



WORKING PAPER

LEGAL COMMITTEE – 39th SESSION

(Montréal, 25 to 28 June 2024)

Agenda Item 3: Review of the General Work Programme of the Legal Committee

**REVIEW OF THE ROLE OF THE INTERNATIONAL EXPLOSIVES
TECHNICAL COMMISSION**

(Presented by the Secretariat)

1. BACKGROUND

1.1 The *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, done at Montreal on 1 March 1991 (Doc 9571) (MEX Convention), establishes an international control regime aimed at diminishing and eliminating the availability of unmarked plastic explosives that has been used to commit acts of unlawful interference against international civil aviation.

1.2 States Parties to the MEX Convention are required to prohibit and prevent the manufacture in their territory of unmarked plastic explosives. Plastic explosives are to be marked by introducing during the manufacturing process any one of the detection agents defined in the Technical Annex to the Convention. The Convention also requires each State Party to prohibit and prevent the movement into or out of its territory of unmarked explosives and to exercise strict and effective control over the possession of any existing stocks of unmarked explosives.

1.3 The MEX Convention also establishes the International Explosives Technical Commission (IETC) consisting of not less than fifteen and no more than nineteen members, experts in the field of manufacture or detection of, or research in, explosives. IETC Members are appointed by the Council. The IETC evaluates technical developments relating to the manufacture, marking and detection of explosives, reports its findings, through the Council, to all States Parties and international organizations concerned, and proposes amendments to the Technical Annex to the Convention, as required.

1.4 The first IETC Session was held in 1999 and, in accordance with the provisions of Article V (3) of the MEX Convention, IETC Members shall serve for a period of three years and shall be eligible for reappointment. Also, under Article V (4) of the MEX Convention, sessions of the IETC shall be convened at least once a year or at such times as may be directed or approved by the Council.

1.5 While considering the appointment of IETC Members during the 220th and 221st Sessions of the Council in 2020, concerns were voiced as to the relevance and relative priority of the work of the IETC going forward. Noting that since the Eighth Session of the IETC (Montréal, 8 to 10 November 2010), it had not been considered necessary to convene IETC meetings, the Council consequently determined that the role and function of the IETC needed to be reassessed in light of technological developments and methods to detect unmarked plastic explosives more effectively.

1.6 To address such concerns, at its Ninth Session (Virtual, 17 to 19 May 2021), the IETC recommended that the Council take note of the importance of engaging in further consultations with States Parties to the MEX Convention through a survey in order to, amongst other things, assess the level of implementation of the MEX Convention by its States Parties; assess whether or not States Parties have any difficulties in complying with the requirements; and assess the effectiveness of current screening equipment in detecting unmarked plastic explosives (C-WP/15257 refers).

1.7 At its Tenth Session (Virtual, 28 to 29 June 2022), the IETC discussed the outcomes of the survey sent by State letter dated 14 September 2021 (C-WP/15442 refers). Given the overall lack of quality in the responses, the IETC recognized that consultation at a wider level (including with security equipment manufacturers and plastic explosives producing entities) was needed in order to obtain a greater understanding of the practical and operational relevance of detection agents in aviation security today. In this connection, there was broad support among Members of the IETC to launch a study by a third party with a view to better understand its role going forward.

1.8 At the Second Meeting of its 231st Session (11 March 2024), the Council, while acknowledging the usefulness of the MEX Convention, recognized that the role of the IETC as initially mandated under the treaty had been fulfilled. With respect to the proposal to carry-out a third-party study to assess the role and relevance of the IETC, the Council agreed that it was not necessary for such a study to be pursued at the present time, bearing in mind the resource constraints and other more pressing priorities at ICAO.

1.9 In that light, the Council further agreed to request the ICAO Legal Committee to give consideration to adding an item on this subject to its Work Programme. It was understood that the Committee would undertake an evaluation of potential solutions on whether or not an amendment to the MEX Convention is required in order to redefine the IETC's role and functions, or alternatively, to terminate the IETC on the basis that it had fulfilled its initial mandate. Consideration would also be given to the timeline and resource implications that may be involved in undertaking this work.

1.10 The MEX Convention currently has 156 States Parties out of which 25 have declared that they are a producer State, that is, a State in whose territory explosives are manufactured.

2. DISCUSSION

Council's Functions under the MEX Convention

2.1 Clause 5 of the Resolution contained in the Final Act of the International Conference on Air Law that adopted the MEX Convention invited the Council to assume the functions assigned to it under the Convention. At the Sixth Meeting of its 134th Session (25 October 1991), the Council agreed to carry out such functions and this decision was endorsed by a Resolution adopted by the 29th Session of the Assembly (Montreal, 22 September – 8 October 1992).¹ The Council thus has the duty to appoint the IETC Members from among the persons nominated by States Parties to the MEX Convention (Article V (1) refers). It is also responsible for convening IETC Sessions and approving the rules of procedure of the IETC (Article V (4) and (5) refers).

¹ See Resolution A29-6, *Role of ICAO in the Implementation of the Convention on the Marking of Plastic Explosives for the Purpose of Detection and the Resolution of the Final Act*.

2.2 With respect to the convening of the IETC Sessions, the Council, at the Fourth Meeting of its 193rd Session (17 June 2011), decided that Sessions of the IETC could be convened only when considered necessary, as this would satisfy the requirements of Article V of the MEX Convention. This notwithstanding, the Council is still under the obligation under the MEX Convention to appoint IETC Members every three years. Meetings of the IETC were not convened between 2010 and 2021.

Relevance of the IETC

2.3 Pursuant to Article VI of the MEX Convention, the IETC shall evaluate technical developments relating to the manufacture, marking and detection of explosives. Also, whenever necessary, it shall make recommendations to the Council for amendments to the Technical Annex² to the MEX Convention.

2.4 Discussions and conclusions from the Tenth Session of the IETC (June 2022), acknowledged that, since the adoption of the MEX Convention in 1991, a wide variety of explosive detection technologies and techniques being used globally at airports are relying partially on detection agents. In addition, the IETC recognized that other users, such as law enforcement and forensic entities, may rely partially or totally on the presence of such agents to complete their duties.

2.5 Furthermore, it should be noted that the Secretariat has been relying on the Working Group on Innovation in Aviation Security (WGIAS) of the AVSEC Panel as the technical expert body in the field of explosives detection technology in order to provide advice and recommendations to the Council on addressing challenges with respect to aviation security screening and processes.

2.6 It is also recalled that since 2005, no substantive recommendations to strengthen the international regulatory framework such as amendment of the Technical Annex to the MEX Convention, have been approved. Rather, the IETC has mainly served as a forum for sharing information on technical developments in the field of explosives detection without developing practical guidance material for Member States. In this regard, during the 227th Session of the Council, the Aviation Security Committee expressed the view that convening IETC Sessions simply for the sake of complying with the Convention was counter-productive (paragraph 46, C-MIN 227/3 refers). In light of the above, the Council, at the Third Meeting of its 227th Session (23 November 2022), reiterated its concerns over the continued relevance and relative priority of the work of the IETC going forward.

3. ACTION BY THE COMMITTEE

3.1 The Legal Committee is invited to consider this working paper and take any action it deems necessary.

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² The Technical Annex to the MEX Convention has been amended only twice. The first amendment, to delete ortho-Mononitrotoluene (o-MNT) from the original list of detection agents, entered into force on 27 March 2002. The second amendment, to increase the minimum concentration level of 2,3-Dimethyl-2,3-dinitrobutane (DMNB) detection agent from 0.1 per cent to 1.0 per cent by mass, entered into force on 19 December 2005.