



LEGAL COMMITTEE – 34TH SESSION

(Montréal, 9 to 17 September 2009)

Agenda Item 2: Consideration of the Reports of the Special Sub-Committee on the Preparation of One or More Instruments Addressing New and Emerging Threats

**GENERAL COMMENTS ON
THE MONTREAL AND THE HAGUE CONVENTIONS**

(Presented by the Russian Federation)

1. INTRODUCTION

1.1 The Russian competent authorities reviewed the draft amendments to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971 (hereunder – the Montreal Convention) and to the Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970 (hereunder – the Hague Convention), and have the following comments.

2. THE MONTREAL CONVENTION

2.1 The analysis of the proposed amendments to the Convention which provide for the criminalization of the unlawful transport by air of weapons of mass destruction and related material and technology, equipment, means of delivery, has shown that these were taken from the Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Protocol). The issues that are contained in the said Protocol are also reproduced in the document under consideration. First of all, the matter concerns the definition which is proposed for the criminalization of the transport of dual purpose materials and objects (Article 1, paragraph 1, sub-paragraph I (iv)). It is the view of the Russian Federation that it is necessary to adhere to the consistent use of the definition of the materials related to weapons of mass destruction, which is contained in UN Security Council Resolution 1540:

"Materials related to nuclear, chemical and biological weapons and their means of delivery: materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery".

In view of the above, the Russian Federation believes that the inclusion of sub-paragraph i (iv) of paragraph 1, Article 1, in its current wording is unacceptable.

2.2 As regards source material and special fissionable material (sub-paragraph I (iii) of paragraph 1, Article 1 refers), the definitions of these terms should be as those contained in Article XX of the IAEA Statute:

"The term "special fissionable material" means plutonium-239; uranium-233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the foregoing; and such other fissionable material as the Board of Governors shall from time to time determine; but the term "special fissionable material" does not include source material.

The term "uranium enriched in the isotopes 235 or 233" means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

The term "source material" means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors shall from time to time determine; as such other material as the Board of Governors shall from time to time determine."

2.3 It seems that the definition of an offence, contained in sub-paragraph i) of paragraph 1, Article 1, requires some further refinement. It would be more appropriate not to give a complex description of an offence at all but rather include a simple formula qualifying an offence as the unlawful transport of persons and dangerous materials, if it is known that these persons and offences were involved in or were part of the offences listed in the universal counter-terrorism conventions.

2.4 Also, the list of these conventions provided in footnote 2 to sub-paragraph j) of paragraph 1, Article 1, should be supplemented by two instruments: the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 10 March 1988 and the International Convention for the Suppression of Acts of Nuclear Terrorism of 13 April 2005.

2.5 Paragraph 1 of Article 1 of the draft international instrument should be expanded to include the indication that a person commits an offence against the safety of civil aviation, since any offence might be committed on board an aircraft (e.g., theft), which in essence would be a criminal act but not against the safety of civil aviation.

2.6 In addition, paragraph j) of Article 1 of the draft international instrument sets a condition under which any person commits an offence against the safety of civil aviation if that person transports, causes to be transported, or facilitates the transport of, another person on board an aircraft knowing that the person has committed an act that constitutes an offence set forth in the treaties listed in the annex. Based on the listed international instruments the notion of an offence against the safety of civil aviation in its sense is interpreted more broadly as compared to its definition in the current Convention of 1971, i.e. it goes beyond the subject of the Convention.

2.7 Paragraph d) of Article 1 of the draft international instrument contains the notion of "navigation facilities or other systems necessary for aircraft operation". It would be more appropriate to replace "оборудование" by "средства" (according to the provisions of the Convention on International Civil Aviation of 07.12.1944). Also, the above clarification requires further consideration, since "other systems" could be understood to mean both aircraft equipment and ground airport equipment. This comment applies throughout the draft text of the Convention.

2.8 Add in paragraph b) of Article 1 after "in service" the wording "interferes with its operation".

3. THE HAGUE CONVENTION

3.1 From the provisions of the draft international instrument it is not clear what is understood by the notions of "seizure of an aircraft" and "control of an aircraft", therefore the Russian Federation suggests that consideration be given to the inclusion in Article 1 of the definitions of those notions.

3.2 In paragraph 1 of Article 1 after "or exercises control of an aircraft in service by" add the wording "interference with its technical operation or".

4. CONCLUSION

4.1 The Legal Committee is invited to consider and take into account the comments to the Protocols to the Montreal and The Hague Conventions contained in this paper.

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