



INTERNATIONAL CONFERENCE ON AIR LAW

(Beijing, 30 August – 10 September 2010)

PROPOSED AMENDMENTS

(Presented by Uruguay)*

DRAFT CONSOLIDATED TEXT OF THE MONTREAL CONVENTION OF 1971 AS AMENDED BY THE AIRPORTS PROTOCOL OF 1988, WITH AMENDMENTS PROPOSED BY THE LEGAL COMMITTEE

THE STATES PARTIES TO THIS CONVENTION

CONSIDERING that unlawful acts against the [~~safety~~] **security** of civil aviation jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the [~~safety~~] **security** of civil aviation;

CONSIDERING that the occurrence of such acts is a matter of grave concern;

CONSIDERING that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders, **co-offenders, accomplices and accessories**.

HAVE AGREED AS FOLLOWS:

PROPOSAL

1. Change the term *safety* to *security* in two places in the first Preambular clause, **as well as in Article 1 (a), (b), (c), (d) and (e), etc.**
2. Add the words **co-offenders, accomplices and accessories** to the last Preambular clause.

JUSTIFICATION

1. We propose to use the term *security* instead of *safety*, since the Convention deals with aviation security and not aviation safety.

* Note: Text proposed for deletion presented in bold in brackets and proposed additions to text presented in bold without brackets.

2. We propose adding the words *co-offenders, accomplices and accessories* to the last Preambular clause because in addition to the perpetrator, there may be persons who designate others to commit the offence or who cooperate directly with the perpetrator both in the preparatory phase and in the consummation of the offence, by carrying out an act that was essential for the offence to take place (co-offender).

3. The Convention should therefore be applicable to persons who provide moral or material support for the offence through deeds carried out before or during the execution of the offence, but which are extraneous and preliminary to the consummation of the offence (complicity).

4. The Convention should also apply to those individuals who, after the commission of an offence and without prior agreement in relation to the execution of the offence with the perpetrators or accomplices, help the latter to secure the benefits or the outcome thereof, to hamper investigation by the authorities or to evade criminal prosecution or punishment. Likewise, anyone who removes, conceals or in any way alters the evidence of an offence, its effects or the instruments used in its execution, whether or not for personal gain, (concealment) should also be liable for prosecution under the Convention. All of the foregoing is consistent with Article 1(2).

ARTICLE 1

1. Any person commits an offence if that person [unlawfully and] intentionally:

- (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the [safety] security of that aircraft; or
- (b) 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] security [in flight]; or
- (c) places or causes to be placed on an aircraft in service [,by any means whatsoever,] a device or substance which is likely to destroy that aircraft, 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] security [in flight]; or
- (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the [safety] security of aircraft in flight; or
- (e) communicates information which he or she knows to be false, thereby endangering the [safety] security of an aircraft [in flight]; or

1 bis Any person commits an offence if that person [unlawfully and] intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause that person serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger [safety] security at that airport.

PROPOSAL

1. Delete the article *un* before the noun *delito* (Spanish text only).
2. Change the term *safety* to *security* in sub-paragraphs (a) to (e) inclusive and in Article 1 *bis*.
3. Delete the word *unlawfully*.
4. Delete the phrase *in flight* from sub-paragraphs (b), (c) and (e) and in Article 1 *bis*.
5. Delete the phrase *by any means whatsoever*.

JUSTIFICATION

1. The correct Spanish phrasing is “Comete delito...”, and not “Comete un delito...”.
2. See our justification above for using the term *security* instead of *safety*. This is a convention on aviation security, not aviation safety.
3. We propose to delete the word *unlawfully* because the text refers to intentional criminal acts, which are willful by definition. It is not conceivable for such acts not to be unlawful, since they are intended to do harm.
4. We propose to delete *in flight* from sub-paragraph (e) because it restricts the foregoing scenario and contradicts the provisions of the preceding sub-paragraphs.
5. We propose to delete the phrase *by any means whatsoever* from sub-paragraph (c) because it adds nothing.

ARTICLE 5

2. (b) ...when the offence is committed by a [stateless] person who has his or her [habitual] permanent residence in the territory of that State,

PROPOSAL

1. We propose to delete the term *stateless*.
2. We propose to delete the term *habitual* and replace it with *permanent*.

JUSTIFICATION

1. We believe that permanent residence is sufficient justification for establishing jurisdiction.
2. A number of international instruments use the term *permanent* and not *habitual*.

ARTICLE 6

1. ...any State Party in the territory of which the [*offender or the alleged offender*] *accused* is present...

PROPOSAL

We propose to replace the terms *offender or alleged offender* with the term *accused*.

JUSTIFICATION

The term *accused* is used in the criminal codes and is in keeping with the most widely accepted doctrine.

ARTICLE 14

PROPOSAL

In the event of a dispute concerning the interpretation or application of this Convention, an attempt shall be made to reach a settlement in accordance with the arrangements set forth in the Charter of the United Nations.

JUSTIFICATION

1. With respect to the phrase “an attempt shall be made”, the Charter of the United Nations imposes no obligation to settle disputes, only the obligation to attempt to settle them.
2. The “arrangements set forth” in Chapter VI Article 33 of the Charter of the United Nations for the “peaceful settlement of disputes” are: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional bodies or arrangements or other peaceful means of their own choice.
3. It does not seem wise to introduce anything new in this respect, since the Charter is of a constitutional nature. All subsequent treaties should conform to it.
4. Likewise, it does not appear advisable to allow for reservations on a dispute settlement provision that makes reference to the Charter.

**DRAFT CONSOLIDATED TEXT OF THE HAGUE CONVENTION OF 1970,
WITH AMENDMENTS PROPOSED BY THE LEGAL COMMITTEE**

PREAMBLE

CONSIDERING that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders, *co-offenders, accomplices and accessories*;

PROPOSAL

We propose to add , *co-offenders, accomplices and accessories* to the last Preambular clause.

JUSTIFICATION

1. In addition to the perpetrator, there may be persons who designate others to commit the offence or who cooperate directly with the perpetrator, both in the preparatory phase and in the consummation of the offence by carrying out an act that was essential for the offence to take place (co-offender).
2. The Convention should therefore be applicable to persons who provide moral or material support for the offence through deeds carried out before or during the execution of the offence, but which are extraneous and preliminary to the consummation of the offence (complicity).
3. The Convention should also apply to those individuals who, after the commission of an offence and without prior agreement in relation to the execution of the offence with the perpetrators or accomplices, help the latter to secure the benefits or the outcome thereof, to hamper investigation by the authorities or to evade criminal prosecution or punishment. Likewise, anyone who removes, conceals or in any way alters the evidence of an offence, its effects or the instruments used in its execution, whether or not for personal gain, (concealment) should also be liable for prosecution under the Convention.

ARTICLE 1

1. Any person commits **an** offence if that person [*unlawfully and*] intentionally...
2. Any person also commits an offence if that person makes a [*credible*] threat [*or unlawfully and intentionally causes any person to receive a credible threat*] to commit an offence in paragraph 1.

PROPOSAL

1. Delete the article *un* before the noun *delito* (Spanish text only).
2. Delete the word *unlawfully*.
3. We propose the following wording for paragraph 2: *Any person also commits an offence if that person makes a threat to commit an offence in paragraph 1.*

JUSTIFICATION

1. The correct Spanish phrasing is “Comete delito...”, and not “Comete un delito...”.
2. We propose to delete the word *unlawfully* because if the threat is to commit an offence, it is obviously unlawful. It is also necessarily intentional, since there is no such thing as an unintentional threat.
3. We believe that a threat does not become credible until the threatened offence is committed. At the time the threat is made, its credibility cannot be determined.

ARTICLE 12**PROPOSAL**

In the event of a dispute concerning the interpretation or application of this Convention, an attempt shall be made to reach a settlement in accordance with the arrangements set forth in the Charter of the United Nations.

JUSTIFICATION

1. With respect to the phrase “an attempt shall be made”, the Charter of the United Nations imposes no obligation to settle disputes, only the obligation to attempt to settle them.
2. The “arrangements set forth” in Chapter VI Article 33 of the Charter of the United Nations for the “peaceful settlement of disputes” are: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional bodies or arrangements or other peaceful means of their own choice.
3. It does not seem wise to introduce anything new in this respect, since the Charter is of a constitutional nature. All subsequent treaties should conform to it.
4. Likewise, it does not appear advisable to allow for reservations on a dispute settlement provision that makes refer.

— END —