ANALYSIS OF THE CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION:

by

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To my grandfather

Ntunta B. Mafeje .

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PREFACE:

The thrust of this research lies in Chapter II in which the study using, inter alia, travaux preparatoires attempts to give an analytical and critical review and interpretation of the provisions of the Convention on the Marking of Explosives for the purpose of Detection of 1991. Analysing the provisions of the Convention, the study tries to preserve and reflect the atmosphere that characterised the deliberations of the International Air Law Conference of 1991, an exercise that is thought to be helpful when one is coupling the theoretical analysis with the practical problems of implementation. For this reason, the study is not restricted to theoretical questions of treaty law. The author benefited from personal participation, as an observer, in the International Conference on Air Law held at Montreal from 14 February to 1 March 1991.

The first chapter is calculated to present, when matched with the section on the Convention on the Marking of Explosives, a full picture of the legal measures for safeguarding aviation security. In a nutshell, the study in this chapter endeavours to review the interpretation and implementation of the aviation security multilateral instruments presently in force.

The author respectfully disassociates Dr Milde M, his Supervisor, from the ideas and positions taken in this study.

RÈSUMÈ:

L'objet principal de cette recherche rèside dans le chapitre II où il est procèdè à une rèvision et une interprètation analytique et critique des dispositions de la Convention sur le marquage des explosifs plastiques et en feuilles aux fins de dètection de 1991, en utilisant notamment les travaux prèparatoires. En cela, cette ètude essaye de prèserver et de reflèter l'atmosphère qui caractèrisa les dèlibèrations de la Confèrence de droit aèrien international de 1991, une tâche utile sans aucun doute lorsque l'on associe l'analyse thèorique à l'ètude des problèmes pratiques de mise en oeuvre. Par consèquent ce travail de recherche ne se limite pas à des questions thèoriques de droit des conventions internationales. L'auteur a pu personnellement participer en tant qu'observateur à la confèrence internationale de droit aèrien, tenue à Montrèal du 14 Fèvrier au 1er Mars 1991.

Le premier chapitre prèsente, en parallèle avec la section sur la Convention sur le marquage des explosifs et en feuilles, un tableau complet des mesures lègales prises dans le but de protèger la sècuritè aèrienne. En bref, cette partie s'efforce d'examiner l'interprètation et la mise en oeuvre des instruments multilatèraux concernant la sècuritè aèrienne actuellement en vigueur.

L'auteur dissocie respectueusement le Dr. M. Milde des idèes et prises de positions adoptèes au cours de cette ètude.

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INTRODUCTION:

Cognisant of the risks involved when breaking the ice, this study is charting the way, in view of the fact that the Convention on the Marking of Explosives for the Purpose of Detection had only been adopted by the International Air Law Conference on March 1, 1991 and, as far as we know, there is as yet no published research work on this subject. Having said that, the author acknowledges the article " Draft Convention on the Marking of Explosives" published by Dr Milde M. in the Annals of Air and Space Law, Vol. XV. 1990, in which he comments on the draft text of the Convention. This study appreciates the dynamic link that welds all the aviation security Conventions into a complex system, which is intended to safeguard international civil aviation against all forms of unlawful interference likely to jeopardise the safety of civil aviation. Therefore, Chapter 1 of the work is dedicated to a brief review of the aviation security Conventions that are currently in force, namely, the Convention on Offences and Certain other Acts Committed on Board an Aircraft 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971, including the Supplementary Protocol to the latter Convention. In this chapter the study attempts to embark on an analytical review of the different interpretations given to the provisions of these instruments

and the problems encountered in the implementation of the provisions of the Conventions. Noting that many of the major provisions of these Conventions are identical, particularly, those of the Montreal and the Hague Conventions, the study therefore, tries to avoid the repetition of comments on similar provisions.

Chapter II, the nucleus of this research, addresses the problem of establishing an international regime for the marking of plastic explosives for the purpose of detection. This chapter is for convenience divided into two sections. Section (a) concerns the root cause, the initiative and the gruelling process of drafting the text which culminated in the eventual adoption of the Convention.

In section (b), the study, availing itself of the other rules of interpretation of international instruments enshrined in the Vienna Convention on the Law of Treaties, endeavours to analyse and interpret the provisions of the Convention on the Marking of Explosives, relying mainly on the travaux preparatoires. Again for convenience, this section is divided into sub-sections, basically taking into account the main provisions of the Convention. Finally, in the last sub-paragraph the study attempts to predict and forewarn of the challenges that might be confronted by the States Parties when implementing the Convention.

CHAPTER 1

(a) Convention on Offences and Certain other Acts Committed on Board Aircraft of 1963.

Loopholes and lacunae observed in the formulation of the provisions of the Geneva Convention on the High Seas of 1958 and the difficulties appreciated in extending the application of the same Convention to cover jurisdiction over offences and other acts committed on board aircraft, which compromise the safety of civil aviation, necessitated the adoption of the Convention on Offences and Certain other Acts committed on Board Aircraft of 1963 (hereinafter referred to as the Tokyo Convention).*1

The Geneva Convention 1958 dealt with "piracy" on High Seas, and the phenomenon of "piracy" as qualified by Art 15 has specific features; for instance, the act must have been committed for private ends by the crew or passengers of a private ship or aircraft against another ship on the high seas. Therefore, at least two ships or aircraft are envisaged. The incident is anticipated to occur in an area beyond the jurisdiction of any state. These requirements, restrictive as they are, leave the offences and other acts governed by the Tokyo Convention outside the scope of application of the Geneva Convention. For example, Jacobson P.M. refers us to the well known scholars who are inclined

to argue and prove that hijacking of aircraft by some political groups, acting either in pursuance of the political aims, or in defiance of political regime of the flag state, are not committed for private ends.*2 Jacobson correctly notes that since unlawful seizures are often committed on board one aircraft, they thus do not correspond to the definition of piracy contained in the Geneva Convention of 1958. The latter Convention is therefore, "inapplicable as a treaty to aircraft hijacking...". *3

Analysing the Tokyo Convention in its historical perspective, and ascertaining its object with the help of its long title , we submit that the Contracting Parties to this Convention never intended it to deal specifically with the question of unlawful seizure of aircraft. During the time of the drafting of this instrument, cases of unlawful seizure of aircraft were not as endemic as they became subsequent to its adoption. It is reported that the need for the Convention was prompted by the fact that national laws of some states conferred jurisdiction on their courts to try offences committed on board aircraft during flights over high seas or over areas having no territorial sovereign, while other states however, did not grant their courts such powers, and there was no internationally agreed upon system to coordinate the exercise of national jurisdictions in such cases.*4 In such a situation, an offender could easily go unpunished. An example of a legal

vacuum is demonstrated in the USA v Cordova case. Two passengers, Cordova and Santano fought in an aircraft in flight and other passengers gathered around them, thus increasing the weight in the rear portion of the aircraft. Consequently, the pilot had problems in maintaining the balance of the aircraft - a potentially disastrous situation. Cordova and Santano could not, however, be punished in the United States because there was no law that covered such incidents if committed above high seas.*5

The Tokyo Convention was therefore intended to regulate the question of jurisdiction over the perpetrators of offences and certain other acts committed on board a civil aircraft in flight.*6 The Convention aims at promoting the safety of civil aviation through the establishment of continuity of jurisdiction over criminal acts committed on board.*7 The Convention tackles mainly the question of the jurisdiction of the flag state; the powers of the aircraft commander; the rights and obligations of a state in whose territory the aircraft lands with the offender still on board; and it endeavours to deal with the aftermath of the crime of hijacking.*8. We disagree with Boyle R.P. and Pulsifer R. who submit that the "fourth major subject dealt with by the Convention (Tokyo Convention- explanation by the author) is the crime of "hijacking".*9 In our opinion the Convention does not address the crime of unlawful seizure of aircraft but the aftermath of this act.

Article 1 of the Convention defines its scope which encompasses offences against penal law and other acts which may not necessarily constitute offences but do nevertheless jeopardise the safety of the aircraft or of persons or property therein, or which jeopardise good order and discipline on board. The Convention avoids the task of defining or enumerating the offences that fall within the ambit of its application; instead it delegates this duty to the municipal laws of the Contracting States. But the watch-word for the application of the Convention to any offence or act is the safety of aircraft, persons and property on board. If the Convention had defined or listed the offences to which it is applicable, this would have narrowed its scope of application by leaving other acts beyond the periphery.

It is to be noted that the Convention, without denying the Contracting States the right to exercise their criminal jurisdiction as provided for in Article 4, and without toning down the crucial question of the safety of aircraft or of persons or property on board, limits the application of its provisions to offences committed in contravention of penal laws of a political nature or those based on racial or religious discrimination. Although Art 2 of the Convention might have been included because of humanitarian considerations it turned out to be an Achilles heel, often

cited by offenders ostensibly fleeing from dictatorial regimes and thus seeking political asylum, as well as by states that were not willing to implement the Convention in good faith. The interpretation given to Art 2 by some states is such that it transforms an ordinary criminal offence into a political case, thus protecting the offenders from prosecution . It should be noted that resort to the provision of Art 2 that recognises the political offence exception is at times barred by the expression "...except when the safety of the aircraft or of persons or property on board so requires...".*10

In analogy with a similar provision contained in the Genocide Convention of 1948, Van Panhuys concludes that the implied reasoning for the inclusion of the exceptions in Art 7 was the desire to ensure "some proportionality between political ideals pursued by the offender and the means adopted for their achievement...".*11 Therefore the safety of persons and property on board takes precedence over any political offence exception that could be claimed by the hijackers. Shubber S. submits, "...although political offences are absolved by Article 2 from the sanctions of the Convention, they are not so absolved when they endanger the safety of the aircraft, any person or property on board".*12 The Supreme Court of Turkey, for example, ruled that two Soviet nationals who hijacked an Aeroflot plane to Turkey in October 1970, killing a stewardess and injuring two other

members of the crew were extraditable as the political motive was not a defense in the circumstances.*13

To put on clothing with a logo of a banned political organisation or to plan a coup d'etat while on board an aircraft in flight does not necessarily compromise the safety of that aircraft. Therefore the commander of the aircraft cannot invoke the provisions of this Convention just because the above mentioned acts are political offences against the penal laws of the state of registration of the aircraft. The main concern of the aircraft commander when exercising his discretion is tne safety of the aircraft and all on board.

Art 1 covers acts which, whether they are offences or not, may or do jeopardise the safety of the aircraft and all on board. A person who defiantly smokes in prohibited areas on board an aircraft or when smoking is prohibited, for example, during take off or landing compromises the safety of an aircraft. A drunk but well behaving person cannot be said to be jeopardising good order and discipline on board in contravention of art 1 (1) b) of the Convention.

Article 1(2) embodies requirements that determine the application of the Convention to a particular act, namely, that the offence or act be committed by a person on board; that an aircraft be registered in a Contracting State; that

an offence be committed while that aircraft is in flight or on the surface of the high seas or of any other area outside the jurisdiction of any state.

The expression "aircraft in flight" is elucidated in Art.1(3) which provides that for the purposes of the Convention, "from the moment when power is applied for the purpose of take-off until the moment when the landing run ends", an aircraft is deemed to be "in flight". Therefore, in this context a parked or a taxiing aircraft is not in flight. Diederiks-Verschoor I.H.Ph. is also of the opinion that "...the time when the aircraft moves across the field into position for actual take off is left out of account".*14 For the purposes of jurisdiction this submission is valid but not for the determination of time and place for the aircraft commander to exercise his powers because for this purpose the determining factor is the closure or opening of the external door of an aircraft.

The Contracting States to the Tokyo Convention granting the aircraft commander rights and duties deemed it appropriate to also consider an aircraft to be "in flight" at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. This measure is intended to enable the aircraft commander to exercise his rights and fulfill his duties pursuant to the provisions of Chapter III

of the Convention, instead of waiting for the aircraft to be in flight as stipulated by Art. 1(3). Taking into account the other duties of an aircraft commander, Matte N.M. suggests that the closing and the opening of the external door formula used to determine the status of an aircraft as being in flight should not be interpreted in a restrictive manner because "...there exists the right bestowed on the commander to assure the safety of the flight before the closing of the aircraft's doors and, consequently, before take off...".*15 We are of the opinion that the activities of the aircraft commander before the closing of the external doors of an aircraft are regulated not by the Convention but rather by the national law of the state in whose territory the aircraft is present.

The Delegate of the United States to the International Conference on Air Law (August-September 1963), Mr Boyle, noted that the power of the aircraft commander might have to cover instances when the aircraft would not be "in flight" but waiting on the runway for a clearance to take off, with the aircraft commander at the same time being expected to maintain law and order on board. According to Boyle, the definite moment for the aircraft commander to begin to exercise his authority and fulfill his responsibilities is the point when the doors are closed.*16 The Conference adopted the US proposal to the effect that the authority of the aircraft commander should apply only to the period

during which the doors of the aircraft were closed.*17

The "closure and opening of the external door" formula is given a liberal interpretation in cases of forced landing so that the provisions of Chapter III can continue to apply with respect to offences and other acts committed on board an aircraft until competent authorities of a State take over the responsibility for the aircraft, for the persons and property on board. Pursuant to Art 5 (1) the flight must be international, or if it is domestic it must have a foreign element so that the provisions of Chapter III can be applicable to offences committed on board.

An offence or act is expected to have been committed by a person on board an aircraft if it is to be regulated by the Convention. "The Convention will not apply if the author of the act or omission was not, at the time it took place, on board the aircraft, even though the same may have produced effect on any person or thing on board".*18 However, if the act or omission is committed on board the aircraft and produces effect outside it, then the Convention is applicable.*19

It is argued that cases of unlawful seizure of aircraft such as the "Cooper Incident" in which the hijacker parachuted out of the plane are outside the scope of the Tokyo Convention.*20 In our opinion, the material point is that

an offence covered by the Convention was committed on board an aircraft in flight; how the offender subsequently escaped is of secondary importance.

Realising its object, namely, that of creating a continuity of jurisdiction over offences and other acts committed on board, Art 3 (1) declares that a state of registration is competent to exercise its jurisdiction over offences and acts committed on board. However, Art 4 enumerates five other situations that might necessitate the other Contracting States to impose their criminal jurisdiction upon offenders. As a rule, however, a state which is not a state of registration may not interfere with an aircraft in flight in order to assert its criminal jurisdiction over offences committed on board.*21 The Convention therefore, does not create priority of any of the legislated and concurrent jurisdictions, thus allowing them to compete.

Article 3 mandates the state of registration to take such measures as may be necessary to establish its jurisdiction in respect of offences committed on board aircraft registered in that state. The measures to be taken may include among other things, acceptance of requests for an extradition of an offender, the enactment of national laws, or even the conclusion of international agreements with other states. Recognising the role of national law, Article 3 (3) does not prohibit any criminal jurisdiction exercised

in accordance with national law. Boyle R.P. writes that the provision was meant to "reflect the fact that the jurisdiction over offences or acts committed on board an aircraft while in flight was an additional concurrent criminal jurisdiction which a State could exercise without prejudice to other criminal jurisdictions that the state might exercise under other legal theories".*22 On the other hand, Abeyratne R.I.R., noticing the same provision in all of the three aviation security Conventions in force, argues that "the element of nationality underlines the parochial nature of the treatment of the offence and the obstinate refusal of the international community to infuse universality to the treatment of the offence".*23 In our opinion, this argument might be valid in respect of the Tokyo Convention but not in regard to the Hague and Montreal Conventions. For example, Evans A.E. correctly posits that the Hague Convention made a "significant contribution to the development of international criminal law by establishing universal jurisdiction over the offense (of hijacking- by the author) so that the hijacker must be submitted to prosecution 'without exception whatsoever' in the member state in which he is found or, in the alternative, he must be extradited".*24

Article 6, articulating one of the main concerns of the Contracting States to the Convention, provides that the reasonable measures which the aircraft commander is

empowered to take against the offenders shall be directed at:

(a) protecting the safety of aircraft, or persons or property therein; or

(b) maintaining good order and discipline on board ; or

(c) enabling him to deliver an offender to competent authorities or to disembark him in accordance with the provisions of Chapter III of the Convention.*25

The question of "reasonable grounds" to believe that a person is contemplating or has committed an offence, as well as that of the degree of "reasonable measures" to be taken, is left to the discretion of the aircraft commander. However, Art. 7 safeguarding the interests of the restrained person obliges the aircraft commander not to keep an offender restrained beyond any point at which the aircraft lands, unless the continuation of such restraint is necessitated by the situations mentioned in Art. 7 (1) sub-paragraphs a), b) or c). The Convention embodies other provisions that are intended to uphold the fundamental rights and freedoms of the alleged offender.

Article 6 (2) cognisant of the status and duties of the other crew members, empowers the aircraft commander to require or authorise their assistance. The passengers are under no contractual obligation with the airline to assist when any of the scenarios envisaged in Art.1 sub-paragraphs

a) and b) are performed. Therefore, the aircraft commander may only request or authorise but not require the assistance of a passenger. The crew members or passengers may take reasonable preventive measures without an authorisation of the aircraft commander in order to protect the aircraft or persons or property therein.*26

Article 7 (2) obliges the aircraft commander to report as soon as practicable, and if possible before landing in the territory of a state, that there is a restrained person on board and the reason for such restraint.

In case of activities contemplated in Art.1 para. 1(b) and for the purpose of Art.6 para 1 (a) and (b), the aircraft commander may disembark an offender in the territory of any state. For a serious offence committed in violation of the penal law of the state of registration of the aircraft, however, the offender may be delivered to the competent authorities of any Contracting State in the territory of which the aircraft lands.

The evidence and information pertaining to an offence committed on board which, under the law of the state of registration, are fully in the possession of the aircraft commander shall be communicated to the authorities of the state that receives the delivered person.

Article 10 protects from subsequent prosecution all those who might have acted to prevent an offender from committing an offence or act that might have jeopardised the safety of an aircraft in flight.

Despite the fact that Art.1 of the Convention avoids defining the offences falling within its scope of application, Art.11 is devoted to the crime of unlawful seizure of aircraft or rather precisely to the aftermath of this offence. According to Art.11 (1) Contracting Parties are obliged to take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft. These States "shall permit its passengers and crew to continue their journey as soon as practicable...".*27 Commenting on this article, the Chairman of the Drafting Committee, Mr Sidenbladh, noted that hijacking could be realised by the use of violence, threat thereof; by putting a drug into a drink to be given to a pilot so that the command of the aircraft could be taken over; the pilot could be cheated to believe that a person had been instructed by an operator to take over the aircraft.*28 However, responding to the above submission by Sidenbladh, the Delegate of Australia emphasised that what the Conference was concerned with in the particular case "...was the end result and not the means by which it had been accomplished... The Conference was not worried about how the hijacking had been achieved but wanted to restore

control to the commander or lawful authorities..."*29

Therefore, the expression " force or threat thereof" in Art 11 should not be allowed to overshadow the main purpose of this article which is to redress or deal with the consequences of the unlawful act by obliging States to restore or preserve control. We take this position mindful of the fact that Horlick G.N. wrote "...much of the discussion of Art 11 at the Tokyo Conference centered on the breadth of the phrase "force or threat thereof" which specifically excludes hijackings by ruse or stratagem..." *30 Disagreeing with Horlick, the author supports Shubber S. who submits that if the provision is interpreted in terms of its purpose, the question of unlawful taking of control of an aircraft by ruse or stratagem could be considered as a case of hijacking.*31

Article 11 is sceptically viewed as a manifestation of a tendency of states "...to render legal pleonasms - a statement of the already existing, pre Convention, customary international law..." Consequently, some states, simple by virtue of the fact that they are not parties to a convention, tend to disregard their international responsibilities emanating from international customary law.*32 A number of conventions, for example, the Geneva Convention on High Seas contain similar obligations. Article 19 of the Geneva Convention provides for determining "...the

action to be taken with regard to the ships , aircraft, or property, subject to the rights of third parties acting in good faith". Horlick G.N., concerned with the practical implementation of Art 11 (1), writes that this provision is deemed to be ineffective against hijackers because there is a risk of endangering the flight while attempting to restore control to the commander."33 It is significant to note that Art 11 (1) contemplates a situation after the aircraft has landed with an offender still on board and de facto in command. Shepard Ira M. suggests that "credit must be given, however, to the Convention's codification of the principle of quick return of plane, crew, passengers".*34 Article 11 (1) addresses all the Contracting States, that is, "Contracting States shall take...". In support of this view, Jacobson P.M. posits that "the use of plural in the provision in addition to the lack of any geographical limitation on its application, indicates that this right is intended by the drafters to be exercised by every state party to the Convention.*35

Circumstances warranting, a Contracting State shall take custody or other measures to ensure the presence of any person delivered to it pursuant to Art. 13 (1). Measures so taken should be as provided in the law of the state in which the alleged offender is present and implicitly so also should be the preliminary enquiry which according to Art.13 (4) shall be immediately conducted.

Article 13 (2) reminds the Contracting Parties that the custody or other measures taken should be of reasonable extent, aimed mainly at enabling the execution of any criminal or extradition proceedings. Therefore the ultimate action to be taken is either prosecution or extradition. This view is supported by the provision in Art. 13 (5) that a State, having conducted a preliminary enquiry of the kind contemplated in paragraph 4 of this Article, shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

The States specifically required to be informed are that in which the aircraft is registered and that in which the offender holds citizenship, and both have vested interests in the proceedings to be pursued.

According to Art 14 (2), disembarkation, delivery, taking into custody, or other measures contemplated in Art 13 (2) shall not have the effect of modification, alteration, or possible circumvention, of the admission procedures pursuant to the immigration laws of the concerned State.

At this point it is important to emphasise that, pursuant to Art. 16 (2) "...nothing in this Convention shall be deemed to create an obligation to grant extradition". There is also no specific obligation to prosecute the alleged

offender, the unification of law achieved by the Tokyo Convention is confined to the establishment of jurisdiction.

Art 16 (1) provides that for the purpose of extradition, offences committed on board an aircraft registered in a Contracting State shall be deemed to have been committed not only in the place in which they were actually done (which might be a territory of another State), but also in the territory of the flag State.

Notwithstanding the fact that Art. 16 emphasises the right of a flag State as regards jurisdiction over offences and other acts committed on board, it should not be interpreted as creating priority of jurisdiction in favour of a State of registration. The Convention establishes a concurrence of jurisdictions without granting any of them priority status. Therefore, Art 16 (1) is only intended to facilitate extradition should the latter be the option of a state in whose territory the offender is present.

The Convention in Art 24 embodies a dispute settlement mechanism.*36

The Convention could be justifiably criticised for limiting itself only to offences and other acts committed on board an aircraft in flight. It does not contain a provision in recognition of the nemo bis in idem debet vexani rule. There

is no provision governing incidents involving a bare-hull charter. However, contrary to the argument that it failed to establish a universal jurisdiction over the crime of hijacking, or make the offence an international crime, we posit that the Convention was never intended to deal with hijacking, probably because it was drafted and adopted before the epidemic of hijackings.

FOOTNOTES

*1. Convention on the High Seas, signed at Geneva on April 29, 1958;
Convention on Offences and Certain other Acts Committed on Board an Aircraft, signed at Tokyo on 14 September, 1963, ICAO Doc. 8364.

*2. Jacobson P.M. From Piracy on the High Seas to Piracy in the High Skies. A study of Aircraft Hijacking. Cornell International Law Journal. Vol. 5;161, 1972. p.168.

*3. ibid. p.171.

*4. ICAO Doc 8565-LC/152-2 pp.29-30.

*5. See- Matte N.M. Treatise on Air-Aeronautical Law. ICASL. McGill University. Montreal. 1981. p.326.

*6. ICAO Doc. 8302. LC/150-2. p.71.

*7. See- Joyner N.D. Aerial Hijacking as an International Crime, Leyden 1974 p.127.

*8. See- Boyle R.P. and Pulsifer R. The Tokyo Convention

on Offenses and Certain other Acts Committed on Board Aircraft. The Journal of Air Law and Commerce, Vol. 30 1964 p. 329.

*9. ibid p. 329.

*10. Article 2.

*11. Van Panhuys H. F. Aircraft Hijacking and International Law, Columbia Journal of Transnational Law. Vol. 9:1 1970 p.2

*12. Shubber S. Jurisdiction over Crimes on Board Aircraft, The Hague. 1973. p. 158.

*13. Evans A.E. A Proposed Method of Control, Journal of Air Law and Commerce. Vol 37 1971 pp.177-8.

*14. Diederiks-Verschoor I.H.Ph. An Introduction to Air Law. 2 ed. Denveter. p.156.

*15. Matte N.M. Treatise on Air-Aeronautical Law, ICASL, McGill University, Montreal. 1981. p.336.

*16. ICAO Doc 8565-LC/152-1. pp.166-167.

*17. ibid. p.170

*18. ICAO Doc 8565-LC/152-2. p.56.

*19. ibid p.56

*20. Joyner N.D. A Contemporary Concept of Piracy in International Law: The Status of Aerial Hijacking as an International Crime. Ph.D Dissertation, The Florida State University. 1973. p.129.

*21. Article 4.

*22. Boyle R.P. and Pulsifer R. op. cit. p.336

*23. Abeyratne R.I.R. "Hijacking and the Teheran Incident-

A World in Crisis?". Air Law Vol. X 1985. p.124.

*24. Evans A.E. op cit. p.179.

*25. Article 6(1) sub-paras. a), b), and c).

*26. For examples of incidents when passengers took initiatives to prevent air disasters or offences being committed on board an aircraft. Matte N.M. op.cit. p.342.

*27. Article 11 (2).

*28. ICAO Doc 8565-LC/152-1. p.324

*29. ibid. pp. 324-325.

*30. Horlick G.N. The Developing Law of Air Hijacking. Havard International Law Journal. Vol 12. 1971. p.38

*31. Shubber S. op.cit. p.181.

*32. McWhinney E. The Illegal Diversion of Aircraft and International Law. Leyden. 1975. p.38.

*33. See- Horlick G.N. op cit. p.38.

*34. Shepard I.M. Air Piracy: The Role of the International Federation of Airline Pilots Associations. Cornell International Law Journal. Vol. 3 Nol 1970 p.87.

*35. Jacobson P.M. op.cit. p.176.

*36. An identical article as Art 24 of the Tokyo Convention is contained in the Hague and Montreal Conventions, and also in the Convention on the Marking of Explosives for the Purpose of Detection of 1991. The dispute settlement mechanism created by these Conventions is analysed in Chapter 2 section 2, sub-section (5) Settlement of Disputes.

(b) Convention for the Suppression of Unlawful Seizure of Aircraft of 1970:

The Legal Commission of the Sixteenth Session of the Assembly of ICAO held in September 1968, discussed the problem which by that time had reached epidemic proportions, namely, the unlawful seizure of aircraft. Pursuant to the discussions conducted , the Assembly adopted Resolution A16-37 in which it requested the Council, "at the earliest possible date, to institute a study of other measures to cope with the problem of unlawful seizure".*1 In the second operative clause of the Resolution the Assembly invited States, even before ratification of, or adherence to, the Tokyo Convention, to give effect to the principles of Article 11 of that Convention.

In December 1968 the ICAO Council, having considered Resolution A16-37 referred the legal aspect of the question of unlawful seizure to the Legal Committee and requested the Chairman of the Committee to establish a Sub-Committee to study the problem and draft a text of a convention on unlawful seizure of aircraft. The Sub-Committee of the Legal Committee met from 10 to 21 February 1969 and from 23 to 3 October 1969 preparing a draft text of the convention to be submitted later to the Legal Committee for consideration.

At its Seventeenth Session (February-March 1970) the Legal

Committee, having considered the text of the draft convention submitted by the Sub-Committee, prepared a Draft Convention which it deemed, by a unanimous vote, to be ready for presentation to the States as a final draft. The Draft Convention was then referred to the Council which in accordance with Resolution A7-6 (Procedure for Approval of Draft Conventions), transmitted it together with the Committee's Report to the States and to concerned international organisations for their consideration. The comments by the States were expected not later than 31 August 1970. The Council also convened the International Conference of Plenipotentiaries from 1 to 16 December 1970 to consider the Draft Convention with a view to approval.

In Resolutions A17-3 and A17-4 adopted by the Assembly at its Seventeenth Session (Extraordinary) held from 16-30 June, States were urged "...to make every reasonable effort at the Conference to agree on a convention based on the draft convention prepared by the Legal Committee" and "to agree to a provision in the draft convention which would require States Parties to the future convention to report to the Council as rapidly as possible all relevant information regarding the unlawful seizure of aircraft".*2 The General Assembly of the United Nations also adopted a Resolution on unlawful seizure of aircraft or interference with civil aviation, calling upon States "to make every possible effort to achieve a successful result at the diplomatic

conference... so that an effective convention may be brought into force at an early date".*3 Consequently, the convened conference adopted the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 (hereinafter referred to as the Hague Convention)*4

Emphasising the necessity of a new and comprehensive convention on unlawful seizure of aircraft, the Delegate of New Zealand observed that, "Art. 11 of the Tokyo Convention was just a piece of paper" and the Indian Delegate, expressing a general view, concurred that "something more was needed".*5 Noting the comments of these Delegates, we, however, reiterate our submission discussed in the preceding section (a) of this Chapter to the effect that the Tokyo Convention was in fact never intended to regulate the problem of unlawful seizure of aircraft but rather the aftermath of the act.

The object of the Hague Convention is expressly embodied in the preamble as the concern of the Contracting Parties about the unlawful acts of seizure or exercise of control of aircraft in flight which jeopardise the safety of persons and property, affect the operation of air services and undermine the confidence of the people in the safety of civil aviation. The Contracting Parties appreciate the fact that in order to deter such unlawful acts appropriate measures need to be taken to punish the offenders.

Article 1 (a) defines the offence that is being suppressed by the Convention. The scope of the Convention is widened to cover even an accomplice to the offence covered by the Convention- something which was not regulated in the Tokyo Convention of 1963.

Analysing the Tokyo Convention in the preceding section (a) of this Chapter, we addressed the question of narcotising the pilot and the subsequent hijacking of the aircraft. At this point, our attention is again drawn to the opinion of Abeyratne R.I.R. who submits that ostensibly the Hague Convention does not by its terminology cover such cases as the above.*6 Disagreeing with Abeyratne R.I.R., the author is of the opinion that an offence is committed if the offender, having secretly drugged a pilot, unlawfully seizes the control of an aircraft. Criminal law of many states regard an act to have been committed by force if the offender rendered the victim defenceless with the help of drugs, alcohol or any other related substance that incapacitates certain faculties of a person.

The Convention is applicable to offences that are committed or attempted while on board an aircraft in flight. Proposals to extend "unlawful seizure" to include acts committed outside the aircraft or while the aircraft is not in flight were rejected by the Hague Conference.*7

Concerning the wording of Art 2, it is reported that consideration was given to the fact that criminal laws of states were diverse and that some states did not even have provisions for penalties for this offence in their national laws, the compromise solution therefore, was to formulate Art 2 in general terms without establishing minimum or maximum penalties. The Sub-Committee of the Legal Committee "intended the hijacking of an aircraft to constitute a special offence, to be punished by special penalties".*8 There was, therefore, an intention to persuade the states to punish the offenders severely but without categorically establishing minimum penalty or penalties in Art 2. Article 2 needs to be read in conjunction with Art 7 which provides that "... authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State".

If in the Tokyo Convention the criterion used to determine an aircraft "in flight" is, inter alia, the application of power in preparation for a take-off, then that criterion is discarded by the Parties to the Hague Convention. Defining an aircraft in flight, the Hague Convention maintained the formula pertaining to the closure and opening of the external doors, a criterion it inherited from the Tokyo Convention. In the words of Abeyratne R.I.R., Article 1 is rendered destitute of effect if an offence is committed

while doors of the aircraft are open.*9 We submit that if the external doors of an aircraft are opened the local authorities have access as well as jurisdiction; there is therefore, no legal vacuum and the regulation of an incident in such a situation is a matter of national law and was as such never intended to be covered by the Convention. Mankiewicz R.H. writes that "any hijacking initiated or attempted before the closing or opening of the aircraft doors" is outside the scope of the Convention and the applicable law in such situations is that of the state where the act is committed.*10

Pursuant to Art 3 (3) the Convention is applicable if the point of departure or the actual landing point of the hijacked aircraft is outside the territory of the flag state of that aircraft. This is so whether the flight is domestic or international. With regard to the territorial application of the Convention, we note that Art 4 restricts the application of the Convention to situations where the point of departure or landing, actual or intended, is outside the territory of the State of registration. Therefore, if an aircraft with an intended destination in another country is hijacked while in flight but before leaving the territory of the State of registration, and forced to land in the same territory, then the Convention is not applicable notwithstanding the fact that the flight was international. The reason for this arrangement could be that if the

hijacking scenario is foiled within the territory of the State of registration, then the possibility of prosecution by that state is in no way in question. However, the situation could be different if deals or concessions, similar to the agreement in the Achille Lauro incident to give the hijackers a safe conduct , are made in order to save the lives of the passengers, crew and property on board.*11

An aircraft forced to land in circumstances envisaged in Art. 1 of the Hague Convention is deemed to be in flight until the competent authorities take over responsibility for the aircraft and for persons and property on board.

While mandating the Contracting States to take the necessary measures to establish their jurisdiction over offences stipulated in Art. 1, and acts of violence against passengers and crew members, Art. 4 institutionalises the following jurisdictions:

(a) the state of registration of an aircraft;
(b) the state in which the aircraft lands with the offender still on board.
(c) the state of a lessee (in a barehull charter) if his principal place of business or his permanent residence is in that state.

Furthermore, according to Art. 4(2) a Contracting State in whose territory an offender is found is obliged to take measures to establish its jurisdiction if it does not extradite him pursuant to Art 8 to any of the three states mentioned supra. The condition that the offender should be present in the territory of the State exercising jurisdiction means that " ...the Hague Convention covers both instances of where the offender is present in a territory whilst committing an offence or after an offence has been committed".*12 Article 4(2) removes any possibility for safe havens. It could be argued that Art 4(2) of the Convention by allowing all Contracting Parties to exercise their jurisdictions, makes hijacking an international offence subject to universal jurisdiction.

Among the states specifically named to be immediately informed about a person being in custody and of the circumstances warranting his detention is the state mentioned in Art. 4 para. 1 (1), namely, the state of the lessee in a barehull charter arrangement.

The Contracting State of the territory in which the offender is found shall, if it does not extradite him, be obliged, "without exception whatsoever" and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution.*13

Ghosh S.K. posits that "the measured significance of Hague's procedural principles regarding detention of the accused is heightened by the forceful provisions absent at Tokyo, i.e. Art.7, which requires prosecution without exception whatsoever, unless extradition arrangements have been made".*14 In contrast to the Tokyo Convention which does not institute an international system to deter hijackers, the Hague Convention makes it an obligation for the Parties to present the case to the competent authorities for prosecution or extradite the offender in their territory.*15 Another author, Christine van den Wijngaert, comparing the conventions on aviation security to earlier international instruments, concludes that the aviation security conventions comprehensively developed the principle aut dedere aut judicare.*16

Article 7 of the Hague Convention obliges a Contracting State to refer a case to its competent authorities and according to van den Wijngaert C. the aut judicare obligation is restricted to submitting the case to these authorities "who, in their discretion decide whether or not to bring a prosecution against the offender..."*17 It should be noted that sometimes these authorities cannot prosecute the offender, for example, when the offender is certified insane or is a minor and at times under compelling occasions they may exercise the prerogative "nolle

prosequi".

The decision to be taken by the authorities viewing a case is expected to reflect the serious nature of the offence of unlawful seizure of aircraft, an act that should be treated like any other grave offence, hence the need for a severe punishment pursuant to Art 2 of the Convention.

In the case of Abarca, which would have been governed by the Montreal Convention if this instrument had been in force at that time, the application of the principle aut dedere aut judicare was tested, linking it with other concepts significant when deciding the question of jurisdiction, namely, ratione materiae and rationae loci. Abarca, a Spanish national, was a member of a political organisation that was struggling to overthrow the regime of General Franco. Intending to sabotage the Iberia aircraft, Abarca left a suitcase full of explosives on the tarmac of the Geneva airport, among the suitcases that were to be loaded in the Iberia aircraft bound for Spain. The suitcase was, however, discovered in time and the attempt to sabotage the plane was thus foiled. Abarca fled to Belgium. Switzerland filed a request for his extradition but the government of Belgium refused on the grounds of the political offence exception. It is reported that Abarca could not at any rate, be prosecuted in Belgium where he was a fugitive because he had attempted to commit the offence abroad and

was a foreign national; therefore, Belgium lacked extraterritorial jurisdiction (i.e jurisdiction rationae loci). Alternatively, criminal law of Belgium had lacunae in that it had no appropriate provisions to cover this specific case (i.e. jurisdiction rationae materiae). Furthermore, extradition to Switzerland could not be effected due to the notion of political offence exception.*18

Therefore the Hague Convention endeavours to tackle the problems witnessed in Abarca's case by providing that:

(a) States shall enact laws to encompass the offences regulated by the Convention, making them punishable by severe penalties.(Art 2)

(b) States shall exercise extraterritorial jurisdiction as regards the regulated offences and unlawful acts.(Art 4 para-1 and Art 7)

(c) A state shall present for prosecution an offender found in its territory. (Art 4(2) and Art 7)

Unlike other instruments of international treaty law, the Hague Convention does not contain the non-extradition of nationals and the political offence exceptions. The inclusion of these exceptions in aviation security conventions would have frustrated the object of these conventions in that most cases of unlawful seizure of aircraft are often associated with a political element.

It is to be noted that conflicting interpretation of Art 7 as a result of the formulation of the English and French versions of this Article can create misunderstanding. According to the French text of the Hague Convention a Contracting Party is obliged to submit "l affaire a ses autorites competentes pour léxercice de l'action penal" and the English version provides that the submission of the case is "for the purpose of prosecution".

We therefore, conclude that the Convention does not oblige a State to prosecute or extradite, but rather, either to present the case for prosecution, or failing this, to extradite the offender found in its territory. We conclude also that this is the essence of the principle aut dedere aut judicare.

The process of extradition is in theory purported to be facilitated by the provisions of Art 8 of the Convention. The inclusion in Art 8 paragraphs (2) and (3), even if with good intentions, of the clause to the effect that extradition "...shall be subject to the conditions provided by the law of the requested state", could lead to the frustration of the attempts of facilitating extradition.

McMahon J.P. posits that hijacking is inextricably intertwined with the notion of political offences and the concept of asylum. Hence, if an international agreement

requiring extradition or prosecution is to function in deterring the forcible diversion of aircraft, it must be a compromise between the preservation of the State's right to grant refuge to individuals who flee from prosecution and the need to discourage hijackers. A liberal approach to the issue of asylum will fail to solve the problem of hijacking, while too strict a requirement for extradition or prosecution will be unacceptable to many nations.*19 It should be noted that the recent trend followed by states in cases of unlawful seizure of aircraft has been to sentence the offenders and consider the question of granting them political asylum after they have served their sentences.

We have noted supra that the Convention discarded with the nationality and political offence exceptions in regard to extradition. Therefore, the Contracting States regulating the unlawful seizure of aircraft, pursuant to Art 8 (1) of the Convention, as an extraditable offence in every treaty to be concluded between them, should not disregard this fact.

In a bilateral arrangement, Canada and the United States further developed the measures meant to deal with the aftermath of unlawful seizure of aircraft by providing in the Joint Canada-USA Declaration on no take-off of hijacked Aircraft, that their governments agreed not to allow (except under extraordinary circumstances), a hijacked aircraft

which has landed in their territory to take off again.*20 In essence, this Declaration means that the Parties to it shall not permit the departure of aircraft with hijackers and hostages on board.

Without nullifying the agreements in force or to be concluded by the Contracting Parties with the aim of affording each other assistance in criminal matters, Art 10 serves as a legal basis for mutual assistance among the Parties when conducting criminal proceedings in respect of the offence and other acts mentioned in Art 4. The law of the State requested shall apply in all cases.

An important obligation not embodied in the Tokyo Convention is the duty of the Contracting States to report to the Council of the International Civil Aviation Organisation any relevant information concerning the specific issues mentioned in Art 11 paras (a), (b) and (c). If the Contracting Parties fulfill this duty bona fide, then ICAO will be in a position to study the implementation process of the Convention and thus be able to make necessary recommendations pertaining to the safety and security of civil aviation. Furthermore, the duty to report is also embodied in Annex 17 to the Convention on International Civil Aviation of 1944.

FOOTNOTES

*1. ICAO Doc 8979-LC/165-2. p.3

*2. ibid p.4

*3. ICAO Doc 8979-LC/165-1. p.4

*4. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970. ICAO Doc. 8920.

*5. See- Horlick G.N. The Developing Law of Air Hijacking. Havard International Law Journal, Vol. 12. 1971 p.43

*6. Abeyratne R.I.R. Hijacking and the Teheran Incident- A World in Crisis? Air Law. Vol. X. 1985. p.123

*7. See- Mankiewicz R.H. The 1970 Hague Convention. The Journal of Air Law and Commerce. Vol. 37. 1971 p.200

*8. ICAO Doc 8936-LC/164-1. p.39

*9. Abeyratne R.I.R. op cit p.123

*10. Mankiewicz R.H. op cit. p. 200

*11. Cassese A. Terrorism, Politics and Law. The Achille Lauro Affair. London 1989. pp.31-54

*12. Abeyratne R.I.R. The Ekanayake Hijacking Appeal in Sri Lanka- a critical appraisal. Air Law. Vol. XIV. 1989. p.65

*13. Article 7 Hague Convention.

*14. Ghosh S.K. Aircraft Hijacking and the Developing Law. New Delhi 110026. 1985. (in the Preface p.1V).

*15. ibid p.34.

*16. van den Wijngaert C., Aviation Terrorism. Jurisdiction

and its Implications. Conference Proceedings, Aviation Security, January 1987. Peace Palace. Hague. p 137.

*17. ibid p.144.

*18. ibid pp. 138-139

*19. Ghosh S.K. op cit. p.34.

*20. Government of Canada. News Release. November 2. 1988. No 235.

(c) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 1971:

In June 1970, the Seventeenth Session (Extraordinary) of the ICAO Assembly adopted Resolution A17-20 in which it directed the Council of ICAO "to convene the Legal Committee if possible not later than November 1970, in order to prepare, as a matter of first priority on its Work Programme, a draft convention on acts of unlawful interference against international civil aviation (other than those covered by the draft Convention on unlawful seizure of aircraft) ... with a view to adoption of the convention at a diplomatic conference as soon as practicable and if possible not later than the summer of 1971 in the Northern Hemisphere;...".*1 It is reported that the ICAO Assembly was concerned with the increasing number of acts of violence endangering international air navigation.*2

Adopting Resolution A17-20, the ICAO Assembly was aware of the fact that due to the time factor stipulated in this Resolution for the adoption of the draft convention, the established procedure for the drafting of conventions within the framework of ICAO would not be observed. Consequently, to expedite the process of the drafting of the convention, the Sub-Committee which is normally established to study the subject and draft the text to be considered by the Legal Committee was in this case not formed. The Chairman of the

Legal Committee assisted by the Secretariat prepared the draft text of the convention on acts of unlawful interference against international civil aviation.

At its Eighteenth Session, held from the 29 September to 22 October 1970, the Legal Committee considered the question of the convention to be prepared pursuant to the directive of the Resolution A17-20. The Report and the Annex thereto presented by the Chairman of the Legal Committee served as a basis for the discussions. The Chairman of the Legal Committee, noting that in an extraordinary brief period of time, a draft Convention on Unlawful Seizure of Aircraft had been prepared, appealed to the Delegates to the Eighteenth Session to manifest a similar spirit during the drafting of the convention because "threats to international civil aviation were constantly becoming more alarming and grave. New aspects, new facets, and more spectacular types of offences were occurring ... For each type of offence, an adequate legal rule would have to be adopted".*3

The terms of reference of the Legal Committee were as provided in resolution A17-20, namely, "to prepare... a draft convention on acts of unlawful interference against international civil aviation (other than those covered by the draft convention on unlawful seizure of aircraft".*4

The Legal Committee prepared and considered the draft as

being ready for presentation to States as a final draft and it referred the final draft to the Council of ICAO for the latter to transmit it to States for their consideration in accordance with the procedure established by Resolution A7-6. The Council circulated the drafc convention together with the Legal Committee's Report thereon and requested States to send their comments by 1 April 1971. The Council convened an International Conference of Plenipotentiaries which was held from 8 to 23 September 1971 and the conference eventually adopted the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 1971 (hereinafter referred to as the Montreal Convention).*5

It should be emphasised that notwithstanding the fact that the Montreal Convention embodies all but five Articles similar to those contained in the Hague Convention, it also covers other types of offences.

Article 1 of the Montreal Convention enumerates offences which pursuant to Art 3 are to be punishable by severe penalties. Matte N.M. writes, "the most obvious lacuna left by the Hague Convention and, furthermore, which motivated the drafting of the Montreal Convention, is that it applies only to aircraft in flight".*6 In this regard we submit that it was not by oversight that the application of the Hague Convention was limited to aircraft in flight. The Hague Convention separately addresses the problem of

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unlawful seizure of aircraft as a matter of priority. Incidents of sabotage are a phenomenon that began to confront civil aviation at a later stage. Consequently, a need arose to legislate even offences perpetrated on the ground, hence the adoption of the Montreal Convention.

The preamble of the Hague Convention distinguishes the main focus of this Convention from that of the Montreal Convention. The former Convention reads: "...considering that the unlawful acts of seizure or exercise of control of aircraft in flight jeopardise ...", whereas the preamble to the latter Convention provides: "...considering that the unlawful acts against the safety of civil aviation jeopardise...". Therefore, from these extracts it is clear that the scope of the Montreal Convention is comparatively broad in respect of offences governed by it.

Article 1 para 1 b), c), d) pertains to sabotage activities and Article 1 (1) listing the offences covered by the Convention, requires that an unlawful act committed by an offender should also be coupled with an element of intent or mens rea. In a case decided in South Africa involving the State versus Jeffers, the accused, Jeffers, told one of the flight attendants to inform the captain that he was hijacking the aircraft enroute from Durban to Johannesburg, (that is, a domestic flight governed by the South African Civil Aviation Offences Act of 1972), and that they should

fly to Maputo. The statute was enacted in order to implement the aviation security conventions in force. The defence counsel argued in vain that since the accused was drunk mens rea or intention to hijack could not be established, especially since the accused did not leave his seat and was not aggressive. The accused claimed that he was only joking.*7

Article 1 (1) d) requires restrictive interpretation in that the destruction or damage caused to air navigation facilities or interference with the operation of these facilities are deemed to be of relevance to the Montreal Convention only if any of these acts is likely to endanger the safety of aircraft in flight. For example, there are states that close their airports at night; hence, should a control tower be sabotaged at night when there is no civil aircraft that is supposed to be or expected to be in flight in that state and in need of the air traffic control services, the Montreal Convention will not be applicable. A further limitation directed at Art 1 para 1 d) is provided in Art 4 (5) which states that "...this Convention shall apply only if the air navigation facilities are used in international air navigation".

According to Diederiks-Verschoor I.H.Ph. the clause "endangering the safety of an aircraft" means that false bomb alerts, which cause only delay and no damage to the

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aircraft are not covered. Hoaxes thus remain beyond the reach of the Convention.*8 In our opinion bomb alerts, whether verified statements or simple hoaxes, are potentially disastrous if one takes into consideration the state of mind of the pilot and the reaction of the passengers after hearing that the aircraft is containing an armed bomb. The matter is further complicated by the fact that in such a situation the pilot needs to execute an emergency landing, possibly at an airport unfamiliar to him, or on a strip of land that may be unsuitable for the type of aircraft involved. The pilot might not even possess a map of that airport. A hoax might necessitate the re-routing of the aircraft to a particular airport; however, an insufficient amount of fuel might eventually cause a crash landing. Therefore, in as much as hoaxes do jeopardise or are likely to endanger the safety of civil aviation, they cannot be interpreted to be outside the scope of application of the Montreal Convention, simply because their consequences may happen to be mere delays and no damage is actually done to the aircraft. Pursuant to Art 1 (1) e) the information so communicated should have been known to be false by the offender and this therefore reinforces the requirement of a guilty mind envisaged in paragraph (1) of the same Article.

The definition of an aircraft in flight is similar to that given in the Hague Convention. The aircraft is, for the

purposes of the Convention, deemed to be in flight as soon as the door is closed after embarkation until it is opened for disembarkation, and that pursuant to Art 2(a) the flight is deemed to be continuing in case of forced landing until the competent authorities take over the responsibility for the aircraft, persons and property on board.

Article 1 (b) declares that it is an offence to destroy an aircraft in service. In accordance with Art 2 (b), an aircraft is deemed to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article. In this regard Abeyratne R.I.R. correctly argues that the formulation of Art 2 (b) on "aircraft in service" leaves outside the scope of the Convention, acts of sabotage committed before the beginning of the preflight preparation of the aircraft or twenty-four hours after any landing.*9 We, however, emphasise that the Contracting Parties to the Convention intentionally did not stretch the provisions of Art 2 b) to encompass even aircraft "not in service" and there is, therefore, no loophole in this Article. For the purposes of the Convention the legal status of an aircraft "not in service" is not different from that of any other chattel or movable property, hence it is not regulated by

the Convention.

As regards the punishment of offenders, the Delegates to the Eighteenth Session of the Legal Committee decided that while it could be appropriate to state in the draft convention on unlawful seizure of aircraft, that "each Contracting State undertakes to make the offence punishable by severe penalties", the case was different in the convention that was being drafted by the Eighteenth Session because there were several different acts, each of which would constitute an offence, and that therefore, each offence should be punishable in accordance with its gravity. The language of the draft convention on unlawful seizure of aircraft was maintained, but the phrase " the offence" put in the plural.*10

The Convention recognises five jurisdictions over the offences it regulates and the fifth one enshrined in Art 5 (1) a) is not contained in the Hague Convention.

The Convention contains in Art 10 obligations that are intended to deal with the aftermath of the commission of any of the offences enumerated in Art 1. Therefore "...any Contracting State in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable and shall without delay return the

aircraft and its cargo to the persons lawfully entitled to possession"*11

Contracting States to the Convention noting that prevention is better than cure, also made it a legal obligation for the Parties to endeavour to take all practicable measures for the purpose of preventing the offences enumerated in Art 1. Pursuant to Art 12, the Parties to the Convention with the same purpose of preventing the perpetration of offences mentioned in Art 1 assumed an obligation to furnish any relevant information that might be of assistance to any of the states mentioned in Art 5 (1).

Like the Hague Convention, the Convention is silent on the question of political offence exception. It is therefore, worth noting the attitude of states on this issue. When Venezuela was ratifying the Convention it expressed a reservation with regard to Articles 4, 7, and 8 to the effect that it "will take into consideration clearly political motives and the circumstances under which offences described in Article 1 of this Convention were committed, in refusing to extradite or prosecute an offender, unless financial extortion or injury to the crew, passengers, or other persons has occurred."*12 In response, the United Kingdom made a declaration to the effect that it does not regard as valid the reservation made by the Government of the Republic of Venezuela in so far as it purports to limit

the obligation under Article 7 of the Convention to submit the case against an offender to the competent authorities of the state for the purpose of prosecution.*13

The US-UK Supplementary Extradition Treaty which entered into force on December 23, 1986, waives the political offence exception to those who are accused of offences covered by the conventions against terrorism, or to those accused of committing grave crimes. However, the treaty allows the denial of a request for extradition if the accused can convincingly prove that the real core of the problem is a question of his race, religion, nationality or political convictions, or that in a court prejudiced by any of these factors he would be unfairly tried if extradited.*14

Article 13 of the Convention obliges parties to keep the International Civil Aviation Organisation informed about the incidents against civil aviation and the measures taken. The Delegate of Venezuela to the International Air Law Conference (1991) revealed a communique from her Government transmitting the final report by the Attorney-General of Venezuela on the Government's handling of the case of the destruction of Cubana de Aviacion in 1976, which indicated that, in accordance with the Montreal Convention, the perpetrators of the heinous act had been prosecuted, and were serving twenty year prison terms in Venezuela.*15

FOOTNOTES

*1. ICAO Doc 9081-LC/170-2 p.1

*2. ICAO Doc 8936-LC/164-2 p.15

*3. ICAO Doc 8936-LC/164-1 p.3

*4. ICAO Doc 9081-LC/170-2 p.30

*5. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 September, 1971. ICAO Doc 8966.

*6. Matte N.M. Treatise on Air-Aeronautical Law. ICASL, McGill University. Montreal. 1981. p.366

*7. See- Margo R.D. Hijacking and Interfering with the Crew of an Aircraft. Air Law. Vol. II No.1. 1977 pp.101-103.

*8. Diederiks-Verschoor I.H.Ph. An Introduction to Air Law. 2nd. Ed. Denveter. 1985. p.2

*9. Abeyratne R.I.R. "Hijacking and the Teheran Incident- A World in Crisis?" Air Law. Vol. X. 1985. p.125

*10. See- ICAO Doc 8936-LC/164-1 p.39 and ICAO Doc 8936-LC/164-2 p.17

*11. Article 10

*12. ICAO Doc 9568 p.132

*13. ibid p.132

*14. See- Griffin J.P. and Mussehl R.C. The International Lawyer. Vol. 23. No.3. Fall 1989. p.784

*15. Conference Minutes. International Air Law Conference (1991). Third Plenary Meeting. p.21.

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

In "response to the terrorist attacks which took place in December 1985 at the Vienna and Rome airports" a proposal to prepare a new instrument for the suppression of unlawful acts of violence at airports serving international civil aviation was presented by Canada to the 26th Session of the ICAO Assembly.*1.

The Montreal Convention of 1971, enumerating in Art 1 offences that fall within its scope of application, also made a reference to an act of violence against a person on board an aircraft in flight.*2 All other acts anticipated in Art 1 of the Montreal Convention relate to interference or sabotage of aircraft, air navigation facilities and communication of false information that is likely to jeopardise the safety of civil aviation. Therefore the Convention does not regulate the acts of violence perpetrated against persons on the ground at airports serving international civil aviation.

The long title of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the

Suppression of Unlawful Acts against the Safety of Civil Aviation spells out the purpose of the instrument.*3 The first paragraph of the preamble expresses the concern of the contracting States about the acts of violence at the airports serving international civil aviation which do, or are likely to, endanger the safety of persons.

As a supplementary instrument to the Montreal Convention, the provisions of the Protocol are grafted into the corresponding Articles of the Convention. The Protocol declares it to be an offence to unlawfully and intentionally commit an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death. Furthermore, it makes it an offence to be engaged in an act of violence at an airport serving international civil aviation that result in the destruction or serious damaging of the facilities of that airport, "if such acts endanger or are likely to endanger the safety of that airport".*4. In our opinion the expression "if such an act endangers or is likely to endanger the safety of that airport" qualifies the extent of violence that could determine the applicability of the Protocol to acts envisaged in Art II (1) of the Protocol.

According to Milde M. "the fundamental qualifying element is that the act endangers or is likely to endanger safety of

that airport".*5

The author appreciates the fact that the expression "...any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon", contained in Art II (1) of the Protocol was intentionally so formulated in order to ensure that only serious acts of violence could be covered by the Protocol. However, the author is of the opinion that serious acts of violence against persons at an airport can also be perpetrated by ordinary, unarmed criminals or by a group of people pursuing political ends and well trained, for example, in martial arts. Therefore, unless Art II (1) is given a liberal interpretation to cover unlawful acts committed against persons at the airport even by unarmed offenders, such acts of violence committed by the latter are not covered as a result of the qualification "...using any device, substance, or weapon".

Signing the Montreal Protocol, the Government of the Kingdom of the Netherlands declared that, "in the light of the preamble, it understood the provisions laid down in Articles II and III of the Protocol to signify the following:
- only those acts which, in view of the nature of the weapons used and place where they are committed, cause or are likely to cause incidental loss of life or serious injury among the general public, shall be classified as acts

of violence within the meaning of the new paragraph 1 bis. (a), as contained in article II of the Protocol;
- only those acts which, in view of the damage which they cause to buildings or aircraft at the airport or their disruption of the services provided by the airport, endanger or are likely to endanger the safe operation of the airport in relation to international civil aviation, shall be classed as acts of violence within the meaning of the new paragraph 1 bis. (b) as contained in Article II of the Protocol".

The Legal Committee of the International Federation of Airline Pilots' Association tried in vain to have Art 1 (1) bis. of the Draft Montreal Protocol, then a draft, extended to embrace other facilities indirectly linked with civil aviation, such as, town terminals, passenger and crew coaches etc.*6. In our opinion incidents occurring in these places are regulated by domestic law as they lack an 'international' element, and there is therefore no need to unify any international aspects.

Bearing in mind the fact that, pursuant to Art 1 of the Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument, that the Protocol supplements the Convention, the Parties to the Protocol are therefore obliged to observe and comply with the obligations contained in the Convention. However, it

should be noted that no ratification of the Protocol amounts to ratification of the Montreal Convention. Articles V (2) and VII (2) de facto prohibit States that are not Parties to the Convention from being Parties to this Protocol.

The International Air Law Conference (1988) adopted the Montreal Protocol and a Resolution which, emphasising the importance of preventive measures against acts of unlawful interference with international civil aviation, urged the Contracting States to render technical, financial and material assistance to the needy States in order for them to be able to adopt effective preventive measures.

FOOTNOTES

*1. Milde M. ICAO /OACI. Annals of Air and Space Law. Vol. XIV 1989 p.465.

*2. Article 1 (1) a) Montreal Convention of 1971.

*3. Montreal Protocol of 1988. ICAO Doc 9518.

*4. Article II (1) b).

*5. Milde M. ICAO/OACI. Annals of Air and Space Law. Vol. XIII 1988 p.313

*6. See- van Wijk A. IFALPA 19th Legal Committee Meeting, Paris, 1617 September 1987, Air Law 1988. p.50.

CHAPTER II

Analysis of the Convention on the Marking of Explosives for the Purpose of Detection of 1991:

(a) Preparation of the Convention:

The delegate of Cuba to the International Air Law Conference (1991) welcoming the new draft convention, regretted that it came too late- years after the destruction of Cuba's flag carrier with the use of C-4 plastic explosives. "ICAO was capable at the time only of condemning such an act through a Resolution of the Assembly (Resolution A225, still in force"), said the Delegate.*1) Recalling the 23 June 1985 Air India disaster off the coast of Ireland, the Delegate from India noted that the Court of Inquiry recommended that ICAO and States members should review the aviation security measures but "it was unfortunate that no tangible measures had been taken at the international level to respond to that appeal until after the Lockerbie tragedy".*2

The Secretary General of the United Nations opening the Conference lamented that the initiative and final stimulus to legislate internationally for the marking of plastic explosives for the purpose of detection were unfortunately embedded in a human tragedy, the Pan American 103 disaster at Lockerbie.*3. The 21 December Pan Am 103 destruction

at Lockerbie.*3. The 21 December Pan Am 103 destruction alerted the whole world about the risks to which civil aviation was increasingly being exposed. It is reported that the destruction of Pan Am 103 was determined to have been caused by a plastic explosive, namely the Semtex, concealed in a portable cassette player/radio. Lest we forget, it should be noted that the first incident directed against civil aviation in which the available evidence proved that plastic explosives were used, was the explosion on board a TWA 727 while the latter was approaching Athens on 2 April, 1986. As a matter of fact, while civil aviation authorities responded to the destruction of Pan Am 103, maritime and other modes of transportation evinced considerable concern also. The UN Secretary General stated that the significance of the Conference was not, therefore, limited to the safety of aviation - it was much wider.*4. The United Nations and, in particular, the International Civil Aviation Organisation, regarded the threat posed by the difficulty of detecting certain types of explosives with deep concern.

Consequently, on 30 January, 1989 the ICAO Council, after discussing the Report of the Chairman of the Committee on Unlawful Interference pertaining to the Pan AM 103 destruction, mandated its President to establish an Ad Hoc Group of Specialists on the detection of explosives.*5.

On 16 February, 1989 the ICAO Council adopted by a consensus

a Resolution which, in Operative Clause 9, "urges member states to expedite, in the light of Assembly Resolution A26-7, App. C, research and development on detection of explosives and on security equipment, to continue to excnange such information, and to consider now to achieve an international regime for the marking of explosives for the purpose of detection".*6. The Council thus, envisaged an international regime.

On 14 June 1989, the UN Security Council adopted Resolution 635 (Appendix A) expressing its concern "at the ease with which plastic explosives can be used in acts of terrorism with little risk of detection"; urging ICAO to intensify its work in prevention of acts of terrorism against civil aviation, particularly its work on devising an international regime for the marking of plastic explosives for the purpose of detection; urging all States, especially the producers of plastic or sheet explosives, "to intensify research into means of making such explosives more easily detectable..."*7.

The UN General Assembly adopted Resolution 44/29 of December 1989 urging , in clause 12, the ICAO "to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection".*8.

The established Ad Hoc Group of Specialists met in March 1989 and later on referred its Report to the Committee on Unlawful Interference for review.

On 29 June 1989, after considering the Report of the Committee on Unlawful Interference on the Report of the Ad Hoc Group of Specialists, the ICAO Council elevated the issue of the "preparation of a new legal instrument regarding the marking of explosives for detectability" to the status of highest priority in the work programme of the Legal Committee.

At the 27th Session of the ICAO Assembly (September-October 1989) a draft Resolution on the marking of plastic and sheet explosives for the purpose of detection (A27-WP/115,EX/37), was submitted to the Executive Committee by the Delegations of Czechoslovakia and the United Kingdom. This draft, then adopted by the Assembly as Resolution A27-8 (Appendix B), "calls upon the Council to convene a meeting of the Legal Committee, if possible in the first half of 1990 to prepare a draft international instrument (on the marking of plastic explosives for the purpose of detection- explanation by the author) with a view to its adoption at a diplomatic conference as soon as practicable thereafter in accordance with the ICAO procedures set out in Assembly Resolution A7-6".*9.

Pursuant to Rule 12 b) of the Rules of Procedure of the Legal Committee, the Chairman of the Legal Committee established a Special Sub-Committee and acting under Rule 17, the Chairman appointed Mr A.W.G. Kean, CBE (UK) as Rapporteur. Legal experts from 17 states were appointed to render their services as members of the Sub-Committee.*10.

Furthermore, in accordance with Rule 13 b) five states had their Representatives as ex-officio members of the Sub-Committee. The sixth ex-officio member (Venezuela) was not available.

The terms of reference of the Sub-Committee were: to study the subject of a draft instrument relating to the marking of explosives for detectability and to prepare a draft text to be considered by the 27th Session of the Legal Committee. The Sub-Committee was to be guided by the terms embodied in the Council decision of 29 June, 1989 and Assembly Resolution A27-8.

The Rapporteur of the Sub-Committee presented a report in which he outlined his vision of a new instrument in the form of a convention. In his rough draft of the Convention, he envisaged an instrument containing a definition of an international offence covered by it. Other Articles called for the formation of an Explosives Technical Commission (hereinafter referred to as the Commission) and detailing

other issues of importance to the formation and functioning of the Commission. As regards many other provisions, for instance, on the question of custody, jurisdiction, prosecution, extradition etc. the rough draft of the Rapporteur was strongly influenced by the Hague and Montreal Conventions of 1970 and 1971 respectively. The rough draft excluded the application of the proposed Convention to explosives from the military and police. On the question of existing stockpiles of unmarked plastic explosives, the Rapporteur proposed that they should be completely consumed within an agreed period of time.*11.

"On the assumption that all States regulate and monitor all matters related to the manufacture, possession and transport etc of explosives...", the United Kingdom submitted a draft text of the Convention with its Articles confined to the issue of preventing the manufacture and movement of unmarked plastic explosives, the formation of the Commission and amendments to the Annexe(s) attached to the proposed Convention.*12. Therefore, the draft text drawn by the United Kingdom did not follow the pattern set by the Hague and Montreal Conventions or the approach adopted by the Rapporteur in his rough draft. It was argued that the draft text prepared by the UK was less confrontational in that it avoided the much resented penal provisions. The assumption on which the draft text presented by the UK was based , was also shared by other authors of the Convention as evidenced

by a similar view noted in the draft Report of the Sub-Committee, wherein it is submitted that "... the new instrument would be effective with respect to explosives manufactured or traded under regulatory supervision of States; no such effect could be expected with respect to explosives which may be produced by clandestine laboratories serving criminal interests and the domestic law enforcement machinery of States will have to alert to suppress such activity".*13. Evidently, this comment by the Sub-Committee draws some of the boundaries of the scope of application of the new Convention, while simultaneously recognising the future role of the national law. Furthermore, it was agreed that the Convention should primarily tackle the problem of adding a detection agent to the plastic explosives at the manufacturing stage.*14.

The discernible trends observed during the initial stages of the preparation of the draft text of the Convention were an inclination towards defining and determining an international offence and consequently, to be accompanied by penal provisions assimilated mutatis mutandis from the Hague and Montreal Conventions. The Rapporteur's rough draft, the draft text presented by Germany and the comments made by Argentina and other states favoured not only a preventive regime but also a repressive control method.*15. At the International Conference on Air Law (February-March 1991) the Delegation of Argentina stated:

"...Argentina reiterates the view expressed by its delegate ... to the effect that clauses be introduced classifying acts which violate the provisions of the Convention as international offences and establishing that perpetrators are to be pursued and brought to judgement".*16.

The draft text of the Convention presented by the United States embodied in the paragraphs on "Consultative Mechanisms" and on "Reporting" provisions which, in our opinion, were more controversial than the supposedly avoided penal provisions enshrined in the Hague and the Montreal Conventions. The two paragraphs were in fact towing the proposed Convention to the arena of the International Law of Disarmament.*17. Another Delegation entertaining similar views proposed the inclusion of "safeguards against violations and means of inspection and verification ... the establishment of an efficient mode for centralised reporting of the manufacture, sale and transfer of explosives and a mechanism for exchange of information regarding suspected violations".*18.

The draft text submitted by the UK, subjecting even the plastic explosives in the hands of the military and police authorities to the rule of the Convention, eventually became the fundamental basis of the new Convention except that the provision on amendments to the Annex had to be modified.

FOOTNOTES

*1. Conference Minutes; Air Law Conf.(1991); Third Plenary Meeting, p.1.

*2. Conference Minutes; Air Law Conf. (1991); Third Plenary Meeting, p.6

*3. Conference MInutes; Air Law Conf. (1991); First Plenary Meeting, p.2

*4. ibid. p.1

*5. See- Milde M. Draft Convention on the Marking of Explosives. Annals of Air and Space Law, Vol. XV 1990 p.159.

*6. LC/SC -MEX-WP/1 p.1

*7. United Nations, Security Council SC/Res 635 (1989), 14 June 1989; LC/SC-MEX -WP/1 p.4 (Appendix A).

*8. LC/SC-MEX-WP/5 p.5

*9. ICAO Doc. 9551, A27-Res; LC/SC-MEX-WP/1 p.6

For procedure of approval of Draft Conventions -See ICAO Doc 7669 -LC/139/3.

*10. For names of States - See LC/SC-MEX-WP/1 p.2

*11. Rapporteur's Draft Text- See LC/SC-MEX/WP/2 pp.7-14

*12. LC/SC-MEX -WP/3 pp.1-3

*13. LC/SC-MEX-WP/8 Addendum 1 p.3

*14. ibid p.8

*15. FRG Draft Text - See LC/SC-MEX-WP/4 pp.3-10

*16. MEX Doc. No. 5.

*17. United States Draft Text- See LC/SC-MEX -WP/4 pp.1-

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*18. ICAO Doc. 9556- LC/187 p.3-4

(b) Analysis of the provisions of the Convention:

(1) Scope and Object of the Convention:

The long title of the Convention reflects the main concern of the States Parties, namely, the marking of explosives and not just explosives in general but specifically plastic explosives, as defined in Article 1 para. (1) and in the Technical Annex Part 1, for the purpose of detection.

Therefore, the title sets the scope and the purpose of this Convention. The Delegation of Indonesia to the International Conference on Air Law (1991) noted that "the aim of this Convention is certainly not just to mark explosives, it is an effort to eliminate the abuse or misuse of explosives".*1. Paragraph 5 of the preamble reflects the recognition by the Parties to the Convention of the fact that "for the purpose of deterring such unlawful acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked". In harmony with the deep concern expressed by the Parties in paragraph 2 of the preamble, Argentina emphasised that "the objective sought is to prevent explosives from being used in an illegal way contrary to the purposes of the Convention, by strengthening the security of air, maritime and land transport and discouraging possible perpetrators from the fraudulent use

thereof".*2. When the Delegation of Thailand to the Air Law Conference (1991) needed clarification on the expression "the objectives of this Convention" as used in the Convention, the Chairman referred to the preamble which, together with the content of the Convention as a whole, he believed reflected those objectives and the Chairman of the Drafting group shared the chairman's view.*3.

Article 1 (1) gives a definition of "explosives" for the purposes of the Convention as "explosive products, commonly known as 'plastic explosives', including explosives in flexible or elastic sheet form as described in the Technical Annex to this Convention". Initially there was a proposal to the effect that the definitions of the terms should be included in a separate Article 1 of the Convention and thus be an integral part of, and introduction to, the contents of the Convention. The other proposal was that the definitions should be incorporated in the Technical Annex, and the Annex made into an integral part of the Convention that could be amended in response to the technological developments.*4. Therefore, the decision to embody the general definitions in Art. 1 and to include the technical details of such definitions in the Technical Annex to the Convention constitutes a compromise approach. In its attempt to define explosives, the Convention recognises the difficulty of precise prediction of future trends in the development of technology, and consequently, it resorts to a generic

description of explosives in Art.1, to an enumeration of currently known technical details in an Annex which is relatively easier to amend than the Convention.

Caution was expressed by the International Air Transport Association and other delegations that the desired effectiveness of the Convention might not be achived as a result of limiting the scope of the instrument to the issue of plastic explosives. IATA cherished an idea of stretching the provisions of the Convention "...so as to include all industrially manufactured (civilian and military) explosives".*5. However, this motion was watered down at the 27th Session of the Legal Committee when several Delegations noted that the terms of reference of the Legal Committee were contained in the UN Security Council Resolution 635, UN General Assembly Resolution 44/29 and in ICAO Assembly Resolution A27-8 all of which limited the scope of the Convention to "the marking of plastic or sheet explosives".*6.

To avoid misunderstanding, the Convention, unlike the draft text, refers only to plastic explosives rather than to "plastic and / or sheet explosives". Though the concept of "plastic or sheet explosives" is used in such authoritative Resolutions as UN Security Council Resolution 635 of June 1989; UN General Assembly Resolution 44/29, ICAO Assembly Resolution A27-8, it was later established that in English

"sheet" is but a subset of "plastic" explosive and in Russian "sheet" refers exclusively to the form given to the explosives. It was explained that in French, the words "plastique" (plastic) and "feuille" (sheet) have a different connotation, hence necessitating the retention of both words in the French text of the Convention.*7.

Milde M., concerned about the fact that the draft of the Convention confines itself to the marking of explosives for the purposes of detection instead of covering also the question of marking such explosives with the aim of identifying their source(s) of production, wrote that "This is perhaps another opportunity that the new Convention may miss - the identification of explosives could be conducive to better prevention, tighter control and easy tracing of sources of illicit leaks".*8. At the International Air Law Conference (1991) the Delegation of Brazil persistently proposed that the concept of "marking" should be expanded to include a form of identification of the manufacturer.*9. Indeed the Convention missed that opportunity because of the compromises made by the participants aimed at the adoption of the instrument by a consensus, balancing the divergent and at times antagonistic interests of the States.

The Delegate of Indonesia sought clarification as to whether the term "territory" found in the Convention bears the same connotation as the use and definition of the word in Art 2

of the Chicago Convention on International Civil Aviation.*10. Although the minutes of the Air Law Conference (1991) do not reveal the response of the Commission of the Whole on this issue, we believe that the sense of the term "territory" as used in Art 2 of the Chicago Convention cannot be acceptable to many nations if it is employed in the context of the Convention on the Marking of Explosives. For example, the destruction of unmarked plastic explosives carried out in a territory under the protection or mandate of a State Party would be in violation of its other obligations emanating from other norms of international law.

In fact, the question of where to destroy unmarked plastic explosives had the effect of a sharp division of the Conference into two camps, with many Delegates from the developing countries insisting that destruction of explosives should be carried out in the territory of a State Party and that Art IV should embody that provision. These Delegates were clearly concerned with and opposed to any form of dumping of explosives on their territories. The above submission is restricted to the word "territory" in relation to the obligations imposed by Art IV of the Convention. The argument is different in respect of the term 'territory" as used in Art II of the Convention. Here, even the interpretation given in Art 2 of the Chicago Convention can be acceptable to many States Parties.

(2) Obligations of States Parties:

The question of the obligations assumed and their fulfillment bona fide by the States Parties to the Convention in due recognition of the principle pacta sunt servanda is pivotal in determining how effective the instrument will be in combating the use of plastic explosives against civil aviation, other modes of transportation, and other targets. The Delegate of Canada to the Air Law Conference (1991) reminded the states to "ensure the political will necessary not only to translate effectively the provisions of the Convention into national laws and procedures, but also their efficient implementation"*11.

The Convention does not place a State Party under an obligation to stop producing plastic explosives but does oblige it to take the necessary and effective measures to prohibit and prevent the manufacture of unmarked explosives in its territory.*12. Though the Convention does not elaborate on the "necessary and effective measures" to be taken by a State, the geographical limitation created by the words "in its territory" in Art. II is an implicit recognition of the question of sovereignty and as such, reserves the question of the determination of the measures to be adopted to the relevant domestic laws. We reach this conclusion after having noted that at the 27th Session of

the Legal Committee it was suggested by one Delegation that the words "in its territory" should be deleted from the paragraph in view of the possibility that they might be interpreted to mean that it would be permissible for a Party to manufacture unmarked explosives outside its territory. This proposal was countered by another Delegation which stated tnat such a deletion could be construed to allow States Parties to extend their domestic laws extraterritorially. The Legal Committee eventually agreed on the formulation as it stands in the text of the Convention.*13. Therefore the above two extremes are to be borne in mind and avoided when interpreting the expression "in its territory" found in Article II of the Convention.

Elaborating on the idea behind Art II of the Convention , the Executive Secretary of the Air Law Conference (1991) stated that the basic intention was to outlaw the future production of unmarked plastic explosives as soon as the instrument entered into force.*14. The wording of Art II preferred by the Drafting Committee was "prohibit and effectively prevent". However, the Delegate of Israel noted that to prohibit and prevent were both absolute requirements but effectiveness should refer to the measures taken.*15.

"Manufacturing" is to be understood in a broader sense as defined in Art. 1 (4). Furthermore, Milde M. appreciates the fact that at times there will be a gap between the stages of

manufacturing and marking and correctly concludes that "the production of the basic unmarked plastic explosive should not be deemed to be unlawful as long as the final product of the process is a marked explosive".*16. One Delegation to the 27th Session of the Legal Committee noted that at times it might be necessary to move unmarked explosives from the point of manufacture to another destination within the same territory for the purpose of marking.*17.

This exception to the rule should be understood as covering even the manufacture of explosives in laboratories for research purposes duly authorised by a State Party. This interpretation would be in line with the letter and spirit of Part 1: Para.11 of the Technical Annex to the Convention. Then it becomes obvious that as "manufacturing" by clandestine organisations fails to advance the cause of the Convention domestic laws should remedy the situation.

The Convention does not only require a State Party to prohibit and prevent the manufacturing of unmarked explosives but in addition obliges a Party to prohibit and prevent the movement of such explosives into and out of its territory. This provision covers even the transportation of such unmarked explosives in fulfillment of an export-import contract. In fact, the national law is supposed to regulate such transactions if a Party is to fulfill in good faith its obligations emanating from the Convention. Article II of the

draft text of the Convention prepared by the Sub-Committee was so radical that it obliged States Parties to prohibit or take necessary measures to prohibit the movement in and out of their territories of unmarked explosives "as well as any transaction involving such explosives..." unless authorised accordingly with due regard to the objective of the Convention.*18.

Article III (2) implies that movement of unmarked explosives for purposes not inconsistent with the objectives of this Convention are not prohibited, provided such movements are carried out by authorities of a State Party performing military or police functions. The formulation of Art. III is so restrictive that we are tempted to believe that the movement of unmarked explosives is supposed to be absolutely prohibited except as provided in Art. III (2). The exemption that is purported to be granted by Art. III (2), that is, "movements for purposes not inconsistent with the objectives of this Convention", can only be realised by the authorities of a State Party performing military or police functions. But if Art III (2) is read in conjunction with Part II (a) and (b) of the Technical Annex to the Convention, then the movement of unmarked plastic explosives in reasonable quantity by authorised institutions for duly authorised research purposes is not prohibited by the Convention.

At the 27th Session of the ICAO Legal Committee there was an

attempt by some Delegations to restrict the provisions of the current Art III to explosives manufactured after the entry into force of the Convention, as distinct from Art IV which governs the question of stockpiles of unmarked explosives existing at the time of the entry into force of the Convention. Other Delegations believed, correctly in our opinion, that the present Art III concerned both stocks of unmarked explosives.*19. If that were not the case, then the problem of the movement of unmarked explosives manufactured prior to the entry into force of the Convention would have been left unresolved.

Responding to the request by the Australian Delegate for clarification of the expression "for purposes not inconsistent with the objectives of this Convention", the Executive Secretary of th ir Law Conference said that the vagueness was noted by the Legal Committee and asked the Drafting Committee to study the preamble to ascertain the objectives of the Convention. Furthermore, he stated that paragraph 2 of Art III did not necessarily encompass only the existing stocks but could cover also new stocks of unlawfully produced unmarked plastic explosives.*20. The US Delegate correctly indicated that it was common practice to have general statements in international agreements when it was considered undesirable to attempt to enumerate all possible purposes that might be considered legitimate.*21.

Some Delegations to the Conference queried the scope of the expression "authorities of a State Party performing military or police functions". Tney suggested instead substitution of the word "police" by the expression "law enforcement..." but tne Drafting Committee felt that "police" was sufficiently flexible, while "law enforcement ..." would be too general to be consistent with the intended application of the Convention.*22.

On the question of stockpiles of unmarked explosives manufactured or brought into a State Party's territory before the entry into force of this Convention in respect of that Party, Art 1V (1) requires that necessary measures be taken to exercise strict and effective control over the possession and transfer of such explosives. The scope of Art. 1V (1) is wide as it refers to unmarked explosives in a States Party's territory regardless of the question of who is holding such explosives. The main problem addressed here is possession and transfer of such possession. The Legal Committee adopted a final draft of the Convention that restricted itself to the task of controlling possession and transfer of possession of unmarked explosives that were acquired before the entry into force of the Convention. In the words of Milde M., for the Legal Committee to have acted likewise, "may have been by oversight".*23. Therefore, paragraphs 5) and 6) of Art 1V of the text of the Convention adopted by the Diplomatic Conference are an

attempt to correct the above mentioned oversight.

If the explosives mentioned above are held by other persons or institutions rather than by the military or police authorities performing their duties, a State Party is obliged to see to it that such stockpiles are consumed or destroyed in a manner not defeating the aim of the Convention, marked or rendered permanently ineffective within a period of three years from the entry into force of this Convention in respect of that State. Commenting on this three year period, the Delegation of the United States noted that in contrast to the fifteen year period set for the destruction of unmarked explosives in the hands of the military, a shorter destruction period for private stocks of such explosives was necessary to prevent their diversion.*24 Furthermore, private stocks are not as large as those in the hands of the military. It is relatively difficult to control possession of explosives and the transfer of the same when the explosives are in private stocks, hence the need to expedite their consumption or destruction.

The obligation to render unmarked plastic explosives permanently ineffective does not mean that an explosive should be made innocuous. It might still be unstable and active but the purpose of the Convention is satisfied if a detection agent as described in the Technical Annex to the

Convention is introduced into an explosive to render it detectable.

Stocks of unmarked explosives referred to in Art IV (1) held by the military or police authorities in fulfillment of their duties and such explosives not incorporated as an integral part of duly authorised military devices, are either to be destroyed or consumed for purposes not frustrating the objective of the Convention, marked or rendered permanently ineffective within a period of fifteen years from the entry into force of the Convention in respect of a State Party. Agreeing on this fifteen year period, States Parties had to acknowledge such factors as ecological consequences of destroying large stocks, economic and technological factors and, to cap it all, defense and security interests of the Parties.

Present at the Air Law Conference were countries that would have liked the Convention to restrict or oblige a State Party to destroy its unmarked explosives "in its territory". Article IV (4) contains this territorial restriction but it is left out in paragraphs 2) and 3) of the same Article. Opponents of the inclusion of a similar limitation in paragraphs 2) and 3) argued that Article III (1) protected states from unlawful movement of unmarked explosives into or out of their territories. They further submitted that since Art IV (2) concerns non-military stocks, it was already

subject to a prohibition of movement under Art III (1). As regards unmarked military stocks, the argument advanced was that a state could always exercise its sovereignty over its territory and prohibit, limit, or place conditions on, the importation of plastic explosives into its territory. Perhaps it is a coincidence that not a single industrialised state supported those that argued for the inclusion of a territorial restriction to pre-empt any possible dumping of plastic explosives or their hazardous or toxic residue. In attempting to allay the fears of the Delegates who were concerned about the possible dumping in future of unmarked plastic explosives and hence wanted the Convention to expressly prohibit the dumping or destruction of unmarked plastic explosives in foreign territories, the delegate of Italy instead aggravated the situation when he suggested that "the destruction of military stocks outside a state's territory obviously could not be done surreptitiously; it would require either a bilateral or a multilateral agreement'.*26. It is not the object of this study to define and discuss tactics of dumping hazardous and toxic objects in violation of the instruments of international law that protect the ecology. We can only hope that the States Parties to the Convention will fulfill their obligations stipulated in Art. IV in good faith and not dump or destroy their unmarked stocks of plastic explosives in the territories of other states. The Chairman of the Conference summing up the deliberations on Art. IV, observed that "...

they (States Parties- explanation by the author) would avoid making other States the dumping ground for such stocks or for the hazardous or toxic wastes emanating from their destruction".*27.

A State Party is duty bound to take measures to destroy the unmarked explosives that might be discovered in its territory and not held by any authorised persons or institutions anticipated in Art IV (2), that is, by the military or police authorities performing their functions and incorporated as an integral part of duly authorised military devices prior to the entry into force of this Convention in respect of that State. The use of the word "discover" implies an act of discovering unmarked plastic explosives intentionally hidden or abandoned by, for example, a clandestine organisation. In such a situation the Convention does not provide a precise period within which the discovered explosives should be destroyed as Art. IV (4) only stipulates that they should be destroyed as soon as possible. The period of destruction of such explosives is, in our opinion, supposed to be far less than the duration of three years provided in Art.IV (2) for Art. IV (4) does not anticipate the consumption of discovered explosives other than the stocks held by the military or police to which reference has been made above. Furthermore, when Art IV (6) obliges a State Party to destroy without giving that State a choice of consuming the explosives, the expression used is

"as soon as possible".

Part I para.II of the Technical Annex to the Convention exempts plastic explosives from being considered to be explosives for the purpose of the Convention if they are held or consumed for the purposes specified in it. Consequently, Art IV (5) obliges States Parties to maintain strict and effective control over the possession and transfer of such explosives so as not to allow their diversion or use in activities contrary to the objectives of this Convention. Unmarked explosives which no longer satisfy the criteria for exemption specified in the sub-paragraphs a), b), c) of the said Para.II, and also unmarked explosives manufactured since the coming into force of the Convention in respect of a State Party, and not being incorporated as stipulated in Para. II d) of Part I of the Technical Annex shall be destroyed "as soon as possible".

In as much as Art IV deals with the question of practical measures to be adopted by the States Parties when implementing the provisions of the Convention, it is important to link this Art with Art VIII (2) which requires that the ICAO Council be kept informed of measures taken to implement the provisions of this Convention. The Delegate of Senegal stated that in analogy with Art 67 of the Chicago Convention of 1944, States Parties would have to file reports on the measures taken and not expect the Council to

request them to do so.*28. At the 27th Session of the Legal Committee, several Delegations wanted the Convention to be specific with regard to the information to be exchanged. They were interested, inter alia, in national laws to be enacted, practical procedures, practices, judicial decisions, technical developments, manufacture of unmarked explosives, etc as they relate to the implementation of the Convention.*29 The Convention could not, however, be overloaded with such specific details. The Council, armed with information received from the States Parties, would be better placed to execute its duties enshrined, especially in Art IX.

(3) The International Explosives Technical Committee:

The Convention forms a legal basis for the establishment of the International Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of not less than fifteen and not more than nineteen members. Membership to the Commission is open to persons nominated by the States Parties to the Convention and eventually appointed by the ICAO Council. Pursuant to Art V (2), candidates to the Commission must have distinguished themselves with "direct and substantial experience in matters relating to the manufacture or detection of, or research in explosives".

As regard criteria and principles to guide the Council when appointing members of the Commission, some Delegations to the 27th Session of the Legal Committee preferred strict adherence to the criterion of competence required from the nominated candidates.*30. Had this trend prevailed, then it is likely that the membership of the Commission would be comprised almost exclusively of experts from the highly industrialised countries. In such a situation, there is a possibility that two or more candidates could be successfully nominated by a State Party to serve in the Commission. Other Delegations, however, while maintaining the criterion of competence, advocated the appointment of candidates to the Commission based on a wide geographical representation. The latter formula, while still honouring the criterion of competence, enables the Commission to be representative of the producer and consumer states of explosives and of detection equipment.

While the Convention is silent on this question of wide geographical representation, it is significant that the Legal Committee noted that " in its practical exercise of functions the Council of ICAO has always respected the need to have all bodies appointed on a broad representative basis".*31 The International Conference on Air Law (1991) adopted a Resolution inviting the Council to "respect the principle of equitable geographical representation in the appointment of the members of the International Explosives

Technical Commission"*32. Some Delegations stressed that a State Party should have a right to nominate only one person to be a member of the Commission. Members of the Commission are to be appointed by the Council in their personal capacity as experts in the field of explosives and not as representatives of the States Parties.

The Air Law Conference was very reluctant to overload the Articles of the Convention with many issues pertaining to the implementation of its provisions. For example, the delegate of the International Maritime Organisation expressed the view that in order for the Convention to take account of the specific requirements of maritime transport, it would be worthwhile for IMO to participate in the work of the Commission, if only as an observer. Though in principle, some Delegates were not opposed to an idea of an observer status as requested by IMO, a provision concerning observers was not included.

Interpreting Art V paragraphs 4) and 5), one concludes that the Commission is intended to function under the authority of the Council in that its additional sessions and / or meeting places other than the Headquarters of the International Civil Aviation Organisation depend on the direction or approval of the Council. The Executive Secretary of the Conference drew an analogy between the Commission and the Air Navigation Commission established by

the Chicago Convention and pointed out that Art 56 of the Chicago Convention did not refer to the rules of procedure of the Air Navigation Commission which was a document that was approved by the Council. The Legal Committee adopted its Rules of Procedure, but they, too were approved by the Council. Therefore, the Commission would make recommendations and the Council render policy decisions.*33. Article V (5) authorises the Commission to adopt its Rules of Procedure which will be subject to approval by the Council.

At its 27th Session, discussing the question of financing of the operation of the Convention, the Legal Committee stated, among other things, that the Council would be in a better position as the authority to convene the Commission and a diplomatic conference at suitable times and places which would be conducive to maximum economy.*34.

A Delegate of the Soviet Union to the Air Law Conference (1991) doubted whether other members of ICAO which would be third parties as regards this Convention should be expected to bear the costs of the activities of the Commission. The Executive Secretary of the Air Law Conference (1991) explained that according Art 63 of the Chicago Convention the cost of representation, whether direct or by appointments of nominees or representatives on any subsidiary body, were borne by the states concerned. He said that constitutionally, there was no question of ICAO

expenditures in respect of the membership on the Commission but ICAO would be in a position to finance some meetings of the Commission from the overall budget of the Organisation, especially because the Commission would be dealing with a question which is regarded as a priority function of ICAO, namely, the security of civil aviation.*35.

A question was raised by some Delegations as to whether members of the ICAO Council who were not parties to the Convention could execute functions pursuant to the provisions of this Convention, for example, appoint members of the Commission. It is not ultra vires the authority of ICAO as specified in the Chicago Convention of 1944 to draft, adopt and participate in the implementation of the aviation security instruments. The United Nations Security Council Resolution 635 of 14 June 1989 and UN General Assembly Resolution 44/29 of December 1989, in particular its clause 12, are construed as an explicit mandate for ICAO to establish an international regime for the marking of explosives. In Resolution A27-8 Appendix B the ICAO Assembly accepted the United Nations' mandate and called upon the Council to act. Therefore, in performing certain tasks emanating from the provisions of the Convention, the Council is fulfilling one of the priority functions of ICAO, which is the promotion of aviation security, and according to Art 54 b) of the Chicago Convention, the Council is obliged to carry out the directions of the Assembly. Therefore, the

Council will appoint the members of the Commission and fulfill other obligations in its capacity as an organ of the ICAO which, due to its potential has been empowered so to act by the Parties to the Plastic Convention.

Article VI stipulates the functions of the Commission and according to paragraph 2) it is required to report its findings on technical developments relating to the manufacture, marking and detection of plastic explosives to the States Parties and international organisations concerned through the Council. States Parties shall complement the activities of the Commission by transmitting, if possible, to the Council information that would be of assistance to the Commission in the discharge of its functions.*37. The general formulation of Art VI (1) is a consequence of the fact that there was a widely shared view at the 27th Session of the Legal Committee that "the function of the Commission should refer not only to the problems of marking and detection of explosives but also to the definition of explosives and their classification, as well as to the evaluation of the different detection systems and detection technology".*38 The fact that the Commission is expected to make recommendations to the Council implies that its role is advisory, and the use of the word "may" in Art VI (4) supports the view that the Commission is to perform advisory functions. The Convention obliges the Commission to attempt to make its decisions by a consensus and resort to

voting in the absence of consensus. When voting, decisions of the Commission will be taken by a two-thirds majority of its members. According to the Resolution adopted by the Air Law Conference (1991), the Ad Hoc Group of Specialists on the Detection of Explosives will continue functioning, conducting studies so as not to allow the Technical Annex to be outdated, until the Convention enters into force and the Commission is formed.

(4) Amendments to the Technical Annex:

Pursuant to Art VI (4) the Council may, acting on the recommendation of the Commission, propose to States Parties amendments to the Technical Annex to this Convention. The procedure worked out for the adoption of the amendments to the Annex is simplified and flexible and is distinct from the procedure of amending the main body of the Convention. From the date of notification of a proposed amendment to the Technical Annex there is a ninety day period within which a State Party can comment or register its objection to the proposed amendment and communicate it to the Council. In view of the fact that a comment or objection is expected to be technical in content, the Council shall therefore, refer such comment or objection to the Commission for its consideration and the Council shall also arrange consultation between the concerned State(s) Party(s) and the

Commission.

The Commission, having considered the comment(s) or objection(s) of a State(s) Party(s), shall report to the Council and the latter may propose the amendment to all States Parties for adoption. If five or more States Parties do not send, in written form, their objections to the proposed amendment within a period of ninety days from the date of notification of the amendment by the Council, then the proposed amendment shall be deemed to have been adopted.

Therefore, as regards the States Parties that have not expressly objected to the proposed amendment, it shall enter into force one hundred and eighty days thereafter or after such other period as might be stipulated in the amendment.

States Parties that had initially registered their objection to the proposed amendment may express their consent to be bound by the amendment in writing.

The voicing of an objection to a proposed amendment from five or more States Parties shall compel the Council to refer the proposed amendment to the Commission for reconsideration. The Air Law Conference (1991) had to be satisfied with the formula of five or more objections and with allowing dissenting Parties not to be bound by an amendment until they ultimately express their consent so to

be bound, because some Delegations were not prepared to entertain, for example, a veto of an amendment by one State Party. Other delegations jealously guarded their sovereignty and would not yield to amendments imposed on them despite their objections. Therefore, the compromise adopted was to resort to veto power by a small number of five or (more) rather than to allow one veto to block an amendment.

Referring to the annals of international law, the Convention Relating to the Regulation of Aerial Navigation of 1919 became a dead letter rejected by many states because inter alia, it established a procedure that would have enabled the International Commission for Air Navigation to approve annexes which would then become obligatory for all the Contracting States. It was noted by the Delegate of tne United States at the Air Law Conference (1991) that there are international instruments, although not in the field of civil aviation, which allow certain obligations to be altered without the express consent of the Contracting Parties.*39. For example, Art. 9 (c) of the Protocol on Substances that Deplete the Ozone Layer of 1987 provides that in case an agreement cannot be reached by a consensus, then a decision shall be adopted by a two-thirds majority vote of the Parties present and voting, representing at least fifty per cent of the total consumption of the controlled substances of the Parties and Art 9 (d) of this Protocol provides that the decisions adopted shall be

binding on all Parties.

Another alternative procedure of adopting an amendment if the procedure embodied in Art VII (3) and discussed supra is not followed, is the convening by the Council of a conference of all the States Parties to the Convention. The Convention does not specify how the conference will take a decision in cases where a consensus cannot be reached, whether by a two thirds majority or by any other formula. It is reported that in commenting on a draft text of this article presented by the Delegation of the United States, many Delegations to the 27th Session of the Legal Committee expressed reservations "in respect of the automatic adoption of the amendment notwithstanding the opposition of less than five States, and concerning the amendment of the Annexes by a two-thirds vote of the States Parties at the diplomatic conference in case no consensus could be reached, if such amendment would be binding on all States Parties".*40. These Delegations emphasised that Annexes so amended "might bind States Parties to provisions to which they have not agreed or, even more, to provisions they are opposed to..."*41. Therefore opposing Parties are supposed to be regarded as third parties in respect of the amended Annex and to oblige them to honour the provisions of the amended Annex would constitute a violation of the principle pacta tertiis nec nocent nec prosunt entrenched in Art 34 of the Vienna Convention on the Law of Treaties of

1969. However, as it was expressed in the 27th Session of the Legal Committee, the concern for the respect of the State's sovereignty had to be reconciled with the recognised interest of having a uniform world-wide system for the marking of explosives for the purpose of detection. The Parties cannot even by analogy to the procedure of filing differences under Art 38 of the Chicago Convention, make reservations in respect of amendments to the Technical Annex to the Convention, without disrupting the process of unification of the law, which according to Milde M. "is the very purpose of the new Convention".*42. In conclusion, for the States Parties that objected to an amendment of the Annex, the Annex would still be a binding instrument but not as amended. The Chairman of the Air Law Conference (1991) stated that "... the Annex would only be binding in its amended form upon those parties which had expressed the consent to be bound to the provisions".*43.

(5) Settlement of disputes:

Article XI on the settlement of disputes assimilated almost verbatim the wording employed in the Tokyo, The Hague and Montreal Conventions of 1963, 1970 and 1971 respectively.

Pursuant to identical provisions as in Art XI (2) of the Convention on the Marking of Explosives, an extremely large

number of Parties to the above mentioned aviation security Conventions made declarations to the effect that they were not bound by the dispute settlement mechanism provided by these instruments.*44 It is therefore, mistaken to believe that with regard to the Convention on the Marking of Explosives the same mechanism will be appealing and acceptable to the Parties which rejected it when they were consenting to be bound by the Tokyo, The Hague, and Montreal Conventions. This is particularly so if one considers the fact that a number of states resent referring cases to the International Court of Justice. Abraham Sofaer, the then Legal Adviser to the State Department, justifying the withdrawal by the United States of its recognition of the compulsory jurisdiction of the International Court of Justice, said: "Would the court be the proper forum for resolving disputes that gave rise to such actions as the Berlin airlift, the Cuban missile crisis, and most recently our diversion of the Achille Lauro terrorists? Each event involved questions of international law. At the same time, however, at stake on each occasion were interests of a fundamentally political nature, going to our nation's security. Such matters cannot be left for resolution by judicial means, let alone by a court such as the ICJ; rather they are the ultimate responsibility assigned by our constitution to the President and Congress".*45. Therefore, we can as well expect many States Parties to the Convention on the Marking of Explosives to make declarations

accordingly in line with Art.XI (2). In our opinion the provisions on settlement of disputes need to be broadened so as to enable the States Parties to avail themselves of, inter alia, the good offices of such international organisations as the United Nations, ICAO and others when they are reluctant to refer their cases to the International Court of Justice.

(6) Reservations to the Convention:

The question of the inclusion or omission of Art XII of the Convention also divided the Air Law Conference. Some Delegates argued that according to Art 19 of the Vienna Convention of 1969 states have a right, in principle, to make reservations to international agreements whether or not that right is expressly or tacitly granted by the instrument. However, such a reservation should not annul the major provisions and the purpose of an agreement. Other Delegates successfully advocated the retention of an Art on non- admissibility of reservations to the Convention, arguing that such a solution would maintain the uniformity and universality of the Convention.

We are of the opinion that the question of reservations is satisfactorily regulated by the Vienna Convention which codifies international customary law, thus, even those

states that are not Parties to the Vienna Convention should be aware of the norms of international customary law regulating reservations to international instruments. The most important question is whether a reservation does not frustrate the purpose of an agreement. It should be noted that Art XXV of the Tokyo Convention of 1963 contains a similar provision on reservations as Art X of the analysed Convention, whereas The Hague and Montreal Conventions of 1970 and 1971 respectively, do not include such a provision.

(7) Entry into force:

The Convention is characterised by a high number of instruments of ratification or accession that are required for its entry into force. This is one of the important features that distinguishes it from the other aviation security instruments. The rationale which prompted the demanded number was an endeavour to secure the efficiency and universality of the instrument. It was argued at the 27th Session of the Legal Committee that "the efficiency of the Convention would be safeguarded only if a significant number of the producer States were to be among those required to bring the new Convention into force".*46 In analogy with Art. XX of the Guatemala City Protocol of 1971 which requires specific states to ratify the Protocol for it to enter into force, Art. XIII (3) of the Convention requires at least five specific states, producers of plastic explosives, to be among the thirty five states that will deposit their instruments of ratification or accession in order for the Convention to enter into force. In view of the nature of the problem the Convention is trying to confront, the Convention would constitute a futile effort if a significant number of states that produce plastic explosives were not Parties to it. Article 34 of the Vienna Convention on the Law of Treaties of 1969 embodies the principle pacta tertiis nec nocent nec prosunt; therefore, producer states left outside the Convention cannot be

expected to abide by and to be bound by the provisions of this Convention.

Some Delegates at the Air Law Conference (1991) questioned the fact that the Convention made it possible for the non-Signitaries to accede to it even before its entry into force. The Executive Secretary of the Conference, clarifying this point, stated that this measure was intended to expedite the entry into force of the Convention by allowing accession at any time.*47 Therefore, in theory the Convention can be made to enter into force by non-Signitaries only if the quantitative and qualitative requirements demanded by Art XIII (3) are satisfied.

A state is also obliged to declare when consenting to be bound by the provisions of the Convention whether or not it is a producer state. Article I (6) gives a definition of a producer state. It is a difficult task so far to qualify a state as either a producer or consumer due to lack of statistics on the quantum of production or consumption of explosives. Therefore, States Parties will rely on the declarations that will be made by the states when consenting to be bound by the Convention. The definition of a producer state is thus based on a "self-assessment".

The Convention does not regulate the question of a change of status, for example, when a State, after depositing its

instrument of ratification as a non-producing State, starts manufacturing plastic explosives and thus becomes a producer State in terms of Art I (6). The question here is whether such a State can retrospectively be regarded as a producer state if it informs the Depositary of the change of its status thus enabling the Convention to enter into force, when there were already four ratifications of producer States and thirty one or more by other non-producing States? In our opinion a State is therefore expected to commence production in accordance with the terms of the Convention, that is, manufacture explosives that are duly marked, if the objective of the Convention is not to be defeated. Article 18 of the Vienna Convention of 1969 obliges Contracting States not to defeat the object and purpose of a treaty prior to its entry into force. But the analysed Convention in Art.I (6) and Art XIII mentions only producers of explosives without distinguishing whether the explosives are marked or not. Therefore, to expedite the entry into force of the Convention, such a State as mentioned above could be regarded as a producer State for the purposes of Articles 1(6) and XIII of the Convention.

(8) <u>Amendments to the Convention:</u>

The Air Law Conference (1991) discussed the question of whether or not the Convention should have an Article on

amendments other than that specifically designed for the Technical Annex to the Convention. Some Delegates favoured the inclusion of a provision on amendments arguing that the Convention, unlike the Tokyo, The Hague, and Montreal Conventions and Montreal Protocol on aviation security, was not limited to civil aviation; that some Parties to the Convention might not be Parties to the Vienna Convention of 1969 and therefore not be bound by its provisions on amendments. It is worth noting that other aviation security instruments do not have articles on amendments as the Conferences that adopted these instruments agreed that the Vienna Convention sufficiently regulated the procedure of making amendments to an international instrument. Furthermore, the ICAO Assembly Resolution A76 establishes the procedure for the preparation and adoption of legal instruments under the aegis of ICAO. Having noted the special regime of the Technical Annex to the Convention, the Chairman of the Conference stated that "...other aspects of the Convention were capable of amendment in the manner provided for and codified in the Vienna Convention on the Law of Treaties".*48

Forecasting Challenges of Implementation:

Article IX of the Convention imposes an obligation upon the Council of ICAO to take, in concert with States Parties and international organisations concerned, appropriate measures to facilitate the implementation of this Convention. The measures to be taken are supposed to include the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

During the drafting of the Convention and its adoption by the Diplomatic Conference on Air Law (1991), the States manifested a political will to work together in eliminating or at least curbing the threat and suffering caused by the use of plastic explosives against civil aviation and other modes of transportation. The same political will will determine whether the Convention will enter into force at a distant date in the future, or remain a document left to be perpetually governed by Art 18 of the Vienna Convention of 1969, or (on a third alternative), to the satisfaction of consumers and those who offer air transport services, enter into force sooner rather than later.

For many States Parties, the implementation of the provisions of the Convention particularly, those requiring the destruction or rendering ineffective of the unmarked

stocks of explosives will depend not only on the political climate prevailing at the time but also on the availability of technology. Industrialised countries might manufacture the necessary equipment and train personnel to operate it but considering the economic crises currently experienced by many developing countries, the implementation of the Convention might be considered to be too costly for those countries. The implementation of the Convention has a bearing on such matters as material, financial, and human resources, defence and security.

At the Air Law Conference (1991) many delegates from the developing countries believed that the technical assistance from the industrialised States Parties will be an important factor in assuring implementation of the Convention.

Aligning itself with the concern of the Delegates from the developing countries, the Delegate of China commented that "the exchange of information, as well as financial and technical assistance were most important steps for the Convention to be widely accepted and implemented".*49

The link between technical assistance and the implementation of the Convention concerned the Delegates from the developing countries to such an extent, that they suggested the inclusion of a provision in the Convention making it an

obligation to render technical assistance for the implementation of the Convention. However, in the spirit of concessions and compromises that characterised the Air Law Conference, the issue of technical assistance was ultimately shelved in the Resolution of the Conference which "urges the international community to consider increasing technical, financial and material assistance to States in need of such assistance in order to be able to benefit from the achievement of the aims and objectives of the Convention, in particular through the technical assistance programmes of the International Civil Aviation Organisation".*50

Following the deliberations of the Conference, it is difficult to interpret the above provision of the Conference Resolution and Art.1X of the Convention as creating a legal obligation for the industrialised States Parties to render technical assistance to States Parties in need of it.

States Parties will need equipment and chemicals to destroy or render permanently ineffective stocks of unmarked plastic explosives in their territories. They will need the detection equipment at their airports, equipped with sensors designed to respond to the detection agents foreseen by the Technical Annex to the Convention. Parties will need personnel to safely conduct the destruction process and to operate the detection equipment at the airports.

The destruction of military stocks of unmarked plastic explosives will in certain circumstances necessitate urgent importation or manufacture of acceptable and detectable explosives, an exercise that might strain the defence budget or disrupt the production plans of the military industries.

The ecological consequences of a large scale and prolonged destruction of plastic explosives are another source of concern when consideration is given to the question of implementation of the Convention.

FOOTNOTES

*1. MEX Doc. No. 32.

*2. MEX Doc. No. 5.

*3. Conference Minutes; Air Law Conf. (1991); Thirteenth Meeting of the Commission of the Whole. p.1.

*4. See LC/SC-MEX-WP/8 Addendum 2 p.1.

*5. MEX Doc. No. 6 p.1

*6. ICAO Doc. 9551-LC/187 p.3-4.

*7. See Mex Doc No. 4 p.3; Conf. Record in MEX Doc No 7 p.3.

*8. Milde M. Draft Convention on the Marking of Explosives. Annals of Air and Space Law. Vol. XV. 1990. p.165.

*9. Conference Minutes; Air Law Conf. (1991); Second Plenary Meeting, p.4.

*10. Conference Minutes; Air Law Conf. (1991); Second Meeting of the Commission of the Whole p.3.

*11. Conference Minutes; Air Law Conf. (1991); Second Plenary Meeting, p.4.

*12. Article 2

*13. ICAO Doc. 9556-LC/187 p.3-23.

*14. Conference Minutes; Air Law Conf. (1991) Third Meeting of the Commission of the Whole, p.1.

*15. Conference Minutes; Air Law Conf. (1991) Thirteenth Meeting of the Commission of the Whole. p.1

*16. Milde M. op.cit. p.171.

*17. ICAO Doc. 9556-LC/187 p.3-12.

*18. LC/SC-MEX-WP/8 Addendum 3 p.2.

*19. ICAO Doc. 9556-LC/187 p.3-11.

*20. Conference Minutes; Air Law Conf. (1991) Third Meeting of the Commission of the Whole, P.2

*21. ibid p.2.

*22. Conference Minutes; Air Law Conf. (1991) Thirteenth Meeting of the Commission of the Whole p.2.

*23. Milde M. op. cit. p.173.

*24. MEX Doc. No. 9 p.3.

*25. See MEX Doc. No. 22.

*26. Conference Minutes; Air Law Conf. (1991) Thirteenth Meeting of the Commission of the Whole, p.3.

*27. ibid. p.5.

*28. Conference Minutes; Air Law Conf. (1991) Eighth Meeting of the Commission of the Whole, p.2.

*29. ICAO Doc 9556-LC/187 p.3-16.

*30. ibid. p.3-13.

*31. ibid. p.3-14.

*32. MEX Doc. No.39 p.5

*33. Conference Minutes; Air Law Conf. (1991) Fifth Meeting of the Commission of the Whole. p.2.

*34. ICAO Doc. 9556-LC/187 pp.3-15 to 3-16

*35. Conference Minutes; Air Law Conf. (1991) Fifth Meeting of the Commission of the Whole, p.4.

*36. See Mex Doc. No. 39 p.5 paragraph 5 a).

*37. Article V111 (1).

*38. ICAO Doc. 9556-LC/187. p.3-15.

*39. Conference Minutes; Air Law Conf. (1991) Ninth Meeting of the Commission of the Whole, P.6.

*40. ICAO Doc. 9556-LC/187 p.3-9.

*41. ibid p.3-9 to 10.

*42. Milde M. op. cit. p.169.

*43. Conference Minutes; Air Law Conf. (1991) Seventeenth Meeting of the Commission of the Whole, p.2.

*44. This fact is documented in Appendices C, D, and E.

*45. Gooding G.V. Fighting Terrorism in the 1980's: The Interception of the Achille Lauro Hijackers. Yale Journal of International Law, Vol. 12. No 1. 1987 p.178.

*46. ICAO Doc. 9556-LC/187 p.3-16.

*47. Conference Minutes. Air Law Conf. (1991). Seventeenth Meeting of the Commission of the Whole. p.3.

*48. Conference Minutes. Air Law Conf. (1991). Eighteenth Meeting of the Commission of the Whole. p3.

*49. Conference Minutes. Air Law Conf. (1991). Sixteenth Meeting of the Commission of the Whole. p.2.

*50. MEX. Doc. 39.

CONCLUSION:

It is a recognised fact that treaty law- making is a process of concessions and compromises. Therefore, when emphasising the shortcomings of the aviation security instruments, one should always bear in mind the fact that divergent interests of states had to be accommodated by the conventions if their drafting and adoption were not to be significantly delayed, or more seriously still, were to fail to secure universal acceptance and implementation.

Noting the speed and enthusiasm with which the Convention on the Marking of Explosives was drafted in contrast with the current pace of depositing the instruments of ratification or accession to it, the author is of the opinion that the process of making the Convention enter into force is likely to be slower. At the time of writing this work, no state has deposited its instrument of ratification or accession with the International Civil Aviation Organisation. As is the normal practice, ICAO will be forced to adopt resolutions urging member states to ratify or accede to the Convention.

Considering the object of the Convention for the Marking of Explosives for the Purpose of Detection, the fact that it does not contain penal provisions does not render it useless or futile. The aviation security instruments should be regarded as forming a security system and all these

conventions complement each other. If the Convention on the Marking of Explosives lacks penal clauses then other aviation security instruments fill in the supposed lacunae.

It is precisely because of the complex nature of the aviation network that any weak link in the chain of security in any part of the globe jeopardises aviation security world wide. Therefore, advanced aviation security technology in a few countries is meaningless if it cannot include other states. It is hoped that State Parties to the Convention on the Marking of Explosives for the Purpose of Detection will live up to the expectation of the Resolution of the International Law Conference of 1991 and afford the States technical, financial and material assistance within the framework of ICAO or possibly through bilateral or multilateral arrangements.

Reflecting the anxiety and concern expressed by many Delegates to the International Air Law Conference of 1991, the author fears that "dumping" of plastic explosives as a way of getting rid of them or, export of their residue after destruction to other states might seriously discredit the Convention on the Marking of Explosives.

We are not going to extoll the aviation security Conventions as regulating and solving general problems of international relations. Rather, it must be said that the unprincipled

measures often taken by the international community, or rather its reluctance to find just and acceptable solutions to the political problems that threaten peace and stability, will also weaken and compromise the authority of the aviation security instruments.

It is often remarked, correctly in our opinion, that the aviation security conventions are not by themselves a panacea. The political realities are best expressed in the United Nations General Assembly Resolution 44/29 of December 1989 which in paragraph 6 urges, "all States, unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism, and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien domination and foreign occupation, that may give rise to international terrorism and may endanger international peace and security".

As shown in Appendices F, and G, acts of unlawful interference with international civil aviation are unpredictable and do not necessarily depend on the prevailing political climate because individuals advancing private ends or a mentally deranged person can also commit an act of interference with civil aviation. Therefore, the

screening of passengers and luggage at the airports, though a costly and time consuming exercise, remains an important preventive measure.

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APPENDIX A.

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

SIGNED AT MONTREAL ON 1 MARCH 1991*

States	Date of signature	Date of deposit of instrument of ratification, acceptance, approval or accession	Effective date
Afghanistan	1 March 1991		
Argentina	1 March 1991		
Belgium	1 March 1991		
Belize	1 March 1991		
Bolivia	1 March 1991		
Brazil(1)	1 March 1991		
Byelorussian Soviet Socialist Republic	1 March 1991		
Canada	1 March 1991		
Chile	1 March 1991		
Costa Rica	1 March 1991		
Côte d'Ivoire	1 March 1991		
Czechoslovakia	1 March 1991		
Denmark	1 March 1991		
Ecuador	1 March 1991		
Egypt	1 March 1991		
France	1 March 1991		
Gabon	1 March 1991		
Germany	1 March 1991		
Ghana	1 March 1991		
Greece	1 March 1991		
Guinea	1 March 1991		
Guinea-Bissau	1 March 1991		
Israel	1 March 1991		
Kuwait	1 March 1991		
Lebanon	1 March 1991		
Madagascar	1 March 1991		
Mali	1 March 1991		
Mauritius	1 March 1991		
Mexico	1 March 1991		
Norway	1 March 1991		
Pakistan	1 March 1991		
Peru(1)	1 March 1991		
Republic of Korea	1 March 1991		
Senegal	1 March 1991		
Switzerland	1 March 1991		

* In accordance with Article XIII, paragraph 3, the Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession, provided that no fewer than five such States have declared pursuant to paragraph 2 of that same Article that they are producer States.

States	Date of signature	Date of deposit of instrument of ratification, acceptance, approval or accession	Effective date
Togo	1 March 1991		
Ukrainian Soviet Socialist Republic	1 March 1991		
Union of Soviet Socialist Republics	1 March 1991		
United Kingdom	1 March 1991		
United States	1 March 1991		
Honduras(1)	26 March 1991		
Bulgaria	26 March 1991		
Turkey(1)	7 May 1991		
Netherlands, Kingdom of the	2 August 1991		

(1) **Reservation:** Does not consider itself bound by Article XI, paragraph 1, of the Convention.

CONVENTION

on the Marking of Plastic Explosives for the Purpose of Detection

THE STATES PARTIES TO THIS CONVENTION,

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

EXPRESSING deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets,

CONCERNED that plastic explosives have been used for such terrorist acts;

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

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

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

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

NOTING with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention as well as its willingness to assume functions related to its implementation,

HAVE AGREED AS FOLLOWS:

Article I

For the purposes of this Convention:

1. "Explosives" mean explosive products, commonly known as "plastic explosives", including explosives in flexible or elastic sheet form, as described in the Technical Annex to this Convention.

2. "Detection agent" means a substance as described in the Technical Annex to this Convention which is introduced into an explosive to render it detectable.

3 "Marking" means introducing into an explosive a detection agent in accordance with the Technical Annex to this Convention

4 "Manufacture" means any process, including reprocessing, that produces explosives

5 "Duly authorized military devices" include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.

6 "Producer State" means any State in whose territory explosives are manufactured

Article II

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

Article III

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

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

Article IV

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

2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article not held by its authorities performing military or police functions are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of this Convention in respect of that State

3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article held by its authorities performing military or police functions and that are not incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of fifteen years from the entry into force of this Convention in respect of that State.

4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this Article, other than stocks of unmarked

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explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.

5 Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph II of Part I of the Technical Annex to this Convention so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention

6. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph II d) of Part I of the Technical Annex to this Convention and of unmarked explosives which no longer fall within the scope of any other sub-paragraphs of the said paragraph II

Article V

1 There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of not less than fifteen nor more than nineteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention

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

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

4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, or at such places and times as may be directed or approved by the Council.

5 The Commission shall adopt its rules of procedure, subject to the approval of the Council.

Article VI

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

2. The Commission, through the Council, sh 'l report its findings to the States Parties and international organizations concerned.

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

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

Article VII

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

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

3 If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States Parties not having expressly objected thereto.

4 States Parties having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.

5 If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.

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

Article VIII

1 States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of Article VI.

2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties and international organizations concerned.

Article IX

The Council shall, in co-operation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

Article X

The Technical Annex to this Convention shall form an integral part of this Convention.

Article XI

1 Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2 Each State Party may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3 Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article XII

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

Article XIII

1 This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accede to it at any time.

2 This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State.

3 This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this Article that they are producer States. Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.

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

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

Article XIV

The Depositary shall promptly notify all signatories and States Parties of

1 each signature of this Convention and date thereof;

2 each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State,

3 the date of entry into force of this Convention,

4. the date of entry into force of any amendment to this Convention or its Technical Annex;

5. any denunciation made under Article XV, and

6 any declaration made under paragraph 2 of Article XI

Article XV

1 Any State Party may denounce this Convention by written notification to the Depositary

2 Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

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

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

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TECHNICAL ANNEX

PART 1 DESCRIPTION OF EXPLOSIVES

I The explosives referred to in paragraph 1 of Article I of this Convention are those that

a) are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10^{-4} Pa at a temperature of 25 C

b) are formulated with a binder material, and

c) are, as a mixture, malleable or flexible at normal room temperature

II The following explosives, even though meeting the description of explosives in paragraph I of this Part, shall not be considered to be explosives as long as they continue to be held or used for the purposes specified below or remain incorporated as there specified, namely those explosives that

a) are manufactured, or held, in limited quantities solely for use in duly authorized research, development or testing of new or modified explosives,

b) are manufactured, or held, in limited quantities solely for use in duly authorized training in explosives detection and or development or testing of explosives detection equipment,

c) are manufactured, or held, in limited quantities solely for duly authorized forensic science purposes, or

d) are destined to be and are incorporated as an integral part of duly authorized military devices in the territory of the producer State within three years after the coming into force of this Convention in respect of that State Such devices produced in this period of three years shall be deemed to be duly authorized military devices within paragraph 4 of Article IV of this Convention

III In this Part

"duly authorized" in paragraph II a), b) and c) means permitted according to the laws and regulations of the State Party concerned, and

"high explosives" include but are not restricted to cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX)

PART 2 DETECTION AGENTS

A detection agent is any one of those substances set out in the following Table Detection agents described in this Table are intended to be used to enhance the detectability of explosives by vapour detection means In each case, the introduction of a detection agent into an explosive shall be done in such a manner as to achieve homogeneous distribution in the finished product The minimum concentration of a detection agent in the finished product at the time of manufacture shall be as shown in the said Table

Table

Name of detection agent	Molecular formula	Molecular weight	Minimum concentration
Ethylene glycol dinitrate (EGDN)	$C_2H_4N_2O_6$	152	0.2% by mass
2,3-Dimethyl-2,3-dinitrobutane (DMNB)	$C_6H_{12}N_2O_4$	176	0.1% by mass
para-Mononitrotoluene (p-MNT)	$C_7H_7NO_2$	137	0.5% by mass
ortho-Mononitrotoluene (o-MNT)	$C_7H_7NO_2$	137	0.5% by mass

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

APPENDIX C.

Convention on Offences and Certain other acts Committed on board Aircraft of 1963:

Pursuant to Art. 24 (2) of the Convention reservations were made by the following countries to the effect that they are not bound by Art. 24 (1):

Bahrain.

Belorussian SSR.

Cameroon.

China.

Czechoslovakia.

Democratic People's Republic of Korea.

Egypt.

Ethiopia.

Guatemala.

Honduras.

India.

Indonesia.

Oman.

Papua New Guinea.

Peru.

Poland.

Romania.

South Africa.

Syria.

Tunisia.

Ukrainian SSR.

USSR.

Uruguay.

Venezuela.

Viet Nam.

*Source: ICAO Doc. 9568. Annual Report of the Council-1990. pp.127-128.

APPENDIX D.

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT SIGNED AT THE HAGUE ON 16 DECEMBER 1970*

States	Date of signature	Date of deposit of Instrument of Ratification or Accession
Afghanistan	16 December 1970	29 August 1979
Antigua and Barbuda		22 July 1985
Argentina	16 December 1970	11 September 1972(1)
Australia	15 June 1971	9 November 1972
Austria	28 April 1971	11 February 1974
Bahamas		13 August 1976
Bahrain		20 February 1984(2)
Bangladesh		28 June 1978
Barbados	16 December 1970	2 April 1973
Belgium	16 December 1970	24 August 1973
Benin	5 May 1971	13 March 1972
Bhutan		28 December 1988
Bolivia		18 July 1979
Botswana		28 December 1978
Brazil	16 December 1970	14 January 1972(2)
Brunei Darussalam		16 April 1986
Bulgaria	16 December 1970	19 May 1971(2)
Burkina Faso		19 October 1987
Burundi	17 February 1971	
Byelorussian Soviet Socialist Republic	16 December 1970	30 December 1971(2)
Cameroon		14 April 1988
Canada	16 December 1970	20 June 1972
Cape Verde		20 October 1977
Central African Republic		1 July 1991
Chad	27 September 1971	12 July 1972
Chile	4 June 1971	2 February 1972
China		10 September 1980(2)(3)
Colombia	16 December 1970	3 July 1973
Costa Rica	16 December 1970	9 July 1971
Côte d'Ivoire		9 January 1973
Cyprus		5 July 1972
Czechoslovakia	16 December 1970	6 April 1972(4)
Democratic Kampuchea	16 December 1970	
Democratic People's Republic of Korea		28 April 1983
Denmark	16 December 1970	17 October 1972(5)
Dominican Republic	29 June 1971	22 June 1978
Ecuador	19 March 1971	14 June 1971
Egypt		28 February 1975(2)
El Salvador	16 December 1970	16 January 1973
Equatorial Guinea	4 June 1971	2 January 1991
Ethiopia	16 December 1970	26 March 1979

* This Convention entered into force on 14 October 1971.
This list is based on information received from depositary States.

States	Date of signature	Date of deposit of Instrument of Ratification or Accession
Fiji	5 October 1971	27 July 1972
Finland	8 January 1971	15 December 1971
France	16 December 1970	18 September 1972
Gabon	16 December 1970	14 July 1971
Gambia	18 May 1971	28 November 1978
Germany	16 December 1970	11 October 1974(6)
Ghana	16 December 1970	12 December 1973
Greece	16 December 1970	20 September 1973
Grenada		10 August 1978
Guatemala	16 December 1970	16 May 1979(2)
Guinea		2 May 1984
Guinea-Bissau		20 August 1976
Guyana		21 December 1972
Haiti		9 May 1984
Honduras		13 April 1987
Hungary	16 December 1970	13 August 1971(7)
Iceland		29 June 1973
India	14 July 1971	12 November 1982(2)
Indonesia	16 December 1970	27 August 1976(2)
Iran, Islamic Republic of	16 December 1970	25 January 1972
Iraq	22 February 1971	3 December 1971
Ireland		24 November 1975
Israel	16 December 1970	16 August 1971
Italy	16 December 1970	19 February 1974
Jamaica	16 December 1970	15 September 1983
Japan	16 December 1970	19 April 1971
Jordan	9 June 1971	18 November 1971
Kenya		11 January 1977
Kuwait	21 July 1971	25 May 1979(8)
Lao People's Democratic Republic	16 February 1971	6 April 1989
Lebanon		10 August 1973
Lesotho		27 July 1978
Liberia		1 February 1982
Libyan Arab Jamahiriya		4 October 1978(9)
Liechtenstein	24 August 1971	
Luxembourg	16 December 1970	22 November 1978
Madagascar		18 November 1986
Malawi		21 December 1972(2)
Malaysia	16 December 1970	4 May 1985
Maldives		1 September 1987
Mali		29 September 1971
Marshall Islands		31 May 1989
Mauritania		1 November 1978
Mauritius		25 April 1983
Mexico	16 December 1970	19 July 1972
Monaco		3 June 1983
Mongolia	18 January 1971	8 October 1971
Morocco		24 October 1975(10)

States	Date of signature	Date of deposit of Instrument of Ratification or Accession
Nauru		17 May 1984
Nepal		11 January 1979
Netherlands, Kingdom of the	16 December 1970	27 August 1973(11)
New Zealand	15 September 1971	12 February 1974
Nicaragua		6 November 1973
Niger	19 February 1971	15 October 1971
Nigeria		3 July 1973
Norway	9 March 1971	23 August 1971
Oman		2 February 1977(2)(12
Pakistan	12 August 1971	28 November 1973
Panama	16 December 1970	10 March 1972
Papua New Guinea		15 December 1975(2)
Paraguay	30 July 1971	4 February 1972
Peru		28 April 1978(2)
Philippines	16 December 1970	26 March 1973
Poland	16 December 1970	21 March 1972(2)
Portugal	16 December 1970	27 November 1972
Qatar		26 August 1981(2)
Republic of Korea		18 January 1973(13)
Romania	13 October 1971	10 July 1972(2)
Rwanda	16 December 1970	3 November 1987
Saint Lucia		8 November 1983
Saudi Arabia		14 June 1974(2)(14)
Senegal	10 May 1971	3 February 1978
Seychelles		29 December 1978
Sierra Leone	19 July 1971	13 November 1974
Singapore	8 September 1971	12 April 1978
South Africa	16 December 1970	30 May 1972(2)
Spain	16 March 1971	30 October 1972
Sri Lanka		30 May 1978
Sudan		18 January 1979
Suriname		25 November 1975(15)
Sweden	16 December 1970	7 July 1971
Switzerland	16 December 1970	14 September 1971
Syrian Arab Republic		10 July 1980(2)
Thailand	16 December 1970	16 May 1978
Togo		9 February 1979
Tonga		21 February 1977
Trinidad and Tobago	16 December 1970	31 January 1972
Tunisia		16 November 1981(2)
Turkey	16 December 1970	17 April 1973
Uganda		27 March 1972
Ukrainian Soviet Socialist Republic	16 December 1970	21 February 1972(2)
Union of Soviet Socialist Republics	16 December 1970	24 September 1971(2)

States	Date of signature	Date of deposit of Instrument of Ratification or Accession
United Arab Emirates		10 April 1981(16)
United Kingdom	16 December 1970	22 December 1971(17)
United Republic of Tanzania		9 August 1983
United States	16 December 1970	14 September 1971
Uruguay		12 January 1977
Vanuatu		22 February 1989
Venezuela	16 December 1970	7 July 1983
Viet Nam		17 September 1979(2)
Yemen		29 September 1986
Yugoslavia	16 December 1970	2 October 1972
Zaire		6 July 1977
Zambia		3 March 1987
Zimbabwe		6 February 1989

(1) The instrument of ratification by Argentina contains a declaration which, in translation, reads: "The application of this Convention to territories the sovereignty of which may be disputed among two or more States, whether Parties to the Convention or not, may not be interpreted as alteration, renunciation or waiver of the position upheld by each up to the present time".

(2) Reservation made with respect to paragraph 1 of Article 12 of the Convention.

(3) The instrument of accession by the Government of the People's Republic of China contains the following declaration: "The Chinese Government declares illegal and null and void the signature and ratification of the above-mentioned Convention by the Taiwan authorities in the name of China".

(4) On 25 April 1991, an instrument was deposited with the Government of the United States by the Government of Czechoslovakia whereby that Government withdraws the reservation made at the time of ratification on 6 April 1972 with regard to paragraph 1 of Article 12 of the Convention. The withdrawal of the reservation took effect on 25 April 1991.

(5) Until later decision, the Convention will not be applied to the Faroe Islands or to Greenland.

Note: A notification was received by the Government of the United Kingdom from the Government of the Kingdom of Denmark that, with effect from 1 June 1980, Denmark withdraws its reservation, made in the following terms upon ratification, in respect of Greenland:

"Sous la réserve que jusqu'à décision ultérieure la Convention ne s'appliquera pas aux Îles Féroé et au Groënland".

(6) The German Democratic Republic, which ratified the Convention on 3 June 1971, acceded to the Federal Republic of Germany on 3 October 1990.

(7) On 10 January 1990, instruments were deposited with the Government of the United Kingdom and the Government of the United States by the Government of Hungary whereby that Government withdraws the reservation made at the time of ratification on 13 August 1971 with regard to paragraph 1 of Article 12 of the Convention. The withdrawal of the reservation took effect on 10 January 1990.

(8) Ratification by Kuwait was accompanied by an Understanding stating that ratificatio of the Convention does not mean in any way recognition of Israel by the State of Kuwait. Furthermore, no treaty relations will arise between the State of Kuwait and Israel.

(9) The instrument of accession deposited by the Libyan Arab Jamahiriya contains a disclaimer regarding recognition of Israel.

(10) "In case of a dispute, all recourse must be made to the International Court of Justice on the basis of the unanimous consent of the parties concerned."

(11) The Convention cannot enter into force for the Netherlands Antilles until thirty days after the date on which the Government of the Kingdom of the Netherlands shall have notified the depositary Governments that the necessary measures to give effect to the provisions of the Convention have been taken in the Netherlands Antilles.

Note 1: On 11 June 1974, a declaration was deposited with the Government of the United States by the Government of the Kingdom of the Netherlands stating that in the interim the measures required to implement the provisions of the Convention have been taken in the Netherlands Antilles and, consequently, the Convention will enter into force for the Netherlands Antilles on the thirtieth day after the date of deposit of this declaration.

Note 2: By a Note dated 9 January 1986 the Government of the Kingdom of the Netherlands informed the Government of the United States that as of 1 January 1986 the Convention is applicable to the Netherlands Antilles (without Aruba) and to Aruba.

(12) Accession of the said Convention by the Government of the Sultanate of Oman does not mean or imply, and shall not be interpreted as recognition of Israel generally or in the context of this Convention.

(13) The accession by the Government of the Republic of Korea to the present Convention does not, in any way, mean or imply the recognition of any territory or regime which has not been recognized by the Government of the Republic of Korea as a State or Government.

(14) Approval by Saudi Arabia does not mean and could not be interpreted as recognition of Israel generally or in the context of this Convention.

(15) Notification of succession to the Convention was deposited with the Government of the United States on 27 October 1978, by virtue of the extension of the Convention to Suriname by the Kingdom of the Netherlands prior to independence. The Republic of Suriname attained independence on 25 November 1975.

(16) "In accepting the said Convention, the Government of the United Arab Emirates takes the view that its acceptance of the said Convention does not in any way imply its recognition of Israel, nor does it oblige to apply the provisions of the Convention in respect of the said Country."

(17) The Convention is ratified "in respect of the United Kingdom of Great Britain and Northern Ireland and Territories under territorial sovereignty of the United Kingdom as well as the British Solomon Islands Protectorate".

APPENDIX E.

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION

SIGNED AT MONTREAL ON 23 SEPTEMBER 1971*

States	Date of signature	Date of deposit of Instrument of Ratification or Accession
Afghanistan		26 September 1984(1)
Antigua and Barbuda		22 July 1985
Argentina	23 September 1971	26 November 1973
Australia	12 October 1972	12 July 1973
Austria	13 November 1972	11 February 1974
Bahamas		27 December 1984
Bahrain		20 February 1984(1)
Bangladesh		28 June 1978
Barbados	23 September 1971	6 August 1976
Belgium	23 September 1971	13 August 1976
Bhutan		28 December 1988
Bolivia		18 July 1979
Botswana	12 October 1972	28 December 1978
Brazil	23 September 1971	24 July 1972(1)
Brunei Darussalam		16 April 1986
Bulgaria	23 September 1971	28 March 1973(1)
Burkina Faso		19 October 1987
Burundi	6 March 1972	
Byelorussian Soviet Socialist Republic	23 September 1971	31 January 1973(1)
Cameroon		11 July 1973(2)
Canada	23 September 1971	19 June 1972
Cape Verde		20 October 1977
Central African Republic		1 July 1991
Chad	23 September 1971	12 July 1972
Chile		28 February 1974
China		10 September 1980(1)(3)
Colombia		4 December 1974
Congo	23 September 1971	19 March 1987
Costa Rica	23 September 1971	21 September 1973
Côte d'Ivoire		9 January 1973
Cyprus	28 November 1972	15 August 1973
Czechoslovakia	23 September 1971	10 August 1973(4)
Democratic People's Republic of Korea		13 August 1980
Denmark	17 October 1972	17 January 1973(5)
Dominican Republic	31 May 1972	28 November 1973
Ecuador		12 January 1977
Egypt	24 November 1972	20 May 1975(1)
El Salvador		25 September 1979
Equatorial Guinea		2 January 1991
Ethiopia	23 September 1971	26 March 1979(1)
Fiji	21 August 1972	5 March 1973
Finland		13 July 1973
France		30 June 1976(1)

* This Convention entered into force on 26 January 1973.
This list is based on information received from depositary States.

States	Date of signature	Date of deposit of Instrument of Ratification or Accession
Gabon	24 November 1971	29 June 1976
Gambia		28 November 1978
Germany	23 September 1971	3 February 1978(6)
Ghana		12 December 1973
Greece	9 February 1972	15 January 1974
Grenada		10 August 1978
Guatemala	9 May 1972	19 October 1978(1)
Guinea		2 May 1984
Guinea-Bissau		20 August 1976
Guyana		21 December 1972
Haiti	6 January 1972	9 May 1984
Honduras		13 April 1987
Hungary	23 September 1971	27 December 1972(7)
Iceland		29 June 1973
India	11 December 1972	12 November 1982
Indonesia		27 August 1976(1)
Iran, Islamic Republic of		10 July 1973
Iraq		10 September 1974
Ireland		12 October 1976
Israel	23 September 1971	30 June 1972
Italy	23 September 1971	19 February 1974
Jamaica	23 September 1971	15 September 1983
Japan		12 June 1974
Jordan	2 May 1972	13 February 1973
Kenya		11 January 1977
Kuwait		23 November 1979(8)
Lao People's Democratic Republic	1 November 1972	6 April 1989
Lebanon		23 December 1977
Lesotho		27 July 1978
Liberia		1 February 1982
Libyan Arab Jamahiriya		19 February 1974
Luxembourg	29 November 1971	18 May 1982
Madagascar		18 November 1986
Malawi		21 December 1972(1)
Malaysia		4 May 1985
Maldives		1 September 1987
Mali		24 August 1972
Marshall Islands		31 May 1989
Mauritania		1 November 1978
Mauritius		25 April 1983
Mexico	25 January 1973	12 September 1974
Monaco		3 June 1983
Mongolia	18 February 1972	14 September 1972(1)
Morocco		24 October 1975(9)
Nauru		17 May 1984

States	Date of signature	Date of deposit of Instrument of Ratification or Accession
Nepal		11 January 1979
Netherlands, Kingdom of the	23 September 1971	27 August 1973(10)
New Zealand	26 September 1972	12 February 1974
Nicaragua	22 December 1972	6 November 1973
Niger	6 March 1972	1 September 1972
Nigeria		3 July 1973
Norway		1 August 1973
Oman		2 February 1977(1)(11)
Pakistan		24 January 1974
Panama	18 January 1972	24 April 1972
Papua New Guinea		15 December 1975(1)
Paraguay	23 January 1973	5 March 1974
Peru		28 April 1978(1)
Philippines	23 September 1971	26 March 1973
Poland	23 September 1971	28 January 1975(1)
Portugal	23 September 1971	15 January 1973
Qatar		26 August 1981(1)
Republic of Korea		2 August 1973(12)
Romania	10 July 1972	15 August 1975(1)
Rwanda	26 June 1972	3 November 1987
Saint Lucia		8 November 1983
Saudi Arabia		14 June 1974(1)(13)
Senegal	23 September 1971	3 February 1978
Seychelles		29 December 1978
Sierra Leone		20 September 1979
Singapore	21 November 1972	12 April 1978
Solomon Islands		13 April 1982(14)
South Africa	23 September 1971	30 May 1972(1)
Spain	15 February 1972	30 October 1972
Sri Lanka		30 May 1978
Sudan		18 January 1979
Suriname		25 November 1975(15)
Sweden		10 July 1973
Switzerland	23 September 1971	17 January 1978
Syrian Arab Republic		10 July 1980(1)
Thailand		16 May 1978
Togo		9 February 1979
Tonga		21 February 1977
Trinidad and Tobago	9 February 1972	9 February 1972
Tunisia		16 November 1981(1)
Turkey	5 July 1972	23 December 1975
Uganda		19 July 1982
Ukrainian Soviet Socialist Republic	23 September 1971	26 January 1973(1)
Union of Soviet Socialist Republics	23 September 1971	19 February 1973(1)
United Arab Emirates		10 April 1981(16)
United Kingdom	23 September 1971	25 October 1973(17)
United Republic of Tanzania		9 August 1983

States	Date of signature	Date of deposit of Instrument of Ratification or Accession
United States	23 September 1971	1 November 1972
Uruguay		12 January 1977
Vanuatu		6 November 1989
Venezuela	23 September 1971	21 November 1983(18)
Viet Nam		17 September 1979
Yemen	23 October 1972	29 September 1986
Yugoslavia	23 September 1971	2 October 1972
Zaire		6 July 1977
Zambia		3 March 1987
Zimbabwe		6 February 1989

(1) Reservation made with respect to paragraph 1 of Article 14 of the Convention.

(2) "In accordance with the provisions of the Convention of 23 September 1971, for the Suppression of Unlawful Acts directed against the Security of Civil Aviation, the Government of the United Republic of Cameroon declares that in view of the fact that it does not have any relations with South Africa and Portugal, it has no obligation toward these two countries with regard to the implementation of the stipulations of the Convention."

(3) The instrument of accession by the Government of the People's Republic of China contains the following declaration: "The Chinese Government declares illegal and null and void the signature and ratification of the above-mentioned Convention by the Taiwan authorities in the name of China".

(4) On 25 April 1991, an instrument was deposited with the Government of the United States by the Government of Czechoslovakia whereby that Government withdraws the reservation made at the time of ratification on 10 August 1973 with regard to paragraph 1 of Article 14 of the Convention. The withdrawal of the reservation took effect on 25 April 1991.

(5) Until later decision, the Convention will not be applied to the Faroe Islands or to Greenland.

Note: A notification was received by the Government of the United Kingdom from the Government of the Kingdom of Denmark that, with effect from 1 June 1980, Denmark withdraws its reservation, made in the following terms upon ratification, in respect of Greenland:

"Sous la réserve que jusqu'à décision ultérieure la Convention ne s'appliquera pas aux Îles Féroé et au Groënland".

(6) The German Democratic Republic, which ratified the Convention on 9 June 1972, acceded to the Federal Republic of Germany on 3 October 1990.

(7) On 10 January 1990, instruments were deposited with the Government of the United Kingdom and the Government of the United States by the Government of Hungary whereby that Government withdraws the reservation made at the time of ratification on 27 December 1972 with regard to paragraph 1 of Article 14 of the Convention. The withdrawal of the reservation took effect on 10 January 1990.

(8) It is understood that accession to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal, 1971, does not mean in any way recognition of Israel by the State of Kuwait. Furthermore, no treaty relation will arise between the State of Kuwait and Israel.

(9) "In case of a dispute, all recourse must be made to the International Court of Justice on the basis of the unanimous consent of the parties concerned".

(10) The Convention cannot enter into force for the Netherlands Antilles until thirty days after the date on which the Government of the Kingdom of the Netherlands shall have notified the depositary Governments that the necessary measures to give effect to the provisions of the Convention have been taken in the Netherlands Antilles.

Note 1: On 11 June 1974, a declaration was deposited with the Government of the United States by the Government of the Kingdom of the Netherlands stating that in the interim the measures required to implement the provisions of the Convention have been taken in the Netherlands Antilles and, consequently, the Convention will enter into force for the Netherlands Antilles on the thirtieth day after the date of deposit of this declaration.

Note 2: By a Note dated 9 January 1986 the Government of the Kingdom of the Netherlands informed the Government of the United States that as of 1 January 1986 the Convention is applicable to the Netherlands Antilles (without Aruba) and to Aruba.

(11) Accession to the said Convention by the Government of the Sultanate of Oman does not mean or imply, and shall not be interpreted as recognition of Israel generally or in the context of this Convention.

(12) The accession by the Government of the Republic of Korea to the present Convention does not in any way mean or imply the recognition of any territory or regime which has not been recognized by the Government of the Republic of Korea as a State or Government.

(13) Approval by Saudi Arabia does not mean and could not be interpreted as recognition of Israel generally or in the context of this Convention.

(14) The Solomon Islands attained independence on 7 July 1978; the instrument of succession was deposited on 13 April 1982.

(15) Notification of succession to the Convention was deposited with the Government of the United States on 27 October 1978, by virtue of the extension of the Convention to Suriname by the Kingdom of the Netherlands prior to independence. The Republic of Suriname attained independence on 25 November 1975.

(16) "In accepting the said Convention, the Government of the United Arab Emirates takes the view that its acceptance of the said Convention does not in any way imply its recognition of Israel, nor does it oblige to apply the provisions of the Convention in respect of the said Country."

(17) The Convention is ratified "in respect of the United Kingdom of Great Britain and Northern Ireland and Territories under territorial sovereignty of the United Kingdom as well as the British Solomon Islands Protectorate".

Note: By a Note dated 20 November 1990, the Government of the United Kingdom declared that Anguilla has been included under the ratification of the Convention by that Government with effect from 7 November 1990.

(18) The instrument of ratification by the Government of Venezuela contains the following reservation regarding Articles 4, 7 and 8 of the Convention:
"Venezuela will take into consideration clearly political motives and the circumstances under which offences described in Article 1 of this Convention are committed, in refusing to extradite or prosecute an offender, unless financial extortion or injury to the crew, passengers, or other persons has occurred".

The Government of the United Kingdom of Great Britain and Northern Ireland made the following declaration in a Note dated 6 August 1985 to the Department of State of the Government of the United States:
"The Government of the United Kingdom of Great Britain and Northern Ireland do not regard as valid the reservation made by the Government of the Republic of Venezuela insofar as it purports to limit the obligation under Article 7 of the Convention to submit the case against an offender to the competent authorities of the State for the purpose of prosecution".

With reference to the above declaration by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of Venezuela, in a Note dated 21 November 1985, informed the Department of State of the Government of the United States of the following:
"The reserve made by the Government of Venezuela to Articles 4, 7 and 8 of the Convention is based on the fact that the principle of asylum is contemplated in Article 116 of the Constitution of the Republic of Venezuela. Article 116 reads:

> 'The Republic grants asylum to any person subject to persecution or which finds itself in danger, for political reasons, within the conditions and requirements established by the laws and norms of international law.'

It is for this reason that the Government of Venezuela considers that in order to protect this right, which would be diminished by the application without limits of the said articles, it was necessary to request the formulation of the declaration contemplated in Art. 2 of the Law approving the Convention for the Suppression of Unlawful Acts Against the Security (sic) of Civil Aviation".

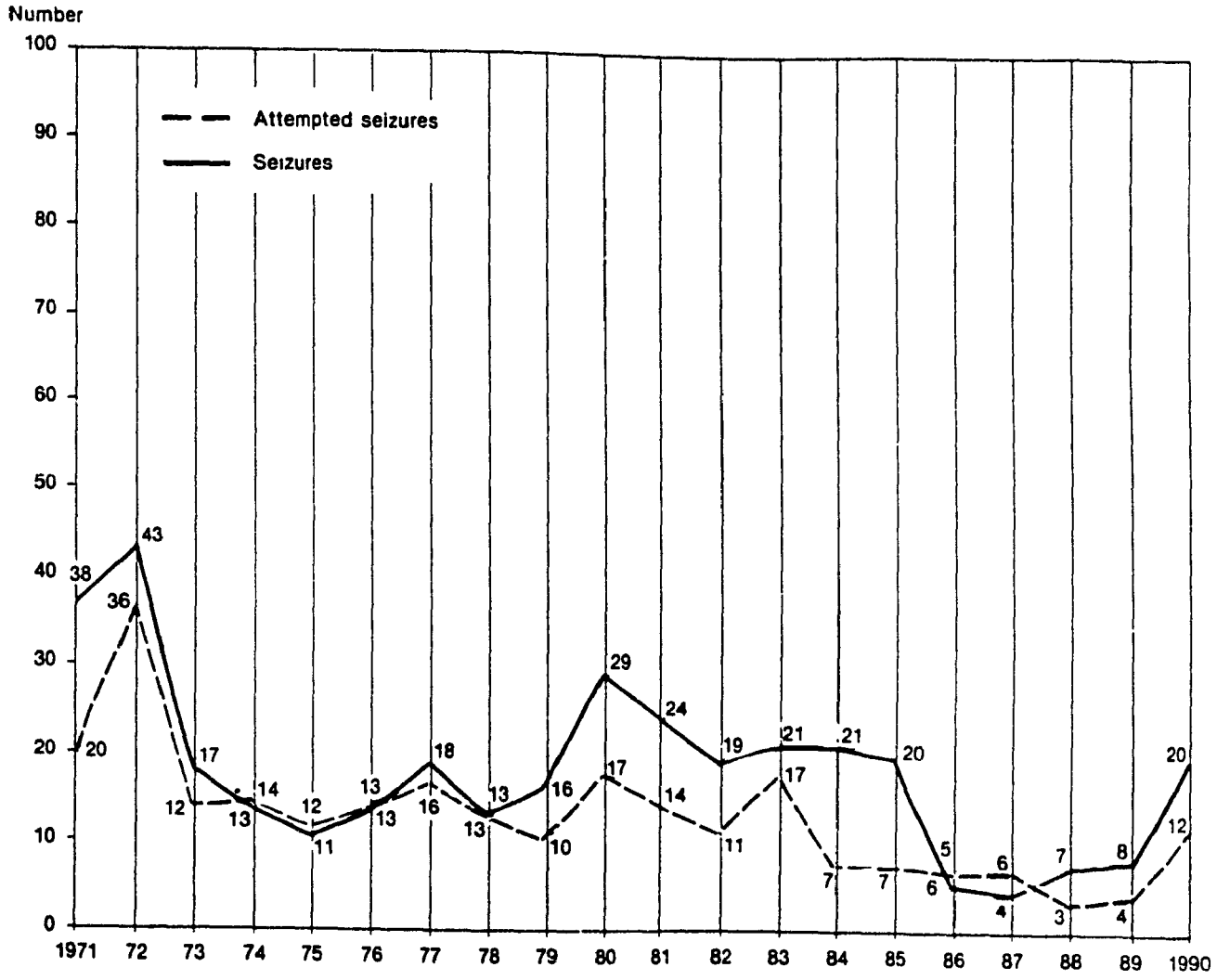
The Government of Italy made the following declaration in a Note dated 21 November 1985 to the Department of State of the Government of the United States:
"The Government of Italy does not consider as valid the reservation formulated by the Government of the Republic of Venezuela due to the fact that it may be considered as aiming to limit the obligation under Article 7 of the Convention to submit the case against an offender to the competent authorities of the State for the purpose of prosecution".

APPENDIX F.

From ICAO Doc. 9568 p.97.

Diagram VII-1

Acts of Unlawful Seizure



8 December 1973: adoption of specification recommending world-wide inspections/screening of passengers and cabin baggage (Annex 9, 9.2); applicable 15 July 1974.

22 March 1974: adoption of Annex 17 (Security), applicable 27 February 1975.

22 June 1989: adoption of Amendment No 7 to Annex 17; applicable 16 November 1989.

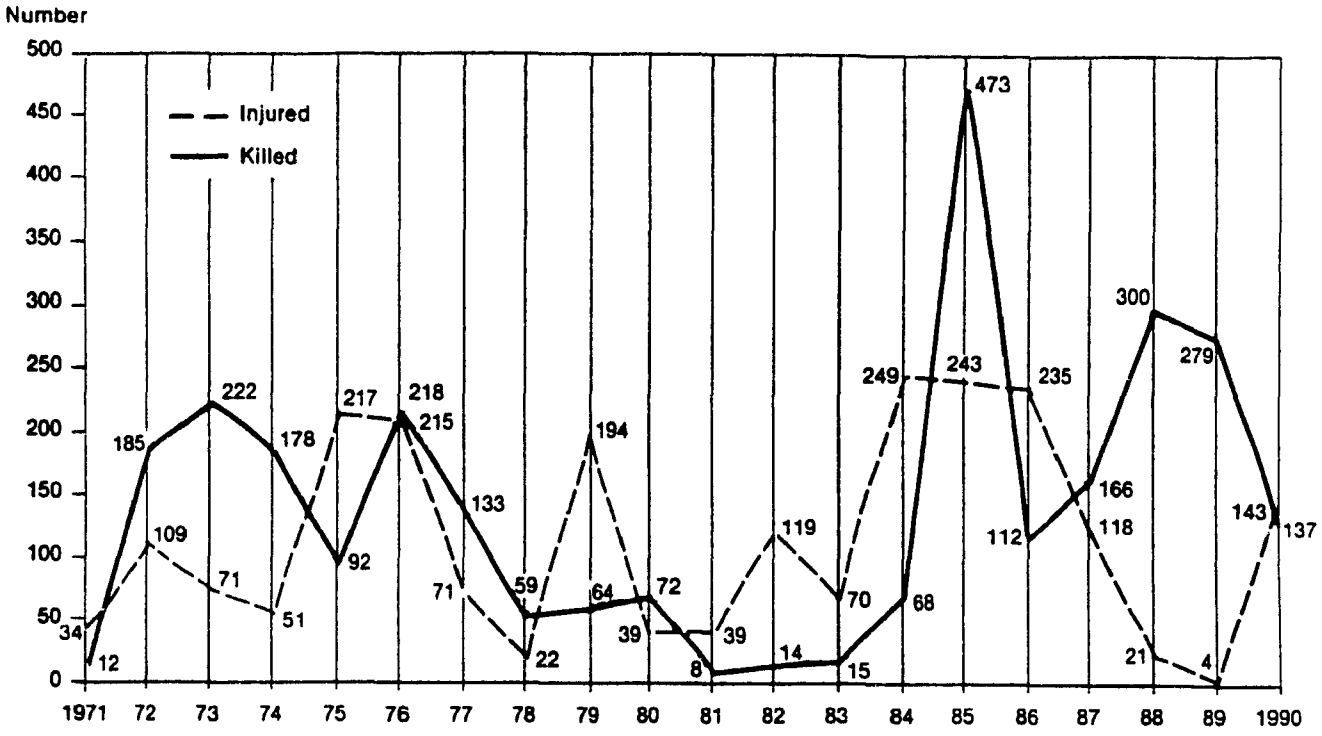
The figures in this diagram include domestic and international occurrences based on media and States' reports

From ICAO Doc 9568 p. 99

APPENDIX G.

Diagram VII-2

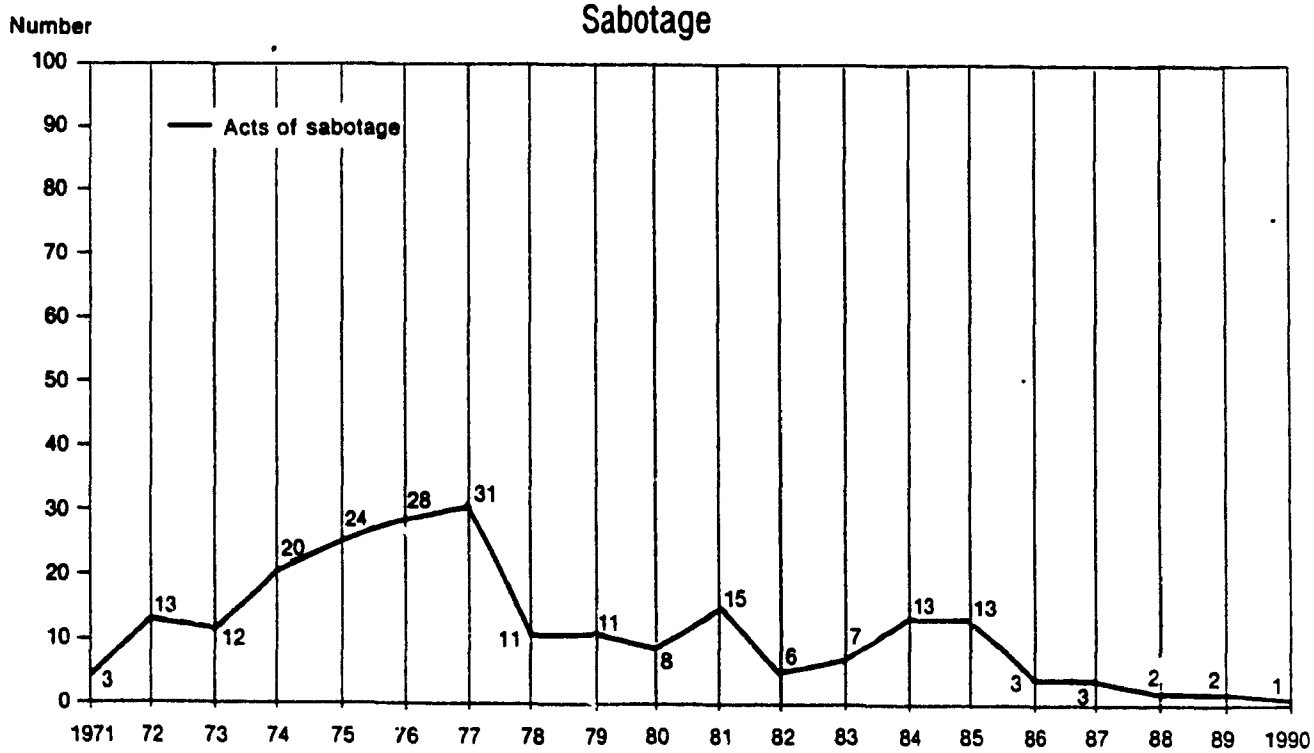
Number of Persons Killed or Injured



The figures in this diagram include domestic and international occurrences based on media and States' reports

Diagram VII-3

Sabotage



The figures in this diagram include domestic and international occurrences based on media and States' reports