

CHAPTER ELEVEN

CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION 1991 (‘Explosives Convention’)

1. This Convention is very different from the other eleven, even the Tokyo Convention, in that it is not directed at the arrest and prosecution of terrorists, but at better detection of a particularly dangerous explosive used by terrorists and other criminals. It therefore does not create any offences, though the implementing legislation will have to. The basic purpose of the Convention is to prevent terrorists, or for that matter any other person with no legitimate right to them, being able to obtain *unmarked* plastic explosives. The existence of criminal penalties may help to deter crime, but the increased possibility of detection should be an even more effective deterrent. Most States have rigorous controls on explosives, including their manufacture, possession, transport and use. The main thrust of the Convention is therefore to tackle the problem posed by the difficulty of detecting *unmarked* plastic explosives. The Convention does not therefore follow the structure or substance of the other conventions. The United Nations lists the Convention as one of the 12 counter-terrorism conventions only because of its importance for the continual fight against terrorism.

2. The sabotage of civil aircraft by terrorists grew markedly in the 1980s. In 1985 there were 13 acts of sabotage killing 473 people.¹⁴⁹ In 1989 two acts killed 279, and it was that year, in the aftermath of what had by then been the single most serious international terrorist attack, that the Convention was conceived. On 21 December 1988 a Boeing 747 aircraft of Pan American Airways on flight PA103 exploded over Scotland killing all 259 passengers and crew and eleven residents of Lockerbie. Wreckage was scattered over an area of 2190 square kilometres. One week later it had been established by scientific examination of wreckage that the aircraft had been destroyed by the detonation of a high performance plastic explosive. This was later confirmed by the report of a Fatal Accidents Inquiry, and the judgment of the Scottish Court sitting in the Netherlands which tried the two Libyans accused of the murder, to have been SEMTEX hidden in a Toshiba radio/cassette player.¹⁵⁰

3. The crime was condemned by the United Nations Security Council on 30 December 1988 (SC/5057). Although Czechoslovakia was not then a member of the Council, it was the primary commercial manufacturer and exporter of the SEMTEX. It therefore proposed to the United Kingdom that the two States should promote a Security Council resolution calling upon all States to cooperate in devising and implementing measures to prevent acts of terrorism involving unmarked plastic explosives, and pursue this within the International Civil Aviation Organisation (ICAO). On 14 June 1989 the Security Council adopted Resolution 635(1989) expressing concern at the ease with which unmarked plastic explosives could be used by terrorists with little risk of detection. The resolution urged ICAO to work on devising an international regime for the marking of plastic explosives to make them detectable. The resolution was reinforced by the United Nations General Assembly on 4 December 1989 in Resolution 44/29.

¹⁴⁹ See M. Milde, ‘Draft Convention on the Marking of Explosives’, *Annals of Air and Space Law*, (1990), pp. 155-179, for the background and an account the initial drafting process, including a discussion of the difficult technical problems encountered.

¹⁵⁰ For the history of the process that led to the trial, see A. Aust, ‘Lockerbie: the other case’, *ICLQ* (April 2000), pp. 278 *et seq.*

4. The Convention was adopted at Montreal on 1 March 1991 and entered into force on 21 June 1998. As of September 2002 it had 80 Parties, including 17 Commonwealth States. Four other Commonwealth States have signed but not yet ratified. The text of the Convention is at page 229 below, and the complete list of signatures, ratifications, accessions and successions at page 235 below.

5. Although most Commonwealth States do not manufacture plastic explosives, it is nevertheless important that all States should be able to control the possession and transfer of unmarked plastic explosives, and prevent their manufacture.

Scope of the Convention

6. Although the Convention was adopted within ICAO, both its preamble and articles show that its purpose is not limited to preventing the use of unmarked plastic explosives in attacks on aircraft.¹⁵¹ It is directed at the detection of any unmarked plastic explosives and not with any particular use to which they may be put. It should therefore help to prevent the use of plastic explosives in any terrorist attacks or by other criminals, whatever their target.

ARTICLE 1 (definitions)

‘Explosives’

7. This term is used as shorthand for ‘explosive products, commonly known as “plastic explosives”, including explosives in flexible or elastic sheet form’. Seven ounces (250 grams) of SEMTEX can destroy an aircraft in flight. Being readily malleable, it can be rolled into thin sheets and used to line the inside of a suitcase or briefcase. This is why the resolutions referred also to ‘sheet’ explosives. However, the technical experts involved in drawing up the Convention advised that it would not be technically correct to include ‘sheet’ since this refers only to the shape the plastic explosive may take and has no relevance to its physical and chemical properties. The Convention does not therefore refer to sheet explosives except as an indication of the form into which plastic explosives can be fashioned.¹⁵² (*Any reference in the following paragraphs to ‘explosive(s)’ is therefore to plastic explosives.*)

8. Part 1(I) of the Technical Annex to the Convention describes in detail the chemical and physical properties of the explosives. They consist of ‘high explosives’ which are defined, non-exhaustively, in Part 1(III). Part 1(II) deems not to be explosives those limited quantities which continue to be held or used either for specified purposes (research, development, training, testing, forensic science etc.), or are destined to be, and are, incorporated into a military device in specified circumstances (see also *Article 4(4)* and paragraph 19 below). This exception is therefore not based on technical characteristics, but on the *purpose* to which the explosives are to be put. Lest it be thought that plastic explosives are inherently evil, or properly used only by the military or police, it should be made clear that they are used extensively for commercial purposes, such as mining, excavation and demolition. It is their misuse that is criminal.

¹⁵¹ See R. van Dam, ‘A New Convention on the Marking of Plastic Explosives for the Purpose of Detection’, *Air Law* (1990), pp. 167-177.

¹⁵² However, alone of the five authentic language, the French text refers also to explosives ‘en feuille’ (in sheet form). The diplomatic conference accepted that, although in most languages it would be superfluous and confusing to refer also to sheet explosives, in French it is not.

‘Detection agent’

9. The properties of the explosive are such that it is inert. Although it will burn, it can be detonated only by an electrical charge. It is virtually invisible unless it is marked by a chemical substance which enables the explosive to be detected by special ‘sniffer’ machines. A ‘detection agent’ is thus a chemical substance introduced into the explosive to make it detectable. Three types of ‘detection agent’ are described in detail in the Technical Annex, Part 2, and in its Table (see below). Parties can choose one or more of the three.

‘Marking’

10. ‘Marking’ simply means introducing a detection agent into the explosive in accordance with the Technical Annex, Part 2. Marking enables the explosive to be detected, but is not a chemical ‘fingerprint’ since it will not identify where the explosive was made. The essence of the scheme of the Convention is that the production, movement, possession and use of plastic explosives is, subject to existing general controls on explosives, permitted provided they are marked in accordance with the requirements of the Convention.

‘Manufacture’

11. This is defined in broad and non-exhaustive terms to be ‘any process, including reprocessing, that produces explosives’.

‘Duly authorised military devices’

12. This (also non-exhaustive) definition is relevant to *Article 4* and Part 1, paragraph II(d), of the Technical Annex (see paragraphs [19, 20 and 22] below). The words ‘duly authorised’ are defined in the Technical Annex, Part 1, paragraph III.

‘Producer State’

13. This term means any State in whose territory explosives are manufactured.

(It will now be all too apparent that the rather complex provisions of *Article 4* and the Technical Annex have to be read carefully with these definitions).

ARTICLE 2 (manufacture of explosives)

14. Each Party is required to take ‘necessary and effective measures’ to prohibit and prevent the manufacture in its territory of unmarked explosives. This requires not only legislation to make it illegal to make unmarked explosives, but practical measures, such inspection of premises known, or suspected of being used, to make explosives. This in turn requires statutory powers of entry.

ARTICLE 3 (movement of explosives)

15. Each Party is required by paragraph 1 to take necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives. The term ‘movement’ is broader than export and import. As with *Article 2*, this requires legislative and practical steps. Paragraph 2 exempts movements of unmarked explosives by authorities of a Party performing ‘military or police functions’ if the explosives are under the control of the Party in accordance with *Article 4(1)*, and provided the movement is ‘for purposes not inconsistent with the objectives’ of the Convention. The phrase ‘performing military or police functions’ indicates that it covers not only the armed forces and police forces, but any other public authorities performing such functions, which could include the coastguard and customs. Although the objectives of the Convention are nowhere specifically defined, its general objectives are plain from its provisions. The phrase

‘performing military or police functions’ is circumscribed also by the rest of the paragraph, in that the movement of unmarked explosives must be done by authorities performing military or police functions and be under the control of the Party in accordance with *Article 4(1)*. The precise application of this requirement will inevitably depend on the particular circumstances of each case.

ARTICLE 4 (existing stocks)

16. Paragraph 1 requires each Party to exercise ‘strict and effective’ control over the ‘possession and transfer of possession’ of unmarked explosives manufactured in, or brought into, its territory *before* the entry into force of the Convention *for that Party* (for an explanation of this, see paragraph 27 below). (Such stocks of unmarked explosives will from now on be referred to as ‘existing stocks’.) The purpose of such strict control is, as with *Article 3*, to prevent the ‘diversion’ or use of existing stocks for ‘purposes inconsistent with the objectives of this Convention’. The term ‘diversion’ refers to unlawful or unauthorised possession or use.

17. Paragraph 2 requires that existing stocks of unmarked explosives, that are not held by the military or police (i.e. commercial stocks), must either be destroyed *or* ‘consumed for purposes not inconsistent with the objectives’ of the Convention *or* marked *or* ‘rendered permanently ineffective’. Whichever is done, each Party must complete the process within three years of the Convention entering into force for that Party. The draft Convention included in this, and paragraph 3, the additional option of disposal by (unspecified) means.¹⁵³ Burying in the ground or in concrete were discussed but rejected. As a result, the *only* options for disposal of unmarked existing stocks are lawful consumption or destruction.

18. Paragraph 3 deals with existing stocks of unmarked explosives held by the military or police. Each Party must ensure that they are destroyed, consumed for purposes not inconsistent with the objectives of the Convention, marked or ‘rendered permanently ineffective’. The option chosen must be affected within 15 years of the Convention entering into force for a Party.

19. The further exception for existing stocks that have been ‘incorporated as an integral part of duly authorised military devices’ has already been mentioned in paragraph 8 above. Such devices are defined, but not exhaustively, in *Article 1(5)*. But this exception applies only to stocks which are destined to be, and are, incorporated within three years of the entry into force of the Convention for a Party (see the Technical Annex, Part 1, paragraph II(d)).

20. Paragraph 4 requires each Party to take necessary measures to ensure the destruction as soon as possible in its territory of unmarked explosives discovered there, if they are not, in effect, existing stocks (to which the first three paragraphs apply), or are not held by military or police authorities and incorporated as an integral part of duly authorised military devices when the Convention enters into force for the Party.

21. Paragraph 5 reinforces the provisions of the Technical Annex, Part 1, paragraph II, in requiring each Party to take necessary measures to exercise strict and effective control over the possession and transfer of the explosives mentioned in those provisions so as to prevent them being diverted or used for purposes inconsistent with the objectives of the Convention.

¹⁵³ Outside the offices of the United Kingdom Mission to the United Nations in New York in the late 1980s there was a warning sign: ‘Suspect packages will be DISPOSED OF BY DESTRUCTION’. Sign writers, like Dickensian conveyancers, are no doubt paid by the word.

22. Paragraph 6 requires each Party to take necessary measures to ensure the destruction as soon as possible in its territory of, first, unmarked explosives manufactured *since* the coming into force of the Convention for that Party, if they are not incorporated as an integral part of duly authorised military devices (Technical Annex, Part 1, paragraph II(d)) and, secondly, unmarked explosives which no longer fall within the scope of the Technical Annex, Part 1, paragraph II(a), (b) or (c).

ARTICLES 5 to 9 (Technical Commission)

23. These articles established the International Explosives Technical Commission to evaluate technical developments relating to the manufacture, marking and detection of plastic explosives, and to make recommendations for amendments to the Technical Annex. *Article 7* has an elaborate procedure for amending the Technical Annex. One amendment has been made and entered into force on 27 March 2002. In the list of detection agents in the Table of the Technical Annex ortho-Mononitrotoluene (o-MNT) was deleted. A new treaty would be needed to amend the rest of the Convention.

ARTICLE 10 (integral annex)

24. This provides that the Technical Annex is an integral part of the Convention.

ARTICLE 11 (disputes)

25. This is the same disputes mechanism as one finds in the other counter-terrorism conventions. A State can opt-out of it on ratification or accession (paragraph 2).

ARTICLE 12 (reservations)

26. Apart from the opt-out permitted by *Article 11(2)*, *no* reservations to the Convention are permitted.

ARTICLES 13 to 15 (final clauses)

27. If a State did not sign the Convention before its entry into force on 21 June 1998, it cannot now do so and then ratify the Convention. Instead it can become a Party by depositing an instrument of accession with the ICAO Secretary-General. The Convention will enter into force for a new Party 60 days after deposit of its instrument of ratification or accession (*Article 13(1) and (4)*). A State that has become independent may succeed formally to the Convention if the Convention had previously been extended to it. In such a case the implementing legislation should already exist. The Convention can be denounced (*Article 15*).

Implementing legislation

28. Model Legislative Provisions are at page 239 below. However, careful consideration will have to be given by each State which is considering becoming a Party to the Convention as to its precise needs for the content of the legislation.

**CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE
PURPOSE OF IDENTIFICATION (MONTREAL CONVENTION 1991)
Signed At Montreal, On 1 March 1991**

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of acts of terrorism for international security;

EXPRESSING deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets;

CONCERNED that plastic explosives have been used for such terrorist acts;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such unlawful acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked;

CONSIDERING United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

BEARING IN MIND Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;

NOTING with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention as well as its willingness to assume functions related to its implementation;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

For the purposes of this Convention:

1. "Explosives" mean explosive products, commonly known as "plastic explosives", including explosives in flexible or elastic sheet form, as described in the [Technical Annex](#) to this Convention.
2. "Detection agent" means a substance as described in the [Technical Annex](#) to this Convention which is introduced into an explosive to render it detectable.
3. "Marking" means introducing into an explosive a detection agent in accordance with the [Technical Annex](#) to this Convention.
4. "Manufacture" means any process, including reprocessing, that produces explosives.
5. "Duly authorized military devices" include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.

6. "Producer State" means any State in whose territory explosives are manufactured.

ARTICLE 2

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

ARTICLE 3

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.
2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article 4.

ARTICLE 4

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article not held by its authorities performing military or police functions 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 this Convention in respect of that State.
3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article 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 this Convention in respect of that State.
4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this Article, other than stocks of unmarked explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.
5. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph II of Part 1 of the [Technical Annex](#) to this Convention so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
6. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph II (d) of Part 1 of the [Technical Annex](#) to this Convention and of unmarked explosives which no longer fall within the scope of any other sub-paragraphs of the said paragraph II.

ARTICLE 5

1. There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of not less than fifteen

nor more than nineteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, or at such places and times as may be directed or approved by the Council.

5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

ARTICLE 6

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the [Technical Annex](#) to this Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the [Technical Annex](#) to this Convention.

ARTICLE 7

1. Any State Party may, within ninety days from the date of notification of a proposed amendment to the [Technical Annex](#) to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, and taking into account the nature of the amendment and the comments of States Parties, including producer States, may propose the amendment to all States Parties for adoption.

3. If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States Parties not having expressly objected thereto.

4. States Parties having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.

5. If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.

6. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may also convene a conference of all States Parties.

ARTICLE 8

1. States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of Article VI.
2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties and international organizations concerned.

ARTICLE 9

The Council shall, in co-operation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

ARTICLE 10

The Technical Annex to this Convention shall form an integral part of this Convention.

ARTICLE 11

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

ARTICLE 12

Except as provided in Article 11 no reservation may be made to this Convention.

ARTICLE 13

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accede to it at any time.
2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State.
3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this Article that they are producer States. Should thirty-five such instruments

be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.

5. As soon as this Convention comes into force, it shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

ARTICLE 14

The Depositary shall promptly notify all signatories and States Parties of:

1. each signature of this Convention and date thereof;
2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;
3. the date of entry into force of this Convention;
4. the date of entry into force of any amendment to this Convention or its [Technical Annex](#);
5. any denunciation made under Article 15; and
6. any declaration made under paragraph 2 of Article 11.

ARTICLE 15

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic languages.

TECHNICAL ANNEX

PART 1: DESCRIPTION OF EXPLOSIVES

I The explosives referred to in paragraph 1 of Article 1 of this Convention are those that:

- a. are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10⁻⁴ Pa at a temperature of 25—C;
- b. are formulated with a binder material; and
- c. are as a mixture, malleable or flexible at normal room temperature.

II The following explosives, even though meeting the description of explosive in paragraph 1 of this Part, shall not be considered to be explosives as long as they continue to be held or used for the purposes specified below or remain incorporated as there specified, namely those explosive that:

- a. are manufactured, or held, in limited quantities solely for use in duly authorized research, development or testing of new or modified explosives;
- b. are manufactured, or held, in limited quantities solely for use in duly authorized training in explosives detection and/or development or testing of explosives detection equipment;
- c. are manufactured, or held, in limited quantities solely for duly authorized forensic science purposes; or
- d. are destined to be and are incorporated as an integral part of duly authorized military devices in the territory of the producer State within three years after the coming into force of this Convention in respect of that State. Such devices produced in this period of three years shall be deemed to be duly authorized military devices within paragraph 4 of Article 4 of this Convention.

III In this Part: "duly authorized" in paragraph 2 (a), (b) and (c) means permitted according to the laws and regulations of the State Party concerned; and "high explosives" include but are not restricted to cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX)

PART 2: DETECTION AGENTS [as amended: see p.228, para. 23, above]

A detection agent is any one of those substances set out in the following Table. Detection agents described in this Table are intended to be used to enhance the detectability of explosives by vapour detection means. In each case, the introduction of a detection agent into an explosive shall be done in such a manner as to achieve homogeneous distribution in the finished product. The minimum concentration of a detection agent in the finished product at the time of manufacture shall be as shown in the said Table.

Table:

<u>Name of detection agent</u>	<u>Molecular formula</u>	<u>Molecular weight</u>	<u>Minimum concentration</u>
Ethylene glycol dinitrate (EGDN)	C ₂ H ₄ (NO ₃) ₂	152	0.2% by mass
2,3-Dimethyl-2,3-dinitro butane (DMNB)	C ₆ H ₁₂ (NO ₂) ₂	176	0.1% by mass
para-Mononitrololuene	C ₇ H ₇ NO ₂	137	0.5% by mass

Any explosive which, as a result of its normal formulation contains any of the designated detection agents at or above the required minimum concentration level shall be deemed to be marked.

**CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES
FOR THE PURPOSE OF DETECTION
DONE AT MONTREAL ON 1 MARCH 1991**

Entry into force: The Convention entered into force on 21 June 1998.

Status: 80 Parties.

State	Date of signature	Date of deposit of instrument of ratification, acceptance (A), approval (AA), accession (a) or succession (s)	Effective date
Afghanistan	1/3/91		
Algeria		14/11/96 (a)	21/6/98
Argentina	1/3/91	8/3/99	7/5/99
Austria	16/12/97	31/5/99	30/7/99
Azerbaijan		4/7/00 (a)	2/9/00
Bahrain		30/1/96 (a)	21/6/98
Belarus	1/3/91	6/2/02 (AA)	7/4/02
Belgium	1/3/91		
Belize	1/3/91		
Bolivia	1/3/91	1/2/02	2/4/02
Botswana		19/9/00 (a)	18/11/00
Brazil	1/3/91	4/10/01	3/12/01
Bulgaria	26/3/91	8/9/99	7/11/99
Cameroon		3/6/98 (a)	2/8/98
Canada	1/3/91	29/11/96	21/6/98
Chile	1/3/91	2/8/00	1/10/00
China	--	--	--
Colombia	13/12/91		
Costa Rica	1/3/91		
Côte d'Ivoire	1/3/91		
Cuba		30/11/01 (a)	29/1/02
Czech Republic		25/3/93 (s)	21/6/98
Denmark	1/3/91	5/10/98	4/12/98
Ecuador	1/3/91	15/12/95	21/6/98
Egypt	1/3/91	19/7/93	21/6/98
El Salvador		18/2/00 (a)	18/4/00
Eritrea		1/12/94 (a)	21/6/98
Estonia		5/3/96 (a)	21/6/98

Finland	25/3/93	5/12/01 (A)	3/2/02
France	1/3/91	21/5/97	21/6/98
Gabon	1/3/91		
Gambia		20/6/00 (a)	19/8/00
Georgia		25/4/00 (a)	24/6/00
Germany	1/3/91	17/12/98	15/2/99
Ghana	1/3/91	22/4/98	21/6/98
Greece	1/3/91	30/10/95	21/6/98
Grenada		15/01/02 (a)	16/3/02
Guatemala		26/11/97 (a)	21/6/98
Guinea	1/3/91		
Guinea-Bissau	1/3/91		
Honduras	26/3/91		
Hungary	30/10/92	11/1/94	21/6/98
India		16/11/99 (a)	15/1/00
Iceland		24/5/02 (a)	23/7/02
Israel	1/3/91		
Japan		26/9/97 (a)	21/6/98
Jordan	17/7/92	23/5/96	21/6/98
Kazakhstan		18/5/95 (a)	21/6/98
Kuwait	1/3/91	18/3/96	21/6/98
Kyrgyzstan		14/7/00 (a)	12/9/00
Latvia		17/8/99 (a)	16/10/99
Lebanon	1/3/91	26/11/97	21/6/98
Lithuania		21/11/96 (a)	21/6/98
Madagascar	1/3/91		
Maldives		22/3/99 (a)	21/5/99
Mali	1/3/91	28/9/00	27/11/00
Malta		15/11/94 (a)	21/6/98
Mauritius	1/3/91		
Mexico	1/3/91	9/4/92	21/6/98
Monaco		14/5/98 (a)	13/7/98
Mongolia		22/9/99 (a)	21/11/99
Morocco		26/5/99 (a)	25/7/99

Netherlands	2/8/91	4/5/98	3/7/98
Nicaragua	6/10/94		
Nigeria		10/5/02 (a)	9/7/02
Norway	1/3/91	9/7/92	21/6/98
Oman		13/12/01(a)	11/2/02
Pakistan	1/3/91		
Palau		30/11/01(a)	29/1/02
Panama		12/4/96 (a)	21/6/98
Peru	1/3/91	7/2/96	21/6/98
Qatar		9/11/98 (a)	8/1/99
Republic of Korea	1/3/91	2/1/02	3/3/02
Republic of Moldova		1/12/97 (a)	21/6/98
Romania		21/9/98 (a)	20/11/98
Russian Federation	1/3/91		
Saint Kitts and Nevis		9/5/02 (a)	8/7/02
Samoa		9/7/98 (a)	7/9/98
Saudi Arabia		11/7/96 (a)	21/6/98
Senegal	1/3/91		
Slovakia		20/3/95 (s)	21/6/98
Slovenia		5/6/00 (a)	4/8/00
South Africa		1/12/99 (a)	30/1/00
Spain	5/4/93	31/5/94	21/6/98
Sri Lanka		11/10/01(a)	10/12/01
Sudan		25/5/00 (a)	24/7/00
Sweden	13/11/92		
Switzerland	1/3/91	3/4/95	21/6/98
The former Yugoslav Republic of Macedonia		21/9/98 (a)	20/11/98
Togo	1/3/91		
Trinidad and Tobago		3/4/01	2/6/01
Tunisia		28/5/97 (a)	21/6/98
Turkey	7/5/91	14/12/94	21/6/98

Ukraine	1/3/91	18/3/99	17/5/99
United Arab Emirates		21/12/92 (a)	21/6/98
United Kingdom	1/3/91	28/4/97	21/6/98
United States	1/3/91	9/4/97	21/6/98
Uruguay		14/6/01 (a)	13/8/01
Uzbekistan		9/6/99 (a)	8/8/99
Zambia		31/5/95 (a)	21/6/98

**MODEL LEGISLATIVE PROVISIONS TO IMPLEMENT THE
CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE
PURPOSE OF IDENTIFICATION**

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Whereas a Convention on the Marking of Plastic Explosives for the Purpose of Identification was signed in Montreal on March 1, 1991:

And Whereas (name of country) intends acceding to the said Convention by depositing an instrument of accession with the Director General of the International Civil Aviation Organisation:

And Whereas it is necessary to make legal provision to give effect to (name of country) obligations under the said Convention:

Now therefore, be it enacted by the Parliament of (name of country) as follows:-

Short title and date of operation

1. This Act may be cited as the Marking of Plastic Explosives Act and shall come into operation on such a date as the Minister responsible for Foreign Affairs by Order published in the Gazette, certifies as the date on which the Convention enters into force in respect of (name of country).

Interpretation

2. In this Act unless the context otherwise requires -

“Convention” means the Convention on the Marking of Plastic Explosives for the Purpose of Identification, signed in the Montreal on March 1, 1991, as amended from time to time;

“detection agent” means any of the substances set out in the Table to Part 2 of the Technical Annex to the Convention;

“duly authorized military device” includes a shell, bomb, projectile, mine, missile, rocket, charge, grenade or perforator, manufactured exclusively for military or police purposes in accordance with the law in force;

“explosive” means anything that is made, manufactured or used to produce an explosive or a detonation or pyrotechnic effect, and includes anything prescribed to be an explosive by regulations made under this Act but does

not include gases, organic peroxides or anything prescribed not to be an explosive by regulations made under this Act;

“plastic explosive” means an explosive that-

- (a) is formulated with one or more high explosives that in their pure form have a vapour pressure less than 10^{-4} Pa at a temperature of 25 C,
- (b) is formulated with a binder material, and
- (c) is, when mixed, malleable or flexible at normal room temperature;

“unmarked plastic explosive” mean a plastic explosive that -

- (a) does not contain a detection agent, or
- (b) at the time of manufacture, does not contain the required minimum concentration level of a detection agent as set out in the Table to Part 2 of the Technical Annex to the Convention.

Prohibition on manufacture, possession, transport import or export of unmarked plastic explosives

- 3. (1) No person shall manufacture unmarked plastic explosives.
- (2) It shall not be a contravention of subsection (1) for a person to manufacture unmarked plastic explosives in such quantities as are approved in writing by the {Inspector of Explosives} solely for use in training in explosives detection or in the development or testing of explosives detection equipment.
- (3) Subject to subsection (5), no person shall possess or transport unmarked plastic explosives.
- (4) It shall not be a contravention of subsection (3) for a person to possess or transport unmarked plastic explosives in such quantities as have been approved in writing by the {Inspector of Explosives} under subsection (2) solely for the uses specified in that subsection.
- (5) Where any unmarked plastic explosives have been –
 - (a) manufactured in, or
 - (b) imported into,
..... (name of country), prior to the date of coming into operation of this Act, then if, such unmarked plastic explosives are -
 - (i) held by authorities performing military or police functions and not incorporated as an integral part of a duly authorized military device, be destroyed or marked or rendered permanently ineffective, within a period of fifteen years from the date of coming into operation of this Act;
 - (ii) held by any other person, be destroyed or marked or rendered permanently ineffective, within a period of three years from the date of coming into operation of this Act.
- (6) No person shall import or export unmarked plastic explosives unless such explosives are incorporated as an integral part of a military device.

Powers of Entry

4. An officer authorized in writing by the [Inspector of Explosives] may, at all reasonable hours, enter any premises where he or she has reasonable grounds to believe that any explosives are being –

- (a) manufactured, or
- (b) kept or stored,

and may make such investigations and inquiries thereon as may be necessary to ascertain whether the provisions of this Act are being complied with. Any such officer may make inquiries from any person found on such premises, inspect any records, documents or equipment found thereon and make copies of, or take extracts from, any such record or document.

Offences

5 (1) Every person who contravenes or fails, without reasonable cause, to comply with subsection (1), or (3), or (5) or (6) of section 3 commits an offence and upon conviction shall be liable to imprisonment for a term of () years.

(2) Every person who-

- (a) resists or obstructs an officer authorized under section 4 in the exercise by that officer of the powers conferred on that officer by that section,
- (b) furnishes information which to his or her knowledge is false, in response to an inquiry made of him or her by an officer authorized under section 4 in the exercise by that officer of the powers conferred on that officer by that section; or
- (c) wilfully suppresses any material information in response to an inquiry made of him or her by an officer authorized under section 4 in the exercise by that officer of the powers conferred on that officer by that section,

commits an offence and upon conviction shall on conviction be liable to imprisonment for a term of () years.

Regulations

6. (1) The Minister may make regulations amending any definition set out section 2 and in respect of all matters which are required by this Act to be prescribed by regulation.

(2) Every regulation made under this section shall be published in the Gazette and shall come into force on the date of such publication or on such later date as may be specified therein.