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INTERNATIONAL REVIEW

AGREEMENT ON THE RESCUE OF ASTRONAUTS, THE RETURN OF ASTRONAUTS AND THE RETURN OF OBJECTS LAUNCHED INTO OUTER SPACE

The Contracting Parties,

Noting the great importance of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, which calls for the rendering of all possible assistance to astronauts in the event of accident, distress or emergency landing, the prompt and safe return of astronauts, and the return of objects launched into outer space,

Desiring to develop and give further concrete expression to these duties,

Wishing to promote international co-operation in the peaceful exploration and use of outer space,

Prompted by sentiments of humanity,

Have agreed on the following:

Article 1

Each Contracting Party which receives information or discovers that the personnel of a spacecraft have suffered accident or are experiencing conditions of distress or have made an emergency or unintended landing in territory under its jurisdiction or on the high seas or in any other place not under the jurisdiction of any State shall immediately:

(a) Notify the launching authority or, if it cannot identify and immediately communicate with the launching authority, immediately make a public announcement by all appropriate means of communication at its disposal;

(b) Notify the Secretary-General of the United Nations, who should disseminate the information without delay by all appropriate means of communication at his disposal.

Article 2

If, owing to accident, distress, emergency or unintended landing, the personnel of a spacecraft land in territory under the jurisdiction of a Contracting Party, it shall immediately take all possible steps to rescue them and render them all necessary assistance. It shall inform the launching authority and also the Secretary-General of the United Nations of the steps it is taking and of their progress. If assistance by the launching authority would help to effect a prompt rescue or would contribute substantially to the effectiveness of search and rescue operations, the launching authority shall co-operate with Contracting Party with a view to

the effective conduct of search and rescue operations. Such operations shall be subject to the direction and control of the Contracting Party, which shall act in close and continuing consultation with the launching authority.

Article 3

If information is received or it is discovered that the personnel of a spacecraft have alighted on the high seas or in any other place not under the jurisdiction of any State, those Contracting Parties which are in a position to do so shall, if necessary, extend assistance in search and rescue operations for such personnel to assure their speedy rescue. They shall inform the launching authority and the Secretary-General of the United Nations of the steps they are taking and of their progress.

Article 4

If, owing to accident, distress, emergency or unintended landing, the personnel of a spacecraft land in territory under the jurisdiction of a Contracting Party or have been found on the high seas or in any other place not under the jurisdiction of any State, they shall be safely and promptly returned to representatives of the launching authority.

Article 5

1. Each Contracting Party which receives information or discovers that a space object or its component parts has returned to Earth in territory under its jurisdiction or on the high seas or in any other place not under the jurisdiction of any State, shall notify the launching authority and the Secretary-General of the United Nations.

2. Each Contracting Party having jurisdiction over the territory on which a space object or its component parts has been discovered shall, upon the request of the launching authority and with assistance from that authority if requested, take such steps as it finds practicable to recover the object or component parts.

3. Upon request of the launching authority, objects launched into outer space or their component parts found beyond the territorial limits of the launching authority shall be returned to or held at the disposal of representatives of the launching authority, which shall, upon request, furnish identifying data prior to their return.

4. Notwithstanding paragraphs 2 and 3 of this article, a Contracting Party which has reason to believe that a space object or its component parts discovered in territory under its jurisdiction, or recovered by it elsewhere, is of a hazardous or deleterious nature may so notify the launching authority, which shall immediately take effective steps, under the direction and control of the said Contracting Party, to eliminate possible danger of harm.

5. Expenses incurred in fulfilling obligations to recover and return a space object or its component parts under paragraphs 2 and 3 of this article shall be borne by the launching authority.

Article 6

For the purposes of this Agreement, the term "launching authority" shall refer to the State responsible for launching, or, where an international intergovernmental organization is responsible for launching, that organization, provided that that organization declares its acceptance of the rights and obligations provided for in this Agreement and a majority of the States members of that organization are Contracting Parties to this Agreement and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

Article 7

1. This Agreement shall be open to all States for signature. Any State which does not sign this Agreement before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Agreement shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, which are hereby designated the Depositary Governments.

3. This Agreement shall enter into force upon the deposit of instruments of ratification by five Governments including the Governments designated as Depositary Governments under this Agreement.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Agreement, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to this Agreement, the date of its entry into force and other notices.

6. This Agreement shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Article 8

Any State Party to the Agreement may propose amendments to this Agreement. Amendments shall enter into force for each State Party to the Agreement accepting the amendments upon their acceptance by a majority of the States Parties to the Agreement and thereafter for each remaining State Party to the Agreement on the date of acceptance by it.

Article 9

Any State Party to the Agreement may give notice of its withdrawal from the Agreement one year after its entry into force by written notification to the Depositary Governments. Such withdrawal shall take effect one year from the date of receipt of this notification.

Article 10

This Agreement, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Agreement shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Agreement.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERPRETATION AND IMPLEMENTATION OF ARTICLE 77 OF THE CHICAGO CONVENTION—NATIONALITY AND REGISTRATION OF AIRCRAFT OPERATED BY INTERNATIONAL AGENCIES

BY DR. RENÉ H. MANKIEWICZ†

I. INTRODUCTION

At its 16th Session (Paris, 5-22 September 1967), the Legal Committee generally endorsed the suggestions and proposals of its Subcommittee which had held two sessions, one from 15 to 24 July 1965 and the other from 4 to 13 January 1967.

The Committee distinguished between "joint registration" and "international registration" (having in common "the fact that the aircraft would not be registered on a national basis in a given State") by noting that the expression "joint registration" refers to "that system of registration of aircraft according to which the States constituting the operating agency would establish a non-national register for the joint registration of aircraft" while "international registration" "denotes the cases where the aircraft would be registered with an international organization."

In regard to the words in Article 77 of the Chicago Convention, "provisions of this Convention relating to nationality of aircraft," the Committee agreed that they "should be regarded as including not only Articles 17 to 21 which appear in Chapter III of the Convention, entitled Nationality of Aircraft, but also all articles of the Convention which either expressly refer to nationality of aircraft or imply it."

Having been answered in the negative by the Panel of Experts in 1960, the question of whether the Council can make a determination under Article 77 without prior amendment of the Chicago Convention was examined at length by the Committee. The Committee answered that question affirmatively, in line with the views of the Subcommittee, and reported as follows: "Article 77 specifically casts upon the Council the duty of determining the manner in which the provisions of the Convention relating to nationality of aircraft shall be applied to aircraft operated by international operating agencies. In the view of the Legal Committee this implies that those provisions can be made so applicable to such aircraft without amending the Convention. Therefore, the Legal Committee concludes that, without any amendment to the Chicago Convention, the provisions of the Convention can be made applicable, by a determination of

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the Council, to aircraft which are not registered on a national basis, such as aircraft jointly registered or internationally registered, subject, however, to fulfillment of certain criteria."

In this connection the Committee also noted that Articles 7, 9, 15 and 27 of the Chicago Convention were no obstacle to a determination under Article 77 and, in particular, would not give rise to any discrimination against aircraft registered in other Contracting States.

The Committee also approved a set of "basic criteria" proposed by its Subcommittee for guidance of the Council in making a determination, as follows:

I. In the case of *joint registration*

- A. The States constituting the international operating agency shall be jointly and severally bound to assume the obligations which, under the Chicago Convention, attach to a State of registry.
- B. The States constituting the international operating agency shall identify for each aircraft an appropriate State from among themselves which shall be entrusted with the duty of receiving and replying to representations which might be made by other Contracting States of the Chicago Convention concerning that aircraft. This identification shall be only for practical purposes and without prejudice to the joint and several responsibility of the States participating in the agency, and the duties assumed by the State so identified shall be exercised on its own behalf and on behalf of all the other participating States.
- C. The operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other Contracting States with respect to the provisions of the Chicago Convention.
- D. The States constituting the international operating agency shall ensure that their laws, regulations and procedures as they relate to the operation of the aircraft of the international operating agency shall meet in a uniform manner the obligations under the Chicago Convention and the Annexes thereto.

II. In the case of *international registration* the States constituting the international operating agency may devise a system for registration as shall satisfy the Council that the other Member States of ICAO have sufficient guarantees that the provisions of the Chicago Convention are complied with. In this connection the criteria mentioned in A, C and D above shall, in any event, be applicable.

Furthermore, the Committee agreed with its Subcommittee that the procedure to be followed by the Council may be divided in two stages. In a first stage the Council would adopt a resolution incorporating the "basic criteria." This resolution would "also specify that the manner of application of the provisions of the Convention relating to nationality of aircraft be as follows:

- (1) In the case of joint or international registration, all the aircraft of a given international operating agency shall have a common mark, and not the nationality mark of any particular State and the provisions of the Convention which refer to nationality marks (Articles 12 and 20) and Annex 7 to the Convention shall be applied *mutatis mutandis*.
- (2) Without prejudice to the rights of other Contracting States as provided for in C of paragraph 8 above and in paragraph 13 below, each such air-

craft shall, for the purposes of the Convention, be deemed to have the nationality of each of the States constituting the international operating agency.

- (3) For the application of Articles 25 and 26 of the Convention the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft shall be considered to be "the State in which the aircraft is registered."

Opinions were divided on the question of whether the Council, when seized with a request under Article 77, should examine a proposed scheme of "non national registration" for compliance with the "basic criteria" above mentioned. The Committee finally agreed that after the adoption by the Council of the "basic criteria," the "determination" by the Council would give effect to the application of these criteria to a particular plan for joint or international registration which might be brought before the Council, it being understood that in the case of joint registration "there would be no problem in regard to the fulfillment of the conditions specified in [the basic criteria] and therefore such determination by the Council in such or similar cases will merely be formal and should automatically be given. The Committee noted however that, "Other cases of joint registration and all cases of international registration may well require different approaches."

The Committee advised, as had been suggested by its Subcommittee, that a determination made by the Council pursuant to Article 77 "will be binding on all Contracting States," provided the Council follows the procedure recommended by the Committee. In that case, the Committee felt that if the "basic criteria" are complied with, aircraft which are registered jointly or internationally would have the rights and obligations established by the Chicago Convention for aircraft registered in a Contracting State.

Because the report of the Legal Committee does not deal with the question raised in the Subcommittee with respect to the majority required for adopting a "determination" by the Council, it must be concluded that the Committee did not challenge the Subcommittee's finding that "approval by a majority of its [the Council's] Members" as specified in Article 52 of the Convention is sufficient.

During its 62nd Session, the Council examined in great detail the report of the Legal Committee. The Council basically agreed with the Legal Committee and, on 14 December 1967 (17th Meeting of its 62nd Session), adopted a resolution (in the three working languages of the Organization) on "Nationality and Registration of Aircraft Operated by International Operating Agencies" which is reproduced hereafter with footnotes referring to the major points discussed in the Council.

II. RESOLUTION ADOPTED BY THE COUNCIL ON NATIONALITY AND REGISTRATION OF AIRCRAFT OPERATING BY INTERNATIONAL OPERATING AGENCIES*

THE COUNCIL

* Footnotes are by the author.

CONSIDERING the provisions of Article 77 of the Convention on International Civil Aviation, the last sentence of which reads: "The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies;"

CONSIDERING the Report on this subject of the Legal Committee, Doc 8704-LC/155, 22/9/67, Annex C;

CONSIDERING the conclusions of the Legal Committee as expressed on the said Report;

AGREEING that, without any amendment to the Convention on International Civil Aviation, the provisions of the Convention can be made applicable, by a determination of the Council under said Article 77, to aircraft which are not registered on a national basis, such as aircraft "jointly registered" or "internationally registered" (which concepts are defined in Appendix 1 hereto) subject, however, to fulfilment of certain basic criteria, which have been established by the Council;

HOLDING that a determination by the Council pursuant to, and within the scope of, said Article 77 of the Convention, and made in accordance with the procedures indicated below, will be binding on all Contracting States¹ and that, accordingly, in the case of aircraft which are jointly registered or internationally registered and in respect of which the basic criteria which have been established by the Council are fulfilled, the rights and obligations under the said Convention would be applicable as in the case of nationally registered aircraft of a Contracting State;

RESOLVES that the process of determination contemplated in said Article 77 shall include the application of the basic criteria which have been established by the Council to each particular plan for joint or international registration which might be brought before it, with appropriate and definite information relating to the describing such plan, by States constituting the international operating agency concerned;

DECIDES, with regard to the establishment of the basic criteria referred to in the three preceding paragraphs, as follows:

- a) In cases of joint registration, to adopt the basic criteria specified in Part I of Appendix 2 hereto;
- b) In cases of international registration, to be guided by Part II of Ap-

¹ The status, scope and effect of the "determination" are clarified by the following statements made during the discussion of the draft resolution in the Council.

As to the question of whether such determination would be appealable, the Director of the Legal Bureau offered the following opinion at the 6th meeting: "This point had been gone into by various bodies that had studied the subject and their conclusion had always been that a determination was a determination, not a suggestion or recommendation, and, as the etymology of the word indicated, conclusive. This did not mean, however, that there could be no appeal from it. Any action taken by the Council under the Chicago Convention could be appealed. If a Contracting State was dissatisfied with a Council determination, it would presumably have recourse to Article 84 of the Convention with a right of eventual appeal to the International Court of Justice." He also pointed out (6th and 9th meetings) that Article 77 gives the Council the power to "cancel, modify or completely reverse" a determination made under that Article. In case the States concerned would not comply with an amendment subsequently adopted by the Council, the following alternative actions were suggested (9th meeting): "Their aircraft might be refused permission to enter the territory of another Contracting State because of their non-compliance with the Council's decision; this would be a dispute under the terms of Article 84, and the appeal provisions of that Article would apply; if, however, a dispute situation did not arise but the States constituting the agency still considered the Council's decision prejudicial, all they could do would be to bring their difficulty before the Council under Article 54(n) and they would have to abide by whatever conclusion the Council reached." The same appears to apply where any of the component States of the agency cease to meet a criterion established by the Council. Moreover, "If any of the States constituting an international operating agency failed to carry out the obligations accepted in their plan for joint or international registration, the action taken would be that specified in the Convention for ensuring fulfilment of the responsibilities of a State or registry." Although the point had been raised by several Representatives, particularly during the 6th meeting, the Council did not consult Contracting States before adopting the above resolution.

pendix 2 hereto.

NOTES, in connection with the foregoing process of determination, that, while the Council has discretion to arrive at such determination as it deems appropriate, in the case of joint registration described in Appendix 3 hereto, there should be little problem in regard to the fulfilment of the basic criteria specified in Part I of Appendix 2 hereto and, therefore, a determination by the Council in such or similar cases should merely be formal and could automatically be given;

NOTES also that other cases of joint registration and all cases of international registration may well require different approaches;

DECIDES that, upon completion of the process of determination as specified above for a particular plan which in the opinion of the Council would satisfy the basic criteria specified in Appendix 2 hereto, the manner of application of the provisions of the Convention relating to nationality of aircraft be as follows:²

- (1) In the case of joint or international registration, all the aircraft of a given international operating agency shall have a common mark, and not the nationality mark of any particular State³ and the provisions of the Convention which refer to nationality marks (Articles 12 and 20 of the Convention) and Annex 7 to the Convention shall be applied *mutatis mutandis*.
- (2) Without prejudice to the rights of other Contracting States as provided for in C of Appendix 2 hereto and in Note 2 therein, each such aircraft shall, for the purposes of the Convention, be deemed to have

² The wording of this clause is based on an amendment proposed by the Representative of the United States of America and reworded by the Director of the Legal Bureau at the 10th meeting of the Council. In this connection the following exchange of views took place. The Representative of France saw some advantage in the wording suggested by the Director of the Legal Bureau because some time—perhaps quite a considerable time—could elapse between the moment the process of determination was completed and the moment when the implementation of the plan could begin, and he believed that the conditions set out in the next three numbered clauses should be considered applicable as soon as the determination had been made. The Representative of the Congo (Brazzaville) said that he would be pleased if the Representative of the United States could accept the suggestion of the Director of the Legal Bureau because it overcame the one difficulty he had had with the original text, namely, from what time were the provisions of the Convention relating to nationality of aircraft to be applied in the manner described in the three numbered clauses. Agreeing with the previous speaker, the Representative of Tunisia thought that the criteria drawn from the Legal Committee's report were absolute, and that once they had been established, all that it would be necessary for such a group of States to do would be to solemnly declare that they would respect the criteria. . . . He had assumed the Council would do the same with declarations of intent to abide by the criteria for joint registration, leaving experience to show whether the States constituting the operating agency were doing so. The President thought that the Council would have to do more than that. "It would have to examine each plan for joint registration submitted to it to determine whether that plan met the criteria."

³ The compulsory use of a common mark and the interdiction of the use of a nationality mark gave rise to a debate during the 10th meeting. The Representative of Australia defended this arrangement by stating, "The use of a common mark was a fundamental feature of the system of joint registration developed by the Legal Committee and that it would be very dangerous to make it optional. If the Council did so, it might as well send the whole subject back to the Committee." He was supported by the Representatives of France, the Congo (Brazzaville), Sweden, and Lebanon. The latter stated that the clause in question was the cornerstone of the system of joint operation developed by the Legal Committee and the symbol of the assumption by the operating agency States of the responsibilities of the State of Registry under Chapter III of the [Chicago] Convention. Similarly, considering the common mark as a "fundamental feature of the system" the Representative of France declared: "Though only a sign, the common mark is a symbol of the international character of the agency. It is common knowledge that those who were not very enthusiastic about the whole exercise on Article 77 had expressed the fear that the solidarity of a group constituting an international operating agency would be more apparent than real. There could be no room for doubt, therefore, that this was joint registration and the aircraft of an international operating agency should bear one mark, a common mark." In view of the foregoing it is submitted that the question, raised by the Representative of Italy, of whether nationality marks may be used under "other schemes" of joint operation contemplated in the introductory words of Appendix 3 to the resolution should be answered negatively.

the nationality of each of the States constituting the international operating agency.⁴

- (3) For the application of Articles 25 and 26 of the Convention, the State which maintains the joint register or the relevant part of the joint register⁵ pertaining to a particular aircraft shall be considered to be the State in which the aircraft is registered, and

DECLARES that:

- (1) This Resolution applies only when all the States constituting the international operating agency are and remain parties to the Chicago Convention.⁶

⁴ The Representative of the United Kingdom had proposed to introduce the following new clause between clauses 2 and 3: "(3) In the case of joint registration, the functions of a State of registration under the Convention (and, in particular, the issue of certificates of registration and airworthiness and of licences for the operating crew) shall be performed by the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft. In any case, the exercise of such functions shall be done on behalf of all the States jointly." This text was taken from paragraph (e) of Appendix (Annex) 3 of the draft resolution, and the reason he was proposing its introduction was that the determination did not stipulate by which State the functions of the State of Registry under the Convention, with the exception of Articles 25 and 26 which were specifically mentioned in Clause (3), were to be performed. This seemed to him an important omission. The proposal was supported by the Representatives of France and Australia who pointed out that its substance should be made the criteria in Appendix 2, namely criteria D. With a view to clarifying the questions of substance involved in the proposed amendment, the Director of the Legal Bureau made the following statement: "The Legal Committee's report had been examined by the technical services of the Organization and in their comments they had asked why Articles 25 and 26 had been singled out in Clause (3) of the determination reading as follows: 'For the publication of Articles 25 and 26 of the Convention the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft shall be considered to be the State in which the aircraft is registered.' The technical services pointed out that no mention was made of other articles (for example, Article 30) which were far more important for air navigation purposes. The proposal of the Representative of the United Kingdom was in line with the criticism by the technical services, and it could not be denied that the Convention specified clearly that the State issuing the certificate of registration was the only authority that could issue the certificate of airworthiness and licenses for the operating crew." Opposing the amendment, the Representative of Tunisia, however, remarked, "To give the status of a criterion to one feature of one plan for joint registration and thus to make it applicable to other plans—plans for international as well as for joint registration—that had not yet been studied was to go beyond the subject the Council was supposed to be considering." The Representative of the Congo (Brazzaville) asked how this particular criterion could be applied to international registration and would the international organization with which the aircraft would be registered have to pass on to a State the functions of a State of Registry under the Convention? The merit he saw in the Legal Committee's report was that it tried to avoid prejudging plans for joint or international registration that it had not considered; the Committee had simply codified the criteria it considered fundamental and necessary and had not listed all the criteria it could think of because this could make joint registration more difficult. Therefore, the Representative of the United Kingdom altered his proposal stating, "After listening to the discussion . . . it would be better to make the clause a separate criterion or an addition to criterion B, but because . . . the resolution and its annexes represented a very fine compromise, which had been reached with difficulty, [he] would be content to have it in a footnote opening with the words 'in connection with B above.'" The proposal so amended was adopted by the Council.

⁵ The Representative of the United Kingdom raised the question, "Whether it would be necessary, in a case of international registration, for the Council to make another determination for the purpose of the application of Articles 25 and 26. If so, it might be necessary or desirable to add another clause." The Director of the Legal Bureau answered as follows: "If an aircraft were registered with an international organization like ICAO, for example, that organization might either perform the functions of the State of Registry under Articles 25 and 26 itself or designate a particular State to do so on its behalf, but in neither case would there be any question of an international operating agency. An international operating agency was a body with legal personality whose function was to operate air services. An international organization could have executive-type aircraft for its own use but it would not be a body operating international air services. There would probably be very few cases of international registration. It could take place if the States constituting an international operating agency decided to register their aircraft with the central office of the agency instead of in a joint or national register. Then Annex 2, paragraph II, would apply, but not Clause (3) of the determination."

⁶ This clause, introduced by the Council, settles the question in line with the findings of the

- (2) This Resolution does not apply to the case of an aircraft which, although operated by an international operating agency, is registered on a national basis.⁷

APPENDIX 1

For the purpose of this Resolution

- the expression "joint registration" indicates that system of registration of aircraft according to which the States constituting an international operating agency would establish a register other than the national register for the joint registration⁸ of aircraft to be operated by the agency, and
- the expression "international registration" denotes the cases where the aircraft to be operated by an international operating agency would be registered not on a national basis but with an international organization having legal personality, whether or not such international organization is composed of the same States as have constituted the international operating agency.

APPENDIX 2

BASIC CRITERIA

Part I. In the case of *joint registration*

- A. The States constituting the international operating agency shall be jointly and severally bound to assume the obligations which, under the Chicago Convention, attach to a State of registry.
- B. The States constituting the international operating agency shall identify for each aircraft an appropriate State from among themselves which shall be entrusted with the duty of receiving and replying to representations which might be made by other Contracting States of the Chicago Convention concerning that aircraft. This identification shall be only for practical purposes and without prejudice to the joint and several responsibility of the States participating in the agency, and the duties assumed by the State participating in the agency, and the duties assumed by the State so identified shall be exercised on its own behalf and on behalf of all the other participating States. (See also Note 1 below)
- C. The operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other Contracting States with respect to the provisions of the Chicago Convention. (See also Note 2 below)
- D. The States constituting the international operating agency shall ensure that their laws, regulations and procedures as they relate to the aircraft and personnel of the international operating agency when engaged in international air navigation⁹ shall meet in a uniform manner the obligations under the Chicago Convention and the Annexes thereto.

Expert Panel and the majority of the Subcommittee; it had not been specifically agreed upon by the Legal Committee. For the discussion of this point in the Council *see*, Minutes of the 6th and 10th meetings.

⁷ This "savings clause" contemplates the case of aircraft operated by SAS or a similar consortium.

⁸ On the question of whether the aircraft would be registered in the name of the States participating in the international operating agency or in the name of the latter, the opinion was expressed at the 11th meeting that "joint registration" means registration concurrently by all States constituting the agency. It is, however, submitted that "joint" refers to the "register" which is kept jointly by the said States, and that it is for these States to decide who should be shown as owner in the Registry, as they also will specify what facts and other rights are to be registered.

⁹ By referring to "aircraft and personnel" and to "international air navigation," it is intended to specify that the Chicago Convention and all its Annexes are to be applied in a uniform manner by the States members of the agency only with respect to international flights of the aircraft jointly registered and to their crew on such flights. "In a uniform manner," however, does not

Part II. In the case of *international registration* the Council, in arriving at its determination, shall be satisfied that any system of international registration devised by the States constituting the international operating agency gives the other member States of ICAO sufficient guarantees that the provisions of the Chicago Convention are complied with. In this connection the criteria mentioned in A, C and D above shall, in any event, be applicable, it being understood that additional criteria may be adopted by the Council.¹⁰

Note 1: In connection with B above, in the case of joint registration the functions of a State of registration under the Convention (in particular, the issue of certificates of registration and the issue and validation of certificates of airworthiness and of licences for the operating crew) shall be performed by the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft. In any case, the exercise of such functions shall be done on behalf of all the States jointly.

Note 2: In connection with C above, and with reference to the under-mentioned Articles of the Chicago Convention, it is noted as follows:

Article 7 (Cabotage): The mere fact of joint or international registration under Article 77 would not operate to constitute the geographical area of the multinational group as a cabotage area.¹¹

Article 9 (Prohibited Areas) and Article 15 (Airport and Similar Charges): The mere fact of joint or international registration under Article 77 will not affect the application of these Articles.

Article 27 (Patent Claims): The requirement of this Article being that a given State should be not only a party to the Chicago Convention but also a party to the International Convention for the Protection of Industrial Property, it might be that, in a particular case, one or other of the States constituting an international operating agency was not a party to the latter Convention. In such case the interests of that State are not protected by the terms of Article 27.

mean that the Convention and Annexes must be applied by these States without any deviation, but these words signify that such deviations, if any, must be uniform; see statement of the Director of the Legal Bureau at the 6th meeting. The Representative of the Federal Republic of Germany had proposed to replace Clause D by the following: "The States constituting the international operating agency shall meet in a uniform manner the obligations under the Chicago Convention and the Annexes thereto," but did not ask for a vote after the President of the Council had made the following comment: "The wording suggested by the Representative of Germany would impose a great many more obligations upon the States constituting an international operating agency than would the original wording or his own amendment. It would mean, for instance, that all these States would have to apply in a uniform manner the provisions of Annexes 3, 10 and 11, whereas the present wording would require them to apply in a uniform manner only the provisions of the Convention and its Annexes relating to the aircraft or its crew."

¹⁰ The Council rejected by 16 votes to 3, with 2 recorded abstentions [the Representatives of the Congo (Brazzaville) and Tunisia], a proposal by the Representative of the Federal Republic of Germany, seconded by the Representatives of Japan and the United States, to amend the last sentence of Part II of Appendix 2 by substituting "should be applicable as far as possible" for "shall, in any event, be applicable." The end of the clause, starting with the words "it being understood," was adopted at the 11th meeting on the suggestion of the Representative of France in order to emphasize the fact that the Resolution covered "joint registration" completely but "international registration" only partially; therefore, additional conditions may be required and established by the Council when seized of a scheme of the latter type of registration.

¹¹ Although a specific reference to Article 7 of the Chicago Convention might be considered redundant in view of the wording of Criterion C, it was maintained after the President of the Council had given the following explanation: "The cabotage question had been an important one during the discussion in the Legal Committee because some States had feared that joint or international registration would have the effect of making the geographical area of the States constituting the international operating agency a cabotage area. This would, of course, give rise to discrimination against aircraft registered in other Contracting States, which was barred by Criterion C. The note reinforced the guarantee given in Criterion C by stating that the mere fact of joint or international registration under Article 77 would not operate to constitute the geographical area of the multinational group as a cabotage area."

APPENDIX 3

In connection with the present Resolution the Council had before it the following scheme of joint registration, noting, at the same time, that other schemes might also be possible:

- (a) The States constituting the international operating agency will establish a joint register for registration of aircraft to be operated by the agency. This will be separate and distinct from any national register which any of those States may maintain in the usual way.
- (b) The joint register may be undivided or consist of several parts. In the former case the register will be maintained by one of the States constituting the international operating agency and in the latter case each part will be maintained by one or other of these States.
- (c) An aircraft can be registered only once, namely, in the joint register or, in the case where there are different parts, in that part of the joint register which is maintained by a given State.
- (d) All aircraft registered in the joint register or in any part thereof shall have one common marking, in lieu of a national mark.
- (e) The functions of a State of registration under the Chicago Convention (for example, the issuance of the certificate of registration, certificate of airworthiness or licences of crew) shall be performed by the State which maintains the joint register or by the State which maintains the relevant part of that register. In any case, the exercise of such functions shall be done on behalf of all the States jointly.
- (f) Notwithstanding (e) above, the responsibilities of a State of registration with respect to the various provisions of the Chicago Convention shall be the joint and several responsibility of all the States which constitute the international operating agency. Any complaint by other Contracting States will be accepted by each or all of the States mentioned.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

REPORT ON THE WORK OF THE LEGAL COMMITTEE

(Sixteenth Session)*

The sixteenth session of the Legal Committee was inaugurated at the ICAO European Office in Paris on 5 September 1967 by Dr. V. Delascio, Chairman of the Legal Committee. The Committee held twenty-seven meetings between 5 and 22 September 1967.

The Committee decided that (a) a Subcommittee to study possible revision of the Warsaw Convention of 1929 as amended by the Hague Protocol of 1955 should be established and meet, subject to the approval of the Council, in the first half of 1968 and (b) that the main subject of the provisional agenda of the next session of the Legal Committee, to be convened in the second half of 1968, should be study of the possible revision of the Warsaw Convention of 1929 as amended by the Hague Protocol of 1955.

I. REPORT ON PROBLEMS OF NATIONALITY AND REGISTRATION OF AIRCRAFT OPERATED BY INTERNATIONAL AGENCIES

A. Introduction

Studies on the subject of the Problems of Nationality and Registration of Aircraft Operated by International Agencies began in 1948 when the Assembly of the Organization adopted Resolution A2-13 and have been conducted in different bodies, namely, the Air Transport Committee, the Council, a Panel of Experts appointed by the Council and a Subcommittee of the Legal Committee.

The present Report relates only to that part of the subject which appertains to Article 77 of the Convention on International Civil Aviation. The Report is intended to constitute advice to the Council of the Organization in response to the reference which was received from the Council as a result of certain requests which had been made to that body by the League of Arab States in 1959 and by the Union Africaine et Malgache de Coopération Economique and of the Government of the United Arab Republic in 1964 that the Council determine, in accordance with the Article of the Convention just mentioned, the manner in which the provisions of the Convention shall apply to aircraft which would be operated by international operating agencies.

* Deleted from this report of the Legal Committee are agenda item numbers 1, 2, 6, and 8 and annexes A, B, F, and G. These items presented: the representative at the session, the noting of the officers and the Secretariat, and the report of the Secretariat, the working methods of the Legal Committee and amendments to its rules of procedure, and the review of the work program which is set out in Part IV.

Aspects of the subject other than those pertaining to the Chicago Convention could be dealt with later, as necessary.

B. *Interpretation Of Article 77 Of The Chicago Convention*

The Article reads as follows:

Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.

The following expressions are defined for the purpose of interpreting the last sentence of the said Article 77:

(1) *provisions of this Convention relating to nationality of aircraft*: The Committee, having examined the provisions of the Chicago Convention, agrees that the words should be regarded as including not only Articles 17 to 21 which appear in Chapter III, entitled Nationality of Aircraft, of the Convention, but also all articles of the Convention which either expressly refer to nationality of aircraft or imply it;

(2) *joint registration and international registration*: The former expression is used herein to indicate that system of registration of aircraft according to which the States constituting the operating agency would establish a non-national register for the joint registration of aircraft. This system is described in greater detail in paragraph 6 below. The other expression, namely, "international registration" denotes the cases where the aircraft would be registered with an international organization. Common to either of these kinds of registration would be the fact that the aircraft would not be registered on a national basis in a given State.

In the sense of the expressions described above, the Legal Committee examined the question whether joint registration or international registration of aircraft would be compatible with the provisions of the Chicago Convention or whether in order to apply the provisions of the Convention it would be necessary to amend the Convention. Leaving aside the case of nationally registered aircraft of international operating agencies, in respect of which there would be no function on the part of the Council under Article 77, consideration was given to determining whether the provisions of the Convention can, without amendment, be made applicable to aircraft of such agencies when they are not registered on a national basis. Article 77 specifically casts upon the Council the duty of determining the manner in which the provisions of the Convention relating to nationality of aircraft shall be applied to aircraft operated by international operating agencies. In the view of the Legal Committee this implies that those provisions can be made so applicable to such aircraft without amending the Convention. Therefore, the Legal Committee concludes that, without any amendment to the Chicago Convention, the provisions of the Convention can be made applicable, by a determination of the Council, to aircraft which are not registered on a national basis, such as aircraft jointly regis-

tered or internationally registered, subject, however, to fulfillment of certain criteria.¹

C. *Effect Of "Determination" By The Council Under Article 77*

In the opinion of the Committee a determination made by the Council pursuant to Article 77 of the Chicago Convention, and within the scope of that Article, following the procedure outlined below,² will be binding on all Contracting States. Accordingly, in the case of aircraft which are jointly registered or internationally registered and which fulfil the criteria,³ the rights and obligations under the Chicago Convention would be applicable as in the case of nationally registered aircraft of a Contracting State.

D. *Joint Registration*

In its study of joint registration, the Committee had before it the following scheme, noting at the same time that other schemes might also be possible.

(1) The States constituting the international operating agency will establish a joint register for registration of aircraft to be operated by the agency. This will be separate and distinct from any national register which any of those States may maintain in the usual way.

(2) The joint register may be undivided or consistent of several parts. In the former case the register will be maintained by one of the States constituting the international operating agency and in the latter case each part will be maintained by one or other of these States.

(3) An aircraft can be registered only once, namely, in the joint register or, in the case where there are different parts, in that part of the joint register which is maintained by a given State.

(4) All aircraft registered in the joint register or in any part thereof shall have one common marking, in lieu of a national mark.

(5) The functions of a State of registration under the Chicago Convention (for example, the issuance of the certificate of registration, certificate of airworthiness or licenses of crew) will be performed by the State which maintains the joint register or, as the case may be, by the State which maintains the relevant part of that register. In any case, the exercise of such functions shall be done on behalf of all the States jointly.

(6) Notwithstanding (5) above, the responsibilities of a State of registration with respect to the various provisions of the Chicago Convention shall be the joint and several responsibility of all the States which constitute the international operating agency. Any complaint by other Contracting States will be accepted by each or all of the States mentioned.

E. *International Registration*

The essential idea here is that aircraft would be registered by an internationally constituted body with a legal personality. Such a body would be concerned with the functions of registration of aircraft and issuance of

¹ *Infra* Part I, section F.

² Part I, section G, fourth para.

³ Part I, section F.

related documents and it would be distinct and separate from the agency which would be operating air services. The international registration body might be composed of the same States as constitute the international operating agency or it might be some other type of international organization.

F. Criteria

The Council should be guided by the following basic criteria in arriving at a determination in accordance with Article 77:

(1) In the case of *joint registration*—

(a) The States constituting the international operating agency shall be jointly and severally bound to assume the obligations which, under the Chicago Convention, attach to a State of registry.

(b) The States constituting the international operating agency shall identify for each aircraft an appropriate State from among themselves which shall be entrusted with the duty of receiving and replying to representations which might be made by other Contracting States of the Chicago Convention concerning that aircraft. This identification shall be only for practical purposes and without prejudice to the joint and several responsibility of the States participating in the agency, and the duties assumed by the State so identified shall be exercised on its own behalf and on behalf of all the other participating States.

(c) The operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other Contracting States with respect to the provisions of the Chicago Convention.⁴

(d) The States constituting the international operating agency shall ensure that their laws, regulations and procedures as they relate to the operation of the aircraft of the international operating agency shall meet in a uniform manner the obligations under the Chicago Convention and the Annexes thereto.

(2) In the case of *international registration* the States constituting the international operating agency may devise such a system for registration as shall satisfy the Council that the other Member States of ICAO have sufficient guarantees that the provisions of the Chicago Convention are complied with. In this connection the criteria mentioned in (a), (c) and (d) above shall, in any event, be applicable.

G. Action By Council On Article 77

In the opinion of the Legal Committee, the Council, in discharging its function under the second sentence of Article 77, may adopt a resolution which would incorporate the criteria⁵ above and would also specify that the manner of application of the provisions of the Convention relating to nationality of aircraft be as follows:

(1) In the case of joint or international registration, all the aircraft of a given international operating agency shall have a common mark, and not the nationality mark of any particular State and the provisions of the

⁴ See Part I, section H.

⁵ Part I, section F.

Convention which refer to nationality marks (Articles 12 and 20) and Annex 7 to the Convention shall be applied *mutatis mutandis*.

(2) Without prejudice to the rights of other Contracting States as provided for in (F) (1) (c) above and in (H) below, each such aircraft shall, for the purposes of the Convention, be deemed to have the nationality of each of the States constituting the international operating agency.

(3) For the application of Articles 25 and 26 of the Convention the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft shall be considered to be "the State in which the aircraft is registered."

The States constituting the international operating agency concerned would file with the Council appropriate information relating to their plan for joint registration or international registration of the aircraft operated by the agency. This would be necessary for the purpose of ascertaining, in accordance with item (2) of the compromise solution below, whether the plan met the criteria⁶ specified. It is also noted that Article 83 of the Chicago Convention requires that aeronautical agreements and arrangements made by any Contracting State shall be forthwith registered with the Council.

The Committee discussed the question whether, in the light of information so received from the States concerned, the procedure for determination under Article 77 would include examination of the question whether in a particular case the criteria⁷ were complied with. Some members of the Committee were of the opinion that such examination may not be pertinent under Article 77 in so far as the Council is merely to make a general determination in a single phase; they recognized nevertheless that such examination might be warranted by other provisions of the Chicago Convention, in particular Article 54. Other delegates maintained that under Article 77, it fell to the Council itself to make a determination in two phases covering firstly, the adoption of general criteria and secondly, their application to particular cases. Eventually, the compromise solution described below was adopted.

The compromise solution adopted was that the process of determination contemplated in Article 77 would include the following:

(1) adoption by the Council of general, basic criteria to be applied to cases of joint or international registration of aircraft: these are specified in paragraph F. above; and

(2) application of the above-mentioned general, basic criteria to a particular plan for joint or international registration which might be brought before the Council, it being understood that in the case of joint registration described above⁸ there would be no problem in regard to the fulfilment of the conditions specified in the criteria⁹ and therefore such determination by the Council in such or similar cases will merely be formal and should

⁶ Part I, section F.

⁷ Part I, section F.

⁸ Part I, section D.

⁹ Part I, section F.

automatically be given. Other cases of joint registration and all cases of international registration may well require different approaches.

H. Observations On Other Provisions Of The Convention

In connection with (1) (c) of the criteria above, the following articles of the Chicago Convention were examined:

Article 7 (Cabotage): It was agreed that the mere fact of joint or international registration under Article 77 would not operate to constitute the geographical area of the multi-national group as a cabotage area.

Article 9 (Prohibited Areas): The Committee agreed that joint or international registration will not affect the application of this Article.

Article 15 (Airport and Similar Charges): The Committee saw no difficulty in the case of this Article.

Article 27 (Patent Claims): The requirement of this Article being that a given State should be a party not only to the Chicago Convention but also a part to the International Convention for the Protection of Industrial Property, it might be that, in a particular case, one or other of the States constituting an international operating agency was not a party to the latter Convention. In such case the interests of that State are not protected by the terms of Article 27.

I. Composition of International Operating Agency

The Legal Committee is of the opinion that if in the case of some international operating agency the States constituting the agency are not all members of ICAO, then a Contracting State which is not a member of the operating agency could refuse a non-contracting State the benefits or privileges which the Convention confers only on aircraft of Contracting States.

II. ACTION ON REPORT OF THE SUBCOMMITTEE ON REVISION OF THE ROME CONVENTION (1952)

The Committee considered the Report of the Subcommittee on Revision of the Rome Convention (1952) as well as the comments of States made in relation thereto. The Committee examined in particular the following questions.

A. Sonic Boom

Noting, in relation to Article 1, paragraph 1, of the Rome Convention, that there was a problem concerning damage resulting from sonic boom, the question was considered whether claims on account of such damage should be left to be determined by national laws or should be regulated by the Convention. The Committee was divided on this question. It was decided to request the Subcommittee to continue its work on this question in the light of developments such as further comments from States and experience of supersonic flights.

B. Nuclear Damage

The Committee noted that 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, channeled liability to the operator of the nuclear installation and excluded 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. The Secretariat was requested to ascertain to what extent these instruments had been ratified and to transmit the information thus received to the subcommittee.

C. Limitation Of Liability

The Committee considered that the question of the limits under the Convention should be further examined, but it did not consider that it was advisable for the Subcommittee to attempt to determine, at this time, specific figures for the limits.

D. Future Work

It was decided that the Subcommittee should continue to exist and that it should, in its further work, take into account the comments made during the Sixteenth Session of the Committee and comments which had already been received or might later be received from States. However, the Committee considered that the Subcommittee could only meet when more experience had been gained and material received in relation to the topics mentioned above.

In the light of the foregoing it would be for the Chairman of the Legal Committee to determine, in consultation with the Chairman of the Subcommittee, when the Subcommittee should be reconvened.

The Committee also noted that one of the topics which could be studied by the Subcommittee was that of a standard form of a certificate of insurance or other security. The Committee expressed the view that its study of possible amendments to the Rome Convention should not deter States which were otherwise ready to take appropriate action in that regard from becoming parties to it.

III. ACTION ON THE REPORT OF THE SUBCOMMITTEE ON LIABILITY OF AIR TRAFFIC CONTROL AGENCIES

A. Report Of The Subcommittee

The Legal Committee considered the Report of the Subcommittee on this subject which was drawn up in April, 1965. It discussed the following questions:

(1) *Description of the services within the scope of the proposed Convention*: It was agreed that such description should be broadly based as contemplated in paragraph 14 of the Subcommittee's report.

(2) *Posture of aircraft*: It was agreed that the Convention should apply whatever the posture of the aircraft—whether in flight, on the surface or

in movement or not—whenever the aircraft was under the control of the service concerned.

(3) *System of liability*: It was agreed that the Convention should contain a system of liability based upon fault.

(4) *Limitation of liability*: The Committee considers that the Convention should provide for a limitation of liability in a reasonably high amount. The amount could be determined only after further studies. The opinion was expressed that the amount of the limit under the proposed Convention might be related to the corresponding limits in the other liability conventions, depending upon the applicability of the latter also to a given case. It was agreed that nothing in the Convention should prevent a State from accepting liability in an amount higher than the limit provided in the Convention.

(5) *Questions concerning direct and recourse actions and apportionment*: The Committee discussed the questions whether direct actions against air traffic control agencies may be maintained independently of direct actions against any other person liable; whether a claimant may recover in the total more than the carrier's or operator's applicable limit; whether there should be priority for direct actions over recourse actions against air traffic control agencies. Opinion on these questions was divided.

(6) *Security for liability*: The Committee discussed this question but no conclusions were reached.

B. Decisions

The Committee reaffirmed the objective that international rules should be comprised in a particular convention on liability of air traffic control agencies, without precluding the exploration, in the course of studies on this subject, of such problems as might arise in relation to the problems of damage caused by foreign aircraft to third parties on the surface and aerial collision.

The Committee decided that the Subcommittee should continue its work, taking into account the foregoing. The Minutes of the present session of the Legal Committee would provide details such as would help the Subcommittee in its further work on the subject.

IV. GENERAL PROGRAMME OF WORK OF THE COMMITTEE

Part A: Subjects on the current programme

- (1) Study of the possible revision of the Warsaw Convention of 1929 as Amended by the Hague Protocol of 1955.
- (2) Liability of Air Traffic Control Agencies.
- (3) Aerial Collisions.
- (4) Study of the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome 1952).
- (5) Resolution B of the Guadalajara Conference.
- (6) Legal Status of the Aircraft; aspects other than those found in the Tokyo Convention.

Part B: Subjects on which no work should be undertaken unless and until

a report had been submitted to the Council by the Secretary General or by the Chairman of the Legal Committee indicating the need for such work and Council had approved, or unless the Assembly or Council otherwise directed that active work should be undertaken

- (1) Study of a system of guarantees for the payment of compensation in pursuance of the Warsaw Convention.
- (2) Study with a view to unifying the rules relating to procedure in cases arising under conventions on air law and of the rules of procedure applicable to the execution of judgments.
- (3) Research in regard to measures for promoting the uniform interpretation of international private air law conventions, and research in regard to measures to be taken in order to ensure (a) the international authority of judgments by competent tribunals on conventions in force on air matters and (b) the distribution and allocation of awards in pursuance of such conventions.
- (4) Consideration of problems concerning assistance on sea and land and remuneration therefor.
- (5) Resolution D of the Guadalajara Conference (New problems of private air law arising in connection with the hire, charter and interchange of aircraft, particularly in relation to the liability of a person who makes available to another an aircraft without crew.).
- (6) Legal Status of the aircraft commander.
- (7) Study of a possible consolidation of international rules contained in the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome 1952), the draft convention on aerial collisions and the subject of liability of air traffic control agencies.
- (8) Liability in respect of nuclear material in relation to civil aviation.
- (9) Study of the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft (Rome 1933).

RECENT CONFERENCES AND MEETINGS

INTERNATIONAL INSTITUTE OF SPACE LAW—TENTH COLLOQUIUM ON SPACE LAW—BELGRADE (24-29 September), prepared by Julian G. Verplaetse†

The Tenth Colloquium on the Law of Outer Space (or Space Law, as it is now called) of the International Institute of Space Law (IISL) of the International Astronautical Federation was held at Belgrade on 27-29 September 1967. It was presided over by Professor Milan Bartos, of Belgrade, a member and past president of the International Law Commission. President Pepin delivered a homage to the late John Cobb Cooper and surveyed the ten year period of the space law colloquia. Several problems were explained by ad hoc working groups.

Legal problems relating to the establishment of a station with personnel on the moon—The reporter, C. Hosford (UK), was unfortunately not present and no serious discussion took place. He had put the following questions in his report:

(1) What rights accrue as to minerals and other natural resources, and does "use" include the right to take things from a celestial body?

(2) Can an area be claimed around the base; and if so, what is the extent of the jurisdiction which could be exercised?

(3) What State shall be responsible for rescue or removal of visiting foreign personnel in case of accident or dispute?

(4) Is a station in permanent orbit around the Moon to be regarded as in space or as on the moon for legal purposes?

(5) In the event of war on earth, what action should be taken by personnel on rival space bases?

(6) In the case of non-permanent stations or recurring visits, does an exploring State which returns have any right to demand the same site again for its base or installation?

(7) Should a UN Space Agency be established with power to grant concessions to exploring States?

(8) Is it desirable to appoint observers to ensure compliance with Treaty obligations, as suggested in the David Davies Draft Treaty?

(9) What criminal or civil jurisdiction should be exercised as to acts or disputes involving personnel of two neighboring stations?

Legal problems arising from the establishment of one or several systems of telecommunications by satellites—The reporter, Professor Cocca (Argentina), had arrived in time to lead the discussion, for which several

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Americans (C. A. Armstrong, R. R. Colino, and S. E. Doyle) had sent contributions. Here again, the absence of some of the contributors had an adverse impact on the discussion. The questions of Professor Cocca were:

- (1) What is the reach of the expression "international public service" in connection with a global telecommunications by satellite network?
- (2) Would the existence of a public international service indicate the operation of an organization of the type recognized by international law or the constitution of an international enterprise of a commercial nature linked to the organization in the capacity of a concessionnaire?
- (3) Could substitution be made for such an enterprise in the services it renders by national or regional telecommunications services?
- (4) Would it be advisable to enlarge the attributions and functions of organizations already existing, such as ITU, for another experimental period in order to arrive at the creation of the definitive entity?

At the third session, the problems of interpretation of the Space Treaty of 27 January 1967, for which I. Herczeg (Hungary) had written an introductory report, gave rise to the most interesting discussion of the meetings. The intervention of Bourély (France and ELDO), Mrs. Galloway (USA), and M. M. Zhukov and Veretchetin (USSR), had a considerable impact, although it could not be expected that they would exhaust the matter. The most interesting consensus was reached on Art. IV where against the position of Reporter Herczeg but with strong support from the floor, it was settled that the qualification of peaceful purposes affected only the moon and other celestial bodies and not outer space itself.

The last section of the Colloquium was entitled "Other Subjects." The reviewer did not attend, having been detained at the General Assembly. The most discussed contribution was by Miss S. Thomas (USA) on Semantics in Space.

The next Colloquium will be held in New York at the Waldorf Astoria during the meetings of the XIX Congress of the IAF from 13-19 October 1968. Several improvements seem to be underway in order to draw more selective papers on the part of the scientists. The final meeting of the Institute did not clarify the jurists' intentions for next year. It was only said that the Board of Directors would decide matters later. The reviewer would suggest more planning, since more often than not the members are at a loss about what is happening, even during the days of the congress. The creation of a news letter sent to all members is a welcome innovation but has not solved the problems of organization.

Julian G. Verplaetse