



WORKING PAPER

LEGAL COMMITTEE – 40TH SESSION

(Montréal, 26 to 30 October 2026)

Agenda Item 2: Consideration of the General Work Programme of the Legal Committee

**REVIEW OF THE ROLE OF THE INTERNATIONAL EXPLOSIVES TECHNICAL
COMMISSION UNDER THE *CONVENTION ON THE MARKING OF
PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION***

(Presented by the Chairperson of the Legal Committee¹)

1. BACKGROUND

1.1 During its 39th Session (Montréal, 25 – 28 June 2024), the Legal Committee decided to include “Review of the Role of the International Explosives Technical Commission under the Convention on the Marking of Plastic Explosives for the Purpose of Detection” as Item 2 of its General Work Programme, which was approved by the Council. The Committee’s decision responds to the concerns raised by the Council, as reflected in the Working Paper LC/39-WP/3-2 submitted by the Secretariat. The Working Paper notes the Council’s difficulty in considering State-submitted appointments to the International Explosives Technical Commission (IETC) and in proceeding with the nomination and composition of the Commission, while the purpose and necessity of further Commission meetings remain unclear. Accordingly, the Council referred the matter to the Legal Committee to determine whether an amendment to the *Convention on the Marking of Plastic Explosives for the Purpose of Detection* (Montreal, 1991 - the “MEX Convention”) would be required or whether the IETC should be discontinued, in light of the view that it has already fulfilled its mandate.

1.2 To facilitate progress on this item in a flexible and expedient manner, on 7 May 2025 the Chairperson of the Legal Committee appointed Dr. Alejandro José Piera Valdés as Rapporteur to study the agenda item, with a view to addressing the concerns raised by the Council.

1.3 During the 42nd Session of the Assembly (Montréal, 23 September – 3 October 2025), the Legal Commission was briefed by the Rapporteur on the status and highlights of a Preliminary Report which had been made available on the ICAO Assembly 42nd Session [Website](#). The Legal Commission while commending the Rapporteur for the work, acknowledged the need to adopt the most flexible and expedient solution to advance the review of the IETC’s role. In this regard, the Legal Commission endorsed the proposal made by the Chairperson of the Legal Committee to establish a group of the Friends of the Chairperson to review the Rapporteur’s Final Report.

1.4 On 18 August 2026 the Rapporteur submitted a final report – *Report of the Rapporteur of the Legal Committee on the Examination of the Role of the International Explosives Technical Commission under the Convention on the Marking of Plastic Explosives for the Purpose of Detection* (Rapporteur’s Report) which is available on the website of the 40th Session of the Legal Committee under [References](#).

¹ Dr. Alice Serpa Braga Della Nina (Brazil).

2. FRIENDS OF THE CHAIRPERSON GROUP

2.1 In November 2025, the Chairperson of the Legal Committee established a Friends of the Chairperson Group (FCG) with experts from Nigeria, Oman, Republic of Korea, Switzerland and the United States who participated in one or more of the meetings of the FCG including some interactions with the Rapporteur. The FCG had Secretariat support by the Legal Affairs and External Relations Bureau (LEB).

2.2 The FCG met virtually five times: First Meeting, 19 December 2025; Second Meeting, 8 May 2026; Third Meeting, 8 June 2026; Fourth Meeting, 9 July 2026; and Fifth Meeting, 7 August 2026.

3. REVIEW OF THE RAPPOREUR'S REPORT BY THE FCG

3.1 **General comments:** The FCG commended the Rapporteur's Report which presented a comprehensive background and clear analysis to address the subject. It duly considered the options put forward in the Report concerning the future of the IETC namely: (i) preserving the current status of the MEX Convention and adopting an interpretative approach that relieves the Council from appointing members to the IETC when no meeting is foreseen, and (ii) the possibility of initiating a formal amendment process. In its review, the FCG did not consider Section 5 of the Report (*International Legal Framework to Amend Conventions, ICAO Practice and Treaty Practice outside ICAO*). This section reviews the treaty-amendment regime under the *Vienna Convention on the Law of Treaties* (Vienna, 1969 –“VCLT”), examines ICAO's longstanding practice in the absence of built-in revision mechanisms, highlights comparative trends toward express amendment procedures and recent developments in treaty-making. Although these issues are of broader interest, they were not pursued by the FCG as they fall outside its mandate and the scope of work under this item.

3.2 **Termination of the IETC:** The FCG recalled that the Council, during its 231st Session (11 March 2024, C-DEC 231/2 refers), had determined that, in light of prevailing resource constraints and more pressing organizational priorities, it was not necessary to commission a third-party study to assess the role and continued relevance of the IETC. Given the Council's view that the role of the IETC as initially mandated under the MEX Convention had been fulfilled, the Council requested the Legal Committee evaluate potential solutions for terminating the IETC or redefining its role and functions. The FCG noted that the Aviation Security Committee (ASC) in its Report to the Council had considered among the factors for recommending a review of the IETC's role the stability over the last 15 years in the detection agents in the MEX Convention, advancements in technology and in other methods to detect unmarked plastic explosives beyond the provisions, as well as the lack of substantial recommendations produced to strengthening the international regulatory framework over the previous IETC Sessions.² In this respect, the FCG recalled that the last IETC meeting, held in 2022, was convened exclusively to consider the future of the Commission, and that the most recent amendment to the Technical Annex to the MEX Convention dates back to 2005. However, the FCG considered that it was not within its remit to endorse or validate the conclusion that no further study would be required, as such an assertion falls outside its competence and legal expertise. In this same context, the Rapporteur's Report underlined that the MEX Convention operates in a wider legal and regulatory context that extends beyond the aviation sector. On this basis, the said Report had concluded that it would be premature, at this stage, to terminate or to review the role of the IETC.

3.3 IETC Appointments:

3.3.1 The FCG acknowledged the practical difficulties associated with the regular appointment of IETC members when no substantive work is anticipated. The FCG noted that the Council faces the challenge of maintaining appointments to a body that may not be expected to undertake any activities, while

² C-MIN 231/2, paras 29 to 34.

States bear the burden of nominating and supporting experts for whom no immediate role or work is foreseen.

3.3.2 The Rapporteur's Report noted that the lack of an objective and comprehensive assessment on the basis for the review of the role of the IETC or its termination makes it premature to reopen the MEX Convention for substantive amendment. Additionally, the Report stated that preserving the legal framework does not mean preserving the current practice in an inflexible manner. Accordingly, the Rapporteur's Report underscores that the MEX Convention affords the Council discretion in determining when and where the IETC should meet (Article V, paragraph 4, final clause). In line with this provision, comparable flexibility may also be exercised with respect to the timing and frequency of the appointment of IETC members. In strengthening this approach, the FCG noted that under Article V of the MEX Convention, IETC members are appointed by the Council for three-year terms and are eligible for reappointment. The FCG considered that this provision does not necessarily require the Council to undertake a full appointment process every three years irrespective of operational needs. Rather, the requirement may be met through an approach to the application of Article V whereby appointments are made on a needs-based basis, when required to support the work of the IETC. This approach would be consistent with the treatment of IETC meetings, which are convened by the Council as and when necessary. Additionally, Article V, paragraph 3 of the MEX Convention should be interpreted to mean that each appointment carries a three-year mandate, but this does not imply that appointments must occur on a triennial cycle. In other words, whenever an appointment is made, the mandate will last for three years.

3.3.3 In this regard, the FCG observed that, while the IETC must comprise at least fifteen members when it meets, the MEX Convention does not expressly stipulate a requirement that this number be maintained at all times between meetings. The FCG considered that an amendment to the MEX Convention would provide the highest degree of legal certainty regarding this approach to the application of Article V and would conclusively settle the matter. However, it also recognized that such an amendment would require considerable time and resources which would not be warranted given the limited scope of the change under consideration. In other words, the current context suggests that the issue raised by the Council can be addressed through an interpretative reading of the Convention alone.

3.3.4 In this context, the FCG concluded that the most practical – and yet legally appropriate – course of action would be for the ICAO Assembly to adopt a resolution endorsing an approach to the application of Article V whereby IETC member appointments may be made on a needs-based basis and, consequently, that the Council is not required to undertake a full appointment process every three years where no operational need for the IETC meetings has been identified. This approach was reflected in the Rapporteur's Report, which includes a draft Assembly Resolution for that purpose.

3.3.5 The FCG further considered that such an approach to the application of Article V would provide useful guidance to the Council pending any further developments regarding the continuing role and relevance of the IETC, while preserving the existing institutional framework established under the MEX Convention. The FCG noted that, given that the current terms of appointment of IETC members will expire in early 2027, while the next ordinary Session of the ICAO Assembly (A44) takes place in 2028, this approach could be implemented by the Council in the exercise of its functions under Article V and that the Council need not await the adoption of an Assembly Resolution before proceeding on that basis. The conclusion rests on the fact that the proposal presented here is declaratory in nature, reflecting a systematic and teleological interpretation of the MEX Convention, and therefore does not depend on any additional formal act. The suggestion to adopt a resolution in the Assembly aims to ensure transparency and to provide States with full awareness of the approach, thereby affording greater support to the Council's decision, while not constituting a measure of a constitutive character.

3.4 **Draft Assembly Resolution:**

3.4.1 The purpose of the Assembly Resolution would be to endorse the Council's approach to the application of Article V concerning the appointment of members of the IETC. This would enable the Organization to address operational requirements and institutional priorities in organizing the work of the IETC while respecting the provisions of the MEX Convention. The Resolution would not seek to introduce new requirements or modify existing rights or obligations under the MEX Convention. Rather, it would provide guidance and express the Assembly's support for the Council's approach to the application of Article V in the administration of the IETC.

3.4.2 While noting that there would be ample opportunity for States to further refine the text, and without expressing an overall position on its specific wording, the FCG considered that the draft Assembly Resolution provides a useful basis and framework for further consideration and development by States.

3.4.3 The FCG identified a number of areas for improvement in the draft Assembly Resolution appended to the Rapporteur's Report. With respect to the first operative clause, in light of the clarity provided by Article V, paragraph 4 of the MEX Convention, the discretion of the Council relating to determining the place and the frequency of IETC's meetings is a settled matter. Accordingly, the FCG understands that there is no need for the Resolution to address this topic and the paragraph of the draft Assembly Resolution can be deleted. In this regard, the **Appendix** to this Working Paper contains a version of the draft Resolution prepared by the Rapporteur which includes amendments to it proposed by the FCG.

4 **ACTION BY THE COMMITTEE**

4.1 The Legal Committee is invited to: (a) note and consider the observations and findings of the FCG on the Rapporteur's Report; (b) review the draft Assembly Resolution contained in the Appendix to this Working Paper; and (c) take any action it deems necessary.

APPENDIX

DRAFT ASSEMBLY RESOLUTION

Application of Articles V and VI of the Convention on the Marking of Plastic Explosives for the Purpose of Detection with Respect to the Appointment of ~~Experts~~ Members and the Convening of the International Explosives Technical Commission

The Assembly:

Recognizing the continuing importance of the *Convention on the Marking of Plastic Explosives for the Purpose of Detection* (Montreal, 1991 – the “MEX Convention”) in contributing to the prevention of unlawful acts against civil aviation and in establishing an international framework for the marking and control of plastic explosives;

Recalling that the International Explosives Technical Commission (IETC) was established by the MEX Convention as an advisory technical body entrusted with evaluating developments in the manufacture, marking, and detection of explosives, and with making recommendations, where appropriate, concerning amendments to ~~the~~ its Technical Annex;

Recalling further that the MEX Convention entrusts the Council with responsibility for convening the IETC, approving its rules of procedure, appointing its members, and supervising the institutional functioning of the technical regime established by the MEX Convention;

Considering that pursuant to Article V, paragraph 3 of the MEX Convention Members of the IETC shall serve “for a period of three years and shall be eligible for reappointment” and does not require the Council to undertake a full appointment process of the IETC every three years, irrespective of the operational needs of the said Commission:

Noting that the Council ~~has, in practice, exercised discretion with respect to the timing and frequency of meetings of the IETC, including by convening such meetings on an *ad hoc* basis as circumstances require~~ decided at the Fourth Meeting of its 193rd Session (17 June 2011) 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;

Noting further the recommendation [contained in _____] [made by the 40th Session of the Legal Committee] that, while no substantial amendment to the MEX Convention is presently warranted, legal ~~certainty~~ clarification and institutional clarity could usefully be enhanced through an ~~interpretative~~ resolution clarifying the Council’s discretion with respect to the appointment of ~~experts and the convening of meetings of the IETC~~ Members;

Bearing in mind that the maintenance of the existing treaty framework, combined with limited interpretative clarification, constitutes a proportionate and legally sound means of aligning institutional practice with contemporary operational realities, without disturbing the substantive obligations or institutional balance established by the MEX Convention;

Noting the precedent established by Resolution A35-2, Application of Article IV of the Convention on the Marking of Plastic Explosives for the Purpose of Detection in which the Assembly interpreted the

application of Article IV of the MEX Convention *mutatis mutandis* to ensure legal certainty and coherence in clarify the operation of the treaty without formally amending its text;

The Assembly:

~~*Invites* States to recognize that, for the purposes of the effective implementation of the Convention, the Council retains discretion with respect to the timing and frequency of the convening of meetings of the IETC, including the possibility of convening such meetings on an *ad hoc* basis where circumstances so warrant;~~

Recognizes further that, ~~in the same manner~~, the Council may exercise its authority discretion with respect to the appointment and reappointment of ~~experts~~ Members to the IETC in a flexible and pragmatic manner, considering the operational need for the convening of the IETC meetings and the practical requirements of its effective functioning;

Urges ~~ICAO Member~~ States that are Parties to the MEX Convention to recognize, in their mutual relations, that the Council's authority under Articles V and VI of the MEX Convention may be exercised in a manner that permits the appointment or reappointment of ~~experts~~ Members to the IETC on a needs-based basis, consistent with the object and purpose of the MEX Convention and with the effective functioning of the said Commission;

~~*Urges further* ICAO Member States that are Parties to the Convention to recognize, in their mutual relations, that the Council may determine, in light of institutional priorities, operational requirements, and the evolution of relevant technical developments, when and where meetings of the IETC should be convened, without the necessity of adhering in all circumstances to a fixed annual meeting pattern;~~

Affirms that the foregoing interpretation is intended solely to clarify the practical application of the MEX Convention and does not modify its substantive obligations, alter the technical mandate of the IETC, or disturb the institutional balance established by the said Convention;

Declares that this resolution is adopted for the purpose of promoting the efficient functioning of the MEX Convention's existing framework.