



## INTERNATIONAL CONFERENCE ON AIR LAW

(Montréal, 26 March to 4 April 2014)

### DIPLOMATIC CONFERENCE (MONTRÉAL, 26 MARCH TO 4 APRIL 2014) TO ADOPT THE PROPOSED TEXT OF THE PROTOCOL TO THE TOKYO CONVENTION OF 1963

(Presented by New Zealand)

#### 1. INTRODUCTION

1.1 New Zealand is honoured to have the opportunity to comment on the draft text for the Protocol. New Zealand considers this proposed Protocol will be a useful measure to enhance international aviation security. New Zealand's position on the draft text is summarised in the table on page 3 of this working paper. New Zealand's comments on this position are contained in paragraphs 2. to 12. below.

#### 2. ARTICLE II 1. PARAGRAPH 3(A)

2.1 New Zealand considers it could be useful to define the term "*competent authorities*" (New Zealand notes this term is used in the Tokyo Convention but is undefined).

#### 3. ARTICLE II 1. PARAGRAPH 3(B)

3.1 New Zealand supports the use of either the term "*government employee*" or the word "*person*".

3.2 New Zealand suggests deletion of the words "*or of*" between the words "*aircraft*" and "*persons*" in line 5 of paragraph (b). This proposed change will clarify that the risk can be to any one or, a combination of, that aircraft, persons or property.

#### 4. ARTICLE III 2. AND 2 BIS

4.1 New Zealand would like to clarify the intended legal effect of including the words "*and acts*" in this provision.

5. **ARTICLE III 2 TER**

5.1 New Zealand would like to know the reason/s for the inclusion of paragraph 2 *ter*.

6. **ARTICLE IV**

6.1 New Zealand supports the addition of Article 3 *bis* to Article IV as such consultation may preclude unnecessary duplication of work by States. It may also ensure that legal actions are not taken against an offender in multiple jurisdictions for the same offence.

6.2 New Zealand supports the use of the word “*may*” in proposed line 3 as it is preferable for contracting States to have a discretion to consult rather than a compulsion.

7. **ARTICLE VI**

7.1 New Zealand supports the wording of Option 2. Option 1 may result in uncertainty and increases the potential for disagreement between the actors which could impact adversely on aircraft safety.

8. **OPTION 2 PARAGRAPH 1**

8.1 New Zealand suggests the insertion of the words “*or she*” between the words “*he*” and “*has*” in line one to ensure gender inclusiveness and for consistency with line one of Option 1.

9. **ARTICLE VII**

9.1 New Zealand is gathering information in order to establish its position on the proposed replacement wording for Article 10 of the Convention.

10. **ARTICLE IX**

10.1 New Zealand has no position on this Article.

11. **ARTICLE X**

11.1 New Zealand has no position on this Article.

| Amendment:                        | Agreement without comments | Agreement with comments* | Disagreement without comments | Disagreement with comments | No position |
|-----------------------------------|----------------------------|--------------------------|-------------------------------|----------------------------|-------------|
| Article I                         | ✓                          |                          |                               |                            |             |
| Article II 1. paragraph 3(a)      |                            | ✓                        |                               |                            |             |
| Article II 1. paragraph 3(b)      |                            | ✓                        |                               |                            |             |
| Article II 1. paragraph 3(c)      | ✓                          |                          |                               |                            |             |
| Article II 1. paragraph 3(d)      | ✓                          |                          |                               |                            |             |
| Article III 1 <i>bis.</i>         | ✓                          |                          |                               |                            |             |
| Article III 2                     |                            | ✓                        |                               |                            |             |
| Article III 2 <i>bis.</i>         |                            | ✓                        |                               |                            |             |
| Article III 2 <i>ter.</i>         |                            | ✓                        |                               |                            |             |
| Article III 3                     | ✓                          |                          |                               |                            |             |
| Article IV                        |                            | ✓                        |                               |                            |             |
| Article V                         | ✓                          |                          |                               |                            |             |
| Article VI                        |                            | ✓                        |                               |                            |             |
| Article VI. Option 2. paragraph 1 |                            | ✓                        |                               |                            |             |
| Article VII                       |                            |                          |                               |                            | ✓           |
| Article VIII.                     | ✓                          |                          |                               |                            |             |
| Article IX.                       |                            |                          |                               |                            | ✓           |
| Article X.                        |                            |                          |                               |                            | ✓           |