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#### 14.1: Developments since the 33rd Session of the Assembly

### ICAO AVIATION SECURITY PLAN OF ACTION PROJECT 12 : LEGAL

#### INFORMATION PAPER

#### SUMMARY

This paper presents the study on legal measures to cover the new and emerging threats to civil aviation.

1. The Study on Legal Measures to Cover the New and Emerging Threats to Civil Aviation (English only), prepared by the Secretariat for the Aviation Security Plan of Action, Project 12: Legal, is set out as Appendix to this paper. This study has been referred to in paragraph 3.4.1.1 of A35-WP/49 “Developments since the 33rd Session of the Assembly”.
2. Other language versions will be available at a later stage.



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**Appendix**

## **APPENDIX**

### **ICAO AVIATION SECURITY PLAN OF ACTION PROJECT 12: LEGAL**

#### **STUDY ON LEGAL MEASURES TO COVER THE NEW AND EMERGING THREATS TO CIVIL AVIATION**

**ICAO AVIATION SECURITY PLAN OF ACTION  
PROJECT 12: LEGAL**

**STUDY ON LEGAL MEASURES TO COVER  
THE NEW AND EMERGING THREATS TO CIVIL AVIATION**

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## 1. INTRODUCTION

1.1 The ICAO Assembly adopted, in October 2001, Resolution A33-1 – *Declaration on misuse of civil aircraft as weapons of destruction and other terrorist acts involving civil aviation*, which directed the Council and the Secretary General to act urgently to address the new and emerging threats to civil aviation, in particular to review the adequacy of the existing aviation security conventions. Pursuant to this Resolution and recommendations of the High-level, Ministerial Conference on Aviation Security held in February 2002, the Council, in June 2002, approved an ICAO Aviation Security Plan of Action, which contains Project 12 – Legal Aspects. Project 12 mandates a review of existing legal instruments in aviation security so as to identify gaps and inadequacies as to their coverage in relation to the new and emerging threats. This document analyzes the coverage of new and emerging threats in existing aviation security conventions and identifies gaps and inadequacies in these conventions. The study focuses on the panel aspects of unlawful interference against civil aviation. It does not address the issue of liability in relation to unlawful interference. In its conclusion, the document contains preliminary recommendations on how to deal, from a legal point of view, with new and emerging threats to civil aviation.

## 2. DESCRIPTION OF NEW AND EMERGING THREATS

2.1 According to an ICAO study group on new and emerging forms of threat to civil aviation, the term “new threat” refers to acts that make use of methods, actions or objects not previously considered to pose a serious threat to civil aviation. The term “emerging threat” refers to those existing methods, actions or objects that could conceivably be used in an act of unlawful interference which have not yet been employed or documented for use against civil aviation.

2.2 The following threats are the focus of the current study:

- 1) Misuse of aircraft as weapons;
- 2) Suicide attacks in the air and on the ground;
- 3) Electronic attacks using radio transmitters or other means to jam or alter the state of ground or airborne navigation or guidance control systems thereby endangering the safety of persons and aircraft;
- 4) Computer-based attacks which block or alter aeronautical communications or interfere with other aviation operations (e.g. aeronautical data banks) which can endanger the safety of persons and aircraft;
- 5) Chemical and biological attacks against the air travelling public or to disrupt air operations and deny use of aviation facilities by threatening its use;
- 6) Misuse of nuclear or other radioactive materials to endanger persons, contaminate property and deny use of aviation facilities; and
- 7) Attacks by making use of Man-Portable Air Defence Systems (MANPADS).

2.3 This list should, of course, be subject to review and should, as necessary, be updated.

### 3. GENERAL REVIEW OF EXISTING INTERNATIONAL AIR LAW INSTRUMENTS

3.1 The existing international air law instruments on civil aviation security adopted under the auspices of ICAO are the following:

- 1) *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963 (Tokyo Convention); status as at 21 September 2004: 178 parties;
- 2) *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970 (The Hague Convention); status as at 21 September 2004: 177 parties;
- 3) *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971 (Montreal Convention); status as at 21 September 2004: 180 parties;
- 4) *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971*, signed at Montreal on 24 February 1988 (Montreal Supplementary Protocol); status as at 21 September 2004: 148 parties; and
- 5) *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, done at Montreal on 1 March 1991 (MEX Convention); status as at 21 September 2004: 110 parties.

3.2 The Tokyo Convention of 1963 applies in respect of “offences against penal law” and “acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board”. The terms “acts” and “offences” mentioned therein are broad enough to include most, if perhaps not all, offences or acts on board aircraft which constitute threats against civil aviation. However, while the Convention authorizes the aircraft commander to disembark an alleged offender or to deliver such person to the competent authorities of a Contracting State, it does not obligate a Contracting State to submit the case of the alleged offender to its competent authorities for the purpose of prosecution.

3.3 As the hijacking problem expanded in the 1960s both in terms of frequency and in the number of countries affected, the international community felt the need for an international instrument aimed at ensuring the prosecution of hijackers and denying them a safe haven. Hence The Hague Convention was adopted in 1970, which covers the unlawful seizure, or exercise of control, of an aircraft in flight, by force or threat thereof, or by any other form of intimidation. Under Article 7 of The Hague Convention, the Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Furthermore, under Article 3 of The

Hague Convention, to determine its scope of application, “it shall be immaterial whether the aircraft is engaged in an international or domestic flight.”

3.4 Since The Hague Convention only covers the offence of hijacking or unlawful seizure of aircraft, when other acts of unlawful interference occurred, such as acts of sabotage, there was a further need to make these acts punishable under international law. Accordingly, the Montreal Convention was adopted in 1971, which covers a wide spectrum of unlawful acts against the safety of civil aviation, including, *inter alia*, acts of violence against a person on board an aircraft in flight, destruction of an aircraft in service, causing damage to an aircraft rendering it incapable of flight, placing or causing to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, destruction of or damage to air navigation facilities or interference with their operation, and communication of information which is knowingly false, thereby endangering the safety of an aircraft in flight. Since these acts of unlawful interference not only targeted aircraft but also airports, the Supplementary Protocol of 1988 was adopted, which extends the application of the Montreal Convention to an airport serving international civil aviation. Furthermore, in its Article II, the Protocol also added two offences, namely, an act of violence against a person at the airport, and an act of destroying or seriously damaging the facilities of the airport or aircraft not in service or disrupting the services of the airport.

3.5 The MEX Convention of 1991 requires that plastic explosives be marked by introducing during the manufacturing process any one of the detection agents defined in the Technical Annex to the Convention. Furthermore, each State Party shall prohibit and prevent the manufacture in its territory of unmarked plastic explosives. 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.

3.6 With the exception of the MEX Convention, the existing aviation security conventions focus on the penal aspects relating to unlawful interference. In addition to the offences themselves, some of these instruments are also applicable to attempted offences and accomplices. They do not, however, expressly and specifically refer to persons organizing or directing others to commit the offences.

3.7 In addition to the aforementioned five international air law instruments, the Annexes to the *Convention on International Civil Aviation*, particularly Annex 17, also contain provisions relating to aviation security.

#### 4. **REVIEW OF NEW AND EMERGING THREATS IN RELATION TO EXISTING INSTRUMENTS AND ANALYSIS OF POSSIBLE GAPS**

##### 4.1 **Misuse of aircraft as weapons**

4.1.1 Misuse of aircraft as weapons was witnessed during the four hijackings of large commercial passenger aircraft on 11 September 2001 in the United States.

4.1.2 Such misuse consists of more than one offence, e.g. the unlawful seizure of an aircraft in flight and the intentional destruction of an aircraft in service, as well as misusing aircraft as weapons to cause death, injury and damage on the ground.

4.1.3 The unlawful seizure of aircraft is listed as an offence under the existing conventions, particularly Article 1 of The Hague Convention. However, misuse of aircraft as weapons to cause death, injury and damage on the ground, is not specifically criminalized under the existing conventions, although certain components of the act may be covered in a piecemeal fashion by these conventions. For instance, misuse of aircraft which results in the destruction of such aircraft is covered by Article 1, paragraph 1(b) of the Montreal Convention. Misuse of aircraft which involves an act of violence on board may be covered by Article 1, paragraph 1(a) of the Montreal Convention. However, these provisions could not cover all aspects of misuse of aircraft as weapons. For instance, using a hijacked aircraft to murder innocent people in the air or on the ground is a much more serious offence than a simple hijacking not causing any death or injury. The aggravated aspect of murder is not specifically covered by The Hague Convention or Montreal Convention.

4.1.4 In view of the grave nature of this new threat, and the resultant potential for extensive damages and loss of lives both in the air and on the ground, it should be further studied whether the misuse of aircraft as weapons should be criminalized as a separate offence under an existing or new international legal instrument.

4.1.5 ***Recommendation: Further study should be carried out to determine whether misuse of aircraft as weapons should be criminalized as a separate offence under an international air law instrument.***

## 4.2 **Suicide attacks in the air and on the ground**

4.2.1 In addition to misuse of aircraft as weapons, suicide attacks were observed, for example, during the four hijackings committed on 11 September 2001 in the United States.

4.2.2 It often happens in suicide attacks, either in the air or on the ground, that the attackers perish during the attacks and can no longer be punished under criminal law. Accordingly, the relevant provisions of the existing aviation security conventions would cease to apply to them. For instance, unlawful seizure of aircraft constitutes an offence under Article 1 of The Hague Convention. However, in the case of suicide attacks by the persons who unlawfully seize an aircraft, the provision would cease to have effect since its reach does not extend beyond the deceased offenders on board the aircraft. An important issue could therefore be raised whether the existing provisions could cover the organizers and directors of the unlawful seizure of aircraft who were not on board the aircraft. This issue will be further discussed in paragraphs 4.7.

## 4.3 **Electronic and computer-based attacks**

4.3.1 Electronic and computer-based attacks give rise to similar legal implications and therefore may be dealt with by similar legal mechanisms. For instance, electronic attacks using radio transmitters or other means may jam, alter or spoof the signals used for air navigation purposes, whereas computer-based attacks may be aimed at destroying, altering or damaging the data essential for operation of aircraft. While the means and targets of the attacks are different, they share two common characteristics: firstly, the attacks are aimed at the intangible and incorporeal elements of civil aviation, such as signals, data and information; and secondly, the attackers do not need to present themselves or cause something to be placed on board aircraft or at the airports in order to effect the attacks. They may do so from a remote and unidentified place.

4.3.2 Accordingly, the Tokyo Convention, which is applicable to offences committed or acts done by a person “on board any aircraft” (Article 1, paragraph 2), does not necessarily apply. The Hague Convention, which deals with unlawful seizure conducted on board aircraft, is also not applicable.

4.3.3 If the attackers spoof the signals or tamper computer data used for air navigation purposes, they may be covered by Article 1, paragraph 1(e) of the Montreal Convention, which declares it as an offence if a person unlawfully and intentionally “communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.” It is not very clear whether this provision would apply if the person jams or blocks instead of spoofing the signals. Furthermore, under Article 1, paragraph 1(d) of the Montreal Convention of 1971, any person commits an offence if he unlawfully and intentionally destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight. Therefore, certain electronic and computer-based attacks may be covered by this provision if the targets of such attacks form a part of air navigation facilities. The term “air navigation facilities” may require interpretation. For instance, a question may be raised whether a computer used by a pilot on board aircraft will be considered as avionics and thus as part of the aircraft, or as air navigation “facilities”, or both. Another question may also be raised whether signals *per se*, even if they are used for air navigation purposes, constitute air navigation facilities. At the present time, the situation is not clear.

4.3.4 Accordingly, further study should be carried out to determine whether the term “air navigation facilities” should include signals, data and other information used for the purpose of air navigation.

4.3.5 ***Recommendation: Further study should be carried out to determine whether the Montreal Convention should be amended or interpreted to ensure that the term “air navigation facilities” includes signals, data and other information used for the purpose of air navigation.***

#### 4.4 Chemical and biological attacks

4.4.1 Chemical and biological attacks against the air travelling public or the threat for such attacks represent an emerging threat. Examples of this threat already have been observed in non-aviation environments, such as the sarin gas attack in the Japanese subway system some years ago, and the anthrax incidents in the United States in late 2001. It was observed that this type of threat could potentially be used against civil aviation at any time. Chemical and biological attacks could ostensibly be used as a threat as effectively as its actual use because of the fear that this subject engenders in the public, although the direct use by perpetrators may be less likely than introducing a bomb on board an aircraft or a suicidal attempt to destroy an aircraft in flight.

4.4.2 The existing aviation security conventions do not expressly cover chemical and biological attacks, although some of the provisions therein may be applicable to such attacks. Article 1(a) of the Tokyo Convention refers to “offences against penal law” and “acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board”. This term is broad enough to cover chemical and biological attacks on board aircraft but covers the threat only in a very general way. Furthermore, it only covers offences and acts on board aircraft, but not those at airports. Finally, the scope of application of the Tokyo Convention is limited by its Article 1, paragraph 2 to any aircraft registered in a Contracting State, “while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State”.

4.4.3 The Hague Convention may be applicable to chemical and biological attacks if a chemical or biological substance is used as a means of threat or intimidation to seize or control an aircraft. It will not be applicable to other forms of chemical and biological attacks. Similar to the Tokyo Convention, The Hague Convention only covers acts on board aircraft, but not those at airports.

4.4.4 The Montreal Convention of 1971, as supplemented by the Montreal Protocol of 1988, is applicable to acts on board aircraft and at airports. While the Convention and the Protocol do not specifically mention chemical and biological attacks, the term “performs an act of violence against a person” on board an aircraft in flight, or at an airport serving international civil aviation may give some room for interpretation to include chemical and biological attacks. Furthermore, if the chemical or biological substance used by the attackers is likely to destroy an aircraft in service, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight, Article 1, paragraph 1(c) of the Montreal Convention may apply. On the other hand, the Montreal Convention and the Protocol do not cover the mere threat rather than actual carrying out of the attacks.

4.4.5 The United Nations *International Convention for the Suppression of Terrorist Bombings* covers attacks by “lethal devices” which include chemical and biological attacks. On the other hand, while the Convention covers “intent to cause death or serious bodily injury” as well as “intent to cause extensive destruction”, it does not cover the intent to threaten the general public travelling by air, or to undermine public confidence in air travel, for example, by spreading a false rumour that an airport has been exposed to the SARS virus.

4.4.6 For recommendations relating to chemical and biological attacks, reference is made to paragraph 4.5.3 below, which covers misuse of nuclear or other radioactive materials, as well as biological and chemical attacks.

#### 4.5 **Misuse of nuclear or other radioactive materials**

4.5.1 Misuse of nuclear or other radioactive materials bears some similarities with chemical and biological attacks. In the *International Convention for the Suppression of Terrorist Bombings*, nuclear or other radioactive materials, along with biological and chemical agents, are included in the term “lethal device”, which is understood as “a weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.”

4.5.2 On the other hand, the threat of the use of the lethal device, which may seriously undermine the public confidence in air travel and disrupt air transportation, is not covered by the Terrorist Bombing Convention.

4.5.3 ***Recommendation: Further study should be carried out to determine whether there is any need to include the following acts as offences in an international air law instrument:***

- a) **the unlawful and intentional delivery, placing or discharging of a “lethal device” at an airport or on board aircraft with the intent to cause death or serious bodily injury; and**
- b) **the threatening of the use of a “lethal device”, thereby causing serious disruption of civil aviation.**

#### 4.6 **Attacks by making use of MANPADS**

4.6.1 Man-portable air defense systems (MANPADS) represent a major threat to civil aviation. For example, on 28 November 2002, a group of persons fired two SA-7 man-portable air defense systems in an attempt to shoot down an Israeli aircraft taking off from Mombasa, Kenya.

4.6.2 Several issues relating to MANPADS need to be considered. Firstly, the use of MANPADS in attacking civil aircraft under existing international legal instruments; and secondly, whether there is a case for recommending the establishment of an international legal framework for controlling the manufacture, distribution and sale of MANPADS.

4.6.3 With respect to the first issue, MANPADS attacks against civil aviation are arguably covered under Article 1(b) of the Montreal Convention, which states, *inter alia*, that any person commits an offence if he unlawfully and intentionally destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight.

4.6.4 With respect to the second issue, there is currently no worldwide international convention establishing a system of controlling MANPADS. For further study on this issue, the following instruments or arrangement may serve as a point of reference. The MEX Convention (see paragraph 3.1(5) above), *The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, Elements for Export Controls of MANPADS*, Vienna, December 2003, and the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts, Components and Ammunition* adopted at New York on 31 May 2001 (UN A/RES/55/255) (not yet in force).

4.6.5 The MEX Convention obligates States Parties to take necessary and effective measures to prohibit and prevent the manufacture in its territory, and the movement into or out of its territory, of unmarked explosives. While the controlling system established under the Convention may serve as a useful precedent for the control of MANPADS, the Convention is not applicable to MANPADS, since Part 1, paragraph I of the Technical Annex to the Convention provides a specific description of the explosives which do not include MANPADS.

4.6.6 *The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, Elements for Export Controls of MANPADS*, Vienna, December 2003 (*The Wassenaar Arrangement*) provides certain measures to control MANPADS.

4.6.7 The *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts, Components and Ammunition*, criminalizes illicit manufacturing of, and illicit trafficking in, firearms, their parts and components and ammunition. It also obligates States Parties to require marking of each firearm at the time of its manufacture, permitting ready identification by all States of the country of manufacture.

4.6.8 At its fifty-eighth session, the United Nations General Assembly adopted resolution 58/241 of 23 December 2003, "*The illicit trade in small arms and light weapons in all its aspects*", by which it decided, *inter alia*, to establish an open-ended working group to negotiate an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons. The General Assembly's decision was based on the July 2003 report of a UN Group of Governmental Experts, in which the Experts describe "light weapons" as including, *inter alia*, portable anti-aircraft guns, portable anti-tank guns, portable launchers of anti-tank missiles and rocket systems, portable launchers of anti-aircraft missile systems and mortars of a calibre of less than 100 mm. MANPADS could arguably fall within the

category. The open-ended working group's first substantive session was held from 14 to 25 June 2004 at the United Nations Headquarters in New York.

4.6.9 In view of the substantive amount of work already undertaken by the United Nations, it is felt that ICAO should avoid duplication of work.

4.6.10 **Recommendation: ICAO should coordinate with the United Nations with a view to establishing certain controlling mechanisms for MANPADS.**

#### 4.7 Offences relating to organizers, directors, contributors and financial backers

4.7.1 As briefly mentioned in paragraphs 3.6 and 4.2, many provisions under the existing aviation security conventions focus on acts and offences on board aircraft. While The Hague Convention and the Montreal Convention both refer to "accomplice" in Article 1, it is not clear whether the notion of "accomplice" could be interpreted to cover organizers, directors and financial backers of the offences. According to *Black's Law Dictionary* (Sixth Edition, 1990), "accomplice" is defined as a person "who knowingly, voluntarily and with common intent unites with the principal offender in the commission of a crime". When The Hague Convention was negotiated, there had been a clear intention that the Convention should apply to those accomplices who were on board the aircraft in flight, and that punishment of acts of complicity not committed on board an aircraft should be left to national law. (*Subcommittee of the Legal Committee on the subject of Unlawful Seizure of Aircraft*, ICAO Doc 8838-LC/157, page 4, paragraph 11). In view of new and emerging threats in today's situations, two questions may be raised: firstly, whether there is any need to cover under international air law instruments the masterminds and backers of the offences who were not on board aircraft by themselves; and secondly, if the answer to the first question is affirmative, whether the term "accomplice" is adequate to cover the masterminds and backers of the offences.

4.7.2 In this connection, it should be noted that two recent UN conventions, namely, the *International Convention for the Suppression of Terrorist Bombings* (New York, 1997) and the *International Convention for the Suppression of the Financing of Terrorism*, (New York, 1999) extend the coverage to a person who a) participates as an accomplice in an offence; b) organizes or directs others to commit an offence; and c) in any other way contributes to the commission of one or more offences by a group of persons acting with a common purpose.

4.7.3 The inclusion of organizers and directors in the scope *ratione personæ* of these conventions marked a significant change. It should be further studied whether the similar approach should be adopted with respect to international air law instruments on aviation security. While those who were on board aircraft would perish after their suicide attacks, those masterminds remaining on the ground should not be allowed to have any safe haven.

4.7.4 Regarding the financing of terrorist acts, the *International Convention for the Suppression of the Financing of Terrorism* addresses this issue because Article 2, paragraph 1(a) provides that any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out an act which constitutes an offence within the scope of and as defined in one of the treaties listed in its Annex. Both The Hague Convention and the Montreal Convention are listed in the Annex to the *International Convention for the Suppression of the Financing of Terrorism*. In view of this, it does not appear necessary to amend these two conventions in order to cover individuals who finance terrorist acts.

4.7.5 **Recommendation:** Further study should be carried out to determine whether international air law instruments on aviation security should include a provision to punish a person who organizes or directs others to commit an offence, and in any other way contributes to the commission of one or more offences by a group of persons acting with a common purpose.

## 5. STRICT AND UNIFORM COMPLIANCE WITH ANNEX 17

### 5.1 General

5.1.1 Annex 17 to the Chicago Convention contains standards and recommended practices (SARPs) relating to aviation security. The High-level, Ministerial Conference on Aviation Security, held in Montreal from 19 to 20 February 2002, underlined the importance of a global uniform approach to the implementation of the international aviation security standards. Accordingly, a legal study was considered necessary in order to evaluate the possible mechanisms to enhance compliance with aviation security standards.

### 5.2 Universal Security Audit Programme (USAP)

5.2.1 From a practical point of view, an essential way to ensure strict and uniform compliance with Annex 17 is to conduct security audits under the ICAO Universal Security Audit Programme (USAP). USAP was established by the Council during its 166th Session on 24 May 2002, following the recommendation by the High-level, Ministerial Conference on Aviation Security to establish a comprehensive programme of universal aviation security audits. The objective of the audit programme is to enhance aviation security further by identifying deficiencies in each State and providing suitable recommendations for their resolution.

5.2.2 Under the current legal framework, a bilateral Memorandum of Understanding (MoU) is signed between each audited State and ICAO, based upon a generic MoU that was endorsed by the Council of ICAO. Under the terms of the MoU, each audited State undertakes to provide, within 60 calendar days of receiving the ICAO audit report, an action plan acceptable to ICAO. The action plan must address the findings and recommendations of the audit team and provide specific actions and deadlines for the correction of the deficiencies identified during the audit.

5.2.3 **Recommendation:** ICAO should continue to enhance compliance with aviation standards through its Universal Security Audit Programme.

## 6. CONCLUSIONS AND RECOMMENDATIONS

6.1 The existing five aviation security conventions have been widely accepted by States as useful legal instruments for combating unlawful interference against civil aviation. Due to the passage of time and changes of circumstances, certain new and emerging threats to civil aviation are not adequately covered by the existing conventions. The conventions focus on the persons actually committing the punishable acts, mainly on board an aircraft or at an airport, without specific provisions addressing the issue of persons organizing and directing the commission of the offences.

6.2 It should also be noted that the existing aviation security conventions, in particular the Montreal Convention of 1971, use “endangering the safety of aircraft in flight” as a criterion to establish an offence. In view of today’s need to protect civil aviation, it should be determined, from a policy point of view, whether the criterion should be expanded to include a major threat to international civil aviation. One example in this respect is the threat to use chemical, biological substance and other lethal devices to seriously disrupt the air transport, without actually causing danger to a specific aircraft.

6.3 Based on the foregoing and subject to further study, it is recommended, on a preliminary basis, that:

- 1) **Further study be carried out to determine whether misuse of aircraft as weapons should be criminalized as a separate offence under an international air law instrument;**
- 2) **Further study be carried out to determine whether the Montreal Convention should be amended or interpreted to ensure that the term “air navigation facilities” includes signals, data and other information used for the purpose of air navigation;**
- 3) **Further study be carried out to determine whether there is any need to include the following acts as offences in an international air law instrument:**
  - a) **the unlawful and intentional delivery, placing or discharging of a “lethal device” at an airport or on board aircraft with the intent to cause death or serious bodily injury; and**
  - b) **the threatening of the use of a “lethal device”, thereby causing serious disruption of civil aviation;**
- 4) **ICAO coordinate with the United Nations with a view to establishing certain controlling mechanisms for MANPADS;**
- 5) **Further study be carried out to determine whether international air law instruments on aviation security should include a provision to punish a person who organizes or directs others to commit an offence, and in any other way contributes to the commission of one or more offences by a group of persons acting with a common purpose; and**
- 6) **ICAO continue to enhance compliance with aviation standards through its Universal Security Audit Programme.**