

(d) Joint Action Against States Endangering Air Security

In April, 1971 representatives of Canada and the United States, at a session of an ICAO Legal Sub-Committee, co-sponsored a working paper containing the text of a draft multilateral convention creating international machinery for taking joint action against states who fail to live up to the legal obligations contained in the relevant international conventions such as the Tokyo, Hague and Montreal Conventions. However, after the initiative encountered opposition from a number of countries, the ICAO Assembly voted in July, 1971, over the strong opposition of Canada, to remove the subject of joint action from the active list on the ICAO Legal Committee's work programme. Taking their usually strict interpretation of the U.N. Charter, the U.S.S.R. and France argued that ICAO should not get involved in joint action since the subject of "sanctions" is reserved to the U.N. Security Council. Canada and the United States, however, contended that since under international law each state has exclusive sovereignty over its own air space, it is open to any state to become a party to a multilateral convention providing for the suspension of air services against states not living up to their international legal obligations.

In the aftermath of the Lod Airport massacre, it was possible to get the ICAO Council to again assign a high priority to the question of joint action. On June 19, 1972 the Council adopted a resolution, proposed by the United States and co-sponsored by Canada, directing ICAO's Legal Committee "... to convene immediately a Special Sub-Committee to work on the preparation of an international convention to establish appropriate multilateral procedures within the ICAO framework for determining whether there is a need for joint action..." against states which fail to live up to legal obligations pertaining to international civil aviation. The Special Legal Sub-Committee met in Washington from September 4 to 15, 1972. Participating countries were Canada, Brazil, Chile, Egypt, Israel, Japan, Netherlands, Spain, Tanzania, the U.S.A. and U.S.S.R., with France, the U.K. and Jamaica participating as ex officio members.

Although a number of basic substantive differences still remain, the Washington meeting was able to achieve positive results, especially in light of the fact that just over one year before the subject of a joint action convention had been placed on the inactive list. Although some states continue to oppose any type of joint action, within an ICAO framework, against defaulting states, the Special Sub-Committee was able to agree that the subject entrusted to it by the ICAO Council (i.e. of preparing an international convention) was "ripe" for consideration by the ICAO Legal Committee which, as recommended by the Special Sub-Committee, should be convened as soon as possible. The Special Sub-Committee's report will contain the draft texts of provisions for (1) a "commission of experts" which would be convened to determine whether an accused state has contributed to a threat to the safety of civil aviation, and (2) machinery (proposed by Canada, the U.S.A., Netherlands and U.K.) for taking joint action after a determination of fault has been made under stage (1).

The ICAO Council will now have to decide when to convene the Legal Committee to continue work on the convention. Canada will be pressing for the earliest possible convening of the Legal Committee to be followed as soon as possible by a diplomatic conference which will, it is hoped, be able to approve a convention.