



WORKING PAPER

LEGAL COMMITTEE – 37TH SESSION

(Montréal, 4 to 7 September 2018)

Agenda Item 2: Consideration of the General Work Programme of the Legal Committee

Agenda Item 2-2: Consideration of guidance on conflicts of interest

Agenda Item 2-4: Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), and the regional multinational organisms, of the establishment of a legal framework

Agenda Item 2-5: Determination of the status of an aircraft – civil/State

Agenda Item 2-6: Promotion of the ratification of international air law instruments

**CONSIDERATION OF OTHER ITEMS ON THE
GENERAL WORK PROGRAMME OF THE LEGAL COMMITTEE**

(Presented by the Secretariat)

1. INTRODUCTION

1.1 This working paper reports on the work relating to the items 2-2, 2-4, 2-5 and 2-6 of the General Work Programme of the Legal Committee other than those respectively covered by working papers LC/37-WPs/2-1, 2-3, 2-7 and 2-8.

2. CONSIDERATION OF GUIDANCE ON CONFLICTS OF INTEREST

2.1 The Council, at the fourth meeting during its 209th Session on 25 November 2016, confirmed this item as priority No. 2 in the General Work Programme of the Legal Committee.

2.2 The 36th Session of the Legal Committee (30 November to 3 December 2015), while noting the need for all States to have a framework for managing conflicts of interest in civil aviation given the prevalence of such situations, decided on further work to be done on this topic including that a resolution be presented to the 39th Session of the ICAO Assembly (27 September - 6 October 2016). Therefore, the Assembly adopted Resolution A39-8: *Conflicts of interest in civil aviation*, which urges States to establish a framework on conflicts of interest that applies to civil aviation activities. The Resolution also mandates the Council to facilitate the collection, analysis, dissemination and promotion of best practices addressing conflicts of interest for the benefit of Member States. It further requests the Secretary General to continue to collect information from States and relevant intergovernmental organizations, concerning policies and measures in this respect and to develop a reference document identifying ICAO provisions in the Annexes and manuals relating to conflicts of interest.

2.3 Regarding work assigned to the Secretariat in Assembly Resolution A39-8 to develop a reference document identifying all provisions in Annexes and manuals relating to conflicts of interest, a multidisciplinary search and review by the Secretariat was carried out during 2017 to identify such provisions. A compilation of ICAO provisions on conflicts of interest is attached at **Appendix A** to this paper. The compilation of provisions will be made available through ICAO website.

2.4 The Assembly also noted 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. It is understood therefore that other work called for in Assembly Resolution A39-8 may not immediately proceed, as funding is to be identified.

3. **CONSIDERATION, WITH REGARD TO CNS/ATM SYSTEMS INCLUDING GLOBAL NAVIGATION SATELLITE SYSTEMS (GNSS), AND THE REGIONAL MULTINATIONAL ORGANISMS, OF THE ESTABLISHMENT OF A LEGAL FRAMEWORK**

3.1 At the fourth meeting of its 209th Session, the Council confirmed this item as priority No. 4 in the General Work Programme of the Legal Committee. At the eighth meeting of its 211th Session on 19 June 2017, the Council requested the Legal Committee to review the current wording of this item No. 4 with a view to its reformulation in a manner that better reflected developments in the technical arena that had occurred in recent years, including, *inter alia*, the adoption of the Global Air Navigation Plan (GANP) as well as other recent initiatives such as global tracking.

4. **DETERMINATION OF THE STATUS OF AN AIRCRAFT – CIVIL/STATE**

4.1 At the fourth meeting of its 209th Session, the Council confirmed this item as priority No. 5 in the General Work Programme of the Legal Committee.

4.2 At the fifth meeting of its 203rd Session in November 2014, when the Council decided to add this item to the Work Programme of the Legal Committee [and assigned it priority No. 7], it also requested that the Legal Affairs and External Relations Bureau (LEB) review the 1993 Secretariat Study on Civil/State Aircraft (1993 Study) to identify those areas where it would be possible to engage the Legal Committee, and recommended that consideration be given to ways to address the matter other than through the amendment of Article 3 b) of the *Convention on International Civil Aviation* (Chicago Convention).

4.3 During the 36th Session of the Legal Committee, in response to working paper LC/36-WP/2-6 – State/Civil Aircraft Definition and Its Impact on Aviation, the Committee concluded that a questionnaire inquiring about the practical problems States are facing due to the classification of “civil/State aircraft” should be sent out to aid in narrowing the scope of LEB’s review of the 1993 Study. Consistent with the Committee’s recommendations, the questionnaire was subsequently distributed on 1 November 2016 (State letter LE 4/50 – 16/86) and called on States to submit their responses by 1 February 2017.

4.4 Fifty-five States submitted responses to the questionnaire (23.5% of ICAO Membership), which were analyzed in the context of LEB’s review of the 1993 Study. Out of the 55 States that responded, 47 did not raise any issues or express any concerns with respect to the determination of the status of an aircraft as civil/State. Of the nine States that did raise issues or concerns, only four went so far as to call for an amendment to Article 3 of the Chicago Convention, while three others advocated the

adoption by ICAO of an interpretation of Article 3 b) along the lines of that proposed in the 1993 Study, which sought to simplify the determination of the status of an aircraft as civil/State and provide criteria for determining whether an aircraft is used in military, customs and police services. The remaining two States raised issues that can best be categorized as operational or implementation-related.

4.5 Recalling the consensus of the 36th Session of the Legal Committee that there is no need to amend Articles 3 a) and b) of the Chicago Convention, and considering that the responses received to the questionnaire did not reveal any challenges posed to States by the current legal regime relative to civil/State aircraft that necessitate updating or otherwise altering the opinions and recommendations of the 1993 Study, the Legal Committee is invited to:

- a) note the continued relevance of the opinions and recommendations in the 1993 Study relative to the issue of the determination of the status of an aircraft as civil/State;
- b) recommend to the Council that States be encouraged to cooperate with each other to address operational issues related to civil/State aircraft status and/or share best practices for implementation of Article 3 b), whether through direct consultations or the utilization of appropriate ICAO forums or regional groups; and
- c) recommend to the Council that the item “Determination of the status of an aircraft – civil/State” be deemed closed and removed from the Work Programme of the Legal Committee.

5. **PROMOTION OF THE RATIFICATION OF INTERNATIONAL AIR LAW INSTRUMENTS**

5.1 At the fourth meeting of its 209th Session, the Council confirmed this item as priority No. 6 in the General Work Programme of the Legal Committee.

5.2 The number of ratifications of the international air law instruments adopted under the auspices of ICAO is reflected in **Appendix B** to this paper, including the number of the ratifications since the end of the 36th Session of the Legal Committee on 3 December 2015. The ICAO public website, under the heading of “Treaty Collection”, provides more information, such as current lists of parties to multilateral air law treaties; the status of individual States with regard to multilateral air law treaties; a composite table illustrating the status of treaties and status of States *vis-à-vis* treaties; administrative packages to assist States in becoming parties to treaties; Assembly resolutions related to ratification matters; and current information and recommendations on ratification matters. All depositary actions are promptly reflected in a chronological record on the website.

5.3 The 39th Session of the Assembly approved amendments to Articles 50 (a) and 56, respectively, of the Chicago Convention. The amendment to Article 50 (a) increases the membership of the Council from thirty-six to forty, while the amendment to Article 56 increases the membership of the Air Navigation Commission from nineteen to twenty-one. The Assembly adopted Resolutions A39-5 and A39-7 recommending to all Contracting States that they ratify most urgently these amendments, as well as directing the Secretary General to bring these Resolutions to the attention of the Contracting States as soon as possible. Accordingly, State letter LE 3/1.20, LE 3/1.21 – 17/2 was issued on 20 January 2017 attaching the Resolutions and urging ratification of these amendments.

5.4 The importance of universal adoption of the *Convention for the Unification of Certain Rules for International Carriage by Air*, done at Montreal on 28 May 1999, was expressly recognized by the Assembly in Resolution A39-9: *Promotion of the Montréal Convention of 1999*, which urged all States that have not done so to become Parties to that Convention. Accordingly, State letter LE 3/38.1-17/25 was issued on 2 March 2017 attaching the said Resolution and urging ratification of the Convention.

5.5 The Assembly also recognized the importance of broadening and strengthening the global aviation security regime by adopting Resolution A39-10: *Promotion of the Beijing Convention and the Beijing Protocol of 2010*, which urged all States to sign and ratify the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (Beijing Convention of 2010) and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft* (Beijing Protocol of 2010). Accordingly, State letter LE 3/44, LE 3/45-17/26 was issued on 2 March 2017 attaching the said Resolution and urging ratification of the Beijing instruments. It should be noted that the Beijing Protocol of 2010 entered into force on 1 January 2018, being the first day of the second month following the ratification by the Republic of Uganda on 28 November 2017. Uganda's ratification constituted the twenty-second deposit, the required number for the entry into force of the Protocol in accordance with its Article XXIII, paragraph 1. The Beijing Convention of 2010 entered into force on 1 July 2018, being the first day of the second month following the ratification by the Republic of Turkey on 31 May 2018. Turkey's ratification constituted the twenty-second deposit, the required number for the entry into force of the Convention in accordance with its Article 22, paragraph 1.

5.6 The President of the Council and the Secretary General continuously promote international air law instruments during their visits to Member States and meetings with high-level government officials. The International Air Transport Association (IATA), the ICAO Regional Office for Eastern and Southern Africa (ESAF) and the Republic of Korea hosted legal seminars on 1 April 2016, on 27-28 November 2017, and on 24-25 May 2018, respectively, to promote, *inter alia*, these instruments. LEB also promotes ratification at legal seminars, during personal deposits by State officials, Assembly sessions and other ICAO meetings.

6. ANY OTHER BUSINESS

6.1 At the eighth meeting of its 211th Session, the Council, when approving the convening of the 37th Session of the Legal Committee, requested that the Committee give consideration to including two additional items on the provisional agenda concerning, respectively:

- a) legal aspects related to developments in space law in the context of activities being undertaken by the United Nations Office for Outer Space Affairs (UNOOSA) insofar as they apply to the ICAO mandate; and
- b) cybersecurity and specifically whether the legal aspects of this issue are currently adequately covered by provisions of the Beijing Convention of 2010.

7. ACTION BY THE COMMITTEE

7.1 The Legal Committee is invited to consider this working paper and take any action it deems necessary.

APPENDIX A

**ICAO GUIDANCE
ON CONFLICTS OF INTEREST
IN CIVIL AVIATION**

(Consolidation of Current ICAO Provisions)

July 2018

PART I - OVERVIEW

INTRODUCTION

In accordance with Assembly Resolution A39-8 *Conflicts of interest in civil aviation*, this reference document identifies provisions in the Annexes and manuals relating to conflicts of interest (COI). The purpose of this document is to provide easy reference to provisions set out in various ICAO documents that are relevant to the topic of COI.

DEFINING COI

A COI is typically defined as a situation in which an official has private interests that may or be perceived to improperly influence or interfere with the performance of his or her official duties and responsibilities. Such improper influence or perceived interference could be attributed to situations involving financial interest, family, emotional life, political or national affinity of the official. COI may also be found at the level of an organization. An organizational COI arises where an organization fails or is impeded to act impartially due to outside activities or relationships it has with other entities.

In the field of civil aviation, such COI may arise, principally, in two different scenarios:

- (a) First, through interactions between a department of the Government or its regulatory agencies with operating entities that are subject to regulation (such as air operators, aviation training organizations, approved maintenance organizations, design organizations, production organizations, air navigation service providers and aerodrome operators). Examples of COI situations that could arise in the course of such interactions include:
 - (i) direct or indirect financial interests in regulated entities;
 - (ii) movement of individuals between jobs in the regulatory and regulated entities (also referred to as “revolving door” situations);
 - (iii) performance of regulatory duties by seconded or designated staff of the regulated entities;
 - (iv) partnerships or arrangements between regulatory and regulated entities to advance the commercial interests of the regulated entities at the expense of the public interest (leading to what is also referred to as “regulatory capture”); and
 - (v) lobbying of policy or rule-making bodies on behalf of or in favour of regulated entities;
- (b) Second, through relationships between different organs or entities of the State involved in civil aviation activities, which could include:

- (i) overlap of functions between regulatory bodies and the government or its other organs such as the military, police, customs and investigative bodies;
- (ii) ownership or control of regulatory and operator entities by the State; and
- (iii) combination of regulatory and service provision functions in the same or related entities.

It is possible that COI (real or perceived), arising from such interactions or relationships, may hamper effective, independent and impartial regulation.

LEGAL FRAMEWORK

Generally, States have developed legal and institutional frameworks to deal with COI in response to requirements of their national laws or with reference to international treaties, such as the United Nations Convention Against Corruption of 2003 (UNCAC)¹ which provides for instance in Article 7(4) that: *“Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.”* There are also guidelines or codes of best practice developed by international organizations such as the Organization for Economic Cooperation and Development (OECD) or by professional bodies. Civil aviation administrations in a given State might be subject to government-wide conflicts of interest frameworks or to frameworks that apply specifically only to them or to some combination of such frameworks. Frameworks that have been developed generally for the public sector or for particular professions may not fully address conflicts of interest as they relate specifically to civil aviation activities.

In a survey carried out by the ICAO Secretariat², it was found that many States have established a framework that deals specifically with civil aviation in addition to or separate from the general framework applicable to the public sector as a whole. In this regard, many respondents observed that it was necessary to establish such a specific framework so as to manage COI risks that are unique to civil aviation and to achieve legal harmonization and certainty. Indeed, the Convention on International Civil Aviation, 1944 (the Chicago Convention) sets an early precedent for standards of conduct in rule making, when in Article 50c) it provides that *“ No representative of a contracting State on the Council shall be actively associated with the operation of an international air service or financially interested in such a service.”* ICAO has also prescribed rules in Annexes and developed guidance for States on COI.

The Assembly in A39-8 urges States which have not done so to consider establishing a legal framework to detect, avoid, mitigate and manage conflicts of interest in civil aviation. It also invites States to examine the level of adequacy of their domestic legal regimes in this regard and

¹ 186 Parties as at June 2018

² The results of the survey were reported to the Legal Committee in LC/36-WP/2-2

where necessary to enact laws and establish relevant policy frameworks. Current ICAO rules and guidance could be used as a reference to inform States as well as guide decisions and future work in this area. Assembly Resolution A39-8 is reproduced in the **Appendix**.

Annex - 17 Security and Annex 19 - Safety Management contain Standards on COI that States are required to implement.

ICAO PROVISIONS

A number of ICAO Annexes and manuals contain provisions which identify and describe potential COI situations in various activities involving civil aviation and highlight the need as well as the means and measures that could be taken by States to address them.

The provisions identified in the ICAO Annexes and manuals have been organized under the following headings, which are provided for convenience only: Safety Management and Oversight; Security; Aeronautical Charts; Charges for Airports and Air Navigation Services; Airport Economics; and Accident Investigation.

PART II - ICAO PROVISIONS RELATING TO CONFLICTS OF INTEREST

A. SAFETY MANAGEMENT AND OVERSIGHT

ANNEX 19 - SAFETY MANAGEMENT

Chapter 3. State Safety Management Responsibilities

3.2 State safety policy, objectives and resources

3.2 Each State shall establish and implement a safety oversight system in accordance with Appendix 1.

Appendix 1 State Safety Oversight System

3. State System and Functions

3.3 The State shall ensure that personnel performing safety oversight functions are provided with guidance that addresses ethics, personal conduct and the avoidance of actual or perceived conflicts of interest in the performance of official duties.

ANNEX 19 - SAFETY MANAGEMENT (APPLICABLE FROM 7 NOVEMBER 2019)

Chapter 3. State Safety Management Responsibilities

3.2 State safety policy, objectives and resources

3.2.3 State System and Functions

3.2.3.1 States shall establish State System and functions in accordance with section 3 of Appendix 1.

Appendix 1 State Safety Oversight (SSO) System Critical Elements

Section 3. State System and Function (CE-3)

3.4 State shall ensure that personnel performing safety oversight functions are provided with guidance that addresses ethics, personal conduct and the avoidance of actual or perceived conflicts of interest in the performance of official duties.

DOC 9859 – SAFETY MANAGEMENT MANUAL
Fourth Edition (advance unedited) — 2018

1.2 Safety Management Applicability

1.2.4 Applicability for State-owned or military service providers

1.2.4.2 Where the State operates as a service provider there should be a clear separation between its functions as the service provider and that of the State regulatory authority. This is accomplished by having clearly defined roles and responsibilities for State authority and service provider personnel to avoid any conflicts of interest.

Chapter 8 - STATE SAFETY MANAGEMENT

8.2 State Safety Programme (SSP)

8.4 Component 2: State Safety Risk Management

8.4.8 Accident investigation

8.4.8.1 The accident investigation authority (AIA) must be functionally independent from any other organization. Independence from the CAA of the State is of particular importance. The interests of the CAA could conflict with the tasks entrusted to the AIA. The rationale for the independence of this function from those of other organizations is that accident causation can be linked to regulatory or SSP-related factors. Also, such independence enhances the viability of the AIA and avoids real or perceived conflicts of interest.

Chapter 9 - SAFETY MANAGEMENT SYSTEMS (SMS)

9.3 Component 1: Safety Policy And Objectives

9.3.5 Safety Accountability and Responsibilities

9.3.5.14 The service provider should aim to avoid conflicts of interest between staff members' safety responsibilities and their other organizational responsibilities. They should allocate their SMS accountabilities and responsibilities, in a way that minimizes any overlaps and/or gaps.

9.3.6 Appointment of key safety personnel

9.3.6.3 In most organizations, an individual is appointed as the safety manager. Depending on the size, nature and complexity of the organization the safety manager role may be an exclusive function or it may be combined with other duties. Moreover, some organizations may need to allocate the role to a group of persons. The organization must ensure that the option chosen does not result in any conflicts of interest. Where possible, the safety manager should not be directly involved in the product or service delivery but should have a working knowledge of these. The

appointment should also consider potential conflicts of interest with other tasks and functions . Such conflicts of interest could include:

- a) competition for funding (e.g. financial manager being the safety manager);
- b) conflicting priorities for resources; and
- c) where the safety manager has an operational role and their ability to assess the SMS effectiveness of the operational activities they are involved in.

DOC 9734 - SAFETY OVERSIGHT MANUAL
Part A The Establishment And Management Of A State's Safety Oversight System

Chapter 2. Safety Oversight: An Obligation

2.3 State Safety Oversight (SSO) System

2.3.4 When the State is both the regulatory authority and service provider (e.g. an air traffic service (ATS) provider, aerodrome operator, air operator, manufacturer or maintenance organization), the requirements of the Convention will be met, and public interest be best served, by a clear separation of functions and responsibilities between the regulatory authority and the service provider. The approval, certification and continued surveillance procedures should be followed as though the service provider were a non-governmental entity.

3.3 State System And Functions (CE-3)

3.3.2 Staffing requirements

3.3.2.2 All State technical personnel authorized to perform licensing, certification, approval and/or surveillance functions, as applicable, need to possess appropriate credentials (with the empowering legislation indicated) identifying them as technical experts employed by the State authorities, with the right to unlimited and unrestricted access to aircraft, aviation-related documents, aerodromes, ATS and other relevant facilities and the associated inspection powers, as applicable and as provided by the State's primary legislation. They also need to be provided with guidance that addresses ethics, personal conduct and the avoidance of actual or perceived conflicts of interest in the performance of official duties.

3.3.2.5 It is recognized that some States (particularly those where the level of commercial air transport activity is low) may not be in a position to meet their staffing requirements due to a lack of qualified local personnel or the inability to obtain the necessary budgetary allocations. In some States, particularly when the State is also a service provider, personnel from the service provider are designated by the CAA to carry out fundamental CAA inspection functions. Such an arrangement should be avoided as it does not provide independent technical supervision and may lead to perceived or actual conflicts of interest. However, when properly controlled by the CAA, the designation of qualified service provider personnel to assist in some inspection functions can

be acceptable in terms of safety and is generally economically beneficial to both the State and the service provider. In such cases, the designated service provider personnel, when performing their designated duties, need to be kept under the supervisory and technical control of the CAA.

3.3.2.7 Regardless of the arrangements that a State makes, it is in no way relieved of its ultimate responsibility for the safe, regular and efficient conduct of aviation within its jurisdiction. It is essential that agreements or contracts for the enforcement of inspection responsibilities and duties be explicit in their requirements.

3.3.4 Establishment of service providers

3.3.4.1 Whether or not the provision of ANS and/or the operation of aerodromes is vested outside the CAA, States have to ensure effective and independent safety oversight by the CAA in its role as the regulator. A clear separation of functions and responsibilities between the regulatory authority and the service provider needs to be established, including mechanisms to avoid perceived, potential or actual conflicts of interest.

3.3.4.2 The regulatory authority and service providers should not overlap in structure, responsibility or function. In particular, for the regulatory authority to be able to take effective and independent actions, including enforcement action, if necessary, the regulatory authority and service provider should not report to the same higher level management, unless the State can demonstrate that a “functional” separation has robust checks and balances, and there is no possibility of conflict of interest, including when enforcement action is taken.

3.6 Licensing, Certification, Authorization And Approval Obligations (Ce-6)

3.6.1 General considerations

3.6.1.5 Under an effective licensing/certification/approval system, all necessary evaluations are effectively performed by qualified personnel, based on national requirements and following a formal and comprehensive process. This personnel may be from the CAA, or in case not all required specialties and competencies exist within the CAA (as happens frequently in the area of aerodromes), the evaluations may also be performed by external specialists through an appropriate delegation of functions. In such cases, the CAA should formally designate the specialists after verification of their competence and of the absence of possible conflicts of interest. The CAA should also approve the specialists’ working methodologies, define deliverables and validate results of evaluations. The outcomes of the evaluations should be properly documented and recorded, with all the pertinent records and evidence kept by the CAA.

DOC 8335 - MANUAL OF PROCEDURES FOR OPERATIONS INSPECTION, CERTIFICATION AND CONTINUED SURVEILLANCE
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5.3 Staffing

5.3.3 A State that is unable to provide sufficient staff for its operations inspectorate could arrange for experienced personnel of an operator to be seconded to the CAA to act as CAA

inspectors. In this case, a strategy to mitigate potential conflict of interest issues should be established and documented. However, it may be impossible to ensure that an inspector in such a case would not be involved in inspections concerning the operator from which the secondment was effected. It is still incumbent upon the DGCA to ensure that operator personnel, seconded as CAA inspectors, are adequately trained and qualified and subsequently supervised in the carrying out of their duties.

DOC 9379 - MANUAL OF PROCEDURES FOR ESTABLISHMENT AND MANAGEMENT OF A STATE'S PERSONNEL LICENSING SYSTEM
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PART I – General Principle and Organization

Appendix A To Part I:

Examples of Job Responsibilities and Qualifications for Key Personnel Positions

3. Examiner (Inspector or Technical Subject Matter Expert but excluding Medical Examiners)

Qualifications:

3d) have no personal or professional conflicts of interest with the examination function;

4. Examination Supervisor (Proctor)

Qualifications:

f) have no personal or professional conflicts of interest with his or her examination supervision function;

PART II - Procedures

Chapter 5 - Examining Principles

5.2 Theoretical knowledge examinations

5.2.3 Examination design and development

5.2.3.9 External question writers or moderators should have no potential conflicts of interest; for example, they should not be associated with any training organization or with persons intending to sit an examination. Precautions should also be taken not to compromise the security of examinations or questions worked on outside the Licensing Authority. Questions lost, mislaid or stolen are considered to be compromised and should be withdrawn from use.

5.4 Qualifications for Examiners

5.4.2 Whether they are responsible for theoretical examinations or practical tests, they must be experienced and current practitioners in their specialist area and have a strong background in training and assessment. Their requirement for the prescribed standard of performance from personnel being tested should not be in doubt. They should also have no professional or personal conflicts of interest with their examining function.

**DOC 10070 - MANUAL ON THE COMPETENCE OF CIVIL AVIATION SAFETY
INSPECTORS (FIRST EDITION (ADVANCE UNEDITED) — 2016**

Changing business models (Page 1-8)

In order to compensate for a shortage of locally qualified people or the inability to acquire sufficient budgetary funding allocations, States may need to consider changing their own business model. For example, they may augment the core group of CASIs with designated personnel trained and qualified to perform inspection/audit duties that are acquired through consignment agreements with other States or selected aviation service providers. In these instances, States must take special precautions to mitigate any likelihood of conflicts-of-interest when assigning inspection duties to temporary employees coming from organizations outside of the CAA. Regardless of the circumstances surrounding the CAA's level of funding or staffing, the State continues to assume full responsibility for meeting its safety obligations enshrined in the Chicago Convention and its Annexes. (Page 1-9)

B. SECURITY

ANNEX 17 - SECURITY

3.4 Quality control and qualifications

3.4.7 Each Contracting State shall ensure that the management, setting of priorities and organization of the national civil aviation security quality control programme shall be undertaken independently from the entities and persons responsible for the implementation of the measures taken under the national civil aviation security programme. Each Contracting State shall also:

- a) ensure that the personnel carrying out security audits, tests, surveys and inspections are trained to appropriate standards for these tasks in accordance with the national civil aviation security programme;
- b) ensure that the personnel carrying out security audits, tests, surveys and inspections are afforded the necessary authority to obtain information to carry out these tasks and to enforce corrective actions;
- c) supplement the national civil aviation security quality control programme by establishing a confidential reporting system for analysing security information provided by sources such as passengers, crew and ground personnel; and
- d) establish a process to record and analyse the results of the national civil aviation security quality control programme, to contribute to the effective development and implementation of the national civil aviation security programme, including identifying the causes and patterns of non-compliance and verifying that corrective actions have been implemented and sustained.

DOC 10047 - AVIATION SECURITY OVERSIGHT MANUAL**2.4 Government Approach To Control And Supervision****2.4.2 Characteristics of an effective State aviation security oversight system**

2.4.2.3 It is equally important that an independent oversight infrastructure provide close governmental control and supervision where security functions are performed directly by civil service staff. This poses a challenge in States where the State is both the regulatory authority and an airport operator, aircraft operator, ATSP or other service provider or operator. In order to avoid any potential conflict of interest, there should be a clear separation of authority and responsibility between the State regulatory authority and any State-run operator or service provider. All approval, certification and continued surveillance procedures should be followed as though the operating agency was a non-government entity.

3.4 State Appropriate Authority for Aviation Security and Its Responsibilities (Ce-3)**3.4.2 Staffing requirements**

3.4.2.5 Persons and entities responsible for the management, setting of priorities and organization of the NQCP should operate independently from persons and entities responsible for the implementation of measures under the NCASP, to avoid the perception of conflict of interest, and to ensure that designated personnel who perform aviation security oversight functions are, in turn, also subject to surveillance.

**DOC 9807 – UNIVERSAL SECURITY AUDIT PROGRAMME
CONTINUOUS MONITORING MANUAL****2.4 Auditing principles**

2.4.1 The following auditing principles apply to USAP-CMA activities, in accordance with *ISO 19011:2011 — Guidelines for Auditing Management Systems*.

(e) **Independence:** the basis for the impartiality of the audit and objectivity of the audit conclusions. Auditors should be independent of the activity being audited and should in all cases act in a manner that is free from bias and conflict of interest. Auditors should maintain objectivity throughout the audit process to ensure that the audit findings and conclusions are based only on the audit evidence.

APPENDIX D – ICAO CODE OF CONDUCT FOR AUDITORS

23. Conflicts of interest may occur when an international civil servant's personal interests interfere with the performance of his/her official duties or call into question the qualities of integrity, independence and impartiality required the status of an international civil servant. Conflicts of interest include circumstances in which international civil servants, directly or indirectly, may benefit improperly, or allow a third party to benefit improperly, from their association with their organization. Conflicts of interest can arise from an international civil servant's personal or familial dealings with third parties, individuals, beneficiaries, or other institutions. If a conflict of interest or possible conflict of interest does arise, the conflict shall be disclosed, addressed and resolved in the best interest of the organization. Questions entailing a conflict of interest can be very sensitive and need to be treated with care.

C. AERONAUTICAL CHARTS

DOC 8697 - AERONAUTICAL CHART MANUAL

1.5 Relations with other States

1.5.2 If responsibility [for the provision of aviation cartographic services] is delegated to an agency, it is very desirable that such agency should at least have an adequate technical background and preferably be one engaged in or allied to civil aviation. Where such background is lacking, the need for close coordination and liaison increases. An agency may be appointed to cover the whole or any part of the aeronautical charting programme and here again the responsibilities delegated should be clearly defined.

D. CHARGES FOR AIRPORTS AND AIR NAVIGATION SERVICES

DOC 9082 - ICAO POLICIES OF CHARGES FOR AIRPORTS AND AIR NAVIGATION SERVICES

Section I. General

Economic oversight

12. States' exercise of their economic oversight responsibilities should be clearly separated from the operation and provision of airports and air navigation services, with roles and powers clearly defined for each function.

E. AIRPORT ECONOMICS

DOC 9562 - AIRPORT ECONOMICS MANUAL

Chapter 2 - Ownership, Control And Governance Of Airports

B — Government Ownership And Control

2.7 When a government plays both the role of regulator (i.e. performing its economic oversight function) and service provider, it should consider a clear separation of the regulatory and operational functions, with roles and powers clearly defined for each function as recommended in ICAO's policies on charges in Doc 9082 (Section I, paragraph 12). This is because too close a relationship between the regulator and the service provider can result in conflicts of interest and undermine public confidence and trust in the adequacy of the system, and because overlaps in the regulatory and operational functions may lead to diffuse accountability relationships within the entity. Separation enhances transparency in the decision-making process and makes clear the lines of accountability and the authority of one branch to monitor the activities of the other.

F. ACCIDENT INVESTIGATION

DOC 9756 - MANUAL OF AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATION (Part 1 – Organization And Planning)

The Accident Investigation Authority

2.1 Structure

2.1.1 In conformity with Article 26 of the Convention on International Civil Aviation, it is incumbent on the State in which an aircraft accident occurs to institute an inquiry into the circumstances of the accident. This obligation can be met only when appropriate legislation on aircraft accident investigation is in place. Such legislation shall make provision for the establishment of an accident investigation authority (or commission, board or other body) for the investigation of aircraft accidents and incidents that is independent from State aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation.

2.1.2 The accident investigation authority must be strictly objective and totally impartial and must also be perceived to be so. The authority should be established in such a way that it can withstand political or other interference or pressure. Many States have achieved this objective by setting up their accident investigation authority as an independent statutory body or by establishing an accident investigation organization that is separate from the civil aviation administration. In these States, the accident investigation authority reports directly to Congress, Parliament or a ministerial level of government (see Figure I-2-1 and Figure I-2-2 as examples).

DOC 9962 - MANUAL ON ACCIDENT AND INCIDENT INVESTIGATION POLICIES AND PROCEDURES

3.2 Independence

3.2.1 Maintaining independence in the conduct of investigations will result in enhancing the credibility of the [Investigation Authority] and its ability to avoid situations that have the potential to create conflicts of interest. Maintaining independence of the investigation function is equally important for accident and incident investigations.

3.2.2 The intent of “independence” is that the [Investigation Authority] shall be functionally independent, in particular of the national civil aviation authorities responsible for airworthiness, certification, flight operation, maintenance, licensing, air traffic control or airport operation and, in general, of any other party whose interests could conflict with the task entrusted to the investigation authority.

3.2.3 “Independence” does not mean that the [Investigation Authority] would not be administratively supervised and accountable to a governmental minister or ministry (or parliament) for its finances, administration, policies and working methods (which should be transparent).

4.2 The Selection and Appointment of Investigators

4.2.5 The use of outside expertise is accomplished by written contracts and/or MoUs which include provisions to ensure that the seconded individuals are relieved of their regular duties during the course of the investigation. Their independence and objectivity in the investigation work is essential, and it is important to ensure there are no real or perceived conflicts of interest on the parts of seconded individuals. Seconded investigators should be given proper credentials and should sign written agreements to comply with [Name of State] laws, regulations, policies and procedures, and to demonstrate their independence and objectivity, and that there are no conflicts of interest during the period of the secondment.

5.5 Delegation of the Investigation (In whole or in part)

5.5.2 For occurrences in which [Name of State] is the State of Occurrence, and involving aircraft operated, registered, designed and/or manufactured by other State(s), the [Investigation Authority] may consider delegating the whole or parts of the investigation to an aircraft accident investigation authority in another State or to an RAIO, in order to facilitate a timely investigation. For example, for aircraft component examinations that must be conducted at facilities outside of [Name of State], the [Investigation Authority] may delegate the oversight of the examinations to the accident investigation authority in another State. Whenever possible, the facility should not be the manufacturer, in order to avoid a real or perceived conflict of interest. However, there may be times when the only appropriate expertise or tooling will be at the manufacturer’s facility, so it will be necessary to ensure investigator supervision of the work. Until the [Investigation Authority] establishes its own flight recorder laboratory, replay and analysis for recorders should be conducted in the facilities of other States with recorder read-out capabilities, in accordance with guidance provided in ICAO Annex 13, Attachment D, Guidelines for Flight Recorder Read-out and Analysis.

Investigation Policies and Procedures

6.1 General

6.1.9 Should the recorders sustain damage in such a way that they cannot readily be read out at the chosen facility, or are of a type that requires additional expertise or equipment (such as Russian-built flight recorders), the [Investigation Authority] should seek expert assistance consistent with the provisions of ICAO Annex 13. In some cases, the recorder may need to be taken to its manufacturer for read-out. In such cases, the work should normally be supervised by a [Investigation Authority] investigator, or an investigator from another State to ensure that there is no real or perceived conflict of interest.

9.1 Laboratory Testing of Aircraft Systems and Components

9.1.2 Specialist examinations may range from a scanning electron microscope (SEM) examination of a failed part to chemical analysis, and/or aircraft systems testing or flight testing. Laboratory examination and testing generally entail the use of specialized equipment not available at the accident site and are often beyond the capability of an aircraft maintenance facility. Consideration should be given to using the component manufacturer's facilities where specialized equipment and trained personnel are readily available. However, this should require close supervision by the [Investigation Authority] investigators, or by investigators designated by the [Investigation Authority] to ensure that there is no real or perceived conflict of interest. All activities, particularly disassembly and testing phases, should be documented and photographed for evidence purposes.

APPENDIX 1

A39-8: 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

A39-8: Cont'd

b) where necessary, to enact legislation and establish systems, codes and practices which promote the awareness of potential conflicts of interest in civil aviation;

3. *Urges* States to ensure the enforcement of rules and measures to detect, avoid, mitigate and manage conflicts of interest relating to safety oversight in civil aviation;

4. *Mandates* the Council to facilitate the collection, analysis, dissemination and promotion of best practices addressing conflicts of interest for the benefit of Member States, taking advantage of existing expertise in the States and within the United Nations and other relevant international organizations;

5. *Requests* the Secretary General to continue to collect information from States and relevant intergovernmental organizations, concerning policies and measures used to detect, avoid, mitigate and manage conflicts of interest in civil aviation, in order to advance the study of this issue;

6. *Requests* the Secretary General to develop a reference document identifying all provisions in the Annexes and manuals relating to conflicts of interest;

7. *Mandates* the Legal Committee to keep the issue of conflicts of interests in civil aviation under regular review; and

8. *Calls upon* States to extend to the Secretary General their full support and assistance in the implementation of the present resolution, including the provision of expertise and information.

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APPENDIX B

STATUS OF INTERNATIONAL AIR LAW INSTRUMENTS (As at 15 June 2018)						
		Entry into force	Signatures	Ratifications or Accessions (and number required for entry into force where applicable)		Ratifications since 3 December 2015
1.	Convention on International Civil Aviation Chicago, 7 December 1944 (Doc 7300) Depositary: US	4/4/47	52	192		1
2.	International Air Services Transit Agreement Chicago, 7 December 1944 (Doc 7500) (part of Doc 9587) Depositary: US	30/1/45		133		2
3.	International Air Transport Agreement Chicago, 7 December 1944 (part of Doc 9587) Depositary: US	8/2/45		11		None
4.	Protocol on the Authentic Trilingual Text Buenos Aires, 24 September 1968 (incorp. in Doc 7300) Depositary: US	24/10/68	58	153		1
5.	Protocol on the Authentic Quadrilingual Text Montreal, 30 September 1977 (Doc 9217) (incorp. in Doc 7300) Depositary: US	16/9/99	39	90		2
*6.	Protocol on the Authentic Quinquelingual Text Montreal, 29 September 1995 (Doc 9663) Depositary: US	-	66	76	Final para ¹	1
*7.	Protocol on the Authentic Six-Language Text Montreal, 1 October 1998 (Doc 9721) Depositary: US	-	60	57	Final para ¹	1
8.	Article 93 <i>bis</i> , Chicago Convention Montreal, 27 May 1947 (incorp. in Doc 7300) Depositary: ICAO	20/3/61		118		2
9.	Article 45, Chicago Convention Montreal, 14 June 1954 (incorp. in Doc 7300) Depositary: ICAO	16/5/58		144		2
10.	Articles 48(a), 49(e) and 61, Chicago Convention Montreal, 14 June 1954 (incorp. in Doc 7300) Depositary: ICAO	12/12/56		147		2
11.	Article 50(a), Chicago Convention Montreal, 21 June 1961 (incorp. in Doc 7300) Depositary: ICAO	17/7/62		135		1
12.	Article 48(a), Chicago Convention Rome, 15 September 1962 (incorp. in Doc 7300) Depositary: ICAO	11/9/75		122		2
13.	Article 50(a), Chicago Convention New York, 12 March 1971 (Doc 8970) (incorp. in Doc 7300) Depositary: ICAO	16/1/73		132		2

1. This Protocol will enter into force only when the corresponding amendment to the Final Paragraph of the Convention on International Civil Aviation enters into force.

* Not in force

STATUS OF INTERNATIONAL AIR LAW INSTRUMENTS (As at 15 June 2018)						
		Entry into force	Signatures	Ratifications or Accessions (and number required for entry into force where applicable)		Ratifications since 3 December 2015
14.	Article 56, Chicago Convention Vienna, 7 July 1971 (Doc 8971) (incorp. in Doc 7300) Depositary: ICAO	19/12/74		135		1
15.	Article 50(a), Chicago Convention Montreal, 16 October 1974 (Doc 9123) (incorp. in Doc 7300) Depositary: ICAO	15/2/80		130		1
16.	Final paragraph (Russian Text), Chicago Convention Montreal, 30 September 1977 (Doc 9208) (incorp. in Doc 7300) Depositary: ICAO	17/8/99		124		1
17.	Article 83 <i>bis</i> , Chicago Convention Montreal, 6 October 1980 (Doc 9318) (incorp. in Doc 7300) Depositary: ICAO	20/6/97		174		6
18.	Article 3 <i>bis</i> , Chicago Convention Montreal, 10 May 1984 (Doc 9436) (incorp. in Doc 7300) Depositary: ICAO	1/10/98		155		6
19.	Article 56, Chicago Convention Montreal, 6 October 1989 (Doc 9544) (incorp. in Doc 7300) Depositary: ICAO	18/4/05		127		1
20.	Article 50(a), Chicago Convention Montreal, 26 October 1990 (Doc 9561) (incorp. in Doc 7300) Depositary: ICAO	28/11/02		142		2
*21.	Final paragraph (Arabic Text), Chicago Convention Montreal, 29 September 1995 (Doc 9664) Depositary: ICAO	-		67	122 required	1
*22.	Final paragraph (Chinese Text), Chicago Convention Montreal, 1 October 1998 (Doc 9722) Depositary: ICAO	-		54	124 required	1
*23.	Article 50(a) Montréal, 6 October 2016 (Doc 10077) Depositary: ICAO			18	128 required	18
*24.	Article 56 Montréal, 6 October 2016 (Doc 10076) Depositary: ICAO			18	128 required	18
25.	Convention on the International Recognition of Rights in Aircraft Geneva, 19 June 1948 (Doc 7620) Depositary: ICAO	17/9/53	27	90		1
26.	Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface Rome, 7 October 1952 (Doc 7364) Depositary: ICAO	4/2/58	26	51		2

STATUS OF INTERNATIONAL AIR LAW INSTRUMENTS <i>(As at 15 June 2018)</i>						
		Entry into force	Signatures	Ratifications or Accessions (and number required for entry into force where applicable)		Ratifications since 3 December 2015
27.	Protocol of Amendment to the Rome Convention Montreal, 23 September 1978 (Doc 9257) Depositary: ICAO	25/7/02	14	12		None
28.	Convention for the Unification of Certain Rules relating to International Carriage by Air Warsaw, 12 October 1929 (ICAO-Net) Depositary: Poland	13/2/33	21	152		None
29.	The Hague Protocol amending the Warsaw Convention The Hague, 28 September 1955 (Doc 7632) Depositary: Poland	1/8/63	38	137		None
30.	Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules relating to International Carriage by Air Performed by a Person other than the Contracting Carrier Guadalajara, 18 September 1961 (Doc 8181) Depositary: Mexico	1/5/64	23	86		None
*31.	Guatemala City Protocol Guatemala City, 8 March 1971 (Doc 8932/2) Depositary: ICAO	-	33	7 ratifications 5 accessions	30 required	None
32.	Additional Protocol No. 1 Montreal, 25 September 1975 (Doc 9145) Depositary: Poland	15/2/96	33	51		1
33.	Additional Protocol No. 2 Montreal, 25 September 1975 (Doc 9146) Depositary: Poland	15/2/96	34	52		1
*34.	Additional Protocol No. 3 Montreal, 25 September 1975 (Doc 9147) Depositary: Poland	-	32	21	30 required	None
35.	Montreal Protocol No. 4 Montreal, 25 September 1975 (Doc 9148) Depositary: Poland	14/6/98	38	60		1
36.	Convention for the Unification of Certain Rules for International Carriage by Air Montreal, 28 May 1999 (Doc 9740) Depositary: ICAO	4/11/03	72 States, 1 Regional Economic Integration Organisation	132		16
37.	Convention on Offences and Certain Other Acts Committed on Board Aircraft Tokyo, 14 September 1963 (Doc 8364) Depositary: ICAO	4/12/69	41	186		None
*38.	Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft Montréal, 4 April 2014 Depositary: ICAO	-	30	13	22 required	12
39.	Convention for the Suppression of Unlawful Seizure of Aircraft The Hague, 16 December 1970 (Doc 8920) Depositaries: RF, UK, US	14/10/71	77	185		None

STATUS OF INTERNATIONAL AIR LAW INSTRUMENTS (As at 15 June 2018)						
		Entry into force	Signatures	Ratifications or Accessions (and number required for entry into force where applicable)		Ratifications since 3 December 2015
40.	Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation Montreal, 23 September 1971 (Doc 8966) Depositaries: RF, UK, US	26/1/73	60	188		None
41.	Montreal Supplementary Protocol Montreal, 24 February 1988 (Doc 9518) Depositaries: RF, UK, US, ICAO	6/8/89	69	175		2
42.	Convention on the Marking of Plastic Explosives for the Purpose of Detection Montreal, 1 March 1991 (Doc 9571) Depositary: ICAO	21/6/98	51	155 [25 producers]		2
43.	Convention on the Suppression of Unlawful Acts relating to International Civil Aviation Beijing, 10/9/10 (Doc 9960) Depositary: ICAO		33	23	Will enter into force on 1 July 2018	11
44.	Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft Beijing, 10/9/10 (Doc 9959) Depositary: ICAO	1/1/18	35	24		12
45.	Convention on International Interests in Mobile Equipment Cape Town, 16/11/01 (Doc 9793) Depositary: Unidroit	1/3/06	28	72		12
46.	Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment Cape Town, 16/11/01 (Doc 9794) Depositary: Unidroit	1/3/06	28	72		12
*47.	Convention on Compensation for Damage Caused by Aircraft to Third Parties (GRC) Montréal, 2/5/09 (Doc 9919) Depositary: ICAO		13	12	35 required	5
*48.	Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft (UICC) Montréal, 2/5/09 (Doc 9920) Depositary: ICAO		11	9	35 required	5
49.	Convention on the Privileges and Immunities of the Specialized Agencies United Nations, 21 November 1947 - application to ICAO Depositary: UN (and ICAO)	2/12/48		114		2
50.	Joint Financing Agreement - Greenland Geneva, 25 September 1956 (Doc 9585) Depositary: ICAO	6/6/58	13	19		None
51.	Protocol of Amendment to the Joint Financing Agreement - Greenland Montreal, 3 November 1982 Further amendments in 2008 (incorp. in Doc. 9585) Depositary: ICAO	1/1/83 provisional 17/11/89 definitive.	17	23		None

STATUS OF INTERNATIONAL AIR LAW INSTRUMENTS (As at 15 June 2018)						
		Entry into force	Signatures	Ratifications or Accessions (and number required for entry into force where applicable)		Ratifications since 3 December 2015
52.	Joint Financing Agreement - Iceland Geneva, 25 September 1956 (Doc 9586) Depositary: ICAO	6/6/58	13	19		None
53.	Protocol of Amendment to the Joint Financing Agreement - Iceland Montreal, 3 November 1982 Further amendments in 2008 (incorp. in Doc. 9586) Depositary: ICAO	1/1/83 provisional 17/11/89 definitive	17	24		None
54.	International Agreement on the Procedure for the Establishment of Tariffs for Intra-European Scheduled Air Services Paris, 16 June 1987 Depositary: ICAO	5/6/88	13	15		None
55.	International Agreement on the Sharing of Capacity on Intra-European Scheduled Air Services Paris, 16 June 1987 Depositary: ICAO	17/7/88	10	11		None
56.	Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe Paris, 30 April 1956 Depositary: ICAO	21/8/57	17	24		3
57.	International COSPAS-SARSAT Programme Agreement Paris, 1 July 1988 Parties to the Agreement: States participating as: Ground Segment Providers (GSP) User States (US) Depositaries: ICAO and IMO	30/8/88	4	29 9		2 GSP + 1 change from US to GSP

— END —