



## INTERNATIONAL CONFERENCE ON AIR LAW

(Beijing, 30 August – 10 September 2010)

### PROPOSED AMENDMENT REGARDING ARTICLE 1, PARAGRAPH 2(D) ("CONCEALMENT PROVISION")

(Presented by The Netherlands, China, Argentina, Australia and Egypt)

1. The Working Group proposes the following text of Article 1, paragraph 2 (d):

(...)

*unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraphs 1, 1 bis, 1 ter, 2 (a), 2(b) or 2(c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.*

2. **EXPLANATORY NOTE**

- 2.1 The Working Group took note of the discussion in the Plenary Session and the views expressed by the delegations on the so-called "concealment provision" and identified the following three elements in this respect:

- a) the form of conduct of the person that gives assistance;
    - b) the threshold of the criminal liability and the formulation thereof; and
    - c) the scope of the criminal offences that fall under the criminal liability.

3. **THE FORM OF CONDUCT OF THE PERSON THAT GIVES ASSISTANCE**

- 3.1 The Working Group suggests using the word "assists" instead of "transports", because the term "assists" refers to a broader range of conduct that is appropriate to cover this offence.

4. **THE THRESHOLD OF THE CRIMINAL LIABILITY AND THE FORMULATION THEREOF**

- 4.1 The Working Group suggests including "unlawfully and intentionally" in order to avoid unintended criminal liability. Furthermore, this is consistent with the approach to other proposed offences in this Convention and the equivalent text in the Protocol of 2005 to the Convention for the suppression of Unlawful Acts against the Safety of Maritime Navigation.

5. **THE SCOPE OF THE CRIMINAL OFFENCES THAT FALL UNDER THE CRIMINAL LIABILITY**

5.1 The Working Group suggests limiting the offences as mentioned in the Montreal Convention and The Hague Convention, because it reduces legal uncertainty and avoids legal complications. Therefore, it is likely to foster wider acceptance of the proposed text.

6. **ADDITION OF SUBPARAGRAPHS 2(B) AND 2(C)**

6.1 The Working Group concluded that subparagraphs 2(b) and 2(c) should logically be included in subparagraph 2(d) and that their omission was the result of oversight. Consequently, we consider they should be incorporated in the text.

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