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INTERNATIONAL REVIEW

INTERNATIONAL CIVIL AVIATION ORGANIZATION

1966 REPORT OF THE SUBCOMMITTEE ON THE ROME CONVENTION†

I. INTRODUCTION

The Subcommittee held its second session at Oxford (England) from 24 March to 4 April 1966, with twelve meetings, under the chairmanship of Mr. A. W. G. Kean. The Subcommittee at its first session (March 1965) had considered the probable reasons of States for not ratifying the Rome Convention. It had observed in its Report of that session (LC/SC/Rev. Rome No. 9, 30/3/65) that it would need for its further study information on certain points and that it would be helpful if States (especially those not represented on the Subcommittee) and International Organizations would provide such information and, in particular, more information concerning (a) which provisions, if any, of the Convention are the main obstacles to its ratification, (b) proposals for overcoming those obstacles, and (c) the acceptability of the suggestions mentioned in that Report. Accordingly, the Secretariat invited States and International Organizations to provide the desired information. The replies received were made available to the Subcommittee at its second session.

The above-mentioned comments of States and other suggestions made in the course of the meeting by the members of the Subcommittee were considered in accordance with the following grouping of the Chapters of the Rome Convention:

- (1) Principles of Liability;
- (2) Extent of Liability;
- (3) Security for Operator's Liability;
- (4) Rules of Procedure and Limitation of Actions;
- (5) Application of the Convention and General Provisions; and
- (6) Final Provisions.

II. PRINCIPLES OF LIABILITY

A. Absolute Liability

No State in its comments suggested any change in the basic principle of absolute liability and no such change was suggested by any member of the Subcommittee.

† Paragraph 2 of the Report which lists persons attending the session and the Appendix are omitted.

B. Noise And Sonic Boom

A number of States had commented that the second sentence of Article 1, paragraph 1, may be ambiguous particularly in the case of damage caused by sonic boom. It is not clear whether that sentence excludes the liability of the operator for physical damage caused by the mere passage of the aircraft in accordance with applicable regulations, or whether the exclusion of liability is restricted to annoyance or other inconvenience. The question of sonic boom has taken on a greater degree of importance after the Rome Conference of 1952, when the implications of supersonic flight for civil aviation were not as well known as today.

Some members of the Subcommittee considered that the provision in question should not be changed as any modification would constitute a barrier to further ratification of the Rome Convention and would also cause difficulty for those States which were already parties to that Convention.

Some members wished to amend the text of Article 1, paragraph 1, second sentence, so as to ensure that the regulation of damage resulting from supersonic flight should be left to the national law of the States overflown, at any rate until such time as more was known about the effects of supersonic flight. One member mentioned the possibility of leaving the whole question of liability for damage caused by noise and sonic boom to be regulated by national law.

Others suggested that Article 1(1) of the Convention should be amended to provide that damage resulting from supersonic flight should give rise to liability even though the flight was in conformity with existing air traffic regulations.

Still others considered that it was wrong that liability should turn upon the character of the flight so that compensation would be paid if the damage resulted from supersonic flight, but not if identical damage resulted from subsonic flight.

Attention was drawn to Section 40, sub-sections (1) and (2), of the United Kingdom Civil Aviation Act 1949, which distinguishes between "material" damage for which there is absolute liability even if local regulations are complied with, and non-material damage, *e.g.*, interference with amenities (nuisance) for which there is no liability at all, if the applicable regulations are complied with and the flight is at a reasonable height. Some members observed that non-physical damage could be of greater importance than physical damage, *e.g.*, large-scale interference with radio and television signals or mental disturbance and that, in some cases, it might be difficult to make a clear distinction between physical and non-physical damage.

In connection with damage resulting from mere passage of aircraft, the Subcommittee noted that difficulties might arise from cumulative damage. Such is the case where damage is caused only to a negligible extent by each of several aircraft, or by a number of flights of the same aircraft, none of them however having caused the whole of the damage or an

identifiable part of the total damage. The case of cumulative damage presents problems the solution of which would require further examination.

C. Nuclear Damage

The Vienna Convention on Civil Liability for Nuclear Damage, 21 May 1963, and the Paris Convention on Third Party Liability in the Field of Nuclear Energy, 29 July 1960, as well as the Brussels Protocol of 1963 thereto, channel liability to the operator of the nuclear installation, and exclude the liability of all other persons, an exclusion which would apply to the operator of an aircraft. Article II.5 of the Vienna Convention provides that the exclusion is not to affect the application of any international convention in the field of transport in force or open for signature on 21 May 1963. There is a corresponding provision in the regional convention. It is not clear whether this provision extends to amendments made to existing conventions after 21 May 1963, and the Subcommittee considered it advisable to insert in any protocol which might amend the Rome Convention, or in any new convention on the subject, a provision that (1) the operator of the aircraft is not to be liable under the Rome system for nuclear damage, or (2) the Rome Convention shall, in respect of nuclear damage, be subject to the provisions of conventions or national laws relating to nuclear damage. The Subcommittee considered that a decision could not be reached as to which of these solutions was acceptable without further study and consultation with the International Atomic Energy Agency on this point.

III. EXTENT OF LIABILITY

A. Limits Of Liability

The comments of many States on the previous report of the Subcommittee indicated that the present low limits in the Convention hinder ratification by them. At least one State which was preparing to ratify the Rome Convention wished it to be known that it considered that the limits should be increased. Some members indicated that their States would be prepared to ratify the Convention with the existing limits.

Agreement on revised limits does not seem likely at present. Among the States represented on the Subcommittee, one State suggested \$4,000,000 and another State suggested \$30,000,000 as the overall limit. The Subcommittee did not consider itself at present under a duty to reconcile these differences, which involve questions of the likely extent of damage, the costs of insurance and other matters not wholly of a legal nature.

The Subcommittee received information about some of these matters which it is as well to record. The tendency is for airlines flying into the United States of America to take out insurance against third party liability (including but not restricted to damage on the surface) up to very high amounts, a figure mentioned being \$60,000,000. The Subcommittee was advised by one Delegation that this type of insurance normally costs about 10% to 15% of the cost of insurance against passenger liability, and that

a small private operator can insure his aircraft against third party risks (including but not restricted to surface damage) up to a limit of \$1,000,000 for about \$300 per annum. An estimate given was that to cover these risks up to a limit of \$15,000,000 per annum would cost a commercial airline approximately \$1,500 per aircraft, though it was emphasized that premiums necessarily vary according to circumstances and the record of the operator. Advice was received that the cost of insurance for the same operator against the same risk does not increase in proportion to the limit of liability. The Subcommittee understands from the Delegation of the United States that, in the case of the Staten Island collision, although all claims have not been settled, the majority of the claims for surface damage have been settled at a total of \$1,000,000, though it was earlier feared that the damage might have been much greater. While this was not the only case of its kind that could occur, the Subcommittee noted it as being indicative of what could occur in practice.

In case it proves impossible for a sufficient majority of States to agree on new limits, suggestions were put forward for introducing a measure of elasticity. These included:

- (1) A suggestion by the Swiss member that each State should, within the framework provided for by the Convention (weight scales, distribution rules, etc.), fix its own limits applicable to damage in its own territory, subject to two requirements:
 - (a) there must be no discrimination between national and foreign aircraft;
 - (b) the State must notify its limits to ICAO, which would inform all other Contracting States.

The Swiss member of the Subcommittee observed that this system would enable States which desired high or low limits to become parties to the Convention, and that the State in which the damage occurred was the best judge of the figures at which liability should be limited in respect of damage in that State, which might be determined:

- (a) by the general standard of living in that country,
- (b) by the balance between the interests of aviation and the interests of members of the community that might suffer damage or injury on the surface.

The Swiss member further observed that such a solution could be modified:

- (a) by setting up an upper overall limit by the Convention,
- (b) by giving Contracting States complete freedom as to the manner in which they would want to determine their limit,
- (c) by applying the limit of the State of registration of the aircraft if that limit is higher than the limit set by the State of occurrence.

The Swiss suggestion was criticized on the ground that, in effect, it would abolish the limitation of liability, which is an important feature of the Convention and the *quid pro quo* for absolute liability. This would be so unless the Convention provided for a ceiling above which the limit could not be fixed. States would, for reasons of prestige or for the better

protection of their own citizens, be inclined to adopt a very high limit, and (it was said) the Swiss suggestion would really be an increase to the highest limit. Some members of the Subcommittee considered that the Swiss formula constituted a retreat from the Rome Convention since it allowed limits to be fixed on a national basis. It was also observed that varying national limits do not facilitate the task of insurers, but that this problem could be eased if there was regional agreement as to limits, which seemed to be likely. Others observed that this dilution of the Convention might be the only way in which its extensive application could be assured.

(2) The Mexican member of the Subcommittee proposed a system which differed from the Swiss suggestion in that States would be free to fix limits for damage caused in their own territory, according to whatever figures and system they considered best, but:

- (a) subject to an overall limit to be specified in the Convention (a figure three times the present Rome limit for the heaviest aircraft was proposed, *i.e.*, \$4,041,000 per aircraft and incident);
- (b) to leave it for each Contracting State to establish limits lower than the said general maximum limit of compensation payable per aircraft and incident through special legislation, taking into account the fact that the operator would have to take out insurance or other necessary security. The establishment of such lower limits shall be made by each Contracting State according to the system which it considers to be most convenient (weight of the aircraft, value of the aircraft, number of persons, etc.).
- (c) Compensation for death or personal injury would be limited by each State at a figure not exceeding \$100,000 per person (three times the present limit). The figure of \$100,000 per person is that suggested by Denmark, Finland, Norway and Sweden as the new limit of liability for death and personal injury. There would also be a minimum of \$33,000 below which the limit could not be fixed.

Some members of the Subcommittee observed that a flexible system with too low a ceiling might defeat its own purpose by rendering the proposal unacceptable to States which wanted a higher limit. The Subcommittee did not, for the reasons given above, attempt to consider the figures used in the Mexican scheme, but some members observed that the Mexican scheme met some of the criticisms of the Swiss scheme.

The point made was that, whether the Swiss or the Mexican proposal was adopted, amendments of the limits fixed by a State should not enter into force until after the lapse of a period of time to be specified in the Convention. It was also observed that, under either scheme, operators might feel obliged to take out insurance up to the highest amount fixed by any of the States in which they would operate.

The Subcommittee unanimously considered it unwise to make any recommendation about the limits of liability for death and personal in-

jury until the outcome of present and future deliberations about the Warsaw Convention was known. It observed that the Rome Convention provides for double the Hague limits or four times the Warsaw limits, but that that proportion might or might not be retained, according to the figure to which those limits might be raised. One member, however, was of the view that, in any event, the limits of liability for death or personal injury should not be less than \$150,000 per person.

B. Unlimited Liability With Limited Compulsory Insurance

During the course of discussion a suggestion was made concerning Chapters II and III of the Rome Convention (Extent of Liability and Security for Operator's Liability) as follows:

- 1) Amend Chapter II, so as to delete the provisions on limits, leaving it to the overflowed State to decide whether there should be a limit to the compensation recoverable under the Convention for damage caused to persons or property on the surface of its territory, and if so what the limit should be; and
- 2) Insert in Chapter III a provision specifying the minimum amount in which an operator must insure to cover the risks of damage contemplated by the Convention.

Comment: This suggestion would remove the objection which some States have to ratifying a Convention which contains a provision limiting liability; and at the same time it takes note of the fact that an operator cannot obtain insurance in an unlimited amount. The provision for compulsory insurance up to a specific amount would ensure recovery of compensation up to that amount, any excess being recoverable from the assets of the airline or other operator concerned.

C. Breaking Of Limits

Some members considered that Article 12 was an obstacle to ratification, and two members said that it could be argued that it was against public policy in their countries. The suggestion was to replace that provision by Article 25 of the Warsaw Convention as amended at The Hague, at any rate in respect of the personal liability of the individual wrongdoer. Others would prefer to retain Article 12, but could accept the substitution of the less rigid formula of Article 25. Those who wished to retain Article 12 felt that to delete it and replace it by a less rigid formula could lead to increased litigation because there would be a greater opportunity to break the limits. If, however, the limits were high there would be less occasion to break them.

IV. SECURITY FOR OPERATOR'S LIABILITY

Some members considered that the whole of Chapter III should be retained without change. It was observed that nineteen States had accepted this in its present form, and that others were preparing to ratify the Convention on that basis. Chapter III had been the subject of long and careful

study at Rome. If some of its provisions seemed to be an unnecessary complication, none of them did any harm and might on occasion be useful. Other members wished to delete the whole of Chapter III apart from paragraphs (1) and (2) of Article 15.

Some members considered that some of the provisions of Chapter III constituted an obstacle to ratification. These were as follows:

(1) The part of Article 15(2)(a) which required a State to verify the financial responsibility of the insurer. In some States there was no machinery for doing this, and in some federal States there might be opposition to federal legislation which imposed this duty and so interfered with a matter regarded as within the sphere of constituent States. It was also observed by one member that State verification might, if negligently performed, raise the question of liability of the State.

(2) Objection was raised to Article 15(7) which enables the State overflown to question the verification of the insurer's financial responsibility, but provides that until the dispute was resolved by arbitration the aircraft could continue to overfly that State. Unless some acceptable solution could be devised, one member would prefer the State overflown to have the right to prohibit the aircraft from overflying, if it was not satisfied with the financial responsibility of the insurer, even after verification in accordance with Article 15(2). The question was raised whether Article 5 of the Chicago Convention, or anything in the International Air Services Transit Agreement, would debar a party to those treaties from prohibiting flight over its territory by an aircraft of another Contracting State, if it was dissatisfied with the financial responsibility of the insurer. Some members were of the opinion that the State overflown would have liberty to debar the foreign aircraft notwithstanding those treaties, but it is understood that the Belgian Conseil d'Etat has advised to the contrary, in respect of Article 5 of the Chicago Convention. A suggestion made in connection with the proposal to delete the general verification procedure in Article 15(2)(a) was that Article 15(7) be amended so as to provide that where the State overflown had reasonable grounds for doubting the financial responsibility of the insurer, it could require the State of registration or the State where the insurer has his residence or principal place of business to verify the financial responsibility of the insurer. There would be then no need for verification as a matter of routine in each case though it would always be available when required.

(3) It was observed that the form of insurance certificate recommended by the Final Act of the Rome Convention was satisfactory, but not obligatory. Some States had commented on the desirability of a uniform certificate, which could be achieved by making the specified form obligatory, in the sense that no other form could be issued or accepted for the purpose of the insurance provisions of the Rome Convention.

(4) One member observed that after the aircraft had arrived in the State overflown, or had perhaps caused surface damage there, it was rather late to start examining the certificate of insurance. He favoured a pro-

vision that any State could require another Contracting State to see the certificate of insurance before the departure of the aircraft, perhaps after the flight plan was filed, and to prevent the departure of the aircraft if the certificate was not produced or was not in force and applicable to the flight. In reply to criticism, he agreed that the Convention could, if need be, relieve the State of departure from liability for negligently performing that task. It was objected that in certain large States it was possible to depart for a foreign State from any point, without restriction, and that there was no practical possibility of examining the certificate of insurance in each case. It was suggested that the same result could be achieved by imposing heavy penalties in the State overflowed for arriving there without the required certificate. It was observed that it might not be possible to achieve anything better, but that penalties imposed by the State overflowed would be impracticable if the aircraft did not land there.

(5) One member objected to the provisions of Article 15(4) which he regarded as an unnecessary complication and one which might involve the State in civil litigation and in waiver of its immunities. Neither the members of the Subcommittee nor any of the Observers knew of those provisions being put to use, but that might only be because the Rome Convention had not yet been ratified by States to which the provisions could be of value. The general opinion of the Subcommittee was that Article 15(4) was optional for the State of registry of the aircraft and that it might prove of some value and possibly enable some States to ratify. It should therefore be retained.

(6) One member objected to the restriction of defenses by Article 16 and particularly Article 16(3) which may oblige an insurer to insure an operator of whom he has no knowledge. This was stated to be contrary to insurance practice, but the objection was withdrawn when the Subcommittee was advised that insurers could comply with Article 16(3), though at some increase in premium.

The Subcommittee had before it the view of Denmark, Finland, Norway and Sweden which considered that the State of registration should afford a subsidiary guarantee in respect of compensation due under the Convention (see Convention on Civil Liability for Nuclear Damage, Vienna, 21 May 1963, Article VII (1) and Convention on the Liability of Operators of Nuclear Ships, Brussels, 25 May 1962, Article III (2)). But here it was pointed out that the conventions on nuclear damage were concerned with a risk which it was not possible to cover fully in the insurance market and this was not true of the risk under the present Rome Convention. The suggestion was not supported by any member of the Subcommittee.

A. Direct Right Of Action Against The Insurer

As to the direct right of action against the insurer contemplated in the comments of Denmark, Finland, Norway and Sweden, it was commented that this would not be very practical, considering that some airlines might carry insurance with a large number of insurers.

*B. Suggestion That Compulsory Insurance Be Required
By State Of Registry*

There was also before the Subcommittee a view of Denmark, Norway and Sweden that the State of registry should be obligated to ensure that any liability arising under the Convention be covered by insurance or other security. The unanimous view of the Subcommittee was that it is for each State overflowed to decide whether it should protect its citizens by requiring insurance or other security.

Although it was open to every State to impose its own system of compulsory insurance, the Subcommittee thought that the provisions of Chapter III had the great merit of avoiding the proliferation of different national systems, which could cause difficulty for operators and insurers alike.

It was observed that in Article 15 (6) the English and French texts referred to "the certificate referred to in paragraph 5 of this Article," while the Spanish text referred to "los documentos" ("the certificates"), which appeared to be correct.

V. RULES OF PROCEDURE AND LIMITATION OF ACTIONS

The Subcommittee took note of various comments which States had submitted in relation to its first report, including the following:

- (1) the single forum should be retained;
- (2) the single forum should be retained, but it could be liberalised (*sic*) for certain cases, in particular where the claimant and operator belonged to the same State;
- (3) provision should be made for the following three fora:
 - (a) the Contracting State in whose territory the damage has been sustained;
 - (b) the Contracting State of registration of the aircraft; and
 - (c) the Contracting State where the operator has his principal place of business.

This was a proposal of the four Nordic States, and associated with it was another to the effect that where the total amount of claims will exceed or is likely to exceed the overall limit, the operator should be allowed to pay the amount of limitation, that is, a "limitation fund" into the court of the Contracting State where the damage was sustained, this court to make the apportionment and distribution of this fund.

With the exception of one member, the Subcommittee agreed that the principle of the single forum was no longer regarded as presenting serious difficulty. It noted, in particular, that the United States of America which had formerly been opposed to the single forum and to the requirement of execution of the judgments of that forum had since made it known that these provisions would not constitute a major obstacle to ratification if the other provisions of the Convention, particularly those relating to limits of liability were satisfactory. It was further noted that the single forum solution had been accepted in the Vienna Convention on Civil Liability for Nuclear Damage, 21 May 1963.

VI. APPLICATION OF THE CONVENTION AND GENERAL PROVISIONS

One member questioned the utility of applying the Convention to small aircraft. Others considered, however, that small aircraft could cause great damage on the surface and that the Convention, therefore, is rightly applicable to them and that some provisions of the Convention were of special importance in relation to small operators.

The Subcommittee heard the comments of an Observer of the International Law Association concerning the suggestion of that Association that States and other responsible bodies should examine the issue of surface damage by aircraft and spacecraft as a whole with a view to the possibility of concluding a single international agreement on the subject. In support of this suggestion, the ILA Observer stated that if aircraft and spacecraft were brought into a single agreement, there would be no necessity, in regard to the question of damage on the surface, for attempting to draw a distinction between aircraft and spacecraft, a distinction which, in time, would be increasingly more difficult to make. In addition, if civil aircraft and spacecraft and military aircraft and spacecraft were brought into one agreement, there would be no necessity to define therein what was meant by the peaceful use of outer space, the attempt to define this expression having already caused some difficulty. In this connection, reference was made to the Brussels Convention on the Liability of Operators of Nuclear Ships, 25 May 1962, which applied to both merchant ships and warships.

The Subcommittee expressed its appreciation of the interest shown by the International Law Association in the subject of surface damage. It noted that a Committee of the United Nations was engaged in the study of the liability aspects of damage caused on the surface by spacecraft and, further, that the suggestion of the International Law Association was of a general nature, not amounting to a suggestion that the Rome Convention should be amended so as to be applicable to spacecraft also.

A. Interchange Of Aircraft

One member of the Subcommittee asked for its views on the problem which could arise under the Rome Convention when an aircraft registered in one State party to that Convention was leased without crew by a foreign operator and caused damage on the surface either in the State of which the operator was a national or in some other State. One suggestion made was to provide in the Rome Convention that when an aircraft was being operated by an operator having the nationality of a State other than that of the State of registry, such aircraft should be treated, for the purposes of the Convention, as if it was registered in the State of nationality of the operator.

Another suggestion made was to add to Article 23(1) the following: "provided that the operator is not a national of the former State" thereby excluding the application of the Convention in such a case.

A further suggestion was that the solution for situations of interchange

of aircraft might be found in facilitating quick changes of registration from one State to another. However, it was observed that the procedure for the change of registration of aircraft was not a flexible one and, in particular, in the case of an interchange agreement between two airlines, the aircraft would be constantly passing in and out of the control of each of the airlines.

Another possibility would be to provide that the Convention would apply to interchange situations when the aircraft had the nationality of one of the States parties to the Convention or the operator had the nationality of one of such States.

Some members thought that, in the Rome Convention, the concept of the nationality of the aircraft should not be replaced by the concept of the nationality of the operator. Some members considered that the question of interchange was a general one which should be dealt with on a general basis, but others thought that it required to be dealt with in the context of the Rome Convention.

B. Registration Of Aircraft Operated By International Operating Agencies

The question of registration of aircraft operated by international agencies was raised in the context of the Rome Convention, since the Convention did not take into account the case of aircraft registered otherwise than on a national register. The Subcommittee noted that this problem was also being considered in relation to the Chicago Convention by another Subcommittee which, it was expected, would meet within the next twelve months. It was felt that no attempt should be made to find a solution for the problem in relation to the Rome Convention until the other Subcommittee had completed its work in relation to the Chicago Convention.

VII. FINAL PROVISIONS

In regard to Article 39 (reservations) one member was in favour of its deletion, one considered reservations to be more acceptable than amending the Convention, and many were against permitting reservations. It was noted that until the contents of a revised Convention were known, it would be premature to make any recommendation concerning reservations.

VIII. FURTHER WORK

The general opinion of the Subcommittee was that most of the suggested modifications might make the Convention somewhat more attractive to the States suggesting them, but would at the same time make the Convention less attractive to other States, including perhaps some of the nineteen States which are already parties to it and those States which may be seriously considering becoming parties to it. Those sharing the above-mentioned opinion stated generally that they were opposed to any amendment other than an increase in the amounts of the limits and perhaps, one or two

other minor amendments, such as allowing compensation for damage by sonic boom, unless an inquiry of States would indicate a majority in favour of such other amendments and a willingness to ratify the Convention if so amended.

The Subcommittee invited the Secretariat to inquire of States whether they find any of the suggestions mentioned in this Report to be desirable modifications of the Rome Convention or, if not, whether the States would be prepared to accept any of them as at least compromise solutions if a sufficient majority considered them necessary or desirable.

When the answers to the foregoing inquiry are available and when the outcome of the current studies on the revision of the Warsaw limits is known, the Council or the Legal Committee will wish to consider whether the Subcommittee should continue its work. Draft texts, perhaps of alternative solutions, could then be established by the Subcommittee and would be useful for facilitating the study of this subject by the Legal Committee.

SAFETY INVESTIGATION REGULATIONS

PART 320 — RULES PERTAINING TO AIRCRAFT ACCIDENTS, INCIDENTS, OVERDUE AIRCRAFT AND SAFETY INVESTIGATIONS†

In November 1965, the Council of the International Civil Aviation Organization (ICAO) adopted certain major revisions of Annex 13 to the International Civil Aviation Convention (Chicago Convention) dealing with the standards and recommended practices in connection with aircraft accident investigations. These revisions became effective 24 March 1966. Under the terms of the Chicago Convention, member states must notify ICAO of any differences that may exist between their national regulations and the provisions of Annex 13 after that date.

While Part 320 of the CAB's Safety Investigation Regulations has required the notification and reporting of aircraft accidents, it does not employ the definition of the term "accident" as that term is employed in Chapter 1 of Annex 13 to the Chicago Convention. By prescribing certain occurrences associated with the operation of aircraft for which notification and reports were required, Part 320 in effect obtained notification and reports of accidents without defining that term in the rule. However, the Board believes it desirable that its regulations conform with the provisions of Annex 13 to the extent feasible, and therefore is incorporating the definition of the term "accident" contained in the Annex in its regulations. This will impose no additional reporting or notification requirements on any person.

In addition, the Board believes it necessary and desirable that it continue to be notified of certain ground occurrences, outside the scope of the definition of the term "accident," which involve serious injury to persons, or substantial damage to property. This has been accomplished by substituting the more commonly understood term "incident," for the phrase "in flight hazards," and requiring that the Board be notified of certain incidents.

Part 320 is being further revised by eliminating certain occurrences which presently require notification because the reporting of such incidents is no longer considered necessary. Thus the incidents of unwanted or asymmetrical thrust reversal or rapid decompression do not presently warrant notification and hence are being eliminated.

These revisions will reduce the notification and reporting requirements of the part. Because the Board recently amended Part 320, by Regulation SIR-6, effective 30 August 1965, and because the amendments herein made

† Safety Investigation Regulations, *Amendment and Reissuance of Part 320*, Effective: 18 May 1966. By Harold R. Sanderson, Secretary of the Civil Aeronautics Board.

involve revision of other sections of the part, the Board finds it desirable that the amended part should be reissued.

Accordingly, Part 320 of the Safety Investigation Regulation (14 C.F.R. Part 320), effective 18 May 1966, is as follows:

Subpart A—General

§320.1 *Applicability.*

This part contains rules pertaining to:

(1) Giving notice of and reporting, aircraft accidents and incidents and certain other occurrences in the operation of aircraft when they involve civil aircraft of the United States wherever they occur, or foreign civil aircraft when such events occur in the United States, its territories or possessions.

(2) Preservation, access to, and release of aircraft wreckage, mail, cargo, and records involving all civil aircraft in the United States, its territories or possessions.

(3) Investigation of aircraft accidents, certain incidents, and overdue aircraft and special studies and investigations conducted by the Board pertaining to safety in air navigation and the prevention of accidents.

§320.2 *Definitions.*

As used in this part the following words or phrases are defined as follows:

"Aircraft accident" means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, in which any person suffers death or serious injury as a result of being in or upon the aircraft or by direct contact with the aircraft or anything attached thereto, or the aircraft receives substantial damage.

"Fatal injury" means any injury which results in death within 7 days.

"Operator" means any person who causes or authorizes the operation of an aircraft, such as the owner, lessee or bailee of an aircraft.

"Serious injury" means any injury which (1) requires hospitalization for more than 48 hours, commencing within seven days from the date the injury was received; (2) results in a fracture of any bone (except simple fractures of fingers, toes or nose); (3) involves lacerations which cause severe hemorrhages, nerve, muscle or tendon damage; (4) involves injury to any internal organ; or (5) involves second or third degree burns, or any burns affecting more than five percent of the body surface.

"Substantial damage":

(1) Except as provided in subparagraph (2) of this paragraph:

(a) Substantial damage in aircraft of 12,500 pounds maximum certificated take-off weight or less means damage or structural failure reasonably estimated to cost \$300 or more to repair.

(b) Substantial damage in aircraft of more than 12,500 pounds maximum certificated take-off weight means damage or structural failure which adversely affects the structural strength, performance, or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component.

(2) Engine failure, damage limited to an engine, bent fairings or cowlings, dented skin, small punctured holes in the skin or fabric, taxiing damage to propeller blades, damage to tires, engine accessories, brakes, or wing tips are not considered "substantial damage" for the purpose of this part.

*Subpart B—Initial Notification of Aircraft Accidents,
Incidents and Overdue Aircraft*

§320.5 *Immediate notification.*

The operator of an aircraft shall immediately, and by the most expeditious

means available, notify the nearest Civil Aeronautics Board, Bureau of Safety Field Office¹ when:

- (1) An aircraft accident or any of the following listed incidents occur:
 - (a) Flight control system malfunction or failure;
 - (b) Inability of any required flight crew member to perform his normal flight duties as a result of injury or illness;
 - (c) During ground operations of an aircraft with engine(s) functioning without the intention of flight any person suffers death or serious injury as a result of being in or upon the aircraft or by direct contact with the aircraft or anything attached thereto, or the aircraft receives substantial damage;
 - (d) Turbine engine rotor failures excluding compressor blades and turbine buckets;
 - (e) In-flight fire;
 - (f) Aircraft collide in flight.
- (2) An aircraft is overdue and is believed to have been involved in an accident.

§320.6 Information to be given in notification.

The notification required in §320.5 shall contain the following information, if available:

- (1) Type, nationality and registration marks of the aircraft;
- (2) Name of owner, and operator of the aircraft;
- (3) Name of the pilot-in-command;
- (4) Date and time of the accident;
- (5) Last point of departure and point of intended landing of the aircraft;
- (6) Position of the aircraft with reference to some easily defined geographical point;
- (7) Number of persons aboard, number killed and number seriously injured;
- (8) Nature of the accident including weather and the extent of damage to the aircraft so far as is known:
 - (a) A description of any explosives, radioactive materials, or other dangerous articles carried.

*Subpart C—Preservation, Access To and Release of Aircraft Wreckage,
Mail, Cargo and Records*

§320.10 Preservation of aircraft wreckage, mail, cargo and records.

- (1) The operator of an aircraft is responsible for preserving to the extent possible any aircraft wreckage, cargo and mail aboard the aircraft, and all records, including those of flight recorders, pertaining to the operation and maintenance of the aircraft and to airmen involved in an accident or incident for which notification must be given until the Board takes custody thereof or a release is granted pursuant to §320.11 of this part.
- (2) Prior to the time the Board or its authorized representative takes custody of aircraft wreckage, mail, or cargo, such wreckage, mail and cargo may be disturbed or moved only to the extent necessary:
 - (a) To remove persons injured or trapped;
 - (b) To protect the wreckage from further damage; or
 - (c) To protect the public from injury.
- (3) Where it is necessary to disturb or move aircraft wreckage, mail or cargo, sketches, descriptive notes, and photographs shall be made, if possible, of the accident locale including original position and condition of the wreckage and any significant impact marks.

¹ CAB field offices are listed under United States Government in the telephone directories in the following cities: Anchorage, Alaska; Chicago, Illinois; Denver, Colorado; Fort Worth, Texas; Kansas City, Missouri; Los Angeles, California; Miami, Florida; New York, New York; Oakland, California; and Seattle, Washington.

§320.11 *Access to and release of aircraft wreckage, records, mail and cargo.*

(1) *Access to aircraft wreckage, records, mail and cargo.* Only the Board's accident investigation personnel and the persons authorized by the Investigator-in-Charge or the Director, Bureau of Safety, to participate in any particular investigation, examination or testing shall be permitted access to aircraft wreckage, records, mail or cargo which is in the Board's custody.

(2) *Release of aircraft wreckage, records, mail and cargo.* Aircraft wreckage, records, mail and cargo in the Board's custody shall be released by an authorized representative of the Board² when it is determined that the Board has no further need of such wreckage, mail, cargo or records.

*Subpart D—Reporting of Aircraft Accidents,
Incidents and Overdue Aircraft*

§320.15 *Reports and statements to be filed.*

(1) *Reports.* The operator of an aircraft shall file a report as provided in paragraph (3) of this section on CAB Form 453 or 454, which forms are attached hereto and incorporated herein as part of this section.³

(a) Within ten (10) days after an accident for which notification is required by §320.5 (a) or when after seven (7) days, an overdue aircraft is still missing.

(b) A report on an incident for which notification is required by §320.5 (a) shall be filed only as requested by an authorized representative of the Civil Aeronautics Board.

(2) *Crew member statement.* Each crew member, if physically able at the time the report is submitted, shall attach thereto a statement setting forth the facts, conditions and circumstances relating to the accident or incident as they appear to him to the best of his knowledge and belief. If the crew member is incapacitated, he shall submit the statement as soon as he is physically able.

(3) *Where to file the reports.*

(a) The operator of an aircraft shall file with the Field Office of the Civil Aeronautics Board nearest the accident or incident any report required by this section involving:

1) Aircraft having a maximum takeoff weight of more than 12,500 pounds, or rotorcraft regardless of weight;

2) Aircraft having a maximum takeoff weight of 12,500 pounds or less operated by an air carrier certificated to engage in air transportation in the State of Alaska, or operated in accordance with Part 135 of this title (Federal Aviation Regulations; Air Taxi Operators and Commercial Operators of Small Aircraft); and

3) Aircraft, regardless of maximum takeoff weight, where fatal injuries have occurred to any occupant of such aircraft.

(b) The operator of an aircraft shall file with the FAA Flight Standards District Office nearest the accident or incident any report required by this section involving fixed-wing aircraft with a maximum take-off weight of 12,500 pounds or less except reports which are required to be filed with the Board pursuant to subparagraph (1) of this paragraph.

Subpart E—Investigations and Special Studies

§320.20 *Authority of Board representatives.*

Upon demand of an authorized representative of the Board and presentation

² An authorized representative of the Federal Aviation Agency (FAA) has authority to release aircraft wreckage, property, or records in those accidents which the Board, pursuant to PN-16, note 4 *infra*, has requested the FAA to investigate.

³ Forms are obtainable from the Civil Aeronautics Board Field Offices (see note 1 *supra*), the Civil Aeronautics Board, Washington, D. C. 20428, and the Federal Aviation Agency Flight Standards District Office. Forms are filed as part of original document.

of credentials issued to such representative, any air carrier, airman, or person engaged in air commerce or in any phase of aeronautics, and any other person having possession or control of any aircraft, aircraft engine, propeller, appliance, air navigation facility, equipment, or any pertinent records and memoranda, including all documents, papers and correspondence now or hereafter existing and kept or required to be kept, shall forthwith permit inspection, photographing or copying thereof by such authorized representative for the purpose of investigating an aircraft accident,⁴ incident or overdue aircraft, or any special study or investigation pertaining to safety in air navigation or the prevention of accidents. Authorized representatives of the Board may interrogate any person having knowledge relevant to an aircraft accident, incident, overdue aircraft, study or investigation.

§320.25 Authority of the Director, Deputy Director, and hearing officers pertaining to aircraft accidents and air safety investigations.

(1) The Director or Deputy Director of the Bureau of Safety of the Board shall have authority in connection with aircraft accidents or incidents to:

(a) Order an investigation into the facts, conditions, circumstances and probable cause of all occurrences involving civil aircraft, which he or the Board determines to constitute accidents or incidents. In such investigations he may order the taking of depositions, and may order a public hearing in accordance with the provisions of Part 303 of the Board's Procedural Regulations where it is deemed necessary in the public interest.

(b) Designate one or more hearing officials with authority to sign and issue subpoenas, to administer oaths and affirmations, and to take depositions or cause them to be taken in connection with such investigations.

(2) The Director or Deputy Director may also order a special study or investigation on matters pertaining to safety in air navigation, and if necessary, designate a hearing official in this connection.

NOTE: The reporting and record-keeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

⁴The Board in PN-16, 30 F.R. 10122, 10168, effective 30 August 1965, requested the Administrator of the FAA to investigate aircraft accidents involving fixed-wing aircraft with a maximum take-off weight of 12,500 pounds or less except accidents in which fatal injuries have occurred to an occupant of such aircraft, accidents involving aircraft being operated in accordance with Part 135 of the Federal Aviation Regulations (14 C.F.R. Part 135 (1965), Air Taxi Operators and Commercial Operators of Small Aircraft), and accidents involving aircraft operated by an air carrier authorized by a certificate of public convenience and necessity to engage in air transportation in the State of Alaska, and to submit a report to the Board concerning each such investigation.