

AIR LAW: CANADIAN INITIATIVE ON AIRPORT SECURITY

In September 1986, the 26th Assembly of the International Civil Aviation Organization (ICAO) unanimously adopted a Canadian proposal calling for the development of a new international instrument for the suppression of terrorist acts at airports serving international civil aviation, and establishing a timetable for its negotiation. The first stage was a meeting of a special sub-committee of the ICAO Legal Committee in February 1987. The sub-committee drew up a draft text that was then reviewed and substantially changed by the Legal Committee, which met in Montreal from April 28 to May 13.

The general debate in the Legal Committee reflected widely diverging and strongly held views on a number of issues that had not been resolved by the sub-committee. These included the form and scope of the new instrument, the degree of seriousness of the offences to be created, the relative priority to be accorded to safety of persons at airports as opposed to safety of airports and their facilities, and the need to define international airports.

As major differences of view had emerged, a large working group, chaired by Canada, was established with both negotiating and drafting functions. The Working Group produced a combination of compromises on fundamental issues and indicative votes on less important ones and a complete text eventually emerged in the form of a draft Protocol to the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

The draft Protocol is broader than Canada had originally envisaged, since it covers not only international airports and their facilities but also airport services and aircraft not in service located at airports. However, an offence, whether committed against persons or property, can only be caught by the draft Protocol if it meets a double condition: it must be of a serious nature in itself and it must endanger or be likely to endanger safety at an international airport.

While substantial progress was made at the Legal Committee meeting, a number of difficult issues, including the form of the new instrument, were left for decision by the Diplomatic Conference which is to be convened in Montreal in February 1988 to finalize and formally adopt its text.