



**ASSEMBLY — 35TH SESSION**

**LEGAL COMMISSION**

**Agenda Item 37: Work Programme of the Organization in the legal field**

**INTERPRETATION OF ARTICLE IV OF THE *CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION***

**SUMMARY**

This paper presents a draft resolution for adoption by the Assembly with respect to an interpretation of Article IV of the *Convention on the Marking of Plastic Explosives for the Purpose of Detection*.

Action by the Assembly is in paragraph 2.

**1. BACKGROUND**

1.1 The *Convention on the Marking of Plastic Explosives for the Purpose of Detection* is composed of the main text and the Technical Annex. Under Article VI, paragraph 4 of the Convention, the Council may, on the recommendation of the International Explosive Technical Commission (IETC), propose to States Parties amendments to the Technical Annex. In June 2002, the IETC recommended an amendment to Part 2 of the Technical Annex by increasing the minimum concentration of 2,3-Dimethyl-2,3-Dinitrobutane (DMNB) from 0.1 to 1.0 per cent by mass. When the Council considered this recommendation at the sixth meeting of its 167th Session on 15 November 2002, a question arose whether States Parties to the Convention would be under an obligation to destroy or otherwise dispose of within a certain period of time those explosives which were marked with the detection agent using concentration level lower than the amount required in the amendment, when the amendment is adopted and enters into force with respect to these States Parties.

1.2 In order to clarify this matter, the Council requested the IETC to study the possibility of incorporating a new provision into the Convention or into its Technical Annex relating to the treatment of plastic explosives manufactured and marked in accordance with the requirements under the current Technical Annex which do not meet the concentration level of a given detection agent after a proposed amendment to its concentration level has become effective. The IETC recommended a draft amendment to be inserted as paragraph III into the Technical Annex, which reads as follows:

“The explosives which, at the time of manufacture, met the requirements contained in Part 2 of the Technical Annex but which no longer meet the requirements of Part 2 because of subsequent amendment to the Technical Annex, shall be subjected to the provisions of Article IV, paragraphs (2) and (3), from the entry into force of that amendment.”

1.3 At the seventh meeting of its 170th Session on 17 November 2003, the Council considered this draft amendment and decided to refer this matter to the Legal Committee. The main issue before the Legal Committee was whether such an amendment was in line with the concept of a Technical Annex under the Convention, or whether it was legally more appropriate to amend the Convention itself, or to solve the matter by an interpretation of Article IV *mutatis mutandis*.

1.4 During the discussion of this issue at the 32nd Session of the Legal Committee, no delegation supported the amendment of the Convention itself only for this purpose, given the requirements for a diplomatic conference and the ratification process. Furthermore, the clear majority of the delegations considered that the Technical Annex was not the proper place for such amendment, since the mandate of the IETC was strictly limited to technical matters. These delegations supported the approach that Article IV of the Convention should be applied *mutatis mutandis*, without amending either the Convention or its Technical Annex. One delegation nevertheless expressed its preference to include this draft amendment in the Technical Annex for the sake of clarity. Several delegations took the view that, if an interpretation was adopted by the ICAO Assembly through a resolution, it would carry the required clarity. However, some doubt was expressed whether an interpretation by the Assembly could resolve the issue of retroactivity concerning this matter.

1.5 In conclusion, the **Committee recommended that Article IV of the Convention be applied *mutatis mutandis***, without amending either the Convention or its Technical Annex. At the sixth meeting of its 172nd Session on 31 May 2004, the Council endorsed this recommendation and decided that a draft Assembly resolution embodying the above interpretation regarding Article IV of the Convention be submitted to the 35th Session of the Assembly for adoption. The text of the draft resolution is set out in the **Appendix**.

## 2. ACTION OF THE ASSEMBLY

2.1 The Assembly is invited to:

- a) note this paper, and
- b) approve the draft Assembly resolution set out in the **Appendix**.

## APPENDIX

### RESOLUTION FRAMED BY THE LEGAL COMMISSION AND RECOMMENDED FOR ADOPTION BY THE ASSEMBLY

#### Resolution 37/1

#### **Application of Article IV of the *Convention* on the Marking of Plastic Explosives for the Purpose of Detection**

*Recognizing* the importance of the *Convention on the Marking of Plastic Explosives for the Purpose of Detection* in the prevention of unlawful acts against civil aviation;

*Conscious* of the need to amend the Technical Annex to the Convention for the purpose of updating the definition and description of detection agents in order to enhance the detectability of the plastic explosives;

*Bearing in mind* the desirability of maintaining a uniform regime for the detection system of the explosives, particularly after an amendment to the Technical Annex; and

*Noting* the recommendation of the Legal Committee as approved by the Council that Article IV of the Convention should be applied *mutatis mutandis* to the explosives which are not marked in accordance with the amended Technical Annex;

*The Assembly:*

*Urges* the ICAO Contracting States which are parties to the Convention to apply Article IV of the Convention in their mutual relations in the following manner:

The explosives which, at the time of manufacture, met the requirements contained in Part 2 of the Technical Annex but which no longer meet the requirements of Part 2 because of a subsequent amendment to the Technical Annex, shall be subjected to the provisions of Article IV, paragraphs (2) and (3), from the entry into force of that amendment.

Accordingly, when an amendment to Part 2 of the Technical Annex enters into force, each State Party not having expressly objected to the amendment shall take the necessary measures to ensure that:

- a) all stocks of those explosives in its territory referred to in the preceding paragraph 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 the amendment, if these explosives are not held by its authorities performing military or police functions; and

- b) all stocks of those explosives referred to in the preceding paragraph 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 the amendment.

— END —