



ICAO

Doc 10081, A39-LE

ASSEMBLY THIRTY-NINTH SESSION

Montréal, 27 September – 7 October 2016

LEGAL COMMISSION

REPORT

*Approved by the Plenary of the Assembly
and published by authority of the Secretary General*

Downloaded from ICAO Doc 10081, 2017-01-01



ICAO

Doc 10081, A39-LE

ASSEMBLY THIRTY-NINTH SESSION

Montréal, 27 September – 7 October 2016

LEGAL COMMISSION

REPORT

*Approved by the Plenary of the Assembly
and published by authority of the Secretary General*

Published in separate English, Arabic, Chinese, French, Russian and Spanish editions by the
INTERNATIONAL CIVIL AVIATION ORGANIZATION
999 Robert-Bourassa Boulevard, Montréal, Quebec, Canada H3C 5H7

For ordering information and for a complete listing of sales agents
and booksellers, please go to the ICAO website at www.icao.int

Doc 10081, *Report of the Legal Commission*

Order Number: 10081

ISBN 978-92-9258-267-8

© ICAO 2017

All rights reserved. No part of this publication may be reproduced, stored in a
retrieval system or transmitted in any form or by any means, without prior
permission in writing from the International Civil Aviation Organization.

ASSEMBLY — 39TH SESSION
MONTREAL, 27 SEPTEMBER TO 7 OCTOBER 2016

REPORT OF THE LEGAL COMMISSION

TABLE OF CONTENTS

	Page
General.....	1
Agenda and Working Arrangements.....	1
Agenda Item 44: Annual Reports of the Council to the Assembly for 2013, 2014 and 2015	2
Agenda Item 45: Work Programme of the Organization in the legal field	2
Agenda Item 46: Consolidated statement of continuing ICAO policies in the legal field.....	8
Agenda Item 47: Other issues to be considered by the Legal Commission	14
Resolution 45/1: Conflicts of interest in civil aviation	3
(Renumbered A39-8)	
Resolution 45/2: Promotion of the Montréal Convention of 1999	5
(Renumbered A39-9)	
Resolution 45/3: Promotion of the Beijing Convention and the Beijing Protocol of 2010	6
(Renumbered A39-10)	
Resolution 46/1: Consolidated Statement of Continuing ICAO Policies in the Legal Field	8
(Renumbered A39-11)	
Appendix - List of Working Papers Considered by the Legal Commission.....	18

.....

REPORT OF THE LEGAL COMMISSION TO THE ASSEMBLY

General

1. The Legal Commission held three meetings between 28 September and 3 October 2016. Mr. A. Quaranta (Italy) was elected by the Plenary as Chairperson of the Commission.
2. At its first meeting, the Commission elected Mr. Abdulrahman Hassan Shiekh (Saudi Arabia) and Mr. Chukwuma Dubem (Nigeria) as its First and Second Vice-Chairpersons respectively.
3. The three meetings of the Commission were held in open session.
4. Representatives from 119 Member States and 12 observer delegations attended one or more meetings of the Commission.
5. The Secretary of the Commission was Mr. J. V. Augustin, Director of the Legal Affairs and External Relations Bureau and was represented in his absences by Dr. J. Huang, Senior Legal Officer and Deputy Secretary. Mr. A. Jakob, Senior Legal Officer, was also Deputy Secretary. The Assistant Secretaries were Messrs. C. Petras and A. Opolot, and Ms. M. Weinstein, Legal Officers.

Agenda and Working Arrangements

6. Agenda items 44, 45, 46 and 47 referred to the Commission by the Plenary were considered, as follows:

Item 44: Annual Reports of the Council to the Assembly for 2013, 2014 and 2015

Item 45: Work Programme of the Organization in the legal field

Item 46: Consolidated statement of continuing ICAO policies in the legal field

Item 47: Other issues to be considered by the Legal Commission.

- 6.1 The documents and working papers considered by the Commission are listed by agenda items in the Appendix to the Report.

- 6.2 The action by the Commission in respect of each item is reported on separately in the paragraphs which follow. The material is arranged according to the numerical sequence of the agenda items considered by the Commission.

Agenda Item 44: Annual Reports of the Council to the Assembly for 2013, 2014 and 2015

44:1 The Commission noted the chapters of the Annual Reports of the Council to the Assembly for the years 2013, 2014 and 2015 as well as the Supplement for the first half of the year 2016 which had been referred to it by the Plenary.

Agenda Item 45: Work Programme of the Organization in the legal field

45:1 The Commission considered this item on the basis of A39-WP/12, presented by the Council, A39-WP/77 (Revision No. 1), presented by Canada, Mexico, Nigeria and the United States; A39-WP/100, presented by the United States; A39-WP/101, presented by the United States; A39-WP/228, presented by the Republic of Korea; and A39-WP/375, presented by Egypt. The Commission noted Information Paper A39-WP/422, presented by Brazil, Canada, Ireland, Luxembourg, Norway, Singapore, Spain, United Kingdom and the United States.

45:2 A39-WP/12 provided information to the Assembly regarding the on-going work of the Organization in the legal field and an overview of the developments and relevant decisions taken by the Council and the Legal Committee since the previous session of the Assembly in relation to the items on the Work Programme of the Legal Committee, including the prioritization of items. Information on legal work in certain additional areas, namely, international interests in mobile equipment (aircraft equipment) and review of the application of ICAO treaties relating to conflict zones was also presented to the Commission.

45:3 With respect to “Study of legal issues relating to remotely piloted aircraft”, it was noted that consistent with the conclusions of the 36th Session of the Legal Committee (Montréal, 30 November to 3 December 2015) and the decision taken by the Council during the 7th Meeting of its 207th Session, the ICAO Legal Affairs and External Relations Bureau had on 29 August 2016 initiated a survey as a means of gathering information on national RPAS legislation for comparative purposes, and as a means to identify international legal issues that RPAS integration was presenting for States, in order to identify legal aspects of RPAS operations that still might need to be addressed. It was further noted that States have been asked to submit their responses to the survey by 31 October 2016. Substantive issues related to RPAS are taken up below, under Item 47.

45:4 Concerning the item “Consideration of Guidance on Conflicts of Interest”, the delegate of Canada, on behalf of the co-sponsors, presented A39-WP/77 Revision No.1, highlighting that conflicts of interest may hamper effective, independent and impartial regulation of civil aviation and thereby pose risks to the safety and security of international civil aviation; and calling for the adoption of an Assembly resolution to promote awareness of potential conflicts of interest in civil aviation as well as the need to take measures to avoid or mitigate risks from conflicts of interest to aviation safety and security. He drew the attention of the Commission to the associated financial implications of future work under this item, as reflected in the Executive Summary of the working paper, that the activities referred to in the Resolution would be undertaken subject to the resources available in the 2017-19 Regular Programme Budget and/or from extra budgetary contributions.

45:5 All delegations who took the floor expressed support for the working paper and the resolution. One delegation, noting that *Annex 19 – Safety Management* contained provisions calling for the establishment of guidance for the avoidance of conflicts of interest in the performance of safety

oversight functions, suggested that reference be made to Annex 19 in the resolution. Several delegations highlighted the need to take into account the level of development and resources available to States in prescribing measures to deal with conflicts of interest and called for a balance to be drawn in that regard between the particular circumstances of States and the risks posed by conflicts of interest. One observer noted that regard should be had to the issue of delegated authority, where a private person exercises regulatory functions on behalf of a regulator under a structured scheme. These schemes, in the industry's view, offer important efficiency and collaboration benefits and should be recognized, and provided for, in any conflict of interest management framework.

45:6 The Commission acknowledged that it would be appropriate to include supplementary text in the resolution to address the additional clarifications and proposals made by delegations.

The Commission then agreed to recommend to the Plenary the adoption of the following resolution:

Resolution 45/1: Conflicts of interest in civil aviation

Recognizing that conflicts of interest may hamper effective, independent and impartial safety regulation of civil aviation and thereby pose risks to the safety and security of international civil aviation;

Acknowledging the need for and the benefits of drawing upon the experience and expertise of qualified industry personnel to help ensure that important regulatory oversight functions can be provided;

Recalling that the item "Consideration of Guidance on Conflicts of Interest" was added to the General Work Programme of the Legal Committee by the 37th Session of the Assembly and subsequently was endorsed by the Legal Committee, the Council and the 38th Session of the Assembly, which elevated its priority;

Aware that under the United Nations Convention Against Corruption adopted by the General Assembly on 31 October 2003, States have the obligation to endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest;

Considering that Annex 19 – *Safety Management* and ICAO guidance material identify the need for States *inter alia* to establish a strategy to mitigate potential issues arising from conflicts of interest in civil aviation; and

Convinced of the need for States to share information concerning policies and measures used to detect, avoid, mitigate and manage conflicts of interest in civil aviation;

The Assembly:

1. *Urges* States which have not done so to consider establishing a formal legal framework to detect, avoid, mitigate and manage conflicts of interest in civil aviation;
2. *Invites* States:
 - a) to examine at the national level the adequacy of their domestic legal regimes on measures and practices to detect, avoid, mitigate and manage conflicts of interest in civil aviation, with a view to ensuring and improving transparency and accountability in civil aviation regulatory activities and to balancing their particular circumstances and ability to fulfil their oversight obligations with addressing the risks to aviation safety and security posed by conflicts of interest; and