



## INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 26 March to 4 April 2014)

### THE VIEWS OF AIR NAVIGATION BUREAU, ICAO ON ARTICLE VI OF THE DRAFT PROTOCOL TO AMEND THE TOKYO CONVENTION

(Presented by Secretariat)

#### 1. INTRODUCTION

1.1 At the 11th meeting of its 199th Session on 14 June 2013, when the Council considered the Report on the 35th Session of the Legal Committee, reference was made in the discussion to the provisions relating to In-flight Security Officers (IFSOs) in the text of the draft Protocol to amend the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo, 1963). The Council agreed that the views of the Air Navigation Bureau (ANB) be solicited regarding the potential impacts of the recognition in the draft Protocol of IFSOs on the safety of aircraft and passengers on board, as well as on the provisions of Annex 6 – *Operation of Aircraft*, Part I – *International Commercial Air Transport – Aeroplanes* relating to the duties and responsibilities of the pilot-in-command.

#### 2. ARTICLE VI OF THE DRAFT PROTOCOL

2.1 The text of draft Protocol relating to the roles and functions of IFSOs is as follows:

##### [Article VI

Article 6, paragraph 2 of the Convention shall be replaced by the following:

##### Option 1

[“1. The aircraft commander or in-flight security officer may, when he or she has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:

- a) to protect the safety of the aircraft, or of persons or property therein; or
- b) to maintain good order and discipline on board; or
- c) to enable the aircraft commander to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.”]

**Option 2**

[“1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:

- a) to protect the safety of the aircraft, or of persons or property therein; or
- b) to maintain good order and discipline on board; or
- c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member, in-flight security officer or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.”]

**3. VIEWS OF ANB**

3.1 Pursuant to the afore-mentioned decision of the Council, ANB has provided the following views:

ANB should support Option 2. The rationale for such choice is:

- a) The aircraft commander’s authority is final and should not be shared or weakened by providing part of that authority to another person on board.
- b) The aircraft commander has a higher level of knowledge of the overall safety status of the aircraft.
- c) The aircraft commander is assigned duties and responsibilities, including safety responsibilities, by the operator, which is ultimately responsible for the safety of the aircraft, while the in-flight security officer is generally assigned other responsibilities by another entity (normally the State) which is not directly responsible for the safety of the flight operation; option 1 creates a potential for decreasing the authority of the commander, for conflicts and for uncertainty. This may negatively affect safety.
- d) The maintenance of good order and discipline on board has a broader scope than just security issues and the commander has the authority for action to maintain order and discipline.

**4. ACTION**

4.1 The Conference is invited to consider the view of ANB.