



| ICAO

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ASSEMBLY
FORTIETH SESSION

Montréal, 24 September – 4 October 2019

LEGAL
COMMISSION

REPORT

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



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ASSEMBLY – 40TH SESSION
MONTREAL, 24 SEPTEMBER TO 4 OCTOBER 2019

REPORT OF THE LEGAL COMMISSION

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REPORT OF THE LEGAL COMMISSION TO THE ASSEMBLY

General

1. The Legal Commission held three meetings between 25 September and 30 September 2019. Mr. Abdul Kadir Jailani (Indonesia) was elected by the Plenary as Chairperson of the Commission.
2. At its first meeting, the Commission elected Mr. J. Klang (United States) and Mr. Mohammed Mansoor Al-Ruqaishi (Oman) as its First and Second Vice-Chairpersons, respectively.
3. The three meetings of the Commission were held in open session.
4. Representatives from 127 Member States and 25 observer delegations attended one or more meetings of the Commission.
5. The Secretary of the Commission was Dr. J. Huang, Director of the Legal Affairs and External Relations Bureau. Mr. B. Verhaegen, Senior External Relations and Legal Officer and Mr. A. Jakob, Senior Legal Officer, acted as his Deputies. The Assistant Secretaries were Messrs. C. Petras, A. Opolot, J. Thachet, Ms. M. Weinstein and Mr. Y. Nyampong, Legal Officers; as well as Ms. D. Brookes and Mr. M. Vaugeois, Acting Legal Officers.

Agenda and Working Arrangements

6. Agenda items 37, 38, 39 and 40 referred to the Commission by the Plenary were considered, as follows:

Item 37: Annual Reports of the Council to the Assembly for 2016, 2017 and 2018.

Item 38: Work Programme of the Organization in the legal field.

Item 39: Consolidated Statement of Continuing ICAO policies in the legal field.

Item 40: 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 37: Annual Reports of the Council to the Assembly for 2016, 2017 and 2018

37:1 The Commission noted the chapters of the Annual Reports of the Council to the Assembly for the years 2016, 2017 and 2018 as well as the Supplement for the first half of the year 2019 which had been referred to it by the Plenary.

Agenda Item 38: Work Programme of the Organization in the legal field

38:1 The Commission considered this item on the basis of A40-WP/78, presented by the Council: A40-WP/101, presented by Brazil and the United States and A40-WP/293 presented by IATA. The Commission noted Information Papers A40-WP/375, presented by the Republic of Korea and A40-WP/545, presented by Indonesia.

38:2 A40-WP/78 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 General Work Programme of the Legal Committee, including the prioritization of items. The Secretariat further informed the Commission of the outcome of the review of the liability limits of the Montreal Convention of 1999 and drew the Commission's attention to the fact that the revised limits would become effective for all States Parties as of 28 December 2019. A large number of delegations expressed support for A40-WP/78 and appreciation for the work of the Legal Affairs and External Relations Bureau (LEB), as well as the work of the Legal Committee and the working groups.

38:3 The delegation of Brazil presented A40-WP/101, which was co-sponsored by the United States, concerning Article 12 of the Chicago Convention and the need for a communication mechanism and guidelines to support its implementation. Noting that the prompt notification and communication of alleged violations of aviation rules is necessary for States to fulfill their enforcement obligations under Article 12 and will enhance safety, the delegation concluded by proposing that the Legal Commission request the Council to create a legal and technical working group under the Legal Committee to study mechanisms to support the implementation of Article 12. The United States, as co-sponsor, took the floor to point out that the promotion of aviation safety worldwide requires cooperation and unimpeded and agile communication among States, particularly their aviation authorities, regarding alleged violations of operating rules. Therefore, the creation of a legal and technical working group to assess and improve upon the process for notification and communication between States will result in the enhancement of global aviation safety.

38:4 When the Chairperson opened the floor for discussion, the first delegation to take the floor expressed support for A40-WP/101 overall, but stated the proposal required further refinement and clarification, to include consideration of rules of the air violations over the high seas, and incorporation of the *just culture* concept. The remaining delegations taking the floor all offered support for the paper, but with the caveat by a number of them that consideration of mechanisms to support implementation of Article 12 take into account the *just culture* concept. Following an intervention by the Director of LEB, which highlighted the advantages of Secretariat formed groups from both a budgetary perspective and as a means of interfacing with technical bodies working on the same or similar issues, several delegations expressed support for the creation of a Secretariat group or task force to address Article 12 implementation mechanisms.