

CONVENTION

on the Marking of Plastic Explosives for the Purpose of Detection

THE STATES PARTIES TO THIS CONVENTION,

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

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

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

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

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

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

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

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

HAVE AGREED AS FOLLOWS:

Article I

For the purposes of this Convention:

1. "Explosives" mean explosive products, commonly known as "plastic explosives", including explosives in flexible or elastic sheet form, as described in the Technical Annex to this Convention.
2. "Detection agent" means a substance as described in the Technical Annex to this Convention which is introduced into an explosive to render it detectable.

3. "Marking" means introducing into an explosive a detection agent in accordance with the Technical Annex to this Convention.
4. "Manufacture" means any process, including reprocessing, that produces explosives.
5. "Duly authorized military devices" include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.
6. "Producer State" means any State in whose territory explosives are manufactured.

Article II

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

Article III

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

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

Article IV

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

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

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

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

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

5. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph II of Part 1 of the Technical Annex to this Convention so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

6. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph II d) of Part 1 of the Technical Annex to this Convention and of unmarked explosives which no longer fall within the scope of any other sub-paragraphs of the said paragraph II.

Article V

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

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

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

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

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

Article VI

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

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

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

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

Article VII

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

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

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

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

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

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

Article VIII

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

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

Article IX

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

Article X

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

Article XI

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

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

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

Article XII

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

Article XIII

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

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

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

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

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

Article XIV

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

1. each signature of this Convention and date thereof;
2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;
3. the date of entry into force of this Convention;
4. the date of entry into force of any amendment to this Convention or its Technical Annex;
5. any denunciation made under Article XV; and
6. any declaration made under paragraph 2 of Article XI.

Article XV

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

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

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

CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION (MONTREAL CONVENTION)

Opened for Signature: 1 March 1991.

Entered into Force: 21 June 1998.

Duration: The Convention does not set any limits on its duration.

Number of Parties: 143

Signatories that have not ratified: 8

Depository: [International Civil Aviation Organization \(ICAO\)](#).

Treaty Text

Background: In December 1988, Pan American flight 103 exploded over Lockerbie, Scotland. To prevent future explosions onboard aircraft, the ICAO Council passed a resolution urging its Member States to expedite current research and development on detection of explosives and on security equipment during its regular session meeting in February 1989.

Also deeply concerned about preventing terrorist bombing of aircraft, the [UN Security Council](#) (SC) met on 14 June 1989 to discuss the marking of plastic or sheet explosives for the purpose of detection. On the same day, the SC unanimously adopted Resolution 635 condemning all acts of unlawful interference against the security of civil aviation and calling on Member States to co-operate in devising and implementing measures to prevent all acts of terrorism, including those involving explosives. The SC urged the ICAO to intensify its work to prevent all acts of terrorism against international civil aviation, and in particular its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection.

Also in June, the ICAO Council decided to include preparation of a new legal instrument regarding the marking of explosives for detectability as a priority in the general work program of the Legal Committee.

From 9-19 January 1990, the ICAO Sub-Committee for the Preparation of a New Legal Instrument Regarding the Marking of Plastic Explosives for Detectability met in Montreal, Canada and drafted a new international agreement to ensure that plastic explo-

sives were marked with an additive to enhance their detectability.

The ICAO Legal Committee considered this draft during its 27th session, which met from 27 March-12 April. This meeting resulted in a final text of six articles for a draft convention.

From 12 February-1 March 1991, the International Conference on Air Law met in Montreal to consider the draft articles prepared by the ICAO Legal Committee in 1990. The Conference adopted the Convention by consensus and without a vote. By the end of the year, 45 States had signed the Convention and one State had submitted an instrument of approval.

Obligations: This Convention calls on States Parties to take the necessary and effective measures to prohibit and prevent the manufacture of unmarked explosives in their territories, to prevent the movement of such explosives into or out of their territory, to exercise strict control over the possession and transfer of unmarked explosives made or imported prior to the entry into force of the Convention, to ensure that all stocks not held by the military or police are destroyed or consumed, marked, or rendered permanently ineffective within three years of the Convention's entry into force, with respect to a State, and to ensure the timely destruction of any unmarked explosives manufactured after the entry into force of the Convention for that State.

States Parties agree to mark plastic explosives with a chemical agent that can be detected by commercially available vapor or particle trace detectors and/or canines. There are four such chemical agents identified in the Convention.

Compliance and Enforcement: The Convention establishes an International Explosives Technical Commission composed of members appointed by the Council of the International Civil Aviation Organization (based on nominations of States Parties to the Convention). The parameters for membership allow between 15 and 19 experts with direct experience in matters relating to the manufacture, detection of, or research in explosives. Members will serve three-year renewable terms. Sessions of the Commission shall

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be convened at least once a year at the ICAO Headquarters or as directed or approved by the ICAO Council.

The Commission is tasked with evaluating technical developments relating to the manufacture, marking, and detection of explosives, reporting findings to the States Parties and international organizations involved, and making recommendations for amendments to the Technical Annex to the Convention.

Under Article 13, States are requested to declare whether they are producer States when depositing their instruments of ratification, acceptance, approval, or accession.

Amendments: The Council, on the recommendation of the Commission, may propose to States Parties amendments to the Technical Annex to the Convention. Within 90 days of the notification of a proposed amendment to the Technical Annex, States Parties may convey comments to the Council. The Commission will consider these views and make a report to the Council. Any proposed amendment that has not been objected to by five or more States Parties will be adopted. The Commission will give further consideration to any amendments objected to by five or more States Parties.

Reservations and Withdrawals: Under Article 11 paragraph 1, disputes between two or more States concerning the interpretation or application of the Convention will be submitted to arbitration at the request of one of the States if the matter cannot be settled through negotiation. However, at the time of signing, ratification, or accession, a State may make a reservation that it does not consider itself bound by this paragraph, in which case other States Parties shall not be bound to it with respect to any State Party that has made such a declaration.

In addition, States Parties may denounce this Convention by written notification to the Depository. In such a case, denunciation will take effect 180 days following the date on which notification is received.

Several States including Algeria, Brazil, Honduras, India, Peru, Turkey, and Saudi Arabia, have made reservations with respect to Article 11.

States that have declared their status as producer States under Article 13 include Argentina, Austria, Bulgaria, Canada, Czech Republic, France, Germany, Greece, India, Japan, Norway, Slovakia, Spain, Switzerland, United Kingdom, and the United States.

Developments:

2007: The 36th session of the ICAO Assembly was held 18-28 September.

2004: During the 35th session of the ICAO Assembly, held from 28 September to 8 October, the Council presented proposals for carrying forward the Plan of Action into the 2005-2007 triennium and for updating the *Consolidated statement of continuing ICAO policies related to the safeguarding of international civil aviation against acts of unlawful interference*.

2002: The ICAO approved the International Explosives Technical Commission's (IETC) recommendation to amend the Technical Annex to the Convention on the Marking of Plastic Explosives for the Purpose of Detection by deleting ortho-Mononitrotoluene (o-MNT) from the list of detection agents. In accordance with Article 7, paragraph 3 of the Convention, the amendment was adopted on 27 September 2001 and entered into force on 27 March 2002.

As recommended by the high-level Ministerial Conference, which met 20 February 2002, the ICAO Legal Committee was requested to review the adequacy of the existing aviation security legal instruments and, if necessary, to develop an appropriate legal instrument addressing this issue.

2001: The ICAO Assembly met from 25 September-5 October in Montreal, Canada. Recognizing the critical need to enhance aviation security, following the tragic developments of 11 September 2001, States were urged to immediately review their aviation security measures and take additional appropriate steps to strengthen aviation security consistent with ICAO Annex 17. States were urged to ratify various Conventions related to civil aviation security, especially the Convention on the Marking of Plastic Explosives for the Purpose of Detection, which was signed at Montreal on 1 March 1991, as a matter of urgency. Specifically, resolution A33-2 requested the Council (the governing body of ICAO) to complete, in addition to the International Explosives Technical Commission (IETC) mandate as prescribed by the Convention on the Marking of Plastic Explosives for the Purpose of Detection, studies into methods of detecting explosives or explosive materials, especially into the marking of those explosives of concern, other than plastic explosives, with a view to the evolution, if needed, of an appropriate comprehensive legal regime.

2000: The Aviation Security Panel of the ICAO conducted a comprehensive review of Annex 17 to adjust its structure and relevancy of Standards and Recommended Practices (SARPS). Draft Amendment 10

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was developed based on the Panel's recommendations and was to be considered in April 2001. The amendment included provisions relating to code-sharing, the Standard Airline Security Program Template, preventive measures relating to cargo, pre-employment background checks, development of human factors, management of response to acts of unlawful interference, armed persons on board an aircraft, and penetration of security systems by the news media. To assess the implementation of Annex 17, States will be audited on a voluntary basis.

1998: The Council of the ICAO considered proposals for the formation, composition, and mandate of the International Explosives Technical Commission established under Article 5 of the Convention.

1997: The 11th meeting of the Ad Hoc Group of Specialists on the Detection of Explosives was held at ICAO Headquarters from 3-7 November. The specialists reported on their work and findings since the last meeting. The group was mandated to maintain the technical annex to the Convention on the Marking of Plastic Explosives for the Purpose of Detection until such time as the Convention enters into force. At such time, the ICAO Council considered the formation of the International Explosives Technical Commission.

The ninth meeting of the Aviation Security Panel was held at ICAO Headquarters in Montreal from 8-12 September. The agenda included issues related to screening of checked baggage, the security regime of cargo, collaborative arrangements between operators, and the "one-stop" security concept.

1996: Immediately after the crash of TWA 800, a group of Ministers from the [G-7](#) countries, with the Russian Federation, met in Lyon to address the issue of international terrorism. As a result of that meeting, the ICAO was asked to expedite its activities on explosive detection, as well as to intensify its work on screening of checked baggage. The Council subsequently convened an informal meeting of the Ad Hoc Group. The result of the Group's efforts was the publication of criteria for explosives detection, which was circulated to States. The Council also adopted an amendment to Annex 17 of the Chicago Convention, which contained recommendations to conduct background checks for security personnel, a standard to conduct a security survey to identify needs, a recommendation to ensure that catering supplies are subject to scrutiny, and a recommendation that operators carry only baggage authorized for carriage.

1992: At the 29th session of the ICAO Assembly, it adopted a resolution dealing with the implementation

of the 1991 Convention on the Marking of Plastic Explosives.

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