problem referred to all forms of unlawful use of civil aviation. See *supra* note 204. Para. 9.

²⁰⁷"Misuse" of Civil Aviation . ICAO Doc. C-WP/8217. March 18, 1986. Para. 2.

²⁰⁸See *ibid.* Para. 2.1.

- Article 4 of the Convention of International Civil Aviation.²⁰⁹

The legal study stated that Article 4 of the Convention on International Civil Aviation is the only provision that explicitly uses the words "misuse of civil aviation", and that it appeared in the heading of the article and not in its substantive text. Additionally, it was indicated that the first paragraph of the Convention referred to "abuse" of international aviation without any attempt to defining the term.²¹⁰

The legal report further informed that Article 4 had never been the subject of nor involved in a decision or interpretation by the Assembly or by the Council. It was then submitted that this Article did not offer any solution to the problem of "misuse of civil aviation" within the scope of the study undergone by the Secretariat, and that it had no relevance to the problem outlined. Article 4 referred only to the obligations of States and to the acts on States, and according to its drafting history, its wording responded particularly to the interest of States to prevent the use of civil aviation for purposes which could create a threat to the security of other nations. Consequently it was suggested that the words "inconsistent with the aims of this Convention" essentially mean "threats to general security".²¹¹

²⁰⁹Article 4. *Misuse of Civil Aviation*. Each contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention. See *supra* note 99.

²¹⁰See *supra* note 207. Para. 3.

²¹¹See *ibid*. Para. 3.1, 3.2. In the light of the discussions on this subject, it was informed by the Director of the Legal Bureau that Article 3 bis filled the gap by creating an obligation on a State to make compliance with an order to land, mandatory to any civil aircraft registered in that State and made that any violation of applicable laws and regulations, punishable by severe penalties. This article further prohibited deliberate use of civil aircraft for any purpose inconsistent with the aims of the Convention, which could be

- *Other provisions of the Convention on International Civil Aviation.*

The study prepared by the Secretariat informed that the Convention on International Civil Aviation does not contain any provisions which would foresee the specific situation when an aircraft is used for or involved in criminal activities or other activities violating the law and public order of States. However, it was stated that numerous provisions in the Convention offer effective safeguards to States, that their applicable laws and public order are observed by foreign aircraft - with respect to aircraft of its own registry, the State concerned has unrestricted jurisdiction.²¹² It was informed that Articles 11 (Applicability of air Regulations), 12 (Rules of the Air) and 13 (Entry and Clearance Regulations) of the Convention in essence confirm the rule on general international law which states that foreign aircraft, its crew, passengers and cargo do not enjoy any "extraterritorial" status while in the airspace or on the ground of another State and that such aircraft are fully subject to the applicable laws of the State concerned.²¹³ Additionally, it was recalled that under the Convention, the State may require landing of a foreign aircraft involved in non-scheduled flight (Article 5), may prohibit or restrict foreign aircraft from flying over certain parts of its territory or over the whole territory (Article 9), may require landing of foreign aircraft at a designated customs airport (Article 10), may search the foreign aircraft (Article 16) and may regulate or prohibit

interpreted as meaning no violation of law and public order of a State. See ICAO Doc. C-Min. 118/2. May 15, 1986. Para. 10.

²¹²See *supra* note 207. Para. 4.

²¹³See *idem*.

the carriage of certain articles in or above its territory (Article 35 (b)).²¹⁴

Accordingly, the Secretariat submitted that all States possess full jurisdiction in the application of their respective laws to prevent or prohibit the use of civil aircraft for unlawful purposes, and that the real problem existed in the field of the practical enforcement in respect to aircraft, particularly aircraft in flight.²¹⁵

- Enforcement of legal obligations in general.

The Secretariat informed that practical enforcement involves legal procedure,²¹⁶ and that all aspects of such legal procedure are governed by lex fori (i.e., the domestic law of the court seized of the case).²¹⁷ The applicable legal procedure is determined by sovereign States and "the general principles of law recognized by civilized nations" (Article 38, 1 c) of the Statute of the International Court of Justice), which are elements of general international law.²¹⁸

²¹⁴Studied in our first chapter. See *idem*.

²¹⁵See *ibid.* Para. 4.1.

²¹⁶For criminal acts legal procedure would include arrest and taking custody of the suspected offender, collection and presentation of pertinent evidence, judicial evaluation of the evidence and evaluation of the points of defense, judicial conviction, sentencing and execution of the judgment. See *ibid.* Para. 5.

²¹⁷Lex fori would determine inter alia what degree of force (including the possible use of weapons) may be legally employed in the process of arrest of the suspected offender; as a rule, that level of force is to be proportionate and adequate to the level of danger created by the suspected offender and by the level of force used by the suspected offender in resisting arrest. See *idem*.

²¹⁸Including the general concept of human rights and specifically the protection of human life, presumption of innocence in criminal procedure, etc. The principles of modern general international law in this field reflect the requirement of "due process" in the procedure of enforcement of laws. See *ibid.* Para. 5.1.

- Article 3 bis .

In its legal study, the Secretariat recalled that by unanimous consensus on May 10, 1984, the 25th Session (Extraordinary) of the ICAO Assembly adopted the Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 3 bis], which addressed problems of interception of and other enforcement measures with respect to civil aircraft in flight.²¹⁹ It was indicated that the drafting history of Article 3 bis supported the conclusion that it is declaratory of the existing general international law with respect to the following elements:

- a) obligation of States to refrain from resorting to the use of weapons against civil aircraft in flight;
- b) obligation, in case on interception, not to endanger the lives of persons on board and the safety of aircraft;
- c) right of States to require landing at a designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of the Convention.²²⁰

When defining the scope of the applicability of Article 3 bis, the Secretariat stressed that this Article is reserved only to "civil aircraft" (consequently state aircraft would not enjoy the same protection), and to civil aircraft "in

²¹⁹See *ibid.* Para. 6.

²²⁰See *idem.* Article 3 bis accepted the terminology "for any purpose inconsistent with the aims of the Convention", as used in Article 4 of the Convention. See *supra* note 209. Nevertheless at the 25th Session of the ICAO Assembly, specific references were made to transport of illicit drugs, contraband, gun running, illegal transport of persons and any other common crimes, and this phrase was meant to cover not only the violations of the "aims" of the Convention, but any violation of the law and public order of the State concerned.

flight" (consequently aircraft which are not "in flight" do not enjoy the special protection).²²¹

Additionally, it was submitted that Article 3 bis refers to foreign aircraft and that the protection in it contained is not reserved to aircraft of the State's own registration. Nevertheless, it was pointed out that this does not imply that a State is free to treat aircraft of its own registration without regard to any rules of international law.²²² The report stated that Article 3 bis does not exclude enforcement against foreign aircraft in flight and does not rule out the use of adequate and proportionate force or interception as such, which as well as any other enforcement measures, is legitimate and acceptable if it does not involve the use of weapons against civil aircraft in flight and if it does not endanger the lives of the persons on board or the safety of the flight.²²³

The study further stated that two other additional provisions of Article 3 bis are likely to deter the occurrences of "misuse" of civil aviation:

In the first place, paragraph c) requires civil aircraft unconditionally to comply with an order to land or other instruction and to this end stipulates that contracting States have the obligation to establish all the necessary provisions in their national law and regulations to make such

²²¹The Chicago Convention does not define the concept "in flight", but it is likely to be interpreted in harmony with the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface of 1952 and the Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft of 1963. Accordingly, an aircraft shall be deemed to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends. See *ibid.* Para. 6.2.

²²²See *ibid.* Para. 6.3.

²²³See *ibid.* Para. 6.4.

compliance mandatory for aircraft of their registration or whose operator has its principal place of business or permanent residence in their territory. It further requires contracting States to make violation of such laws or regulations punishable by severe penalties and to submit the case to their competent authorities. With this provision, Article 3 bis offers a practical safeguard that no violators would go unpunished.²²⁴

In the second hand, paragraph d) requires all contracting States to take the appropriate measures to prohibit any deliberate "misuse" of any civil aircraft of their registration or whose operator has his place of business or permanent residence in that State.²²⁵

- Other legal aspects.

The Secretariat's report finally noted that States can exercise criminal jurisdiction over foreign aircraft in flight over their territory as well as over the territory not subject to sovereignty of any State (i.e., high seas), according to the provisions of the Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft of 1963, which in some cases,²²⁶ permits interference with an aircraft in flight in order to exercise criminal jurisdiction over an offense committed on board.²²⁷

²²⁴See *ibid.* Para. 6.5.a).

²²⁵See *ibid.* Para. 6.5.b).

²²⁶a) the offense has effect on the territory of such State; b) the offense has been committed by or against a national or permanent resident of such State; c) the offense is against the security of such State; d) the offense consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State; e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement. Article 4 of the Convention. See *ibid.* Para. 7.

²²⁷See *idem.*

- *Conclusions.*

The preliminary study presented by the Secretariat ended with a list of the following conclusions:

- a) The term "misuse of civil aviation" is a legally imprecise term which has no firm basis in the Convention on International Civil Aviation apart from the title of Article 4.
- b) The phrase "any purpose inconsistent with the aims of this Convention" has historically a different meaning in Article 4 of the Convention... and in paragraphs (b) and (d) of Article 3 bis...
- c) The concept of "misuse of civil aircraft" analyzed... would be best referred to as "deliberate use of civil aircraft for unlawful purposes".
- d) The Convention on International Civil Aviation contains effective provisions safeguarding full jurisdiction of States to prevent or prohibit the use of foreign aircraft for unlawful purposes in their territory.
- e) Law enforcement in general is a legal procedure and not an arbitrary or instinctive action; it requires "due process" under the law of the State concerned as well as proportionality and adequacy of the force to be used; presumption of innocence is a indivisible part of the "due process".
- f) Article 3 bis to the Convention in its declaratory legal statements recognizes that weapons must not be used against civil aircraft in flight and that human lives and safety of aircraft must not be endangered in case of interception.
- g) Special protection under Article 3 bis is reserved for foreign civil aircraft in flight; it does not cover aircraft of the State's own registration, state aircraft and aircraft which are not "in flight".
- h) Article 3 bis does not rule out the use of proportionate and adequate force or interception of foreign civil aircraft; actions undertaken in harmony with the applicable Standards and Recommended Practices would be consistent with international law.²²⁸

²²⁸See *ibid.* Para. 8.

Following the Secretariat's presentation, the Council noted the preliminary study introduced and the fact that it would be taken into account to the extent required in further work, on all aspects of ICAO's role in its efforts to combat illicit transport of narcotic drugs and psychotropic substances by air, and by the Air Transport Committee and the Air Navigation Commission in their ongoing work in the subject. The Council also understood that the legal analysis presented would be used in the future when addressing the subject of the misuse of civil aviation.²²⁹

B. The 26th Session of the Assembly and subsequent action

In its 26th Session, ICAO's Assembly considered a report of the Council on the role of ICAO in the suppression of illicit transport of narcotic drugs by air, as part of its Agenda Item 7.²³⁰ This report described the actions that had been performed by the Council to assist in the international effort to suppress illicit drug transport by air, and invited the Assembly to provide policy guidance on continuing ICAO involvement in the international programme of drug control.²³¹

Within this framework, the delegation of the United States presented a paper that contained a draft resolution which was further adopted, and which offered policy guidance for the future work in the subject.²³² The Resolution stated that

²²⁹See *supra* note 204.

²³⁰Item 7: Annual Reports of the Council to the Assembly for 1983, 1984 and 1985 and Work Programme for 1987-89, and their reference to the Executive Committee as a whole and to the Commissions as necessary. See The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. A26-WP/28. June 18, 1986.

²³¹See *idem*. Para. 10.

²³²See The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. A26-WP/61. September 16, 1986.

The Assembly:

1. NOTES favourably the efforts of the Contracting States to counter illicit drug trafficking in international civil aviation;
2. ENDORSES the action taken by the Council to date with respect to the illicit transport of narcotic drugs and psychotropic substances, and urges the Council to continue expeditiously its efforts to explore ICAO's possible role in this matter and to present a report to the next ordinary session of the Assembly;
3. REQUESTS the Council to encourage Contracting States to utilize the provisions in the Annexes to the Convention, to counter the movement of illicit drugs by air;
4. CALLS upon Contracting States to assist airlines to adopt effective means to prevent their aircraft, equipment and facilities from being used for drug trafficking purposes.²³³

This resolution was transmitted to the Contracting States on December 15, 1986. States were then invited to report to the Secretariat any measures that they had taken, or intended to take, to counter the movement of illicit drugs by air.²³⁴

After this session of the Assembly, the relevant bodies within ICAO performed the following work related to its role in narcotics control in the field of international civil aviation.

1. Study of the Potential for Suppression of Illicit Transport of Narcotic Drugs by Air.

Pursuant to a request made by the Council, the Air Navigation Commission had undertaken a preliminary review of

²³³The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Assembly Res. A26-12 (1986).

²³⁴See Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. State Letter E 2/2.7-86/113. December 15, 1986.

the need or otherwise for technical specifications and/or guidance material related to civil flight operations for suppressing the illicit transport of narcotic drugs by air, and at the eighteenth meeting of its 116th Session,²³⁵ the Council reviewed the Commission's report and requested a progress report during the 119th or 120th Session.²³⁶

The Air Navigation Commission presented the progress report in the 17th meeting of the Council's 120th Session.²³⁷ It made a summary of all the events which had taken place in the Organization to that date concerning the technical aspects on the subject and pointed out several technical areas which the Commission had the intention of studying.²³⁸

It was informed that a preliminary review was being carried out by the Secretariat in order to determine which areas offered an opportunity to develop, upgrade or strengthen provisions, or provide guidance material to assist States in the detection or suppression of illicit transport of narcotic drugs by air. The following is a summary of the review:²³⁹

- Flight operations and airworthiness.

The progress report stated that technical measures to deter the concealment of drugs (or other articles) on aircraft could be considered along with other measures to

²³⁵See *supra* note 146. ICAO Doc. C-Min. 116/18.

²³⁶See *supra* note 201. See Progress Report to Council on Study of the Potential for Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. C-WP/8395. March 20, 1987. Para. 1.

²³⁷See ICAO Doc. C-Min. 120/17. March 27, 1987.

²³⁸See *supra* note 236. Summary.

²³⁹See *ibid.* Para 2.1, 2.2.

assist in the detection of persons involved in illegal operations.²⁴⁰

Among measures to deter concealment, the Commission considered it desirable that aircraft be designed so as to minimize, as far as possible, the opportunity for concealment, both by reducing the number of accessible hatches from the exterior and by having an interior design that would reduce space for concealment and that would make access more difficult, bearing in mind the requirements of routine maintenance and servicing. Secondly, the Commission considered the possibility of deploying alarm systems, which were available commercially, and which would indicate when an access panel or opening had been tampered with. Moreover, the Commission considered that a checklist of possible concealment areas could be developed for each aircraft type in order to assist the previous measures.²⁴¹

In relation with the detection of aircraft engaged in illegal activity, the Commission had been informed of the following possibilities that were being considered by at least one State: a) to increase the minimum size of aircraft exterior registration markings in order to improve identification in air-to-air situations (the Commission found this item related to interception and noted that the registration mark's size should relate to the aircraft size); b) to locate the aircraft's identification plate or an alternate plate in a position visible from the ground or easily accessible in order to ease the comparison between the identification plate and the external registration markings; c) to require that at all times the aircraft should carry design approval documentation.²⁴²

²⁴⁰See *ibid.* Para 3.1.

²⁴¹See *ibid.* Para. 3.2, 3.3, 3.4.

²⁴²See *ibid.* Para. 3.5.

- *Communications.*

The Council had suggested in its 118th session that consideration should be given to introducing a new message type in Annex 10, Volume II, corresponding to the need for co-ordination between air traffic services and law enforcement agencies regarding information on departures and destinations of all aircraft, or of those suspected to be involved in illicit drug traffic.²⁴³

The Commission found that there was no need to define a new message type as the requirement could be met with the existing systems, and through agreements between the authorities concerned on the message distribution.²⁴⁴

- *Accident investigations.*

The Commission stated that guidelines could be developed for the determination of whether an aircraft involved in an accident is also involved in drug trafficking or in other activities. Accordingly, it suggested that the Manual of Aircraft Investigation,²⁴⁵ could include a section on dangerous behavior of pilots in their attempts to evade detection when involved in illicit operations.²⁴⁶

The guidelines could include a list of circumstances, which in order to obtain evidence of narcotics trafficking, should prompt a special or detailed search of the aircraft or wreckage (i.e., aircraft or wreckage abandoned, international

²⁴³See *ibid.* Para. 4.1.

²⁴⁴See *ibid.* Para. 4.2.

²⁴⁵Manual of Aircraft Investigation. ICAO Doc. 6920-AN/855/4. Fourth Edition. 1970.

²⁴⁶See *supra* note 236. Para. 5.1.

flight, no flight plan filed, flight plan not followed, intentionally hazardous operations, etc.).²⁴⁷

The Commission also stated that investigative techniques and procedures for co-operation with local enforcement authorities could be developed, in order to establish whether illicit narcotic drugs or other illicit traffic were carried.²⁴⁸

- Air traffic services.

The Commission reiterated a suggestion it had made earlier,²⁴⁹ when it had indicated that guidance material could be developed in order to establish and implement interdiction methods. Such guidance material could cover the following areas: a) identification of geographical areas where illicit transport of drugs by air is a problem; b) inquiries to States on the problems that they have experienced in the application of Article 9 of the Chicago Convention, which obliges the pilot to submit certain checks, the flight plan, reports, etc., regarding prohibited zones and restricted flights; c) facilitation of the tracking of aircraft by requiring all flights operating in the airspace in question to submit flight plans, inform of amendments, report positions, inform of deviations, and submit arrival reports; d) critical examination of the flight plans and their amendments in relation to flying distances, air speed and weather conditions, in order to detect possible airdrop activities in the event where the aircraft returns to departure point alleging mechanical and other difficulties; e) procedures and mechanisms for co-ordination and co-operation between ATS authorities / ATS units and law enforcement agencies / customs authorities for the exchange and

²⁴⁷See *ibid.* Para. 5.2.

²⁴⁸See *ibid.* Para 5.3.

²⁴⁹See *supra* note 200.

sharing of information and communication links, in the view of identifying suspects, smugglers' operation techniques, and of alerting about suspicious flight plans, deviations from flight plans, communication of failures, alleged emergency landing, etc.; f) increased exploitation of primary and secondary surveillance radar, including both civil and military radars for monitoring all traffic in given portions of airspace or particular suspicious flights; and g) imposing a mandatory requirement for the operation of secondary surveillance radar.²⁵⁰

- Increased user awareness.

In order to increase awareness on the subject in the international aviation community, the Commission suggested that a technically oriented poster could be developed and that for this purpose the ICAO bulletin could also be used.²⁵¹

- Commercial movement of precursors, essential chemicals and equipment.

The Commission stated the importance of monitoring the movement of precursors, specific essential chemicals, other materials and sophisticated tableting, encapsulating or other equipment required by illicit production laboratories, in a way that would minimize interference with legitimate commerce. Such monitoring could be achieved by requiring all exports of these items to be descriptively and accurately labeled and recorded in the exporter's records, and by requiring the record of the consignee's particulars, requiring that excessive orders should be reported to the country of destination, and ruling that manufacturers and/or

²⁵⁰See *supra* note 236. Para. 6.1.

²⁵¹See *ibid.* Para. 7.1.

shippers should report suspicious orders to drug law enforcement agencies.²⁵²

- Prosecution actions.

The Commission noted the consideration of stern regulatory/legal regimes with respect to general aviation pilots or other licensed airmen who are found to have been either directly or indirectly involved in the illicit traffic activity. Such measures could include the threat of automatic and permanent revocation of licenses and the automatic impoundment and/or confiscation of aircraft involved in the illicit activity.²⁵³

- Conclusion and further Council action.

The Commission considered that the effectiveness of its suggested actions depended on the mandatory filling of flight plans for all aircraft traversing identified, critical airspaces. It suggested previous to any development of the suggested actions, a review of the outcome of the International Conference on Drug Abuse and Illicit Trafficking.²⁵⁴ The Commission also agreed that the possible measures that might be adopted could be instituted with little or no change to existing ICAO instruments.²⁵⁵ Following the consideration of the Commission's report, the Council noted its content.²⁵⁶

In the framework of the 16th meeting of the 122nd Session, the President of the Air Navigation Commission presented an oral report recalling the previous progress

²⁵² See *ibid.* Para. 8.1, 8.2.

²⁵³ See *ibid.* Para. 9.1, 9.2.

²⁵⁴ See *ibid.* Para. 10.1, 10.2

²⁵⁵ See *ibid.* Para 10.3.

²⁵⁶ see *supra* note 237.

report on the subject. The President informed the Council that the Commission was of the view that further work should be undertaken within the context of the results of the forthcoming Vienna Conference on Drug Abuse and Illicit Trafficking. The Council agreed with the President's proposal and noted his oral report.²⁵⁷

Later, in the second meeting of the 123rd Session, by initiative of the Representative of France, the Council requested the Air Navigation Commission to expedite its technical study and to report to the 123rd Session; particularly, in order to re-evaluate whether the current regulatory provisions in the appropriate Annexes (1,2,6 and 13) presented a sufficient safeguard against drug abuse by flight crew members and air traffic controllers.²⁵⁸ In response to this query, another progress report was presented orally by the President of the Air Navigation Commission. The Council noted the report and requested the Commission to continue to monitor developments in the area with the view of consulting States on the subject as early as possible and presenting proposals for the Council's consideration.²⁵⁹

- Proposals for action in the Legal Committee and in the Committee on Unlawful Interference.

In the 16th meeting of its 124th Session, the Council considered the subject Work Programme of the Legal Committee - Plan of legal meetings for 1989. Within this framework, the Secretary General,²⁶⁰ informed the Council of a proposition submitted by the delegation of Peru, co-sponsored by other

²⁵⁷See ICAO Doc. C-Min. 122/16. December 14, 1987.

²⁵⁸See ICAO Doc. C-Min. 123/2. DRAFT. January 26, 1988.

²⁵⁹See ICAO Doc. C-Min. 123/20. DRAFT. March 31, 1988.

²⁶⁰See Work Programme of the Legal Committee and Plan for Legal Meetings in 1989. ICAO Doc. C-WP/8574. February 29, 1988.

Latin-American countries, for the inclusion of the subject Legal aspects relating to suppression of the illicit transport of narcotic drugs and psychotropic substances involving international civilaviation , in the general work programme of the Legal Committee. He considered that since the Air Navigation Commission and the 10th Session of the Facilitation Division would be considering many of the aspects of the subject, its inclusion could result in a duplication of efforts. Accordingly, the Council decided to defer for a later stage the inclusion of the subject in the work programme of the Legal Committee, in the light of the results of the United Nations Conference for the adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, scheduled to take place in Vienna on November/December 1988.

Additionally, in its 121st Session,²⁶¹ the Committee on Unlawful Interference considered a report prepared by the Secretary General,²⁶² which summarized the action taken by ICAO with respect to its role in the suppression of illicit transport of narcotic drugs by air, and analyzed its possible intervention.²⁶³

A Report of the Chairman of the Committee was considered in the 121st Session of the Council.²⁶⁴ It contained the conclusions that the Committee had reached when reviewing the subject of illicit trafficking of narcotic drugs by air in relation to the aviation security programme and to its own

²⁶¹See ICAO Doc. UI-SD/121-1. April 30, 1987; ICAO Doc. UI-SD/121-3. May 14, 1987.

²⁶²See Review of Annex 17 and related documents with regard to ICAO's role in the suppression of illicit transport of narcotic drugs by air. ICAO Doc. UI-WP/159. April 24, 1987.

²⁶³See Review of Annex 17 and Related Documents with Regard to ICAO's Role in the Suppression of Illicit Transport of Narcotic Drugs by Air . ICAO Doc. C-WP/8432. June 11, 1987.

²⁶⁴See ICAO Doc. C-Min. 121/9. June 17, 1987; ICAO Doc. C-Min. 121/10. June 19, 1987.

programme. The Committee had agreed that it was not appropriate for the time being to consider revising Annex 17 or the Security Manual to include provisions relating specifically to the illicit transport of narcotic drugs. It had agreed also that the examination of the measures aimed at the suppression of illicit transport of narcotics by air were beyond its scope of activity; however, it stated that the question could be further examined in the light of the results of the forthcoming International Conference on Drug Abuse and illicit Trafficking.²⁶⁵ Following the corresponding debate on the subject, the Council took note of the report of the Committee.

2. Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs and Psychotropic Substances by Air

- International Conference on Drug Abuse and Illicit Trafficking.

In its 120th Session,²⁶⁶ the Council considered a report of the Secretary General on the preparations of the International Conference on Drug Abuse and Illicit Trafficking,²⁶⁷ which contained background information on the activity performed by the United Nations, on the work undertaken by ICAO in the suppression of illicit transport of narcotic drugs by air up to that date, on the decisions of the Assembly in its 26th Session, on the participation of ICAO in meetings relating to suppression of illicit trafficking, and on the Conference and its expected results, namely the adoption of a Declaration and of a Comprehensive

²⁶⁵See *supra* note 262.

²⁶⁶See ICAO Doc. C-Min. 120/14. March 23, 1987.

²⁶⁷See Chapter 1, A, 4. See International Conference on Drug Abuse and Illicit Trafficking (Vienna, 17-26 June 1987) Brief for the ICAO Observer. ICAO Doc. C-WP/8387. February 19, 1987.

Multidisciplinary Outline - CMO of future activities addressing the drug problem.²⁶⁸

The Council was informed that an ICAO observer had participated in the general discussion of the CMO, and had introduced specific amendments to those portions of the draft CMO directly or indirectly involving civil aviation, in order to ensure that its text would comply with the general framework of international air law, with the aviation terminology and technical realities of aviation.²⁶⁹

It was further stated that ICAO was expected to attend the Conference in its capacity as a specialized agency of the United Nations, and to be represented by an observer at the senior level. It was considered desirable that the factual documentation on the role and activities of ICAO in the suppression of illicit transport of narcotic drugs by air should be made available to the Conference. Consequently it was suggested that the ICAO observer should be briefed to inform the Conference of such role and activities. By instructions of the Council,²⁷⁰ the Secretary General prepared the brief, which was later circulated among the members of the Council.²⁷¹

As outlined in Chapter 1 of this thesis, the Conference was held in Vienna from June 17 to 26, 1987. During its 122nd Session,²⁷² the Council considered a report on the results of the Conference, presented by the Secretary General and

²⁶⁸See *idem*.

²⁶⁹See *ibid*. Para 5.6.

²⁷⁰See *supra* note 267. Para. 11.

²⁷¹See International Conference on Drug Abuse and Illicit Trafficking. ICAO Doc. Council President Memo. E 2/2.7. May 28, 1987.

²⁷²See The UN International Conference on Drug Abuse and Illicit Trafficking and the Further Work by ICAO. ICAO Doc. C-Mins. 122/11. February 23, 1988 and 122/12. February 19, 1988.

introduced by the Director of the Legal Bureau.²⁷³ The ICAO observer had made a statement to the plenary on the related role and activities of the organization, and the brief prepared by the Secretary General had been distributed as a Conference document.²⁷⁴

The Secretary General reported that the forum had adopted the "Declaration of the Conference on Drug Abuse and Illicit Trafficking",²⁷⁵ and the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control (CMO),²⁷⁶ and further reported on the role of ICAO in the implementation of the CMO, and presented comments on five selected targets considered to be of direct relevance to ICAO, with a view to identifying possible future action by the Organization.²⁷⁷

a) Target 4: Prevention of drug abuse in the workplace.

The Conference had identified in its CMO, the problem of drug abuse in the workplace and in occupational activities, and had indicated that it has multiple and harmful consequences including the deterioration of productivity and performance, defective quality of products, loss of qualified employees, accidents, loss of income and professional disqualification, all which are costly to the individual, the

²⁷³See The UN International Conference on Drug Abuse and Illicit Trafficking and the Further Work in ICAO. ICAO Doc. C-WP/8466. October 14, 1987.

²⁷⁴See *ibid.* Para. 2.3.

²⁷⁵See Chapter 1, A, 4, a. See *supra* note 45.

²⁷⁶See Chapter 1, A, 4, b. See *supra* note 58.

²⁷⁷See *supra* note 272. See *supra* note 273. Para. 3. The texts of the targets from the CMO relevant to international civil aviation were circulated among the Council members. See United Nations International Conference on Drug Abuse and Illicit Trafficking (Vienna, 17-26 June 1987). ICAO Doc. SG Memorandum, E 2/2.7, SG 1124/87. September 3, 1987.

employer and the community. The CMO had stated that drug abuse by individuals in a wide range of sensitive occupations could result in disaster, and had emphasized that measures dealing with drug abuse in the workplace and in occupational activities must have a significant prevention component.²⁷⁸ Most of the speakers who specifically had addressed this target, by way of illustration had referred to the job of pilots and air traffic controllers as typical examples of "sensitive occupations".²⁷⁹

The Secretary General informed the Council that ICAO regulatory materials contain specific provisions relating to medical fitness of the holders of a license:

Annex 1 (6.3.2.2, 6.4.2.2, 6.5.2.2), requires that an applicant for a particular class of medical assessment shall have no established medical history or clinical diagnosis of alcoholism and drug dependence. This provision applies to any class of medical assessment, including licenses for commercial pilots, flight navigators, flight engineers, flight radio operators and air traffic controllers.²⁸⁰

Additionally, Annex 2 (2.5) states that

No person shall pilot an aircraft, or act as a flight crew member of an aircraft, while under the influence of intoxicating liquor or any narcotic or drug, by reason of which that person's capacity to act is impaired.²⁸¹

²⁷⁸See *supra* note 277. ICAO Doc. SG Memorandum, E 2/2.7, SG 1124/87. Attachment 2. Excerpt from the CMO. Para 57.

²⁷⁹See *supra* note 273. Para. 3.1.1.

²⁸⁰See *ibid.* Para. 3.1.2. See Personnel Licensing - Annex 1 to the Convention of International Civil Aviation. 8th Edition. July, 1988.

²⁸¹See *idem.* See Rules of the Air - Annex 2 to the Convention of Civil Aviation. Ninth Edition. July 1990.

Furthermore, Annex 6 states that the pilot-in-command shall be responsible for ensuring that a flight will not be commenced if any flight crew member is incapacitated from performing his duties by any cause such as injuries, sickness, fatigue, the effects of alcohol or drugs.²⁸²

It was pointed out that the Manual of Civil Aviation Medicine, in the other hand, details the guidance material related to this subject.²⁸³

The Secretary General finally suggested that the subject should be addressed by the Air Navigation Commission in order to reevaluate whether the existing provisions are sufficient or if they require any enhancement in order to ensure the safety of international civil aviation.²⁸⁴

b) Target 24: Tightening of controls of movement through official points of entry.

The Conference had identified the problem of security of airports, seaports and land border crossings, which is

²⁸²See *supra* note 273. Para. 3.1.2. See Operation of Aircraft - Annex 6 to the Convention on Civil Aviation. Part II - International General Aviation - Aeroplanes.

²⁸³See Manual of Civil Aviation Medicine. ICAO Doc. 8984-AN/895. 2d. ed. 1985. This manual was published in 1974 and complemented in 1985 and is intended to provide expert medical guidance material in the field of aviation. It has no regulatory status as its main purpose is to assist and guide designated medical examiners and Licensing Authorities in decisions relating to the medical fitness of license applicants. (See Foreword). Part III, Chapter 9, deals with mental fitness and neurological examinations and concentrates in the assessment of mental fitness for aviation duties. In doing so, it concentrates *inter alia*, in the problems of drug dependence and drug dependence of alcohol type (alcoholism or problem drinking), (See Pg. 9), and provides definitions of the following terms in the context of aviation: drug, drug abuse, drug dependence, physical dependence capacity, physical dependence, psychic dependence, (See Pg. 23).

²⁸⁴See *supra* note 273. Para. 3.1.3.

normally within the scope of responsibility of customs and, to a certain extent, immigration authorities, and had stated that there are usually gaps in the effective control by law enforcement agencies.²⁸⁵ The CMO had called upon ICAO, among other international organizations, to consider and adopt standards or codes of conduct to be recommended to their members and designated to improve control of the movement of passengers and goods, with a view to curbing the illicit traffic in drugs,²⁸⁶ and further had stated that these international organizations should provide, if requested, technical advice and assistance to Governments with respect to modalities for effecting appropriate physical security in standard layout and design of premises of official points of entry.²⁸⁷

The Secretary General informed the Council that to this end, the Convention on International Civil Aviation contained effective provisions that recognized full jurisdiction of the States concerned to take appropriate measures at points of entry,²⁸⁸ and that some of these aspects had been referred by the Council to the Air Transport Committee and to the 10th Session of the Facilitation Division, where Annex 9 was to be reviewed.²⁸⁹

The Secretary General stated, however, that even if the CMO's target is directed at measures to be taken at points of entry, experience had showed that strict preventive measures must be adopted at the point of departure rather than at the point of entry, and consequently, that ICAO should go beyond the framework of the CMO. The Secretary General informed the Council that many preventive measures already existed in the

²⁸⁵See *supra* note 277. ICAO Doc. SG Memorandum, E 2/2.7, SG 1124/87. Attachment 2. Excerpt from the CMO. Para 272.

²⁸⁶See *ibid.* Para. 285.

²⁸⁷See *ibid.* Para. 288.

²⁸⁸See *supra* note 273. Para. 3.2.2.

²⁸⁹See *ibid.* Para. 3.2.3.

field of aviation security, which could be adjusted to the needs of the prevention and suppression of illicit trafficking; consequently, he suggested that relevant guidance material could be drafted by ICAO.²⁹⁰

c) Target 26: Surveillance of land, water and air approaches to frontier.

The Conference had identified the problem that frontiers are particularly difficult to keep under effective surveillance and offer smugglers many opportunities for evasion. It had called on air traffic control agencies and other authorities concerned, to strengthen flight control regulations in co-operation with their counterparts in the region and on a world-wide basis. The CMO had further encouraged the authorities of States to take full advantage of the regional and inter-regional mechanisms and of the sessions of international organizations, including ICAO, in order to ensure maximum co-operation and consistency of implementation and training methods in safeguarding and strengthening the security of frontiers.²⁹¹ Under this target the Conference had addressed the overall protection of frontiers, including the protection of the designated points of entry, the airspace and the remote areas; in reference to aviation, the CMO had noted the growing number of unlawful air strips, flights beyond established air routes and without a flight plan, and air drop deliveries of illicit drugs in remote areas.²⁹²

In this regard, the Secretary General expressed his belief that with a strict enforcement of the existing

²⁹⁰See *ibid.* Para. 3.2.4.

²⁹¹See *supra* note 277. ICAO Doc. SG Memorandum, E 2/2.7, SG 1124/87. Attachment 2. Excerpt from the CMO. Para 291. See *supra* note 273. Para. 3.3.1.

²⁹²See *supra* note 273. Para. 3.3.2.

Standards and Recommended Practices it should be possible to minimize the unlawful and undetected operations used by the traffickers; nevertheless, he suggested a review of the subject by the Air Navigation Commission with a view to recommending whether additional regulatory or guidance material should be developed.²⁹³

d) Target 27: Controls over the use of the international mails for drug trafficking.

The Conference's CMO had noted that customs services had determined by various techniques, including sniffing dogs, sensing devices, X-rays, and the like, that controlled substances are being sent through the international mails notwithstanding the prohibition of such use of the post by the Universal Postal Convention. It had been noted that if a suspicious item is destined for delivery within the national territory, the customs service may obtain a search warrant and open the item for inspection, if the national laws so provide; however, according to the Constitution of the Universal Postal Union - UPU and to the Universal Postal Convention, postal items in transit may not be opened. The Conference had further called for the UPU to provide States parties to the Universal Postal Convention with models of standard procedures for co-operation of the postal authorities with Customs.²⁹⁴

The Secretary General suggested its participation by monitoring the matter in co-operation with the UPU and by bringing to the attention of the Air Transport Committee and of the Council, any problems requiring their action.²⁹⁵

²⁹³See *ibid.* Para. 3.3.3.

²⁹⁴See *supra* note 277. ICAO Doc. SG Memorandum, E 2/2.7, SG 1124/87. Attachment 2. Excerpt from the CMO. Para 304. See *supra* note 273. Para. 3.4.1.

²⁹⁵See *ibid.* Para. 3.4.2.

e) Target 28: Controls over ships on the high seas and aircraft in international airspace.

The Conference had noted the fact that vessels and aircraft are utilized to transport illicit drugs between countries, outside national boundaries, on the high seas and in international airspace.

In this regard, the Secretary General indicated that these ships and aircraft are subject only to the jurisdiction of their State of registry; he further noted that the CMO had addressed the question of whether any appropriate action could be taken against them by other States which may be affected by the illicit trafficking, and had indicated that appropriate co-operative procedures for interception needed to be devised which would not interfere with legitimate passage and commerce, subject to compliance with existing relevant international conventions.²⁹⁶

The Secretary General further indicated that the problem called for a study by the Air Navigation Commission, which could develop standards and procedures for the exchange of information between the Air Traffic Control services of different States in the case when an aircraft has been identified as suspected of carrying illicit substances in the international airspace.²⁹⁷

f) Council Action.

Following the corresponding debate on the Secretary General's report, the Council's action included its noting

²⁹⁶See *supra* note 277. ICAO Doc. SG Memorandum, E 2/2.7, SG 1124/87. Attachment 2. Excerpt from the CMO. Para 309. See *supra* note 273. Para. 3.5.1.

²⁹⁷See *supra* note 273. Para. 3.5.2.

that the targets of the Comprehensive Multidisciplinary Outline (CMO) that were singled out (4, 24, 26, 27 and 28), contained elements within the mandate of ICAO; noting the establishment of a task group by the Secretariat to co-ordinate the interdisciplinary approach to the problem of drug abuse and illicit trafficking; referring to the Air Navigation Commission the study of targets 4, 26 and 28; instructing the Secretary General to prepare the relevant documentation for the consideration of targets 24 and 27 in the 10th Session of the Facilitation Division; and approving the preparation of a comprehensive Manual or Circular containing guidance to States in the various aspects of prevention and suppression of drug abuse and illicit traffic in international civil aviation.²⁹⁸

*- Draft Convention against Illicit Traffic in Narcotic
Drugs and Psychotropic Substances.*

The report of the Secretary General, presented in the framework of the 120th Session of the Council,²⁹⁹ also informed about the activity carried out by the Secretariat in the Preparation of a draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.³⁰⁰

It was stated that the Secretary General of ICAO had been consulted in the process of the preparation of the draft, and had presented numerous drafting suggestions, and that comments had been made to the Division on Narcotic Drugs and to the Thirty-second Session of the Commission on Narcotic Drugs,³⁰¹ aimed at assuring that the operator of an aircraft would not be held absolutely liable for any penalties, including possible forfeiture of the aircraft,

²⁹⁸See *ibid.* Para. 5, 6. See *supra* note 272. Para. 12.

²⁹⁹See *supra* note 267.

³⁰⁰See Chapter 1, A, 5.

³⁰¹See *idem.*

unless it is provided that the operator of the aircraft had the knowledge of the use of the aircraft for illicit traffic. These comments had been made in order to establish an appropriate balance between the law enforcement activities and the facilitation of international air transport.³⁰²

Later, during its 122nd Session,³⁰³ when the Council considered a report presented by the Secretary General,³⁰⁴ reference was made to specific action of ICAO in the preparation of the draft. The Secretary General informed the Council that the proposed convention would be a multilateral instrument defining the offense of illicit traffic as an international offense subject to the jurisdiction of and severe penalties administered in all States, and that furthermore, the convention would provide for the extradition of the offenders, judicial co-operation of Contracting States, identification, tracing, freezing and forfeiture of proceeds of drug trafficking, measures to ensure that commercial carriers are not used to transport illicit substances, prevention of the use of the mails for the illegal transport of such substances, etc.³⁰⁵ This report of the Secretary General made reference to the draft that had resulted from the meeting of the intergovernmental group of experts,³⁰⁶ and contained comments on several articles of the draft text; it also stated that a more advanced text was being prepared by the UN Commission of Narcotic Drugs.³⁰⁷ On the basis of this report, the Council instructed the Secretary General to present for comments in the 124th Session of the Council, the draft Convention prepared by the UN Commission on Narcotic Drugs.³⁰⁸

³⁰²See *supra* note 267. Para. 7.4.

³⁰³See *supra* note 272.

³⁰⁴See *supra* note 273.

³⁰⁵See *idem*. Para. 4.1.

³⁰⁶To which ICAO was not invited to participate.

³⁰⁷See Chapter I, A, 5. See *supra* note 273. Para. 4.5.

³⁰⁸See *supra* note 272. C-Min. 122/12. Para. 12. f).

Accordingly, in the framework of its 124th Session,³⁰⁹ the Council considered an updated report on the subject that contained the revised text of the Convention.³¹⁰ This report of the Secretary General made reference to specific provisions of the draft convention that deserved comments by ICAO, as follows:

a) Title of the Convention.

The Secretary General stated that the proposed title "Convention against Illicit Traffic..." could be improved along the lines of The Hague (1970) and Montreal (1971) Conventions, to read: "Convention for the Suppression of Illicit Traffic in Narcotic Drugs and Psychotropic Substances."³¹¹

b) Preamble of the convention.

The Secretary General informed the Council that the principles stated in the preamble of the draft convention are in harmony with the provisions of ICAO Assembly Resolution A26-12.³¹²

c) Commercial carriers-Definition [Article 1 (b)].

In this article the draft convention defined "commercial carrier" as any person or entity engaged in transporting, for remuneration or hire, persons or goods. The Secretary General expressed the opinion that since the Commission on Narcotic

³⁰⁹See ICAO Doc. C-DEC. 124/15. July 7, 1988.

³¹⁰See Draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. ICAO Doc. C-WP/8600. April 26, 1988. Addendum. June 2, 1988.

³¹¹See *idem*. Para. 2.

³¹²See *supra* note 233.

Drugs had expressed the opinion that attempts at drug smuggling were made not only by commercial carriers, but by private aircraft, the Convention should include a definition of "non-commercial carrier" to cover the case of illicit traffic performed by private aircraft, and hence to include aircraft operation "not for remuneration or hire".³¹³

d) Illicit traffic - Definition - [Article 1 (h)].

The Secretary General informed the Council that the draft convention defined "illicit traffic", inter alia as the "transport" of any controlled substance contrary to the provisions contained in the international instrument regulating the subject, and noted that the draft text did not define the term "transport", which would encompass any action of transfer of the illicit substances from one place to the other.³¹⁴

Consequently, it was stated that the "illicit traffic", which includes "transport", would be the criminal offense, and that therefore it was essential to improve the text to make sure that it would not cover any transport of drugs or psychotropic substances (e.g., without knowledge or intention) but only unlawful and deliberate acts.³¹⁵

e) Commercial carriers (Article 11).

Paragraph 2 of this article stated that "each party shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for illicit traffic." It was noted the those reasonable precautions should not impose on the carrier an excessive burden that would delay the carriage of passengers and cargo.

³¹³See *supra* note 310. Para. 4.

³¹⁴See *ibid.* Para. 5, 5.1.

³¹⁵See *ibid.* Para. 5.2.

Accordingly, the role of commercial carriers should be restricted to reducing illegal access to the aircraft, to the associated equipment and to screening and selecting responsible personnel used for handling of aircraft, cargo and baggage.³¹⁶

Earlier versions of this article allowed penalties against the carrier, including the possibility of detention or seizure of the means of transport. It was stated that it could be useful to insert into the text of the Convention a provision drafted along the lines of Recommendation 9 of the Third Air Transport Conference,³¹⁷ indicating that unless there is evidence of an intentional unlawful act committed by the carrier or its servants or agents, the carrier should be protected against detention or seizure of the means of transport as well as against any other penalties.³¹⁸

f) Labeling and commercial documents (Article 11 bis).

The Secretariat informed the Council that paragraph 1 of article 11 bis of the draft Convention enumerated the particulars to be included in commercial documents for exports of narcotic drugs and psychotropic substances. Concern was expressed over the fact that the article did not state the person or entity responsible for the correctness of the commercial documents,³¹⁹ and reference was made to Standard 4.36 of Annex 9 (Facilitation) which states that

...where a Contracting State has requirements for documents such as the commercial invoice, declaration forms, import license and the like, it shall not make it the obligation of the operator to ensure that these documentary requirements are met, nor shall the operator be held responsible, fined or

³¹⁶See *ibid.* Para. 6, 6.1.

³¹⁷See *supra* note 150.

³¹⁸See *supra* note 310. Para. 6.2.

³¹⁹See *ibid.* Para 7, 7.1.

penalized for inaccuracies or omissions of facts shown on such documents, unless he is, or is acting for, the importer or exporter...³²⁰

Accordingly it was recommended that this article should be considered for comment by the 10th Session of the Facilitation Division in September 1988.³²¹

g) Free trade zones and free ports (Article 13).

The report also recommended that this article should be considered for comment in the 10th Session of the Facilitation Division, since it would supplement Standard 5.13 of Annex 9 by requesting Parties to the Convention to monitor the movement and transshipment of goods in the free trade zones and free ports and to establish a detection system to discover and identify suspicious substances.³²²

h) Suppression of the use of the mails for illicit traffic (Article 14).

It was also recommended that this article be studied by the 10th Session of the Facilitation Division in its relation to Standard 4.52 of Annex 9, as it requires parties to adopt measures to suppress the use of the mails for illicit traffic, in conformity with their obligations under the Conventions of the Universal Postal Union.³²³

i) Sanctions and jurisdiction (Arts. 2, 2 bis , 3 and 4).

The Secretary General further commented on the content of the cited articles indicating that the draft convention

³²⁰See *ibid.* Para. 7.2.

³²¹See *idem.*

³²²See *ibid.* Para. 8.

³²³See *ibid.* Para. 9, 9.1.

contained a list of offenses, which when committed intentionally call for severe penalties. The description, prosecution and punishment of the offenses was reserved for domestic law. However, the draft text obliged each State to take measures to establish its jurisdiction over the offenses when committed on its territory or on board of an aircraft which is registered under its laws, at the time the offense is committed, or when the alleged offender is present in the territory of that State and it does not extradite him to another State. It was stated that these provisions were compatible to those of the Tokyo Convention of 1963.³²⁴

j) Other issues not covered by the convention and deserving further study.

The Council informed that even though ICAO's observer in 1987 had brought to the attention of the Commission on Narcotic Drugs the fact that the draft convention did not contain any provisions regarding the commercial carrier's liability, the matter remained unresolved allowing for the liability of the carrier when passengers or shippers were involved in illicit traffic.³²⁵

Accordingly it was suggested that a provision should indicate that "knowledge" and "intent" are required to establish the carrier's liability; also, that the carrier cannot be subject to any action unless "fault" on his part has been established or when it has been proven that he was an accessory to drug trafficking. Such a provision would reflect the essence of Recommendation 9 of the Third Air Transport Conference.³²⁶

³²⁴See *ibid.* Para. 10.

³²⁵See *ibid.* Para. 11.

³²⁶See *ibid.* Para. 11.1.

k) Council action.

As a result of the deliberations on the report that was presented, the Council agreed that the Secretary General should communicate to the Secretariat of the Commission on Narcotic Drugs the comments mentioned in the report as well as other pertinent Recommendations of Regional Air Navigation Meetings in respect to Draft Article 11 relating "commercial carriers". It further requested the Secretary General to prepare background documentation on the subjects that should be considered by the 10th Session of the Facilitation Division, to keep the Council informed of future developments on the subject and to arrange for the representation of the Organization in the conference of plenipotentiaries to be convened for November/December 1988.³²⁷ In the same session, the Council adopted a Resolution regarding the declaration by the United Nations, of June 26 as the International Day against Drug Abuse and Illicit Trafficking. With this Resolution the Council confirmed the strong commitment of the International Civil Aviation Organization to pursue its efforts in the campaign against the illicit trafficking of narcotic drugs and psychotropic substances.³²⁸

3. Need for technical specifications related to the illicit transport of narcotic drugs by air.

The President of the Air Navigation Commission developed a progress report to the Commission, to provide information about all the events that took place since its last consideration of the subject and that contained the comments and the views that had been expressed during the Council's discussions at the 122nd and 123rd Sessions,³²⁹ namely in

³²⁷See *supra* note 309. Para. 2.

³²⁸See *ibid.* Para. 4, 5.

³²⁹Progress Report on the Study of the Potential for Suppression of Illicit Transport of Narcotic Drugs by Air. Air

relation to the previous work of the Commission concerning technical aspects, about the outcome of the Vienna Conference on Drug Abuse and Illicit Trafficking,³³⁰ and about the requirement of the Council to expedite the work on the subject of drug abuse by flight crew members and air traffic controllers.³³¹

The President also referred to a consultation that had been performed with States about the implementation of Assembly Resolution A26-12 and about the action that they had taken or were intending to take with regard to the problem of illicit transport of narcotics by air. He informed the Council that 27 replies had been received but that only two referred to technical aspects. The others referred to customs, immigration, law enforcement and security aspects.³³²

This report also reviewed the CMO material in its relation to ICAO's regulatory material, which helped to identify the following specific issues that would require further analysis by the part of the Commission's Secretariat:

- Aviation Medicine.

The report made a preliminary evaluation of the subject that served as the base for a detailed document that will be discussed later.³³³

Navigation Commission Task No. SEC-8602: Need for Technical Specifications related to the Illicit Transport of Narcotic Drugs by Air. ICAO Doc. AN-WP/6182. March '0, 1988.

³³⁰See *supra* note 298.

³³¹See *supra* note 329. Para. 2, 3.

³³²See *ibid.* Para. 3.1.4.1.

³³³See *infra* note 376.

- *Accident investigations.*

It was recommended that the Commission should determine if Annex 13 (among others), may require enhancement in regard to accident investigation and to the issue of whether the flight crew and air traffic controllers involved in an accident were free of drugs. The relevant provision of Annex 13 (Paragraph 5.9 - Recommendation), requires a pathologist to do an internal autopsy examination of the accident fatalities. The report stated that an amendment to the Annex did not appear to be warranted at that moment, but that a standard relating to testing following an accident could be considered.³³⁴

In addition, it was suggested that the next revision of the Manual of Aircraft Accident Investigation,³³⁵ could include guidance on the importance of drug testing as part of the internal autopsy examination, about the determination of whether an aircraft involved in an accident was involved in drug trafficking, and about the use of procedures for co-operation developed for ATC and law enforcement authorities.³³⁶

- *Flight Operations and Airworthiness.*

The President of the Commission stated in his report that the last written progress report that had been presented to the Council,³³⁷ mentioned a number of technical measures which could be taken in the area of flight operations and airworthiness. He further emphasized that none of the targets of the CMO fell within these areas, and that it was not immediately evident that any of the measures contemplated in

³³⁴See *supra* note 329. Para. 4.3.1, 4.3.2.

³³⁵See *supra* note 245.

³³⁶See *supra* note 329. Para. 4.3.3.

³³⁷See *supra* note 236.

that report would lead to new or revised provisions in ICAO documents, excepting the registration marking and modification documentation aspects.³³⁸ Accordingly he informed the Commission that the Secretariat of the Commission intended to consult States and selected international organizations on several specific points with a the view to determining which provisions should be created or revised.³³⁹

- Air Traffic Services.

The President informed the Commission of the intention to elevate a consultation with States and with selected international organizations in the view of obtaining specific information in the technical field.³⁴⁰

- Transport of Dangerous Goods.

The Commission was further informed that in relation with the movement of immediate precursors or essential chemicals involved in the preparation of controlled substances, an amendment of Annex 18 (The Safe Transport of Dangerous Goods by Air) directed to control the movement of such goods, did not appear either practical or promising, since air transport was not particularly needed for their transport.³⁴¹

The report further stated that it was outside the mandate of ICAO to rule that shippers or manufacturers, should keep records of chemicals, in the view of having them reporting orders that exceed "legitimate" requirements.³⁴²

³³⁸See *supra* note 329. Para. 4.4.1.

³³⁹See *ibid.* Para. 4.4.2.

³⁴⁰See *ibid.* Para. 4.5.2.

³⁴¹See *ibid.* Para. 4.6.1.

³⁴²See *ibid.* Para. 4.6.2.

Finally, it was stated that an inclusion of additional provisions in Annex 18 would be ineffective as it was not reasonable to assume that individuals engaged in illicit activities would properly and accurately declare the nature of the consignments.³⁴³

- *Conclusions.*

The report concluded emphasizing the importance of consulting with States in order to obtain their views and to gather information on their practices and/or intentions, in order to formulate specific guidance material, and proposals to amend, enhance, strengthen or bring to the attention of States the existing ICAO provisions.³⁴⁴

Finally, the Secretariat suggested that an interim oral progress report should be delivered to the Council.

This report was presented by the President of the Air Navigation Commission in 18th meeting of the 124th Session.³⁴⁵ The Council noted it and further requested for the 125th session a written report on the need for technical specifications related to the illicit transport of narcotic drugs by air.

Accordingly, in continuing its study of the need for technical specifications, the Air Navigation Bureau developed a detailed report on the review of ICAO's provisions and the identification of several areas where these provisions should

³⁴³See *ibid.* Para. 4.6.3.

³⁴⁴See *ibid.* Para. 5.2.

³⁴⁵See ICAO Doc. C-Dec. 124/18. June 30, 1988.

be created or amended, or guidance material, might be able to assist States in the suppression of illicit trafficking.³⁴⁶

This paper was considered in the 5th, 7th and 8th meetings of the 119th Session of the Air Navigation Commission. During the discussion, the Commission found no evidence indicating that the Annex provisions, as formulated at that moment, should be amended: it further concluded that what remained to be done was to develop guidance material, published in another type of document, to assist States in their efforts to suppress the illicit transport of narcotic drugs by air.³⁴⁷ Accordingly, the Commission requested the Secretariat to present a paper identifying the existing provisions that could be utilized by States and concurrently to present an outline of the Chapter headings for guidance material to be developed later.³⁴⁸

As response to this task, the Secretariat developed a study that reviewed in detail and identified the provisions in the Annexes which could be used, together with additional guidance material, as a basis for assisting States in their efforts towards the suppression of illicit transport of narcotic drugs by air.³⁴⁹ This paper was studied in the fifth meeting of the 120th Session of the Air Navigation Commission.³⁵⁰

³⁴⁶See Need for technical specifications related to the illicit transport of narcotic drugs by air, Air Navigation Commission Task No. SEC-8602 . ICAO Doc. AN-WP/6234. September 28, 1988. Summary.

³⁴⁷See ICAO Docs. AN-Min. 119/5, October 11; 119/7, October 18; 119/8, October 20, 1988.

³⁴⁸See *idem*.

³⁴⁹See Study on the Potential for Suppression of Illicit Transport of Narcotic Drugs by Air, Air Navigation Commission Task No. SEC-8602: Need for technical specifications related to the illicit transport of narcotic drugs by air . ICAO Doc. AN-WP/6285. January 20, 1989.

³⁵⁰See ICAO Doc. AN. Min 120-5. January 31, 1989.

It contained a review of the Annexes as they related to the specific areas that had thus far been identified as related to narcotics control: air traffic services, flight operations and airworthiness, aeronautical telecommunication, aircraft accident investigations, aeronautical information services and transport of dangerous goods.³⁵¹

- Air traffic services.

The relevant provisions are contained in Annex 2 (Rules of the Air), in Annex 11 (Air Traffic Services) and in the PANS-RAC, provisions that were found adequate in their present form. However, some recommendations were formulated in order to include guidance material in a manual on the illicit transport of narcotic drugs by air.³⁵²

a) Annex 2 - Rules of the Air.

Chapter 3 of this Annex contains provisions regarding flight plans, which were reviewed and considered adequate. Accordingly, it was suggested that enforcing the current provisions rather than adding new requirements could assist in drug enforcement. The same comment was made regarding the provisions on Chapter 4 concerning visual flight rules and on Chapter 5 concerning instrument flight rules. However, it was stated that guidance material could be developed in these subjects.³⁵³

³⁵¹See *supra* note 349.

³⁵²See *ibid.* Para. 4.1.

³⁵³See *ibid.* Para. 4.2.

b) Annex 11 - Air Traffic Services.

The provisions of this Annex, regarding the objectives and needs for ATS as well as co-ordination with ATS authorities were considered adequate and that they could serve as basis for guidance material aimed at providing co-ordination with customs and drug enforcement agencies in relation with questionable or suspicious activities regarding certain flights.³⁵⁴

c) PANS-RAC- Procedures for Air Navigation Services.

These procedures, regarding flight plans, strayed or unidentified aircraft and co-ordination with ATS units, were deemed adequate. In this case the Secretariat also stated that they could serve as basis for the new guidance material to assist drug enforcement agencies.

- Other considerations.

The Secretariat found that there was a need to assist States with guidance material on several other actions that they may take in certain areas in conjunction with air traffic services to help them in the suppression of the illicit traffic.³⁵⁵

- Flight operations and airworthiness aspects.

The relevant provisions are contemplated in Annex 6 (Operation of Aircraft), Annex 7 (Aircraft Nationality and Registration Marks) and Annex 8 (Airworthiness of Aircraft).

³⁵⁴See *ibid.* Para. 4.3.

³⁵⁵See *ibid.* Para. 4.5.

a) *Annex 6 - Unauthorized modification of aircraft.*

Discussion on the subject originated with the indication by a State of a number of cases where additional fuel tanks were fitted into the passenger cargo compartment to provide additional range and enhance the usefulness of the aircraft for drug smuggling. That State dealt with the matter by introducing provisions in its own regulations that require at all times the carriage on board of a certificate of authorization of the modification. ICAO's regulations only address the subject of aircraft modification in general terms in Part I of Annex 6 that deals with International Commercial Air Transport, and provides for the maintenance of modification records; in the meantime, Part II concerning International General Aviation only provides for the maintenance of the records without addressing the subject of modification directly.³⁵⁶

Part I requires all modifications to be made in accordance with methods appropriate to the aircraft concerned. The Secretariat believed that such provision could be supported by guidance material, which could also be drafted in respect to manuals, logs and records. For Part II, guidance material could be provided on the maintenance of appropriate records, which in respect to international general aviation, do not need to be carried on the airplane.³⁵⁷

b) *Annex 7 - Nationality and registration marks.*

It is necessary to be able to identify aircraft in flight suspected of being involved in drug smuggling. Annex 7

³⁵⁶See *ibid.* Para. 5.2.1, 5.2.2.

³⁵⁷See *ibid.* Para. 5.2.3, 5.2.4, 5.2.5.

presently requires that marks on the wings should be at least 50 cm. high and that those on the fuselage or vertical tail should be at least 30 cm. high. Some of the smuggling activity is done on board of aircraft with false registration marks. For these reasons it was stated that guidance material, should indicate that the identification plates be placed in a location where they would be easily seen.³⁵³

c) Annex 8 - Design measures which would reduce the opportunity for concealing drugs.

Guidance could be provided to ensure that through aircraft design, access points to potential hiding places are kept to a minimum.³⁵⁹

d) Possible use of alarm systems or access points.

Guidance material was suggested to assist States in the implementation of alarm systems that would indicate when unauthorized access to a point of an aircraft is attempted.³⁶⁰

e) Use of checklists.

The concealment of drugs in an aircraft can be combated by the identification of probable concealment spaces and by thorough search procedures. Accordingly, the Secretariat suggested that in the implementation of such procedures the development of search checklists would be useful.³⁶¹

³⁵⁸See *ibid.* Para. 5.3.1, 5.3.2.

³⁵⁹See *ibid.* Para. 5.4.

³⁶⁰See *ibid.* Para. 5.5.

³⁶¹See *ibid.* Para. 5.6.

- *Aeronautical Telecommunications.*

The relevant provisions are contained in Annex 10, Volume II. The study conducted concentrated in Chapters 4 (Aeronautical Fixed Services) and 5 (Aeronautical Mobile Services) as it was seen that they provide for all types of messages in support of aircraft operation, thus messages related to the suppression of drug trafficking. It was also pointed out that these services would be the most likely to be used in efforts to suppress the illicit trafficking.³⁶²

- *Aircraft Accident Investigation.*

Provisions on the organization and conduct of accident investigations are contained in Chapter 5 of Annex 15. The provisions were found adequate; however, the development of guidance material for the determination of the involvement of an accidented aircraft in illicit traffic, and on the co-operation with law enforcement authorities, was once again suggested in order to include it in the Manual of Aircraft Accident Investigation and in a manual dealing specifically with the subject of suppression of illicit drug transport by air.³⁶³

- *Aeronautical Information Services.*

Annex 15, Chapter 6, paragraph 6.1.1.1 c) 8) provides for aeronautical information circulars (AICs), by which information or notification of an explanatory or advisory nature concerning technical or administrative matters is communicated. It was considered that extracts from national legislation regarding illicit transport of narcotic drugs by air could be promulgated by means of such AICs, and pointed

³⁶²See *ibid.* Para. 6.

³⁶³See *ibid.* Para. 7.

out that guidance material on this subject could be developed.³⁶⁴

- Transport of dangerous goods.

In relation to this subject, a comment that was delivered in the previous report respecting the impracticability of amending Annex 18 was confirmed.³⁶⁵ However, it was stated that guidance material could be developed on the exchange of information between carriers and law enforcement agencies.³⁶⁶

- Development of guidance material.

Having as a basis the above mentioned provisions, the Secretariat of the Air Navigation Commission proposed that guidance material could be divided into four main parts, namely: illicit trafficking by air - technical aspects, facilitation and air transport aspects, aviation medicine aspects, and legal aspects. It proposed an outline of the chapter headings for the technical aspects. It was also suggested that States, as well as selected international organizations, would be consulted in the process.³⁶⁷

The Commission cautioned that any guidance material to be developed, does not detract from the main purpose of the Annex provisions on which it is based, nor create conflicting situations or generate additional impositions on already overburdened services. With these remarks, the Commission concluded that the provisions were adequate for their intended purpose, that they did not create an impediment to the objectives pursued by other agencies and that they could

³⁶⁴See *ibid.* Para. 8.

³⁶⁵See *supra* note 341, 342, 343.

³⁶⁶See *supra* note 349. Para. 9.

³⁶⁷See *ibid.* Para. 3.3.

be used as the basis for guidance material. Finally, the Commission reviewed and noted the outline of proposed guidance material and agreed that the Secretariat should undertake consultation with States and selected international organizations in order to collect information for the development of guidance material to be incorporated in an ICAO manual.³⁶⁸

As a result of all the activity performed, the President of the Air Navigation Commission reported by writing to the Council,³⁶⁹ in its 6th meeting of the 127th Session.³⁷⁰ In the 7th meeting, when discussing the preparation of the forthcoming Assembly, the Council approved a Draft Report on the implementation of Resolution A26-12, prepared by the Secretary General.³⁷¹

4. Prevention of drug abuse by flight crew members and air traffic controllers in the workplace.

In the 14th meeting of the Air Navigation Commission's 117th Session, a progress report was presented by the Director of the Air Navigation Bureau. The Commission then noted that at the request of the Council a new element had been introduced in paragraph 3.1.3 aimed at the prevention of drug abuse in the work place (Target 4 of the Comprehensive Multidisciplinary Outline - CMO), and that the Air Navigation Commission had been asked by the Council to study whether the current regulatory provisions represented a sufficient

³⁶⁸See *supra* note 350.

³⁶⁹See Need for technical specifications related to the illicit transport of Narcotic Drugs by Air . ICAO Doc. C-WP/8769. February 21, 1989.

³⁷⁰See ICAO Doc. C-Dec. 127/6. May 31, 1989.

³⁷¹See ICAO Doc. C-Dec. 127/7. June 2, 1989. The Assembly working paper will be reviewed in its opportunity.

safeguard against drug abuse by flight crew members and air traffic controllers.³⁷²

During these discussions, the observer from the International Federation of Air Pilots Associations - IFALPA, objected to the implication that there was a problem of drug and alcohol abuse by airline flight crew members in international civil aviation. However, the Commission requested its Secretariat to document the subject, and indicated that in the light of such documentation it would judge whether a problem existed or not.³⁷³

During its first meeting of the 118th Session, the Air Navigation Commission approved a change in its work programme allowing for the subjects of drug abuse and drug traffic in the field of international civil aviation to be dealt with separately.³⁷⁴ In this same session the IFALPA observer objected to the naming of the Commission's agenda item 13B - Drug abuse by flight crew members and air traffic controllers, and suggested that it should be changed in a way that would not imply the existence of a problem. Nevertheless, the Commission agreed for the time being to retain the existing title.³⁷⁵

Following these decisions, the Secretariat undertook a detailed study related to the issue of drug abuse and flight safety, which resulted in a report that was presented to the Commission in the framework of the 7th meeting of its 118th Session.³⁷⁶ In this report, the Secretariat noted that it had

³⁷²See *supra* note 249.

³⁷³See ICAO Doc. AN. Min. 117/14. March 17, 1988.

³⁷⁴The Commission agreed that there was no need to report to the Council the change in its work programme.

³⁷⁵See ICAO Doc. AN. Min. 118/1. April 26, 1988.

³⁷⁶See Prevention of Drug Abuse by Flight Crew Members, Air Navigation Commission Task No. MED-8801. ICAO Doc. AN-WP/6201. May 3, 1988.

been monitoring and assessing the subject, and that it had held consultations with relevant research and other authorities, particularly with those responsible for international aviation medicine practice.³⁷⁷ As a result of this study, the following conclusions were drawn:

- Prevention of Drug Abuse.

The report pointed out that legislative provisions related to drug abuse both in the acute and/or chronic mode already exist in Annexes 1, 2 and 6, and that the Manual of Civil Aviation Medicine contained relevant guidance material. It stated also that both ICAO and Civil Administrations have conducted educational programmes related to the adverse effects of drugs in the context of flight safety.³⁷⁸

The Secretariat noted that in international practice, the term "substance abuse" more widely accepted than "drug abuse" or "drug dependence". However, it was signaled that there is no universally accepted definition of the terms "drug", "psychotropic substance" or "medication".³⁷⁹ In addition, it was pointed out that in the context of aviation safety not a single medication (even aspirin) could be considered "safe", since most medications produce side effects, not compatible with the levels of alertness and performance required in aviation duties. Nevertheless, it was stated that the report would focus mainly in "social drugs", meaning those taken for pleasure or other personal reasons, as opposed to disease treatment medications.³⁸⁰

The Commission's Secretariat finally emphasized the importance of prevention through education, in order to

³⁷⁷See *ibid.* Para 1.2.

³⁷⁸See *ibid.* Para. 2.1.

³⁷⁹See *ibid.* Para 2.2.

³⁸⁰See *ibid.* Para 2.2, 2.3.

create awareness among all license holders of the deleterious effects of drug abuse.³⁸¹

- *Drug testing.*

The report made clear that this subject had been debated for a number of years in aviation medical circles and that many experts in civil aviation administrations did not feel that mandatory drug testing constituted a solution to the problem. The Secretariat indicated that it strongly shared that view, partly because of the low incidence of the problem within a healthy population and mainly given the difficulty of international implementation. It stated that in the event that ICAO would consider to make drug testing compulsory, its legal implications and possible extraterritorial effects should be carefully studied. The Secretariat further argued against compulsory testing, indicating that the state of the art technology, both of blood and/or urine testing, had not yet reached a level of reasonable reliability and that false positive and/or false negative results had been detected in many instances.³⁸²

In the assessment of this issue, the Secretariat had contacted airline medical departments; drug addiction centres, whose directors indicated that the rehabilitation success rate varied from excellent in cases of marijuana abuse, to very poor with heroin addiction; and specialized laboratories, which showed their enthusiasm for the establishment of drug detection programmes. All of them favored prevention approaches through educational programmes, which had already been developed by several industrial organizations.³⁸³

³⁸¹See *ibid.* Para 2.3.

³⁸²See *ibid.* Para. 3.1.

³⁸³See *ibid.* Para. 3.2.

The Commission was further informed that two types of initial drug testing methods were available: radio immuno tests and/or enzyme immuno tests. Such tests were stated to be no more than screening tests, not always reliable, since they frequently give rise to false positives. The Secretariat indicated that the screening tests should be followed by confirmatory tests (gas chromatography and mass spectrometry), which are more specific, but also more expensive. The report argued against such procedure, since it would demand for a significant amount of time from the moment of the suspicion until the moment of the confirmatory result, a period of time in which the employee would have to be separated from his work. In addition, it was stated that the implementation of such screening practice would also have to take into consideration the high costs of the equipment and of the tests, which could prevent its worldwide utilization.³⁸⁴

The Secretariat pointed out that in the experts' belief, drug testing should be sub-divided in pre-employment testing, post accident testing, reasonable cause of suspicion testing and random testing; it finally concluded that after the extensive consultation made, the first two could be significant in the context of aviation safety and/or cost effectiveness, while the last two should be strongly discouraged.³⁸⁵

- Conclusions and action.

In the Secretariat's opinion, the existing regulatory provisions contained in the corresponding annexes offer a sufficient safeguard against drug abuse by flight crew members and air traffic controllers.³⁸⁶

³⁸⁴See *ibid.* Para. 3.3.

³⁸⁵See *ibid.* Para. 3.4.

³⁸⁶See *ibid.* Para. 4.2.

Having noted the working paper, the Air Navigation Commission agreed that the Secretariat should continue to monitor this issue and if and when developments so warranted, should bring the matter to the Commission's attention.³⁸⁷ The Secretary General informed member States of this development and sent extracts of the related regulatory provisions contained in the Annexes to the Convention on International Civil Aviation.³⁸⁸

- Regulatory Provisions.

The following are the mentioned existing regulatory provisions extracted from the Annexes to the Chicago Convention:³⁸⁹

Extract from Annex 1 - (Personnel Licensing).

1.2.3 Decrease in medical fitness.

1.2.6.1 The holder of a license shall not exercise the privileges of his license and related ratings at any time when he is aware of any decrease in his medical fitness which might render him unable to safely exercise these privileges.

1.2.6.1.1 Recommendation.- *Each Contracting State should, as far as practicable, ensure that a license holder does not exercise the privileges of his license during any period in which his medical fitness has, for any cause, decreased to an extent that would have prevented the issue or renewal of his license.*

6.2.2 Physical and mental requirements.

An applicant for any class of Medical Assessment shall be required to be free from:

a) any abnormality, congenital or acquired, or

³⁸⁷See ICAO Doc. AN Min. 118-7. May 31, 1988.

³⁸⁸See Prevention of drug abuse in the context of flight safety. State letter ICAO Doc. AN 5/15-88/77. September 14, 1988.

³⁸⁹See *supra* note 376. Appendix A.

- b) any active, latent, acute or chronic disability, or
- c) any wound, injury or sequelae from operation,

such as would entail a degree of functional incapacity which is likely to interfere with the safe operation of an aircraft or with the safe performance of his duties.

6.3.2.2 The applicant shall have no established medical history or clinical diagnosis of:

- a) a psychosis;
- b) alcoholism;
- c) drug dependence;
- d) any personality disorder, particularly if severe enough to have repeatedly resulted in overt acts;
- e) a mental abnormality, or neurosis of a significant degree;

such as might render the applicant unable to safely exercise the privileges of the license applied for or held, unless accredited medical conclusion indicates that in special circumstances, the applicant's failure to meet the requirement is such that exercise of the privileges of the license applied for is not likely to jeopardize flight safety.

Extract from Annex 2 (Rules of the Air).

2.5 Use of intoxicating liquor, narcotics or drugs.

No person shall pilot and aircraft, or act as a flight crew member of an aircraft, while under the influence of intoxicating liquor or any narcotic drug, by reason of which his capacity so to act is impaired.

Extract from Annex 6, Part II (Operation of Aircraft).

4.12 Fitness of flight crew members.

The pilot-in-command shall be responsible for ensuring that a flight:

- a) will not be commenced if any flight crew member is incapacitated from performing his duties by any cause such as injury, sickness, fatigue, the effects of alcohol or drugs;
- b) will not be continued beyond the nearest suitable aerodrome when flight crew members' capacity to perform functions is

significantly reduced by impairment of faculties from causes such as fatigue, sickness, lack of oxygen.

5. Facilitation aspects of methods used to control the illicit transport of narcotics.

Standards and Recommended Practices on Facilitation were adopted by the Council for the first time on March 25, 1949, pursuant to the provisions of Article 37 of the Convention on International Civil Aviation. They were then incorporated as Annex 9 to the Convention and became effective on September 1 1949. These Standards and Recommended Practices are based on recommendations of the Facilitation (FAL) Division, which has subsequently held several sessions that have expanded and amended Annex 9 comprehensively. The tenth and to date last session of the Facilitation (FAL) Division was held from September 7 to 23, 1988, in Montreal, and also resulted in a comprehensive expansion and amendment of Annex 9.³⁹⁰

Within the framework of the 10th Session, its Secretary presented background material that had been prepared to inform the Division on the subject of narcotic control,³⁹¹ as well as a report on the measures to facilitate such control in international airports, with the purpose of drawing to the Division's attention the matters relating to narcotics control that had been referred to it by the ICAO Council so that the Division would present suggestions for action.³⁹²

The Division first agreed to support to the decision of the Council to publish within the existing resources of the Organization a Manual or Circular containing guidance to States on various drug related aspects, with the purpose of

³⁹⁰See *supra* note 126. Annex 9. Foreword.

³⁹¹See ICAO Doc. FAL/10-WP/58.

³⁹²See Measures to facilitate Narcotics Control at International Airports. ICAO Doc. FAL/10-WP/103 & Corrigendum No. 1. August 8, 1988. Para. 1.

leaving Annex 9 free to retain its essential facilitation character.³⁹³

Secondly, a proposal to display notices and leaflets at international airports, warning travellers of the serious consequences of narcotics trafficking and of penal measures to which persons convicted of narcotics law offenses might be liable, was also accepted, as well as a suggestion to develop a pictogram or other appropriate notice for this purpose.³⁹⁴ Another proposal was agreed, that viewed the use of facilitation missions to States, in order to draw to the attention of the local authorities the provisions of Annex 9 concerning narcotics control, as well as the relevant guidance material published by ICAO.³⁹⁵

In addition, the Division did not support the establishment of Narcotics Control Committees similar to the Facilitation and Security Committees as these last two were considered to provide the necessary co-ordination in respect of narcotics control.³⁹⁶

Moreover, an extensive debate was aroused in the Division when it considered a proposal to implement a provision, along the lines of the proposed United Nations Convention for the Suppression of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which would a) protect air carriers against detention or seizure of aircraft except where there is evidence of knowledge or negligence on the part of the carrier; and b) removing the carrier's liability for incorrectness or misrepresentations in the labeling and

³⁹³See Report of the (FAL/10) Division on Agenda Items 2.1, 2.2 and 2.5. ICAO Doc. FAL/10-WP 233. September 22, 1988. Para. 2.2:2.

³⁹⁴See *ibid.* Para 2.2:4 & Para 37 a). See *supra* note 392. Para. 6.6.1. Pg 13.

³⁹⁵See *supra* note 393. Pg. 2.2-9.

³⁹⁶See *ibid.* Para. 2.2:7.

completion of transport documents.³⁹⁷ Two different opinions were put forward. While several delegations supported both provisions, the majority opposed them for a variety of reasons. In the view of some delegations, these provisions would encourage a lax attitude on the part of the carriers; some stated that the proposed provisions were contrary to their national legislation in respect to the reversal of the burden of proof and existing customs legislation; others believed that it was inappropriate for ICAO to suggest the inclusion of protective clauses for the carriers, when references to penal provisions for carriers had been deleted from the proposed United Nations Convention.³⁹⁸ In conclusion, the Division decided to reject both proposals but this matter was brought up again, and after further consideration and discussion the Division decided to adopt a Recommendation that reads as follows:³⁹⁹

IT IS RECOMMENDED THAT:

The ICAO Council, in continuing to pursue the objectives of Assembly Resolution A26-12 dealing with the suppression of illicit transport of narcotic drugs by air, take into consideration:

- a) that measures taken to prevent illicit transport of narcotic drugs and psychotropic substances by air should, wherever possible, not lead to disruptions in international air transport services; and
- b) the essential functions and requirements of facilitation to ensure, to the greatest practicable extent, the continued operation of international air services between Contracting States.

Finally, the Division did an extensive review of the subject of narcotics control in its relation to facilitation, and in conclusion it agreed to a recommendation dealing with

³⁹⁷See *ibid.* Para. 2.2:8.

³⁹⁸See *ibid.* Para. 2.2:9.

³⁹⁹See *ibid.* Para. 2.2:10, 2.2:11.

the addition of one Standard, and to following amendments to the existing provisions of Annex 9:⁴⁰⁰

- Chapter 1. Definitions and Applicability.

Chapter 1 of Annex 9 contains a list of the definitions given to several terms used in the Standards and Recommended Practices. The Division agreed to add the following definition:

Narcotics control. Measures to control the illicit movement of narcotics and psychotropic substances at or through international airports.⁴⁰¹

The Division also agreed to recommend the amendment of the definitions of "free airport" and "free zone", as follows:

Free airport. An international airport at which, provided they remain within a designated area until removal by air to a point outside the territory of the State, crew, passengers, baggage, cargo, mail and stores may be disembarked or unladen, may remain and may be trans-shipped, without being subjected to any customs charges or duties and to any examination, except for aviation security or for appropriate narcotics control measures.⁴⁰²

Free zone. An area where merchandise, whether of domestic or foreign origin, may be admitted, deposited, stored, packed, exhibited, sold, processed or manufactured, and from which such merchandise may be removed to a point outside the territory of the State without being subjected to customs duties, internal consumer taxes or to inspection except for aviation security or for appropriate narcotics control measures. merchandise of domestic origin admitted into a free zone may be deemed to be exported. When removed from a free

⁴⁰⁰We consider it pertinent to include the texts of these provisions contained in Annex 9, as amended by the 10th Session of the FAL Division, as they illustrate the type of air transport regulatory material related to our subject matter.

⁴⁰¹Supra note 126. Annex 9. Pg. 2.

⁴⁰²Ibid. Pg. 1.

zone into the territory of the State, the merchandise is subjected to customs and other required entry procedures.⁴⁰³

- Chapter 2. Entry and departure of aircraft.

The Division first recommended an amendment of Standard 2.2, to read as follows:

2.2 Contracting States shall make provisions whereby procedures for the clearance of aircraft, including those normally applied for aviation security purposes, as well as those appropriate for narcotics control, will be applied and carried out in such manner as to retain the advantage of speed inherent in air transport.

Note 1.- With respect to application of aviation security measures, attention is drawn to Annex 17 and to the ICAO Security Manual.

Note 2.- With respect to application of appropriate narcotics control measures, attention is drawn to the relevant ICAO publication (currently in preparation).⁴⁰⁴

Moreover, in a section dedicated to arrangements concerning international general aviation and other non-scheduled flights, the Division recommended an addition of a note below Standard 2.34, for it to read as follows:

2.34 In the case of aircraft registered in other Contracting States, which are not engaged in scheduled international air services and which are making flights either in transit or stopping in the territory of a Contracting State for non-traffic purposes, such Contracting State shall not require more advance notice of such flights than is necessary to meet the requirements of air traffic control and of the public authorities concerned.

Note.- This provision is not intended to prevent the application of appropriate narcotic control measures.⁴⁰⁵

⁴⁰³*Idem.*

⁴⁰⁴*Supra* note 126. Annex 9. Standard 2.2. *See supra* note 393. Para. 2.2:12.b). As we will review later, such guidance document is not going to be published. *See infra* note 477.

⁴⁰⁵*See supra* note 126. Annex 9. Standard 2.34. *See supra* note 393. Para. 2.2:12.c).

- Chapter 3. Entry and Departure of Persons and Their Baggage.

The Division recommended that Standard 3.2 and Recommended Practice 3.30 be amended, to read as follows:

3.2 Contracting States shall make provisions whereby the procedures for clearance of persons travelling by air, including those normally applied for aviation security purposes, as well as those appropriate for narcotics control, will be applied and carried out in such a manner as to retain the advantage of speed inherent in air transport.

Note 1.- With respect to application of aviation security measures, attention is drawn to Annex 17 and to the ICAO Security Manual.

Note 2.- With respect to application of appropriate narcotics measures, attention is drawn to the relevant ICAO publication (currently in preparation).⁴⁰⁶

3.30 Recommended Practice.- Contracting States should nor require presentation of baggage of passengers departing from their territory except for aviation security measures, or in special circumstances.

Note.- This provision is not intended to prevent the application of appropriate narcotics control measures.⁴⁰⁷

- Chapter 4. Entry and Departure of Cargo and Other Articles.

In the first hand, the Division recommended that Standard 4.2 would be amended to read:

4.2 Contracting States shall make provisions whereby procedures for the clearance of goods carried by air and for the interchange of air cargo with surface transport, including those normally applied for aviation security purposes as well as those appropriate for narcotics control, will be applied and carried out in such a manner as to retain the advantage of speed inherent in air transport and to avoid delay.

⁴⁰⁶See *supra* note 126. Annex 9. Standard 3.2. See *supra* note 393. Para.2.2:12.d)

⁴⁰⁷See *supra* note 126. Annex 9. Recommended Practice 3.30. See *supra* note 393. Para. 2.2:12.e).

Note 1.- With respect to application of aviation security measures, attention is drawn to Annex 17 and to the ICAO Security Manual.

Note 2.- With respect to application of appropriate narcotics measures, attention is drawn to the relevant ICAO publication (currently in preparation).⁴⁰⁸

Furthermore, in relation to clearance of export cargo, amendments were recommended for Standards 4.11, 4.13 and 4.15:

4.11 Contracting States shall make arrangements consistent with aviation security, as well as those appropriate for narcotics control, which permit operators to select and load cargo, including unaccompanied baggage, and stores on outbound aircraft up to the time of departure.⁴⁰⁹

4.13 Except for reasons of aviation security Contracting States shall not normally require physical examination of cargo, including unaccompanied baggage, to be exported by air.

Note.- This provision is not intended to prevent authorities from examining goods exported under certain conditions, e.g. under bond, license or drawback, nor is it intended to preclude other essential examinations including any appropriate narcotics control measures.⁴¹⁰

4.15 Contracting States shall permit cargo, including unaccompanied baggage which is to be exported by air, to be presented for clearance purposes at any approved customs office. Transfer from the first office to the air customs office of the airport where the cargo, including unaccompanied baggage, is to be laden on the aircraft shall be effected in accordance with the procedure laid down in the laws and regulations of the State concerned. Such procedure shall be as simple as possible, making due allowance for aviation security

⁴⁰⁸See *supra* note 126. Annex 9. Standard 4.2. See *supra* note 393. Para. 2.2:12.f).

⁴⁰⁹See *supra* note 126. Annex 9. Standard 4.11. See *supra* note 393. Para. 2.2:12.f). Standard 4.10 of the previous numeration.

⁴¹⁰See *supra* note 126. Annex 9. Standard. 4.13. See *supra* note 393. Para. 2.2:12.g). Standard 4.12 of the previous numeration.

requirements, and any appropriate narcotics control measures.⁴¹¹

Moreover, regarding clearance of import cargo, the Division suggested the amendment of Standard 4.27:

4.27 Contracting States shall, subject to compliance with any national prohibitions or restrictions and any required aviation security or appropriate narcotics control measures, make arrangements whereby special air cargo consignments, e.g. disaster relief shipments, perishable goods (livestock, plants, foodstuffs, etc.) can be released and/or cleared immediately upon arrival.⁴¹²

- Chapter 5. Traffic Passing Through the Territory of a Contracting State.

Regarding traffic arriving and departing on the same through-flight, the Division recommended the amendment of Standard 5.1, to read:

5.1 Each Contracting States shall make provision by means of direct transit areas, direct transit arrangements, or otherwise, whereby crew, passengers, baggage, cargo, stores and mail continuing their journey on the same through-flight may remain temporarily within the State without undergoing any examination except for reasons of aviation security, narcotics control or in special circumstances.

Note 1.-With respect to application of aviation security measures, attention is drawn to Annex 17 and to the ICAO Security Manual.

Note 2.- With respect to application of appropriate narcotics measures, attention is drawn to the relevant ICAO publication (currently in preparation).⁴¹³

⁴¹¹See *supra* note 126. Annex 9. Standard 4.15. See *supra* note 393. Para. 2.2:12.h). Standard 4.14 of the previous numeration.

⁴¹²See *supra* note 126. Annex 9. Standard. 4.27. See *supra* note 393. Para. 2.2:12.i). Standard 4.25 of the previous numeration.

⁴¹³See *supra* note 126. Annex 9. Standard 5.1.

In relation to traffic being transferred to another flight at the same airport, the Division agreed to include a note in the following standards so they would read as follows:

5.5 Each Contracting State shall make arrangements for the direct trans-shipment of mishandled baggage, unaccompanied baggage, unladen cargo and stores, from one flight or operator to another at the same airport, without examination, except for reasons of aviation security or in special circumstances. In cases when direct trans-shipment cannot be effected, Contracting States shall ensure that arrangements are made for the temporary custody of such goods under secure supervision and appropriate location. Operators shall undertake to process mishandled baggage trans-shipment cargo and stores as rapidly as possible.

*Note.- This provision is not intended to prevent the application of appropriate narcotics control measures.*⁴¹⁴

5.6 Each Contracting State shall make arrangements to allow operators, under supervision of the public authorities concerned, to disassemble trans-shipment cargo, including shipments in containers and pallets, so that they may sort and reassemble shipments for onward carriage without examination, except for reasons of aviation security or in special circumstances and subject only to simple documentation where required.

*Note.- This provision is not intended to prevent the application of appropriate narcotics control measures.*⁴¹⁵

Regarding traffic being transferred to another airport, the Division recommended the inclusion of the same note:

5.8 Recommended Practice.- *Each Contracting State should make provision by means of direct transit arrangements or otherwise, whereby traffic which passes directly through the State and, in the course of such passage, transfers from one international airport to another international airport, may proceed without undergoing examination, except for aviation security measures or in special circumstances.*

⁴¹⁴See *ibid.* Standard 5.5. See *supra* note 393. Para. 2.2:12.k).

⁴¹⁵See *supra* note 126. Annex 9. Standard 5.6. See *supra* note 393. Para. 2.2:12.k).

*Note.- This provision is not intended to prevent the application of appropriate narcotics control measures.*⁴¹⁶

The Division further agreed to recommend the addition of the following Standard in Annex 9, regarding free airports and free zones:

5.14 Contracting States shall ensure that the provision of free airports and free zones and/or warehousing facilities presents no additional risks as regards aviation security and narcotics control.⁴¹⁷

- Chapter 6. International Airports - Facilities and Services for Traffic.

The Division made several suggestions for amendment of Chapter 6, in related provisions, to read as follows:

6.1 Contracting States shall take all necessary steps to secure the co-operation of operators and airport administrators in ensuring that satisfactory facilities and services are provided for rapid handling and clearance of passengers, crew, baggage, cargo and mail at their international airports. Such facilities and services shall be flexible and capable of expansion to meet anticipated growth in traffic volume, or increased security measures during higher threat situations, while permitting appropriate narcotics control measures.

Note 1.- With respect to application of aviation security measures, attention is drawn to the relevant specification in Annex 17, Chapter 2. (That reads: 2.2.1 Recommendation.- Each Contracting State should whenever possible arrange for the security measures and procedures to cause a minimum of interference with, or delay to the activities of, international civil aviation).

*Note 2.- With respect to application of appropriate narcotics measures, attention is drawn to the relevant ICAO publication (currently in preparation).*⁴¹⁸

⁴¹⁶See *supra* note 126. Annex 9. Standard 5.8. See *supra* note 393. Para. 2.2:12.k).

⁴¹⁷See *supra* note 126. Annex 9. Standard 5.14 See *supra* note 393. Para. 2.2:12.1).

⁴¹⁸See *supra* note 126. Annex 9. Standard 6.1. See *supra* note 393. Para. 2.2:12.m).

Additionally, it recommended the following text regarding airport traffic arrangements:

6.9.1 Recommended Practice. Notices and leaflets should be prominently displayed at international airports warning travellers of serious consequences of illegal narcotics trafficking and of the penal measures to which persons convicted of narcotics law offenses may be liable.⁴¹⁹

Regarding outbound passengers, crew and baggage:

6.21 Recommended Practice.- In order to facilitate aircraft departure, Contracting States, in examining passengers as a security measure, or for purposes of narcotics control as appropriate, should, to the extent feasible, utilize specialized equipments in conducting such examinations so as to reduce materially the number of persons to be searched by other means.

Note 1.- The use of radiological techniques for screening passengers should be avoided.

Note 2.- Privacy should be assured when a thorough physical research is to be carried out. If special rooms are not available, portable screens may be used for this purpose.⁴²⁰

6.22 Recommended Practice.- In order to facilitate aircraft departure, Contracting States, in examining baggage of passengers departing from their territory as a security measure, or for narcotics control purposes as appropriate, should, to the extent feasible, utilize specialized equipment in conducting such examination so as to reduce materially the amount of baggage to be searched by other means.⁴²¹

Regarding transit and transfer of passengers and crew, the Division recommended the addition of a note after Recommended Practice 6.27, then 6.33, that reads as follows:

⁴¹⁹See *supra* note 126. Annex 9. Recommended Practice 6.9.1. See *supra* note 393. Para. 2.2:12.m). Recommended Practice 6.6.1 of the previous numeration.

⁴²⁰See *supra* note 126. Annex 9. Recommended Practice 6.21. See *supra* note 393. Para. 2.2:12.m). Recommended Practice 6.15 of the previous numeration.

⁴²¹See *supra* note 126. Annex 9. Recommended Practice 6.22. See *supra* note 393. Para. 2.2:12.m). Recommended Practice 6.16 of the previous numeration.

6.33 Recommended Practice.- Contracting States should ensure that physical facilities at airports are provided where the volume and nature of traffic so require, whereby crew and passengers in direct transit on the same aircraft, or transferring to other flights, may remain temporarily without being subject to inspection formalities, except for aviation security measures, or in special circumstances.

*Note.- This provision is not intended to prevent the application of appropriate narcotics control measures.*⁴²²

Finally, regarding cargo and mail handling and clearance facilities:

6.44 Recommended Practice.- Adequate space should be available in cargo terminals for storage and handling of air cargo, including building up and breaking down of pallet and container loads, located next to the customs area and easily accessible to the authorized persons and vehicles from both the apron and landside road. Such arrangements should take into account aviation security and appropriate narcotics control measures.⁴²³

6.50 Recommended Practice.- Sufficiently large and convenient areas should be provided at international airports, where, under customs supervision, trans-shipment cargo can be broken down, sorted and reassembled for immediate or later onward transmission. Such arrangements should take into account aviation security and appropriate narcotics control measures.⁴²⁴

6.52. Recommended Practice.- Where the volume of air mail so warrants and where it will expedite the onward transmission of the mail, in the opinion of the postal authorities, adequate space and facilities should be provided at international airports for the reworking, sorting and onward transmission of air mail. Such arrangements should take into account aviation security and appropriate narcotics control measures.⁴²⁵

⁴²²See *supra* note 126. Annex 9. Recommended Practice 6.33. See *supra* note 393. Para. 2.2:12.n). Recommended Practice 6.27 of the previous numeration.

⁴²³See *supra* note 126. Annex 9. Recommended Practice 6.44. See *supra* note 393. Para. 2.2:12.o). Recommended Practice 6.38 of the previous numeration.

⁴²⁴See *supra* note 126. Annex 9. Recommended Practice 6.50. See *supra* note 393. Para. 2.2:12.o). Recommended Practice 6.44 of the previous numeration.

⁴²⁵See *supra* note 126. Annex 9. Recommended Practice 6.52. See *supra* note 393. Para. 2.2:12.o). Recommended Practice 6.45 of the previous numeration.

D. The 27th Session of the Assembly and subsequent action

During the 27th Session of ICAO's Assembly, it included for the first time on its agenda as a separate item the Role of ICAO in the suppression of illicit transport of narcotic drugs by air, in view of the importance that the aviation community attached to the threat posed by the increase in drug abuse and illicit trafficking.⁴²⁶

In this framework, the Assembly considered several papers. First, a report presented by the Council on the implementation of Assembly Resolution A26-12,⁴²⁷ which provided detailed information on the activities that had been performed during the last triennium by the Council, the Air Navigation Commission, the Air Transport Committee, the 10th Session of the Facilitation (FAL) Division and by the Secretariat; all these activities had been closely coordinated with the entire United Nations system.⁴²⁸

Secondly, the delegation of Peru, on behalf of several co-sponsors (Bolivia, Colombia, Cuba, Ecuador, Paraguay, Peru, Trinidad and Tobago), presented a proposal of a draft resolution that aimed at safeguarding the international scheduled public air transport service from the effects of the growing trend to transfer to that service the burden of inspection, and the consequent liability in the event of its being involved in illicit trafficking when there was no

⁴²⁶Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. A27-WP/167. September 29, 1989. Para. 18:1.

⁴²⁷See Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. Report of the Council on the Implementation of Resolution A26-12. ICAO Doc. A27-WP/34. June 15, 1989.

⁴²⁸See supra note 426. Para. 18:2.

negligence or guilt on the part of the air carrier.⁴²⁹ Peru also presented on behalf of its cosponsors (Bolivia, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela), a proposal to establish a permanent working group, that would study and recommend the necessary measures aimed at preventing and controlling the illicit traffic, and that would co-ordinate the efforts of the various ICAO bodies and make proposals to the Council.⁴³⁰

The last working paper was presented by the International Air Transport Association - IATA, which also indicated its concern over the growing tendency of customs administrations to penalize airlines when their aircraft were used for illegal carriage of contraband, regardless of the carrier's lack of participation in, or knowledge of, the illegal transport of drugs. It urged the Assembly to recognize its concern, that had already been underlined in the Third Air Transport Conference, the 10th Session of the Facilitation Division and in the 1988 Latin American Civil Aviation Conference - LACAC Assembly.⁴³¹

As a result of the deliberations, the Assembly adopted two resolutions which remain in force today, and whose resolving parts read as follows:

A27-12: Role of ICAO in the suppression of illicit transport of narcotic drugs by air.

The Assembly:

⁴²⁹See Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. Safeguarding the International Scheduled Public Air Transport Service. ICAO Doc. A27-WP/145. September 29, 1989.

⁴³⁰See Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. Establishment of a study group... ICAO Doc. A27-WP/142. September 26, 1989.

⁴³¹See Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. Carriage of Illicit Drugs. ICAO Doc. A27-WP/32. June 13, 1989.

1. Endorses the action taken by the Council through the Air Transport Committee, Air Navigation Commission, the Tenth Session of the Facilitation Division and by the Secretariat to implement Assembly Resolution A26-12 and the Comprehensive Multidisciplinary Outline adopted by the International Conference on Drug Abuse and Illicit Trafficking;
2. Urges the Council to elaborate with a high degree of priority concrete measures in order to prevent and to eliminate possible use of illicit drugs and abuse of other drugs or substances by crew members, air traffic controllers, mechanics and other staff of international civil aviation;
3. Urges the Council to continue its work in order to prevent illicit transport of narcotic drugs and psychotropic substances by air;
4. Requests the Council to continue to follow closely the work of the United Nations and other agencies in the implementation of the Comprehensive Multidisciplinary Outline of Future activities in Drug Abuse Control and to assure active co-operation of the Organization in the implementation of all programmes relevant for international civil aviation;
5. Requests the Council, in the light of any further study which may be necessary, to propose specific actions and measures, including the preparation of necessary guidance material on all drug-related problems which may be encountered in international civil aviation;
6. Calls upon all Contracting States to continue their efforts to prevent the illicit trafficking of drugs by air, to take appropriate legislative measures to ensure that the crime of illicit transport of narcotic drugs and other psychotropic substance by air is punishable by severe penalties and to become parties, as soon as practicable, to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;
7. Requests the Council to present a report on the implementation of this Resolution to the next ordinary session of the Assembly; and
8. Declares that this Resolution supersedes Resolution A26-12.⁴³²

A27-13: Safeguarding international public air transport.

⁴³²Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Assembly Res. A27-12. 1989.

The Assembly:

1. Reaffirms the public-service character of the service provided by air transport operators, recognizing that the essential purpose of such a service is to satisfy the common good of peoples in whose development States, carriers and users are equally interested;

2. Declares as detrimental to the principles established in the Convention on International Civil Aviation any improper detention of an aircraft assigned to commercial air transport where there is no evidence or presumption of negligence or guilt on the part of the air carriers concerned.⁴³³

In the triennium that followed this Session of the Assembly, the Organization performed the following activity:

1. Prevention of drug abuse by flight crew members and air traffic controllers in the workplace.

The Air Navigation Commission in the 12th meeting of its 122nd Session,⁴³⁴ considered a progress report presented by the Director of the Air Navigation Bureau,⁴³⁵ which summarized the activities performed by the Secretariat regarding the monitoring of drug abuse in the workplace.⁴³⁶

This report comprised three parts:

- *Secretariat's passive monitoring.*

The Secretariat reported that it had searched the applicable literature in scientific textbooks, journals,

⁴³³Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Assembly Res. A27-13. 1989.

⁴³⁴See ICAO Doc. AN Min. 122-12. November 23, 1989.

⁴³⁵See Prevention of drug abuse by flight crew members and air traffic controllers in workplace. Air Navigation Commission Task No. MED-8801. ICAO Doc. AN-WP/6381. November 9, 1989.

⁴³⁶As instructed in the 118th Session of the Commission. See *supra* note 387.

aviation oriented publications and lay press, where a minimal amount of information was found in relation to drug abuse in civil aviation operations.⁴³⁷

Further reference was made to the proceedings of the Joint Committee on Aviation Pathology's 15th Scientific Session, which was held in the United Kingdom in 1986. The Secretariat indicated that a paper entitled "Place of Biochemical Tests in Aircrew Medical Examinations", stated that

the purpose of aircrew periodic medical examinations is to detect any disease or condition which, if left undetected, might impair his function.⁴³⁸

It was reported that reviewing the cost/effectiveness of the different testing procedures to detect diseases and conditions, the author had made the following remark:

With respect to the abuse of drugs and alcohol, the place of laboratory tests is much more difficult to define; with drugs because of the legal implications, and with alcohol because of the limitations of the tests.⁴³⁹

Accordingly, the Secretariat stated that the Legal Bureau of ICAO was studying the legal implications of drug testing, including the possible extraterritorial effects of rendering it compulsory.⁴⁴⁰

The Secretariat also informed the Commission about its review of recent textbooks in the field of aviation medicine. It noted that the most significant publication, entitled "Fundamentals of Aerospace Medicine", was published in the United States in 1985, where its authors strongly condemned

⁴³⁷See *supra* note 435. Para. 2.1.

⁴³⁸See *ibid.* Para. 2.2.

⁴³⁹See *idem.*

⁴⁴⁰See *idem.*

the use of drugs by aviation personnel because most illicit drugs have effects that threaten flight safety. These experts emphasized on the importance of educational campaigns to discourage drug use. One of them indicated that in his experience, the incidence of drug abuse in professional airline population was practically non-existent.⁴⁴¹ However, the Secretariat realized that most of the available published material is out of date and suggested that this could be the result of the matter being so sensitive, and that it could have risen from an absence of detailed statistical data to determine whether drug abuse has been a significant factor in aircraft accidents or on flight crew incapacitation.⁴⁴²

The Secretariat insisted in its position that screening tests were still not reliable, and that they gave rise to many false positive results; consequently, they had to be followed by confirmatory tests, procedure that requires sophisticated laboratory techniques, which due to their high expense do not permit worldwide implementation.⁴⁴³

The Secretariat stated its intention to continue the monitoring of the issue, its search for more factual information and the monitoring of technical developments concerning more reliable testing methods that would permit universal application.⁴⁴⁴

It further confirmed its previous position, indicating that the existing provisions in the ICAO documents represented sufficient safeguards on the issue.⁴⁴⁵

⁴⁴¹See *ibid.* Para. 2.3.

⁴⁴²See *ibid.* Para. 2.4.

⁴⁴³See *ibid.* Para. 2.5.

⁴⁴⁴See *ibid.* Para. 2.7.

⁴⁴⁵See *ibid.* Para. 2.8.

- Secretariat's active monitoring.

The Secretariat noted that it had contacted the World Health Organization (WHO), and had requested it to provide information on the standard methods of testing for drugs, evaluation of results and applicability to the civil aviation environment. The WHO had been unable to provide substantive answers to such questions. Additionally, it was informed that since all the publications specifically mentioned occurrences in the United States, the Secretariat had tried to obtain information from the National Institute of Drug Abuse of the United States Administration, but that no answer had been received.⁴⁴⁶

The Secretariat informed that as part of its active monitoring, it had sent a questionnaire on the prevention of drug abuse in the workplace to 22 Chief Medical Officers of selected administrations. It reported that only 11 answers had been received, and presented a summary of the replies. The Secretariat pointed out that only two of the administrations believed that the existing provisions were insufficient (United States and Sweden).⁴⁴⁷ The questions asked were:

1) (Do you) agree with present ICAO regulatory provisions as being sufficient safeguard?

2) Which testing modalities are mature enough and implementable worldwide?

3) (Do you) agree that random testing does not constitute a solution to the problem?

4) Additional comments.⁴⁴⁸

⁴⁴⁶See *ibid.* Para. 3.1, 3.2.

⁴⁴⁷See *ibid.* Para. 3.4.

⁴⁴⁸For replies see *ibid.* Appendix A.

- Discussions and decisions of the 27th Session of the Assembly.

In the light of the decisions of the 27th Assembly and the responses received to the questionnaire sent to the administrations, the Secretariat noted that it was assessing the possibility of upgrading a recommendation in Annex 13 related to post-mortem examinations. The change had been suggested by the United States in its response to the questionnaire. In the opinion of the Secretariat, such upgrading could have a significant preventive impact: first, flight personnel would be aware that the presence of drugs in their system would be revealed in the event of an autopsy; secondly, insurance policies of the flight personnel would be null and void if drugs were found in the system; finally, the airlines (operators) would not be able to invoke limitation of liability if drugs were found to be a factor in the accident.⁴⁴⁹

- Discussion and Commission's Action.

After an extensive debate over the content of this report as well as over two discussion papers that were introduced, the Commission took note of the report, requested the Secretary General to continue his efforts to expedite development of additional guidance material with emphasis on educational programmes related to prevention of drug abuse, requested the Secretariat to complete its assessment of the amendment of Annex 13 to include testing for the presence of drugs during autopsies, and requested a further report on future developments.⁴⁵⁰

⁴⁴⁹See *supra* note 435. Para. 4.2.

⁴⁵⁰See ICAO Doc. AN Min. 122-14. November 30, 1989.

2. Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs and Psychotropic Substances by Air

During the 18th meeting of the Council's 130th Session, the Secretary General presented a progress report on the implementation of Assembly Resolutions A27-12 and A27-13, that contained also information about the Special Session of the UN General Assembly convened in February of 1990.⁴⁵¹

The Council was informed that the resolutions had been transmitted for comments to member States, to the United Nations, to the International Maritime Organization, IATA, INTERPOL and IFALPA.⁴⁵² Only seven replies to the Resolutions had been reported and all of them were related to the subject of illicit transport; none made reference to drug abuse by licensed aviation personnel.⁴⁵³ These replies provided information about the relevant legislation that had been adopted by the responding States and about the signature by four of them of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Two States made general comments in relation to Assembly Resolution A27-13, and one reported that its existing law allowed detention of an aircraft not only if there was a suspicion of guilt on the part of the carrier, but also if such suspicion was directed against others, in the events that the detention is considered necessary for purposes of criminal investigation, a case in which the carrier can expect suitable compensation.⁴⁵⁴

⁴⁵¹See *supra* note 69. ICAO Doc. C-WP/9098.

⁴⁵²See Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air; Safeguarding International Public Air Transport. ICAO Doc. State Letter E 2/2.7-89/109. December 6, 1989.

⁴⁵³See *ibid.* Para. 2. 3.

⁴⁵⁴See *ibid.* Para. 3.

The Secretary General additionally reported on the results of the Seventeenth Special Session of the United Nations General Assembly of the United Nations where a Political Declaration and Global Programme of Action had been adopted,⁴⁵⁵ and informed about the contents of Resolution 44/141 of the United Nations General Assembly - System-wide Plan of Action for International Drug Abuse Control.⁴⁵⁶ The Secretary General commented on the input that ICAO had provided to the system-wide plan of action, citing the mandates laid down in Resolution A27-12.⁴⁵⁷

The report further concentrated in the implementation of Resolution A27-12 referring to the activity carried on in relation to the prevention of substance abuse in the workplace, to the technical problems of drug trafficking by air and to facilitation, and stated that the publication of guidance material was intended for 1992, in the form of a compilation of the Organization's policy with the attachment of the text of the UN Convention against Illicit Traffic in Narcotic Drugs.⁴⁵⁸

The Secretary General finally informed the Council that the United Nations General Assembly had decided to observe June 26 each year as the International Day Against Drug Abuse and Illicit Trafficking.

In the course of the discussions, clarification was provided in response to a number of queries that were raised, particularly in respect to the issue of the prevention of substance abuse in the workplace. The Council understood that additional information on the preparation of an ICAO manual addressing the subject would be provided and requested the

⁴⁵⁵See *supra* note 74.

⁴⁵⁶See *supra* note 77.

⁴⁵⁷See *supra* note 452. Para. 6.

⁴⁵⁸See *ibid.* Para. 9-12.

Secretary General to submit a more detailed analytical progress report to its 132nd Session.⁴⁵⁹

This document was produced for the 8th meeting of the Council's 132nd session. It reported on further action taken within the United Nations system, analyzed replies to the State letter transmitting the two resolutions, provided a progress report on the activities relating to the prevention of substance abuse in the workplace, technical problems of drug trafficking, facilitation and preparation of guidance material, as follows:

- Activities of the United Nations system.

The Secretary General noted that ICAO's Assembly had urged States to ratify or accede to the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and recalled the information contained in the last progress report to the Council regarding the Global Programme of Action and the United Nations system-wide plan of action. The Secretary General additionally noted that the General Assembly of the United Nations had reaffirmed that the fight against drug abuse and illicit trafficking should be based on respect for the principles enshrined in the Charter of the United Nations and international law, particularly the sovereignty and territorial integrity of States, non-interference in the internal affairs of States and non-use of force or threat of force in international relations.⁴⁶⁰

The Secretary General also reported that the General Assembly of the United Nations had requested its Secretary

⁴⁵⁹See ICAO Doc. C-Dec. 130/18. June 26, 1990.

⁴⁶⁰See Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs and Psychotropic Substances by Air. ICAO Doc. C-WP/9235. February 6, 1991. Para. 6.

General, to enhance that organization's structure, with the view to creating a single drug control programme based in Vienna, that would give priority to the implementation of the recommendations contained in the CMO and to the mandates and recommendations of the Global Programme of Action.⁴⁶¹

- States' response to Resolutions A27-12 and A27-13.

The Secretary General reported on the replies that he had received to the State letter transmitting Assembly resolutions A27-12 and A27-13. He reported that to that date he had received seventeen replies, all of them related to illicit transport; again none made reference to drug abuse by licensed aviation personnel. They only contained general statements on the implementation of the mentioned resolutions.⁴⁶²

3. Consultation with ICAO's member States and relevant international organisations.

Following the discussion of the preceding progress report, the Council requested the Secretary General to pursue consultation with Contracting States in the form of two questionnaires transmitted by separate State letters.⁴⁶³

The first requested information related to the illicit transport of narcotic drugs by air and its purpose was to determine the adequacy of the existing technical specifications. This information was needed as it would serve as the basis for the development of the necessary guidance material. It contained the following questions:

⁴⁶¹See *ibid.* Para. 7.

⁴⁶²See *ibid.* Para. 10.

⁴⁶³See ICAO Doc. C-Dec. 132/8. March 8, 1991.

- 1) Has your administration encountered any problem related to the illicit transport of narcotic drugs by air?
- 2) Have any technical procedures or practices been introduced or contemplated within your State to prevent the illicit transport by air of such drugs?
- 3) If such measures have been introduced, what were the results?
- 4) Has the application of narcotics control measures created problems at airports in facilitating the entry and departure of aircraft, persons and their baggage or the clearance of cargo and mail?⁴⁶⁴

The second questionnaire was related to the prevention of substance abuse in civil aviation, and requested information on the extent and nature of such problem of abuse of illicit drugs, and of other drugs or substances by civil aviation personnel. In its turn, it contained the following questions:

- 1) Has your Administration encountered any problems related to substance abuse in your civil aviation license holders?
- 2) Has any system of mandatory substance testing been instituted by your administration?
- 3) If testing for substances has been undertaken, what were the results?⁴⁶⁵

- Suppression of illicit transport of narcotic drugs by air.

The Air Navigation Commission during its 130th Session,⁴⁶⁶ considered a report of the Secretariat that

⁴⁶⁴See Assembly Resolution A27-12: The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. State Letter AN 5/15, E 2/2, 7-91/40. May 17, 1991.

⁴⁶⁵Assembly Resolution A27-12: The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. State Letter E 2/2.7-91/30. April 12, 1991.

⁴⁶⁶See ICAO Docs. AN-Min. 130-3. May 12, 1992. and 130-9. June 2, 1992.

presented the responses received to the State Letter sent. Sixty-three replies had been received.⁴⁶⁷

The majority of States reported that they had encountered problems related to the illicit transport of narcotic drugs by air. They highlighted various means of concealment (i.e., in the body of the aircraft, on the person of the passenger, in all forms of baggage, within cargo consignments, by way of commercial courier services and by use of general aviation), and the problem offered by the deficiencies in manpower resources and equipment availability.⁴⁶⁸ To deal with these problems, all but seven of the States had introduced technical procedures and practices such as specialized detection equipment, deployment of trained dogs for drug detection, systematic study of flight plans, potential offender profiling, development of intelligence resources, inter-agency and inter-State co-operation (e.g., the European programme of exchange of information and the implementation of interdiction strategies in the United States).⁴⁶⁹

The work on the field of aviation security was reported to have contributed to the suppression of illicit transport of drugs by air, as the system of security screening of passengers, baggage and cargo, and the protection of access to the aircraft had played a positive deterrent role against drug smuggling.⁴⁷⁰

States reported that the introduction of preventive measures appeared to be satisfactory, evidenced by the

⁴⁶⁷See Need for technical specifications related to the illicit transport of narcotic drugs by air. ICAO Doc. AN-WP/6675. April 24, 1992.

⁴⁶⁸See *ibid.* Para. 3.1.

⁴⁶⁹See *ibid.* Para. 3.2.

⁴⁷⁰See *ibid.* Para. 3.3.

noticeable increase in the quantities detected. They acknowledged however, the need for more effective measures since the methods for drug smuggling frequently changed.⁴⁷¹

In addition, 75% of the responding States affirmed that narcotic control measures had not created problems of facilitation at airports. The rest reported that they had created difficulties mainly in respect to passenger flows and flight delays, and that efforts were being made to overcome such difficulties.⁴⁷²

The Secretariat finally stated that in its opinion, States would benefit from guidance material as called for by Clause 5 of Resolution A27-12. The Commission was then invited to agree with this statement and to consider the most appropriate means of presenting such guidance material.⁴⁷³

After reviewing the report and the responses to the State letter, the Commission noted that the Secretariat intended to develop guidance material. However, a Commissioner expressed his reservations about the usefulness of such guidance material and stated that he could not support the allocation of ICAO resources to developing guidance material for which States had not identified a need.⁴⁷⁴ The Chief of the Aviation Section indicated that States had not been consulted over the need for guidance material and that the Secretariat had concluded that it would be beneficial in the light of the responses to the State letter.⁴⁷⁵ However, the Commission recognized that in the responses of States, no comments had been received relating to the need for guidance material with respect to the

⁴⁷¹See *ibid.* Para. 3.4.

⁴⁷²See *ibid.* Para. 3.5.

⁴⁷³See *ibid.* Para. 3.6.

⁴⁷⁴See *supra* note 466. ICAO Doc. AN-Min. 130-3. Para. 27.

⁴⁷⁵See *ibid.* Para. 28.

technical provisions of any of the Annexes.⁴⁷⁶ The Commission concluded that the guidance material which would benefit States was related only to Annex 9 - Facilitation, and that its work in this area had already been concluded; consequently, the Commission agreed that the work of Task No. SEC-8602, Need for technical specifications related to the illicit transport of narcotic drugs by air, had been completed.⁴⁷⁷

- Prevention of Substance Abuse in the workplace.

During the 9th meeting of its 129th Session,⁴⁷⁸ responses to the State letter requesting information on the prevention of substance abuse in civil aviation were presented to the Air Navigation Commission by its Secretariat.⁴⁷⁹

The Secretariat reported that by November 4, 1991, fifty-six replies had been received from fifty-five States and one international organization.⁴⁸⁰ In addition, the analysis of the replies indicated that the majority of States had found no problem related to substance abuse by civil aviation license holders. However, some administrations expressed concern that alcoholism, if defined in terms of substance abuse, might offer a more serious problem than other drugs.⁴⁸¹

The different administrations that replied, indicated that they had implemented legislative provisions and

⁴⁷⁶See *supra* note 466. ICAO Doc. AN-Min. 130-9. Para. 21.

⁴⁷⁷See *ibid.* Para. 23.

⁴⁷⁸See ICAO Doc. AN-Min. 129-9. February 18, 1992.

⁴⁷⁹Prevention of Substance Abuse by Flight Crew Members and Air Traffic Controllers in the Workplace. Air Navigation Commission, Task No. MED-8801. ICAO Doc. AN-WP/6615. November 4, 1991.

⁴⁸⁰See *supra* note 478. Para. 2 and Appendix A.

⁴⁸¹See *ibid.* Para. 4.1.

educational (including rehabilitation) programmes that were very specific and categorical in dealing with both acute and chronic situations. They elaborated that such provisions had, in effect, implemented ICAO Standards and Recommended Practices (SARPs), and guidance material. Accordingly, the Secretariat maintained its view that the present provisions in the ICAO regulatory documents, if properly implemented, represent a safeguard and provide Contracting States with sufficient legislative means to prevent and/or suppress substance abuse in civil aviation related occupations.⁴⁸²

It was further reported that the Secretariat had completed an assessment of the possibility of amending Annex 13, dealing with post-mortem examinations and that a paper was being prepared for the 1992 Accident Investigation Group - AIG Divisional Meeting.⁴⁸³

In the light of the discussions, a Commissioner requested that the organization should take action other than repeating that the existing ICAO provisions were adequate, and the Observer of IFALPA commented on the Association's disbelief that there was a problem with substance abuse, and pointed out that there were other issues that merited more attention from ICAO. He expressed the view that IFALPA saw no safety problem.⁴⁸⁴

The delegation of Australia noted its concern over the extraterritorial effects of a measure intended by the United States. In December 1989 the U.S. Department of Transportation (DOT) had begun drug testing under regulations designed to create a drug-free transportation workplace,⁴⁸⁵ in

⁴⁸²See *idem*.

⁴⁸³See *ibid*. Para. 4.5.

⁴⁸⁴See *supra* note 478. Para. 9.

⁴⁸⁵The implementation of such provision had been delayed until January 1993.

order to seek assurances regarding the safety and security rules applied to personnel in other countries, if such personnel were employed either directly or under contract, by U.S. transportation firms. In response to this concern, it was agreed that the Legal Bureau should be consulted on the extra-territorial implications of the intended United States policies.⁴⁸⁶

The Commission, in receiving the report, agreed that the present ICAO standards and Recommended Practices if properly implemented represent a sufficient safeguard, and reiterated its request to the Secretariat to continue its efforts to expedite the development of additional guidance material with emphasis on the educational programmes related to prevention of substance abuse. It further agreed that the Secretariat should continue monitoring the technical aspects of the subject and report back to the Commission as necessary. It finally noted the intention of the Secretariat to study the extraterritorial implications of the intended policies of the United States raised by Australia.⁴⁸⁷ In sum, it was seen that the guidance material had to be developed before taking any further specific action.⁴⁸⁸

E. The 29th Session of the Assembly and future action.

In its 29th Session, the Assembly considered Agenda Item 17: Role of ICAO in the United Nations Drug Control Programme . The Council presented its Report on the implementation of Resolutions A27-12 and A27-13, that informed the Assembly about all the activity that had been performed since the last Assembly's ordinary session.⁴⁸⁹

⁴⁸⁶See *supra* note 478. Para. 33.

⁴⁸⁷See *idem*.

⁴⁸⁸See *ibid*. Para. 32.

⁴⁸⁹Report of the Council on the Implementation of Resolutions A27-12 and A27-13. ICAO Doc. A29-WP/44. July 7, 1992.

The main was the development of guidance material regarding the prevention of substance abuse by flight crew members and air traffic controllers in the workplace. It was informed that the Secretariat of the Organization had already held preliminary exchanges of views with possible contributors to the development of the requested guidance material. It was reported that the progress had been slow due to the staff shortage in the aviation medicine section. Additionally, the problem of extra-territorial aspects of international drugs testing programmes continued to exist and the Secretariat intended to monitor technical and legal aspects, and to study the extra-territorial aspects of intended policies of States.⁴⁹⁰

It was further reported that the AIG 1992 Divisional Meeting recommended the upgrading of a recommendation in Annex 13 dealing with post-mortem examinations to a Standard and the inclusion of a note indicating the availability of guidance material, and that this recommendation was being reviewed by the Air Navigation Commission and Council after consultation with States.⁴⁹¹

The report to the Assembly also noted the co-ordination of activities with the World Health Organization. ICAO had assisted the WHO-convened meeting of the Expert Committee on Health Promotion in the Workplace - Alcohol and Drug Abuse, November 1991. This expert committee had developed the following recommendation:

In view of the widespread concern regarding the issue of drug screening and testing and considering that such programmes would not have universal applicability, the Expert Committee recommends that WHO conduct studies to determine the usefulness, reliability and effectiveness of drug screening

⁴⁹⁰See *ibid.* Para. 18.

⁴⁹¹See *ibid.* Para. 19.

and testing programmes. The Expert Committee is of the opinion that such programmes even if proven cost-effective should only be introduced as part of a more comprehensive health protection and promotion programme which should emphasize the prevention and education activities related to alcohol and drug-related problems. Drug screening which limits individual employee rights to privacy and dignity should be utilized only to the extent that it is necessary to achieve clearly established public health objectives.⁴⁹²

The Council's report also detailed the activity related to the technical problems of drug trafficking by air and provided information on the decision by Air Navigation Commission that the present relevant provisions were adequate and that consequently no further development nor complementary guidance material was needed.⁴⁹³

The Council informed the Assembly of the results of 10th Session of the Facilitation Division, and regarding legal aspects, indicated that a number of States had advised that they have in effect or are developing legislation to ensure that illicit drug traffic is punishable by severe penalties (i.e., fines, loss of license, detention of aircraft, imprisonment, and in two instances, capital punishment).⁴⁹⁴

Accordingly, the Council offered as conclusions, first, that regarding the prevention of substance abuse in international civil aviation, guidance material related to prevention, detection and suppression of such abuse, including alcohol abuse, was being developed with emphasis on educational programmes related to prevention of substance abuse. Second, regarding the prevention of illicit transport of narcotic drugs, the Council indicated that the Air Navigation Commission had concluded its work by stating that the relevant provisions in the technical annexes are adequate

⁴⁹²*Ibid.* Para. 20.

⁴⁹³See *ibid.* Para. 25.

⁴⁹⁴See *ibid.* Para. 29.

and that they require no further development nor complementary guidance material. The Council further stated that it would continue to follow closely the activity of the United Nations system to assure active co-operation in the implementation of all the programmes relevant to international civil aviation.⁴⁹⁵

During the discussions held in the framework of the Executive Committee, concern was expressed by the United States on behalf of co-sponsors (Australia, Canada, Egypt, and the Russian Federation), concerning the lack of progress that had been made regarding Resolution A27-12.⁴⁹⁶ By their invitation, the Assembly adopted a new Resolution, by which it

1. *Declares* its strong support for making and maintaining civil aviation workplaces free of substance abuse and encourages cooperative efforts throughout the international civil aviation community to educate employees on the dangers of substance abuse and to take steps, when deemed necessary, to detect and deter such use, and, through such efforts, to ensure that substance abuse never becomes prevalent or tolerated within international civil aviation;

2. *Urges* the Council to accord a high degree of priority... in the Technical Work Programme, to expediting the development and publication of guidance material containing measures which may be implemented by Contracting States and to conducting or arranging such symposia or seminars as necessary to assist and educate Contracting States to maintain civil aviation workplaces free from the threat of substance abuse;

3. *Requests* the Council to continue its effort to monitor:
a) the existence and growth of the threat to the safety of international civil aviation posed by substance abuse; and
b) efforts by Contracting States to implement preventive measures;...⁴⁹⁷

⁴⁹⁵See *ibid.* Para. 31, 32.

⁴⁹⁶See Role of ICAO in the United Nations International Drug Control Programme. ICAO Doc. A29-WP/236. October 5, 1992.

⁴⁹⁷Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Assembly Res. A29-16. 1989.

In addition, the observer from the International Federation of Air Line Pilot's Associations (IFALPA) presented a working paper, which suggested that the supposed problem of substance abuse by flight crew members was insignificant and that it had not placed in jeopardy the safety, efficiency and regularity of international civil aviation. Furthermore, IFALPA supported those arguments that had been made against unannounced random drug testing.⁴⁹⁸

The Islamic Republic of Iran provided information on domestic and international security measures in Iranian airports concerning the prevention of illicit transport of narcotic drugs by air.⁴⁹⁹ Moreover, several African delegations drew the Assembly's attention to the increasing use of their airports in illicit traffic activities.⁵⁰⁰

The Executive Committee of the Assembly noted the report of the Council and agreed with the conclusion of the Air Navigation Commission that the relevant provisions in the technical annexes are adequate and require no further development or complementary guidance material. Secondly, it agreed that States should continue their efforts to prevent the illicit traffic of drugs by air, to take appropriate legislative measures with a view to ensuring that the crime of illicit transport of narcotic drugs and other psychotropic substances by air is punishable by severe penalties, and encouraged States to become parties, as soon as practicable, to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The Committee noted that the Council will continue to follow the

⁴⁹⁸See Role of ICAO in the United Nations International Drug Control Programme, Prevention of Substance Abuse in the Workplace. ICAO Doc. A29-WP/132. September 25, 1992.

⁴⁹⁹See Role of ICAO in the United Nations International Drug Control Programme. ICAO Doc. A29-WP/80. October 10, 1992.

⁵⁰⁰See *supra* note 496. Para. 17:8.

relevant work within the United Nations system, and that the two Resolutions adopted by the 27th Session of the Assembly remained in force.⁵⁰¹

⁵⁰¹See *ibid.* Para. 17:9-17:13.

C O N C L U S I O N S

After the study that we have undertaken we now offer our conclusions in the form of the following comments on the main issues raised in our paper:

*- ICAO's role in the suppression of Illicit Transport of
Narcotic Drugs and Psychotropic Substances by Air.*

The problem of illicit traffic in narcotic drugs and psychotropic substances is far from being resolved, and will surely take new forms in the future. The international community has very defined policies that will continue to require the action of all the organs of the United Nations system to enact them. As part of the international system of drug control, the International Civil Aviation Organization will be surely called upon to provide its support in the field of its competence and will have to continue monitoring all future developments.

We have to agree that ICAO has responded in a very efficient and prompt manner to the call for action by the United Nations, particularly in the definition of its role regarding the Comprehensive Multidisciplinary Outline - CMO, and in the drafting of the Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. According to the recent events in the United Nations with the adoption of its Global Programme of Action, ICAO will have to define its role in the expansion of the development of programmes directed at the suppression of the illicit traffic, in co-operation with member States and the transportation industry.

- *Need for technical specifications related to the illicit transport of narcotic drugs by air.*

By decision of the Council, the Air Navigation Commission dedicated a great deal of its efforts to study the need for technical specifications related to the illicit transport of narcotic drugs by air. The Commission has had the important support of the Secretariat, which has undertaken significant studies of all the technical implications of the subject in the air navigation field, in particular with a view to defining the need for a revision of the Standards and Recommended Practices contained in the Annexes to the Chicago Convention. After an extensive analysis of this issue, the Secretariat concluded that no changes to the existing provisions of the Annexes were necessary; however, it stated that in its view, States would benefit from guidance material on the subject, and proposed the development of such guidance in the form of a manual containing specific recommendations to States.

The Air Navigation Commission disregarded the Secretariat's recommendation and decided that the development of the guidance material was not necessary, arguing that in response to the questionnaire sent to States in relation to the suppression of illicit transport of narcotic drugs (see note 465), no comments had been received relating to the need for the mentioned guidance material.

We disagree with argument that no ICAO resources should be allocated to the development of guidance material for which States had not identified a need (see note 474) and agree with the argument presented to the Commission by the Chief of the Aviation Section, indicating that States had not been consulted for the need of the guidance material (see note 475). We consider very unfortunate that the Air Navigation Commission disregarded the conclusions to which the Secretariat arrived after so many years of

work and after the numerous and extensive studies supporting the need for the guidance material.

Consideration of the costs that ICAO could assume for the evaluation of this issue and for the eventual development of new ICAO material, logically should have preceded any action of the Secretariat. It appears that all the efforts of the Secretariat's staff, which have been time consuming and surely costly for the Organization, have been wasted with the adoption of a decision that probably could have been taken earlier.

States that have identified the existence of the problem of illicit drug traffic in their civil aviation reported that they were strengthening their national efforts and that they were using appropriate information-sharing and inter-agency/State co-operation to enhance their detection capabilities (see note 469). However, seven out of the 63 States that responded to the Secretariat's questionnaire in illicit drug traffic (see notes 465, 469), reported that they did not have in place any specific technical procedures or practices. It is unquestionable the importance of the support and guidance provided by administrations such as the FAA from the United States, which has very defined policies in the subject. Nevertheless, we consider it difficult to believe that States would not benefit from guidance material originated in ICAO, that would provide an international perspective of the problem, and that would support the provisions contained in the Annexes to the Chicago Convention in particular in relation to air traffic services (see notes 352, 353, 354, 355), unauthorized modification of aircraft (see note 357), nationality and registration marks (see note 358), design measures which would reduce the opportunity for concealing drugs (see note 359), possible use of alarm systems or access points (see note 360), use of checklists (see note 361), aircraft accident investigation (see note 363), aeronautical information services (see note 364) and transport of dangerous goods (see note 366).

In that sense, even if the Commission has agreed to conclude its work on the subject, and that the issue is sufficiently safeguarded, we believe that the discussion is not closed yet. If the need for guidance material really exists, it will make itself evident in the near future and States will take the necessary action to make sure that the corresponding material is developed.

- Prevention of drug abuse by flight crew members and air traffic controllers in the workplace.

The Air Navigation Commission has concluded that the present Standards and Recommended Practices, if properly implemented, constitute a sufficient safeguard on this issue, and has agreed on the need for the development of guidance material with emphasis on educational programmes related to the prevention of drug abuse.

It appears that the development of such guidance material is the only major issue pending on ICAO's present agenda regarding the suppression of drug abuse and illicit traffic in international civil aviation. However, there are several unresolved aspects that are still being studied.

Drug testing represents a very important prevention component in ensuring a drug free environment in aviation. Nevertheless, there has been no agreement on who should be tested, why, how and when. This debate has particular connotations in the field of international civil aviation, given the difficulty of establishing an international policy on the subject, and the fact that if ICAO decided to make drug testing compulsory such action would have important legal implications and extraterritorial effects. There is no consensus on the legality and practicality of implementing an international programme of drug testing. States have agreed through the Air Navigation Commission that the material contained in the ICAO documents offer sufficient safeguards, but no real international policy has been adopted.

The most important aspects of this debate are, in the first place, the determination of the rationale for conducting the tests. Many arguments have been presented against drug testing in its different modalities, namely, that the testing methods are not yet reliable, that they are too costly, that statistics show a very low incidence of drug abuse and that drug testing suggests the invasion of the privacy rights of the aviation personnel. Secondly, there has been no agreement on the modalities of testing. ICAO's Secretariat has expressed its opinion that reasonable cause of suspicion testing and random testing procedures should be strongly discouraged and that pre-employment testing and post accident testing could be significant in the context of aviation safety and/or cost effective.

In our view, since the main reason for testing is preventive, we believe that no efforts should be spared to ensure that the civil aviation environment is drug free. This is a clear event where public interest is at stake and it carries more weight than the private rights of the aviation personnel.

Pre-employment and post accident testing should not create great controversy. The first is made part of the international legislation contained in Annex 1 to the Chicago Convention, and the latter has been assessed by ICAO's Secretariat with a view to its detailed study by the Accident Investigation Group - AIG Divisional Meeting (see note 483). We must emphasize the importance of the effects of post accident testing (see note 449), since they are very likely to have particular preventive connotations. In the words of Dr. M. Milde,

...Under no currently known accident insurance policy would any indemnity be payable to the pilot's beneficiaries if it were proved that the pilot was under the influence of drugs. Moreover, the aircraft operator (air carrier, airline) would hardly be in any position to invoke the limitation of liability under the Warsaw Convention now in force... The presence of drugs as a factor in an accident would most likely qualify as "wilful misconduct", thereby depriving the air carrier of the limitation of liability... In turn, the logical consequence of such situation would be that the

air carriers would exercise due caution to prevent any use of drugs by servants and agents.*

Accordingly, air carriers, aware of the onerous consequences of post accident testing, would be more open to the implementation of programmes including the other testing modalities. However, random testing and reasonable cause of suspicion testing have generated positions that as for the moment appear to be irreconcilable. The first appears to raise questions on human rights issues that would make very difficult its international adoption, and the "suspicion" component of the latter offers a subjective element that could lead to its misuse.

We believe that even if it is true that low levels of incidence have been revealed, a reasonable procedure of drug testing, that includes all the four studied modalities, will ensure that those low levels will be maintained in the future.

Another relevant issue relates to the testing methods. Concern has been expressed over the fact that drug testing has offered false positive results, and that the existing methods are not reliable and consequently require confirmatory tests, only obtainable by the use of expensive equipment. In our view, this is a technical matter that needs to be resolved, as no drug testing method should be accepted for its international application unless it has been proven as reliable. This is an issue where legal comment should necessarily respond to technical realities.

Finally, we acknowledge that States are free to decide on their policies regarding their national air transport; nevertheless in the presence of international civil aviation, a policy must soon be established. The development of the guidance material that is

*See Milde, Michael. The Role of ICAO in the Suppression of Drug Abuse and Illicit Trafficking. Annals of Air and Space Law. Vol. XIII, 1988. Pg. 146.

currently being prepared by ICAO's Secretariat, may help States in the determination of such international policy.

- Facilitation.

ICAO's preliminary analysis of the air transport aspects of the suppression of illicit drug traffic was carried out by the Air Transport Committee and by the Third Air Transport Conference, which referred to the 10th Session of the Facilitation Division - FAL, the issues that in their view would require an amendment of Annex 9 - Facilitation, to the Chicago Convention.

The implementation of such changes has been concluded and as we have studied, they mainly acknowledge the existence of narcotics measures in their relation to the facilitation programme. However, we recall that the Division supported the decision of the development of guidance material on drug related aspects, with the purpose of leaving Annex 9 free to retain its essential facilitation character (see note 393). The Division expressly made reference to the support of such guidance material to several of the Annexes provisions: regarding entry and departure of aircraft (see note 404), regarding entry and departure of persons and their baggage (see note 406), regarding traffic passing through the territory of a contracting State (see note 413), regarding international airports - facilities and services for traffic (see note 418). This gives additional ground to our argument on the need for the development of the corresponding guidance material.

- Safeguarding international public air transport.

After the multiple efforts performed by several States, with the adoption of Resolution A27-13, air carriers appear to be protected by the declaration of the Assembly that it is detrimental to the principles of the Chicago Convention, any detention of an aircraft assigned to commercial air transport where there is no

evidence or presumption of negligence on the part of the carriers concerned.

The adoption of this Resolution represents an important safeguard to international air transport. We consider justifiable any efforts directed at preventing the penalization of innocent air carriers with the seizure or detention of public air transport aircraft, when there is no evidence or even presumption of their negligence or guilt.

- Extraterritorial effects of measures taken by individual States.

The Legal Bureau of ICAO's Secretariat is conducting relevant studies according to the Australian delegation's concern on the extraterritorial effects of a measure taken by the United States administration, relating to the conduction of drug testing on personnel in other countries if such personnel were employed directly or under contract, by U.S. transportation firms (see note 486).

In our view, the United State's policies, disregarding whether they are justifiable or not, are only applicable in that State's territorial jurisdiction. Any intent to apply such policies abroad could be possible, but it would have to be done in a way that would respect the civil and labor rights recognized by the State in whose territory, the personnel of the U.S. transportation firms perform.

- National action.

Our study suggests that most of the work to be done in the field of the prevention and suppression of drug abuse and illicit traffic, must be ultimately performed by States.

Legal enforcement, in drug related issues, is carried on at the national level (see note 32). However, the international

community has developed an important body of binding instruments, that obliges States to develop national legislation that responds to international needs. Accordingly, States have agreed to adopt measures to criminalize illicit drug traffic under their domestic law, have agreed to enact and enforce national laws aimed at the suppression of the drug trade, and have agreed to implement measures to prevent and suppress drug abuse in the workplace.

In the field of civil aviation, States have been called upon by the ICAO to respond to the international need for a drug free environment. In that sense, the most relevant directives have been issued by the Assembly, which during its last three sessions has dealt with drug related matters.

Accordingly, ICAO has stimulated the national efforts to counter the problem of illicit drug traffic in international civil aviation and in doing so has encouraged States to use the provisions contained in the Annexes to the Chicago Convention, to take legislative measures to ensure that the crime of illicit transport of narcotic drugs is punishable by severe penalties and to become parties to the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

In addition, ICAO has encouraged the prevention aspects of drug abuse in the workplace, and has encouraged international co-operation to eradicate the problem in civil aviation, recognizing the immense threat that this activity poses.

It is then the duty of States, to respond to the directives of ICAO and to act in accordance to their international obligations. Nevertheless, each State has responded in a different manner, due to different levels of tolerance and varying levels of resources. Consequently, we can expect to see a varied spectrum of approaches, that go from policies of zero tolerance, like the one assumed by the United States administration, to low levels of action performed by other States.

The possible forms of national action can be grouped around air transport aspects and air navigation aspects.

a) Air transport aspects.

According to the different levels of tolerance, States deal with air transport aspects differently. Some may consider it more essential to stress on the implementation of very restrictive measures to control drug traffic, while others would prefer to stress on the facilitation aspects of air transport services.

After concluding our study of the extensive action performed by ICAO in this subject, we believe that an adequate balance should be sought where the two interests are protected. Accordingly, we could expect States to enforce their national laws dealing with the subject of illicit drug traffic in a way that would recognize the importance of safeguarding air transport, and would expect that national legislation would bare in mind two main issues: first , an important balance between the drug enforcement measures and the facilitation programme with the view of assuring rapid and efficient clearances of aircraft and their loads, and the simplification of formalities in effecting border control. Secondly, as already mentioned, we could expect to see national legislation safeguarding air carriers from detention or seizure of their aircraft assigned to commercial air transport, where there is no evidence or presumption of their negligence or guilt.

b) Air Navigation Aspects.

Related to air navigation aspects, we can expect national legislation dealing separately with the problems of illicit drug traffic and drug abuse, as the necessary measures for dealing with them are different in nature.

ICAO has made clear that in combating illicit drug traffic by air, States should refer to the provisions contained in the Annexes to the Chicago Convention, since after the extensive studies that were performed, the relevant organs have concluded that if implemented properly, such provisions should offer sufficient safeguard to the problem. Bearing in mind the regulatory nature of the standards and the recommendatory nature of the practices contained in the Annexes, in the implementation of their national legislation, States must take into account such relevant provisions, which deal with multiple aspects of illicit drug traffic, in areas like air traffic services, where States would have to refer to the provisions of Annex 2, Annex 11 and the PANS-RAC (see notes 352, 353, 354, 355); flight operations and airworthiness where the relevant provisions are contained in Annex 6, Annex 7 and Annex 8, dealing with unauthorized modification of aircraft, nationality and registration marks and design measures which would reduce the opportunity for concealing drugs (see notes 356, 357, 358); the implementation of provisions related to the organization and conduct of accident investigations, which would have to bear in mind the contents of Annex 15 (see note 363); or in the transport of dangerous goods, where States would have to bear in mind the provisions of Annex 18 (see note 366).

It would be practicable to translate the contents of these annexes to the national legislation in a way that such provisions would then be applicable to the national civil aviation of the States concerned, in addition to ensuring the protection of the international civil aviation interests. In fact, the most affected States surely have already gone beyond the international directives by implementing national provisions that respond to their needs and to their national policies.

Secondly, the measures aimed at combating drug abuse in the workplace by the aviation personnel offer an even wider framework for national action, as no international policy has been

recognized. This is another area where national action will respond to the level of tolerance of the particular administration.

For example, the United States through the Federal Aviation Administration, has implemented a zero tolerance policy which has touched domestic, flag and supplemental air carriers, air taxi and commuter operators and commercial operators of large aircraft, private air-traffic controllers and employees performing in sensitive safety or security related positions (flight personnel, instructors, dispatchers, maintenance and security personnel and air traffic controllers). The program establishes that such persons should be tested in six separate instances: a) pre-employment testing, meaning that an applicant can not be hired unless he/she passes a drug test; b) periodic testing, by which all concerned employees must be tested at least once during the first year of the program, procedure that can be discontinued after the employer has random tested during one year; c) random testing, conducted at regular intervals (e.g. every month) in a way that at least 50% of the total number of employees are tested each year; d) post accident testing, performed within thirty-two hours of an accident and that covers all the employees that could have contributed to the accident; e) testing based on reasonable cause, when there is the belief that an employee is engaged in the use of prohibited substances; and f) testing after return to duty, for employees that have failed the previous drug tests and that are unannouncedly tested for a period of up to six months after their return to their jobs. The results of these tests are analyzed by a Medical Review Officer, a licensed physician with specialized knowledge in drug use and related problems.*

This policy has been highly criticized using the same arguments that we studied earlier in our paper, namely by pointing out the low evidence of drug abuse by the aviation personnel, and that the testing methods are still not reliable and require very

*See Early, Mark. The FAA Anti-Drug Program: A Constitutional Consideration. Spring 1990. Pg. 763-801.

expensive confirmatory tests. In addition, legal issues have arisen regarding the constitutionality of the measures adopted by the FAA since they have been considered to attempt against the privacy rights of the persons involved.

We must comment that each administration is called upon to regulate the subject according to the way in which its national legislation deals with human rights and public interest issues. However, we believe that a balance should be sought where the flight safety is protected. Testing methods constitute the most important preventive measures aimed at impeding disastrous accidents originated by the drug consumption of aviation personnel. They serve as a deterrent and ensure the safety of the people on board of an aircraft. In our view the human rights consideration of the invasion of privacy does not have sufficient ground in the discussion of aviation testing, since the flight safety requirements offer a perfect example where public interest is far more important than the private interests of the aviation personnel.

Hence, the balance should not be sought in the grounds of the legality, since testing methods in our view are legal, but in the domain of the practicality. We believe that it is of the interest of every State affected by the problems of drug abuse, to implement testing programs that involve not only pre-employment and post accident testing, but also random and reasonable cause of suspicion testing, all in a reasonable way, that responds both to its national interests, and to the civil aviation need to count with a drug free environment. Nevertheless, also practical considerations must be taken into account, since among other issues, it is understandable that the implementation of such a drug programme is very expensive and costs could be beyond the capacity to pay of small air carriers already struggling to survive in difficult times.

It would be interesting to follow the future evolution of international co-operation on the subject. We could expect that once an international policy is established, it would be very likely that States would be willing to co-operate in terms of resources and facilities in the implementation of internationally accepted testing programmes.

Finally we must also note that since national efforts should be logically conducted to prevention, States should recognize the importance of the implementation of educational programmes that would offer a clear message on the need for maintaining the civil aviation activity free from any type of substance abuse.

As a final comment, we must finally note that our study has offered an incomparable opportunity for our familiarization with ICAO's documents and with the way in which business is conducted within the Organization's structure.

B I B L I O G R A P H Y

I. Conventions.

Agreement Concerning the Suppression of the Manufacture of, Internal Trade in and Use of, Prepared Opium, Geneva, 11 Feb., 1925 (First Opium Conference of the League of Nations). 51 U.N.T.S. 337.

International Opium Convention, Geneva, 19 Feb., 1925 (Second Opium Conference of the League of Nations). 81 L.N.T.S. 317.

Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, Geneva, 13 July, 1931. 139 L.N.T.S. 301.

Agreement Concerning the Suppression of Opium-Smoking, Bangkok, 27 Nov., 1931. 177 U.N.T.S. 373.

Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, Geneva, 26 June, 1936. 198 L.N.T.S. 299.

Convention on International Civil Aviation. (Chicago Convention). 6th ed. ICAO Doc. 7300/6. 1980.

Protocol Amending the Agreements, Conventions and Protocols on Narcotic Drugs Concluded at the Hague on 23 Jan., 1912 at Geneva on 11 Feb., 1925 and 19 Feb., 1925, and 13 July, 1931, at Bangkok on 27 Nov., 1931, at Geneva on 26 June, 1936, Lake Success, New York, 11 Dec., 1946. 12 U.N.T.S. 179.

Protocol amending the 1931 Convention, Paris, 30 March 1948. T.I.A.S. No. 1895.

Protocol Bringing under International Control Drugs Outside the Scope of the Convention of July 13, 1931, Paris, 19 Nov., 1948. 44 U.N.T.S. 277.

Protocol Limiting the Manufacture and Regulating the Cultivation of the Poppy Plant, the Production of, Inter-national and Wholesale Trade in, and Use of Opium, New York, 23 June, 1953. 456 U.N.T.S. 3.

Convention on the Territorial Sea and Contiguous Zone, Geneva, April 29, 1958 (United Nations Conference on the Law of the Sea, February 24 - April 27, 1958). 516 U.N.T.S. 205.

Single Convention on Narcotic Drugs (Narcotics Convention), New York, Mar. 30, 1961. 520 U.N.T.S. 204.

Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention, 1970). ICAO Doc. 8920.

Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. (Montreal Convention, 1971). ICAO Doc. 8966.

Convention on Psychotropic Substances (Psychotropic Convention), Vienna, Feb. 21, 1971. 1019 U.N.T.S. 175.

Protocol Amending the Single Convention, Geneva, Mar. 25, 1972. 976 U.N.T.S. 3.

International Convention on the Simplification and Harmonization of Customs Procedures, Kyoto, 1973.

Convention on the Law of the Sea, Montego Bay, Dec. 10, 1982 (Third United Nations Conference on the Law of the Sea). U.N. Doc. A/CONF. 62/122.

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. UN Doc. E/CONF. 82/15 & Corr. 1. December 19, 1988.

II. United Nations.

A. General Assembly Resolutions.

International co-operation in drug abuse control. UN GAOR, A/RES/34/177. December 17, 1979.

International co-operation in drug abuse control. UN GAOR, A/RES/35/195. December 15, 1980.

International Drug Abuse Control Strategy. UN GAOR, A/RES/36/168. December 16, 1981.

Measures to improve co-ordination and co-operation in the international struggle against illegal production of drugs, illicit drug traffic and drug abuse. UN GAOR, A/RES/38/93. December 16, 1983.

Draft Convention against Traffic in Narcotic Drugs and Psychotropic Substances and Related Activities. UN GAOR, A/RES/39/141. December 14, 1984.

Declaration on the Control of Drug Trafficking and Drug Abuse. UN GAOR, A/RES/39/142. December 14, 1984.

International Campaign against Traffic in Drugs. UN GAOR, A/RES/39/143. December 14, 1984.

International Campaign against Traffic in Drugs. UN GAOR, A/RES/40/171. December 13, 1985.

International Conference on Drug Abuse and Illicit Trafficking. UN GAOR, A/RES/40/122. December 13, 1985.

Preparation of a draft convention against illicit traffic in narcotic drugs and psychotropic substances. UN GAOR, A/RES/42/111. December 7, 1987.

Global programme of action against illicit narcotic drugs. UN GAOR, A/RES/44/142. December, 15 1989.

Political Declaration and Global Programme of Action adopted by the General Assembly at its seventeenth special session, devoted to the question of international co-operation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances. United Nations Doc. A/RES/S-17/2. March 15, 1990.

B. Documents.

Charter of the United Nations and Statute of the International Court of Justice. United Nations Doc. DPI/511-40108 (3-90) 100M, New York.

UN, Economic and Social Council, Commission on Narcotic Drugs, Preparatory Body: Report of the First Session 17-21 February 1986. UN Doc. A/CON.133/PC/6. March 11, 1986.

UN, Economic and Social Council, Commission on Narcotic Drugs, Preparatory Body: Report of the Second Session 12-18 February 1987. UN Doc. A/CON.133/PC/10. May 7, 1987.

Backgrounder No. 1. United Nations International Conference on Drug Abuse and Illicit Trafficking (Vienna, Austria, 17-26 June 1987). July, 1986.

Backgrounder No. 2. United Nations International Conference on Drug Abuse and Illicit Trafficking (Vienna, Austria, 17-26 June 1987). August, 1986.

Backgrounder No. 3. United Nations International Conference on Drug Abuse and Illicit Trafficking (Vienna, Austria, 17-26 June 1987). October, 1986.

Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987. Chapter II, Historical Background of the Conference. A/CONF.133/12.

Final Act of the United Nations Conference for the Adoption of a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. U.N. Doc. E/CONF. 82/14. December 19, 1988.

III. International Civil Aviation Organization.

A. Annexes to the Chicago Convention.

Personnel Licensing - Annex 1 to the Convention of International Civil Aviation. 8th Edition. July 1988.

Rules of the Air - Annex 2 to the Convention of Civil Aviation. Ninth Edition. July 1990.

Operation of Aircraft - Annex 6 to the Convention on Civil Aviation. Third Edition. September 1983.

Facilitation - Annex 9 to the Convention on International Civil Aviation. Ninth Edition, July 1990.

Aeronautical Communications - Annex 10 to the Convention on International Civil Aviation. Fourth Edition. April 1985.

Aircraft Accident Investigation - Annex 13 to the Convention on International Civil Aviation. Seventh Edition. May 1988.

B. Documents.

Agreement between the United Nations and the International Civil Aviation Organization. ICAO Doc. 7970.

Procedures for Air Navigation Services - Rules of the Air and Air Traffic Services (PANS-RAC). ICAO Doc. 4444.

Manual of Aircraft Investigation. ICAO Doc. 6920-AN/855/4. Fourth Edition. 1970.

Manual of Civil Aviation Medicine. ICAO Doc. 8984 AN(895). 2d. ed. 1985.

Resolutions of the 39th Session of the United Nations General Assembly. ICAO Doc. C-WP/8004. May 8, 1985.

ICAO Doc. C-Min. 115/7. June 14, 1985.

Adoption of Amendment 27 to Annex 2 - Rules of the Air. ICAO Doc. C-WP/8028. June 19, 1985.

Detention of Public Transport Aircraft Due to Carriage of Drugs and Prohibited Goods. ICAO Doc. AT CONF/3-WP/20. September 23, 1985.

The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. C-WP/8099. October 21, 1985.

Report of the Joint Inspection Unit on Drug Abuse Control Activities in the United Nations System. ICAO Doc. C-WP/8107. October 25, 1985.

Report of the Third Air Transport Conference. ICAO Doc. 9470. October 22 - November 7, 1985. Recommendation 9.

ICAO Doc. C-Min. 116/18. December 2, 1985.

ICAO Doc. AT-Min. 117/1. January 20, 1986.

ICAO Doc. AT-Min. 117/2. January 22, 1986.

ICAO Doc. AT-Min. 117/6. February 3, 1986.

ICAO Doc. AT-Min. 117/7. February 5, 1986.

ICAO Doc. C-Min. 117/4. February 7, 1986.

ICAO Doc. AT-Min. 117/8. February 10, 1986.

ICAO Doc. C-Min. 117/10. March 5, 1986.

Facilitation Aspects of Narcotic Control. ICAO Doc. AT-WP/1481. March 4, 1986; and Corrigendum No. 1. March 11, 1986.

Facilitation Aspects of Narcotic Control. ICAO Doc. C-WP/8216. March 17, 1986.

"Misuse" of Civil Aviation . ICAO Doc. C-WP/8217. March 18, 1986.

ICAO Doc. C-Min. 117/23. March 27, 1986.

The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. Air Navigation Commission Task No. SEC-8602. ICAO Doc. AN-WP/5918. April 5, 1986.

The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. Air Navigation Commission Task No. SEC-8602. ICAO

Doc. AN-WP/5918. April 5, 1986. Attachment: Backgrounder - The Drug Problem - Narcotic Smuggling Via Commercial Aircraft.

ICAO Doc. AN-Min. 112/3. May 8, 1986.

Need for Technical Specifications Related to the Illicit Transport of Narcotic Drugs by Air, Air Navigation Commission, Task No. SEC-8602. ICAO Doc. AN-WP/5922. May 15, 1986.

ICAO Doc. C-Min. 118/2. May 15, 1986.

The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air . ICAO Doc. C-WP/8246. May 27, 1986.

ICAO Doc. AN-Min. 112/6. May 27, 1986.

ICAO Doc. C-Min. 118/5. May 30, 1986.

ICAO Doc. C-Min. 118/9. June 9, 1986.

The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air . ICAO Doc. A26-WP/28. June 18, 1986.

The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. A26-WP/61. September 16, 1986.

The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Assembly Res. A26-12. 1986.

Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. A26-WP/167. October 10, 1986.

Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. State Letter E 2/2.7-86/113. December 15, 1986.

International Conference on Drug Abuse and Illicit Trafficking (Vienna, 17-26 June 1987) Brief for the ICAO Observer. ICAO Doc. C-WP/8387. February 19, 1987.

Need for technical specifications related to the illicit transport of narcotic drugs by air. ICAO Doc. AN-WP/6041. February 24, 1987.

ICAO Doc. AN-Min. 114/12. March 3, 1987.

Need for technical specifications related to the illicit transport of narcotic drugs by air. ICAO Doc. AN-WP/6049. March 5, 1987.

ICAO Doc. AN-Min. 114/14. March 12, 1987.

Need for technical specifications related to the illicit transport of narcotic drugs by air. ICAO Doc. AN-WP/6056. March 17, 1987.

ICAO Doc. AN-Min. 114/15. March 19, 1987.

Progress Report to Council on Study of the Potential for Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. C-WP/8395. March 20, 1987.

ICAO Doc. C-Min. 120/14. March 23, 1987.

ICAO Doc. C-Min. 120/17. March 27, 1987.

Review of Annex 17 and related documents with regard to ICAO's role in the suppression of illicit transport of narcotic drugs by air.

ICAO Doc. UI-WP/159. April 24, 1987.

ICAO Doc. UI-SD/121-1. April 30, 1987.

ICAO Doc. UI-SD/121-3. May 14, 1987.

International Conference on Drug Abuse and Illicit Trafficking. ICAO Council President's Memorandum E/2/2.7. May 28, 1987.

Review of Annex 17 and Related Documents with Regard to ICAO's Role in the Suppression of Illicit Transport of Narcotic Drugs by Air.

ICAO Doc. C-WP/8432. June 11, 1987.

ICAO Doc. C-Min. 121/9. June 17, 1987.

ICAO Doc. C-Min. 121/10. June 19, 1987.

United Nations International Conference on Drug Abuse and Illicit Trafficking (Vienna, 17-26 June 1987). ICAO Doc. SG Memorandum, E 2/2.7, SG 1124/87. September 3, 1987.

The UN International Conference on Drug Abuse and Illicit Trafficking and the Further Work in ICAO. ICAO Doc. C-WP/8466. October 14, 1987.

ICAO Doc. C-Min. 122/16. December 14, 1987.

ICAO Doc. C-Min. 123/2. DRAFT. January 26, 1988.

ICAO Doc. C-Min. 122/11. February 19, 1988.

ICAO Doc. C-Min. 122/12. February 23, 1988.

Work Programme of the Legal Committee and Plan for Legal Meetings in 1989. ICAO Doc. C-WP/8574. February 29, 1988.

Progress Report on the Study of the Potential for Suppression of Illicit Transport of Narcotic Drugs by Air. Air Navigation Commission Task No. SEC-8602: Need for Technical Specifications

related to the Illicit Transport of Narcotic Drugs by Air. ICAO Doc. AN-WP/6182. March 10, 1988.

ICAO Doc. AN-Min. 117-14. March 17, 1988.

ICAO Doc. C-Min. 123/20. DRAFT. March 31, 1988.

ICAO Doc. AN-Min. 118-1 & Corr. No. 1. April 26, 1988.

Draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. ICAO Doc. C-WP/8600. April 26, 1988.
Addendum. June 2, 1988.

Prevention of Drug Abuse by Flight Crew Members, Air Navigation Commission Task No. MED-8801. ICAO Doc. AN-WP/6201. May 3, 1988.

ICAO Doc. AN Min. 118-7. May 31, 1988.

ICAO Doc. C-Min 124/16. June 19, 1988.

ICAO Doc. C-DEC. 124/18. June 30, 1988.

ICAO Doc. C-DEC. 124/15. July 7, 1988.

ICAO Doc. FAL/10-WP/58.

Measures to facilitate Narcotics Control at Inter-national Airports.
ICAO Doc. FAL/10-WP/103 & Corrigendum No. 1. August 8, 1988.

Report of the (FAL/10) Division on Agenda Items 2.1, 2.2 and 2.5.
ICAO Doc. FAL/10-WP 233. September 22, 1988.

Prevention of drug abuse in the context of flight safety. State letter ICAO Doc. AN 5/15-88/77. September 14, 1988.

Need for technical specifications related to the illicit transport of narcotic drugs by air, Air Navigation Commission Task No. SEC-8602 . ICAO Doc. AN-WP/6234. September 28, 1988.

ICAO Doc. AN-Min. 119/5. October 11, 1988.

ICAO Doc. AN-Min. 119/7. October 18, 1988.

ICAO Doc. AN-Min. 119/8. October 20, 1988.

Study on the Potential for Suppression of Illicit Transport of Narcotic Drugs by Air, Air Navigation Commission Task No. SEC-8602; Need for technical specifications related to the illicit transport of narcotic drugs by air. ICAO Doc. AN-WP/6285. January 20, 1989.

ICAO Doc. AN. Min 120-5. January 31, 1989.

Need for technical specifications related to the illicit transport of narcotic drugs by air. ICAO Doc. AN-WP/6286. February 3, 1989.

Need for technical specifications related to the illicit transport of Narcotic Drugs by Air . ICAO Doc. C-WP/8769. February 21, 1989.

ICAO Doc. C-DEC. 127/6. May 31, 1989.

ICAO Doc. C-DEC. 127/7. June 2, 1989.

Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. Carriage of Illicit Drugs. ICAO Doc. A27-WP/32. June 13, 1989.

Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. Report of the Council on the Implementation of Resolution A26-12. ICAO Doc. A27-WP/34. June 15, 1989.

Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. Establishment of a study group... ICAO Doc. A27-WP/142. September 26, 1989.

Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. Safeguarding the International Scheduled Public Air Transport Service. ICAO Doc. A27-WP/145. September 29, 1989.

Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. A27-WP/167. September 29, 1989.

Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Assembly Res. A27-12. 1989.

Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Assembly Res. A27-13. 1989.

Prevention of drug abuse by flight crew members and air traffic controllers in workplace. Air Navigation Commission Task No. MED-8801. ICAO Doc. AN-WP/6381. November 9, 1989.

ICAO Doc. AN Min. 122-12. November 23, 1989.

ICAO Doc. AN-Min. 122/13. November 28 1989.

ICAO Doc. AN Min. 122-14. November 30, 1989.

Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air; Safeguarding International Public Air Transport. ICAO Doc. State Letter E 2/2.7-89/109. December 6, 1989.

ICAO Doc. AN-Min. 122/14. January 30, 1990.

Resolutions of the 44th Session of the United Nations General Assembly . ICAO Doc. C-WP/9077. April 25, 1990.

Progress Report on the Implementation of Assembly Resolutions A27-12 and A27-13 and Information of the Special Session of the UN General Assembly - February 1990. ICAO Doc. C-WP/9098. May 16, 1990.

ICAO Doc. SG Memorandum 1211/90. May 30, 1990.

ICAO Doc. C-DEC. 130/18. June 26, 1990.

Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs and Psychotropic Substances by Air. ICAO Doc. C-WP/9235. February 6, 1991.

ICAO Doc. C-DEC. 132/8. March 8, 1991.

Assembly Resolution A27-12: The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air . ICAO Doc. State Letter E 2/2.7-91/30. April 12, 1991.

Assembly Resolution A27-12: The Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Doc. State Letter AN 5/15, E 2/2, 7-91/40. May 17, 1991.

Prevention of Substance Abuse by Flight Crew Members and Air Traffic Controllers in the Workplace. Air Navigation Commission, Task No. MED-8801. ICAO Doc. AN-WP/6615. November 4, 1991.

Draft Work Programme of ICAO for 1993-1995 in the Air Navigation Field, Air Navigation Commission Task No. ANB-9106. ICAO Doc. AN-WP/6606. November 8, 1991.

ICAO Doc. AN-Min. 129-9. February 18, 1992.

Need for technical specifications related to the illicit transport of narcotic drugs by air. ICAO Doc. AN-WP/6675. April 24, 1992.

ICAO Docs. AN-Min. 130-3. May 12, 1992.

ICAO Docs. AN-Min. 130-9. June 2, 1992.

Draft Assembly Paper on the Role of ICAO in the United Nations International Drug Control Programme. ICAO Doc. C-WP/9573. June 4, 1992.

Report of the Council on the Implementation of Resolutions A27-12 and A27-13. ICAO Doc. A29-WP/44. July 7, 1992.

Prevention of Substance Abuse in the Workplace. ICAO Doc. A29-WP/67. September 3, 1992.

Role of ICAO in the United Nations International Drug Control Programme, Prevention of Substance Abuse in the Workplace. ICAO Doc. A29-WP/132. September 25, 1992.

Role of ICAO in the United Nations International Drug Control Programme. ICAO Doc. A29-WP/177. October 1, 1992.

Role of ICAO in the United Nations International Drug Control Programme. ICAO Doc. A29-WP/236. October 5, 1992.

Role of ICAO in the United Nations International Drug Control Programme. ICAO Doc. A29-WP/80. October 10, 1992.

Role of ICAO in the Suppression of Illicit Transport of Narcotic Drugs by Air. ICAO Assembly Res. A29-16. 1992.

IV. International Federation of Air Pilots Associations.

Report of the Forty-Second Conference. International Federation of Air Pilots Associations. Vancouver, Canada 23rd-28th April, 1987. Volume 1. Pg. A/B-30.

V. Books and publications.

Bassiouni, M. Cherif. Critical Reflections on Inter-national and National Control of Drugs. (International Narcotics Trafficking Symposium). Denver Journal of International Law and Policy. Vol. 18:3, Spring 1990.

Early, Mark. The FAA Anti-Drug Program: A Constitutional Consideration. Spring 1990.

Hanchett, Karen. The Role of the Federal Aviation Administration in the Control of Aviation Drug-Trafficking. Journal of Air Law and Commerce. Summer 1991. Pg. 999-1025.

Matte, Nicolas M. Treatise on Air-Aeronautical Law. Montreal, 1981.

McKenna, Edward. Critics Fault Scope of Drug, Alcohol Tests. Aviation Week & Space Technology. Vol. 136. Iss: 23. June 8, 1992.

Mecham, Michael. Industry Slow to Comply with FAA Drug Testing Rule. Aviation Wee & Space Technology. Vol: 131. Iss: 12. September 18, 1989.

Milde, Michael. The Role of ICAO in the Suppression of Drug Abuse and Illicit Trafficking. Annals of Air and Space Law. Vol. XIII, 1988.

Ott, James. Airline Unions Want Random Tests Cut After They Reveal Low Level of Drug Abuse. Aviation Week & Space Technology. Vol: 135. Iss:6. August 12, 1991.

Podesta Costa, L.A.; Ruda, José María. Derecho Internacional Público. Buenos Aires, 1985.

Stewart, David. Internationalizing the War on Drugs: The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (International Narcotics Trafficking Symposium). Denver Journal of International Law and Policy. Vol. 18:3, Spring 1990. Pg. 387-404.