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International Civil Aviation Organization (ICAO) Meetings

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INTERNATIONAL REVIEW

By Julian G. Gazdik, Secretary, Legal Committee, I.A.T.A.

I.

INTERNATIONAL CIVIL AVIATION ORGANIZATION
(ICAO) MEETINGS

Seventh Session of the Assembly—June 16th to July 6th, 1953

A full-scale session of the Assembly of the International Civil Aviation Organization was held in Brighton, England from June 16th to July 6th, 1953 to review the work of the Organization in the administrative, economic and technical fields during the past three years and to provide the 21-member Council and its subsidiary bodies with policy decisions for the future. Fifty-two Contracting States, five non-Contracting States and eight international organizations were represented. During the sessions the Government of Yugoslavia announced that it will become a member of ICAO with effect on January 1st, 1954, and it was also announced that Nationalist China and Japan would shortly become members.

Sir Frederick Tymms, United Kingdom, was elected President of the Assembly, the Vice-Presidents chosen were Mr. L. C. Jain (India), Cdr. J. W. F. Backer (Netherlands), Mr. H. Fontenelle (Brazil), and Mr. J. Paul Barringer (United States).

The Assembly established Three Commissions and elected Chairmen as follows: Technical Commission: Chairman, Lt. Col. Luis Azcarraga (Spain); Economic Commission: Chairman, Mr. R. M. L. Lemaire (France); Administrative Commission: Chairman, Brig. C. S. Booth (Canada).

A new Council, composed of Argentina, Australia, Belgium, Brazil, Canada, Norway, Egypt, France, India, Lebanon, Ireland, Italy, Mexico, Netherlands, Philippines, Portugal, Spain, Union of South Africa, United Kingdom, United States of America and Venezuela, was elected for a three-year term.

AIR TRANSPORT MATTERS

In the economic field the Assembly was chiefly concerned with the international operating rights of airlines and other operators of air transport services. Since the decision of all states that each must retain sovereignty over its own airspace, and cannot permit nationals of other countries to operate air services into its territory without permission, repeated attempts have been made to devise some general form of permission to be agreed upon by all nations, so that operators of international services could arrange them to the best possible advantage without the necessity for constant reference to governments for permits and licenses. It has proved impossible, however, to evolve a formula acceptable to all states, and the network of international air services now covering the world is the result of some three hundred special agreements between various pairs of governments. Those agreements have tended to sectionalize the world and to make air transportation both more expensive and less convenient than it should be.

This matter of operating rights was thoroughly studied and discussed in Brighton. The conclusion reached was that the time was not yet ripe
for attempting world-wide agreement concerning the exchange of commercial rights in international air services. It was, however, agreed that the ICAO Council should study what might be achieved by means of general agreement concerning certain partial solutions, producing results of practical value on the way towards the objective of multilateralism in the exchange of commercial rights.

The possibility of some form of regional agreement has been raised by the Council of Europe which wishes to see the unification of Europe extended to the air. The Council of Europe has requested ICAO, as the international body concerned with all aviation problems, to convene a conference to consider various measures to coordinate and improve European air transport. This proposal has been approved by the ICAO Assembly, and preparations for the conference will shortly be made. (The ICAO Council, meeting immediately after the assembly already decided that a preparatory committee composed of representatives of Belgium, Denmark, France, Italy, Netherlands, Norway, Sweden, Switzerland and the United Kingdom should meet on or about October 15th, 1953.) Resolution A7-15 reads as follows:

Prospects of and Methods for Further International Agreement on Commercial Rights in International Air Transport—Scheduled International Air Services.

THE ASSEMBLY

(1) IS OF THE OPINION that there is no present prospect of achieving a universal multilateral agreement, although multilateralism in commercial rights to the greatest possible extent continues to be an objective of the Organization;

(2) APPROVES, in these circumstances, the favorable reception given by the Council to the request for co-operation addressed to the Organization by the Council of Europe with a view to convening a regional conference including in its agenda the study of commercial rights;

(3) EXPRESSES its desire that the Council keep under review the possibilities of partial solutions including those considered by this Assembly and undertake study of those partial solutions which, in the Council's view, would produce results of practical value to the Contracting States consistent with and thereby assuring sound progress toward the Organization's objective with respect to a multilateral exchange of commercial rights;

(4) URGES Contracting States to co-operate fully in supplying data required in connection with the studies initiated by the Council and to keep the Council fully informed of important problems arising from the application of bilateral agreements and of any developments achieved or contemplated which tend toward the objective of multilateralism in the exchange of commercial rights.

NON-SCHEDULED AIR TRANSPORT OPERATIONS

The Assembly also gave special attention to the needs of non-scheduled international air services. It was felt that it was too early to expect universal freedom for this type of transportation, but it was agreed that the ICAO Council should explore this matter to see how charter operations could be distinguished from regular services, and which charter
operations could be given general freedom of operations internationally, without encroaching on traffic of the regular services. Resolution A7-16 reads as follows:

Prospects of and Methods for Further International Agreement on Commercial Rights in International Air Transport—Non-scheduled Air Transport Operations.

THE ASSEMBLY RESOLVES:

(1) That Contracting States be requested to inform the Council whether they have accepted the definition of a “scheduled international air service” adopted by the Council on 25 March 1952 or what other definition or method they have adopted for distinguishing between scheduled international air services and non-scheduled international operations;

(2) That the Council should give careful attention to any views expressed by Contracting States which might lead to an improvement of the definition as a means of distinguishing between scheduled and non-scheduled air services and should take such action to give effect to its conclusions as it may think best;

(3) That, in addition, Contracting States be requested to inform the Council of:
   (a) any difficulties they may have experienced in the operation of international non-scheduled services, together with other relevant facts;
   (b) their suggestions as to the practical steps that might be taken to eliminate or reduce any such difficulties; and
   (c) any legal problems that might be presented by attempts at liberalization of their national regulations; and

(4) That, after considering this information, the Council advise Contracting States what practical steps should be taken in order to facilitate the operation of non-scheduled air transport.

STUDY OF CHARGES FOR AIRPORTS AND AIR NAVIGATION FACILITIES

The problem of the growing cost of airport and radio facilities for air navigation was also discussed. The airlines could not bear the whole cost of these services without an excessive increase in passenger fares, which would result in a decrease in traffic. In view of the fact that different states are not in agreement as to what sort of charges would represent a reasonable balance between the operators of airlines and the operators of airports, it was agreed that the Council should issue a purely factual report on the situation, so that governments could examine it independently and reach their own conclusions. Resolution A7-18 reads as follows:

Study of Charges for Airports and Air Navigation Facilities

WHEREAS the Working Group of the Air Transport Committee appointed to examine the question covered by Resolution A2-14 has reached an advanced stage in its study of the subject of airport charges;

THE ASSEMBLY DIRECTS THE COUNCIL:

(1) To take, as a matter of urgency, all necessary steps to transmit to Contracting States, preferably before 1st January
1954, an objective study concerning airport charges without
at this stage formulating recommendations;

(2) To request the opinion of Contracting States as to whether
a meeting to reach conclusions on the subject of airport
charges could usefully be held at a convenient early date; and

(3) To take action on this point, taking into account the replies
received.

AIR NAVIGATION

While modifications have to be made from time to time to meet new
developments and techniques, the basic annexes of ICAO which contain
the various international standards, practices and procedures to be im-
plemented all over the world, are now approaching a degree of stability in
which the number of future amendments necessary will decrease pro-
gressively. Similarly, the regional plans in the eight ICAO air naviga-
tion regions are becoming stabilized.

The Assembly, therefore, decided that the moment had arrived when
more emphasis could be placed on the implementation of international
standards, practices and procedures. Accordingly it recommended that
stress should be laid on specific problems of an urgent character rather
than on the revision of any set of standards or regional plans. Emphasis
was also laid on the desirability of developing the resources of the five
regional offices of ICAO (Paris, Cairo, Lima, Melbourne, Montreal) to
enable the regional representatives to assist the national administrations
more effectively in their task of implementing these standards, practices
and procedures.

In general, the ICAO international standards are framed in such a
way that little difficulty is experienced in implementing them. An excep-
tion exists, however, in the international standards for airworthiness. At
present, the ICAO airworthiness standards cover only three categories
of aircraft and the standards are mandatory only insofar as they concern
aircraft which have been voluntarily certified as conforming with the
specifications relating to one of the three categories. For this reason
there is no obligation on the part of a particular state to conform exactly
to the ICAO requirements or to notify the Organization of departure
therefrom. However, not only have the ICAO airworthiness standards
proved a valuable guide to aircraft-manufacturing states, but, in accord-
ance with the Convention on International Civil Aviation to which each
ICAO member nation is a party, every aircraft flying an international air
route must possess a certificate of airworthiness issued by the state in
which the aircraft is registered. The aircraft-manufacturing countries
of the world see to it in their national regulations that any such aircraft,
and indeed all other aircraft produced by them, are fully airworthy.
Nevertheless, it would be desirable for international airworthiness stand-
ards to exist to which all aircraft would have to conform. Such standards
would naturally have to be limited to broad principles of safety and air-
worthiness, for otherwise initiative in the design and performance of
aircraft, on which progress depends, would be stifled. The advent of the
jet age has emphasized the desirability of some action being taken by
ICAO to develop international airworthiness requirements to which all
aircraft-producing states would have to conform. The ICAO Assembly
in Brighton was of the opinion that it is highly desirable to arrive at a
solution at the earliest possible date, and it adopted a resolution which
will strengthen the hand of the Council in the work it has already under-
taken on this question.
ADMINISTRATION AND BUDGET

The Assembly resolutions in the administrative field endorse a policy and a scale of future endeavor which will be both stable and flexible within the framework of steadily declining budgets. Budget estimates have been reduced. The total budget figure for 1954 is 3,200,000 Canadian dollars as compared with 3,259,384 in 1953.

LEGAL COMMITTEE—CONSTITUTION

The Assembly adopted a revised Constitution of the ICAO Legal Committee and a revised procedure for the approval of draft conventions on international air law. At its Fourth Session held in 1950, the Assembly requested the Council to study the relationship of the legal work of the Organization and the relationship of the Legal Committee to the Council and the Secretariat, and to formulate proposals for any reorganization and any amendment of the constitution of the Committee that may be found necessary, and to submit the proposals to an early ensuing session of the Assembly. The Council, after consultation with the Legal Committee, submitted such proposals to the Assembly and at Brighton the Assembly adopted the following texts:

"1. The Legal Committee (hereinafter called 'the Committee') shall be a permanent Committee of the Organization, constituted by the Assembly and responsible to the Council except as otherwise specified herein.

2. The duties and functions of the Committee shall be:
   (a) to advise the Council on matters relating to the interpretation and amendment of the Convention on International Civil Aviation, referred to it by the Council;
   (b) to study and make recommendations on such other matters relating to public international air law as may be referred to it by the Council or the Assembly;
   (c) by direction of the Assembly or the Council, or on the initiative of the Committee and subject to the prior approval of the Council, to study problems relating to private air law affecting international civil aviation, to prepare drafts of international air law conventions and to submit reports and recommendations thereon;
   (d) to make recommendations to the Council as to the representation at sessions of the Committee of non-Contracting States and other international organizations, as to the co-ordination of the work of the Committee with that of other representative bodies of the Organization and of the Secretariat and also as to such other matters as will be conducive to the effective work of the Organization.

3. The Committee shall be composed of legal experts designated as representatives of and by Contracting States, and shall be open to participation by all Contracting States.

4. Each Contracting State represented in meetings of the Committee shall have one vote.

5. The Committee shall determine, subject to the approval of the Council, the general work programme of the Committee and the provisional agenda of each session, provided that the Committee may, during a session modify the provisional
agenda for the better conduct of its work consistently with the provisions of this Constitution. Sessions of the Committee shall be convened at such places and times as may be directed or approved by the Council.

6. The Committee shall adopt rules of procedure. Such rules, and any amendment thereof which affects the relationship of the Committee with other bodies of the Organization or with States or other organizations, shall be subject to approval by the Council.

7. The Committee shall elect its own officers.

8. The Committee may appoint Sub-committees either to meet concurrently with the Committee or subject to the approval of the Council, at other times and places as it may deem fit."

PROCEDURE FOR APPROVAL OF DRAFT CONVENTIONS

"1. Any draft convention which the Legal Committee considers as ready for presentation to the States as a final draft shall be transmitted to the Council, together with a report thereon.

2. The Council may take such action as it deems fit, including the circulation of the draft to the Contracting States and to such other States and international organizations as it may determine.

3. In circulating the draft convention, the Council may add comments and afford States and organizations an opportunity to submit comments to the Organization within a period of not less than four months.

4. Such draft convention shall be considered, with a view to its approval, by a conference which may be convened in conjunction with a session of the Assembly. The opening date of the conference shall be not less than six months after the date of transmission of the draft as provided in paragraphs 2 and 3 above. The Council may invite to such a conference any non-Contracting State whose participation it considers desirable, and shall decide whether such participation carries the right to vote. The Council may also invite international organizations to be represented at the conference by observers."

POST ASSEMBLY COUNCIL SESSION—JULY 7TH TO JULY 15TH, 1953

On July 7th, 1953, in Brighton, Dr. Edward Warner was unanimously reelected for a three-year term as President of the Council of the International Civil Aviation Organization.

THIRD CONFERENCE ON NORTH ATLANTIC OCEAN STATIONS—
JULY 8TH TO JULY 15TH, 1953

The Third Conference on North Atlantic Ocean Stations was held in Brighton, England from July 8th to July 15th, 1953. Representatives of Belgium, Canada, Denmark, France, Iceland, Ireland, Israel, Italy, the Netherlands, Norway, Spain, Sweden, the United Kingdom, the United States, Venezuela and observers of the United Nations and the World Meteorological Organization attended this conference. Mr. A. P. Dekker (Netherlands) was elected Chairman and Mr. G. Crone Levin (Denmark) was elected Vice-Chairman.
The agenda of the Brighton Conference was confined to consideration of the re-allocations of responsibilities and distribution of contributions under the existing Agreement.

The major purpose of the agreement co-ordinated by ICAO is to fill an essential gap in the complex weather reporting networks which exist in Europe and North America; to do this the 10 floating stations take surface and upper air weather observations several times daily, and report these back to their bases for incorporation into the weather networks. The stations provide meteorological and navigational aids to aircraft, and serve as floating search and rescue bases.

25 ships are needed to operate these ten stations; depending upon the station's distance from the shore base, between two and three ships are required to keep each station in full operation. Although weather reporting is their main work, the ships have built up an enviable search and rescue record in the past few years. Several hundred people have been saved from the Atlantic, including the passengers and crews of four aircraft (a non-scheduled flying boat, and three military planes) and more than half a dozen surface vessels.

The original agreement which provided for the maintenance of the network was signed in 1946, and revised in 1949. The 1949 agreement was originally to expire on July 1st, 1953, but was extended for one year by a special protocol signed in the summer of 1952.

It soon became apparent, that, owing to the fact that at least three vessels now operated by the United States would, under a new agreement, have to be replaced by vessels of other operators, the scheme of 25 vessels could be continued only if replacement vessels could be found. Although all potential operating States were prepared to carry their full computed share required in maintaining the network in full operation, the assurances of cash contributions did not appear sufficient to induce operators of the vessels to assume the additional burden in excess of their computed responsibilities. Thus, only 22 vessels were offered (several of them subject to certain assumptions as to cash contributions which might not materialize), with a possibility of a 23rd vessel, which might be made available if an operator for this vessel could be found. With only 22 or possibly 23 ships available, one or two stations could not be continuously manned. The crucial difficulty was that European operators could not be expected to operate the required additional ships unless assured of a substantial period of operation and adequate financial support.

The offer of France to operate, on a reimbursement basis, one additional vessel (a frigate—the 23rd vessel referred to above) was considered to be presumably unproductive because of lack of funds. Several partial solutions were studied. Among these was a proposal by which the Euronpan States would pool operational and financial resources in order to keep the eastern stations going while the United States and Canada maintained a portion of the western stations. It was also suggested by Belgium that only certain provisions of the existing Agreement affecting European operators might be amended so as to adjust the financial rights and obligations of the States affected to present conditions. These measures, however, were deemed unsatisfactory and out of keeping with a true international solution of the problem. Particular attention was given to the budgetary problems of certain States which would be unable to give unequivocal assurance to their financial departments that funds would be needed for operation beyond 30th June 1954.

In connection with a proposal of the United States with regard to "non-aeronautical benefits," the conference noted that the ICAO Council
has indicated that such a study will be continued—views on the necessity of this study were divided.

These "non-aeronautical benefits" include those provided for maritime interests, such as sighting of ice flows and bergs, as well as oceanographic observations including wave heights and sea swell, utilized in forecasting these elements for other locations, and guarding of distress frequencies to provide search and rescue of sea surface shipping. In addition, the meteorological observations serve to provide better weather forecasts for non-aeronautical interests, which include merchant shipping on the high seas and deep sea fishing, coastal shipping and coastal fishing, agriculture, land transportation, industry, and the general public of the countries surrounding the North Atlantic. In connection with the study of "route benefits" a proposal from Spain was noted that some simplified method based on a judgment factor might be supplied to the evaluation of such benefits.

In view of the foregoing, the Brighton Conference resolved that a full conference should be convened to review the whole problem of the North Atlantic Ocean Stations as soon as practicable, and if possible before the end of 1953, for the purpose of:

(a) determining the number of stations and vessels which will be technically adequate for international civil air navigation in the North Atlantic region and practicable within the collective resources available;

(b) determining the agreed upon responsibilities for the operation and financing of the scheme;

(c) embodying the results in an agreement to become effective upon termination of the present Agreement (July 1st, 1954).

G. F. F.

II.

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR

(Opened for Signature at Warsaw, October 12th, 1929)

I. Ratification and Accessions in 1952 and 1953

Japan ratified the Convention with reservation on May 20th, 1953 and Argentina acceded to it with reservation effective May 21st, 1952. The U.K. deposited documents of accession on behalf of Basutoland, September 1st, 1952 and Bechuanaland (Protectorate), September 1st, 1952. Both reservations by Japan and Argentina are in connection with international carriage by air performed directly by the State.

As of November, 1952, Germany by an exchange of notes has agreed to apply the Warsaw Convention reciprocally between the Federal Republic of Germany and the following States: Denmark, France, Greece, India, Netherlands, Spain, Sweden, Switzerland, United Kingdom, Yugoslavia, Brazil, Ceylon, Pakistan; United States, March 24th, 1952; Canada, November 11th, 1952.

II. Revision

The Legal Committee of the International Civil Aviation Organization will meet on August 25th, 1953, in Rio de Janeiro and the main item on their Agenda is the Revision of the Warsaw Convention. The basis of discussions will be the Report of the Sub-Committee on the Revision of the Warsaw Convention and the Draft Convention prepared in Paris in Janu-
With respect to limits of liability and economic questions, the Council of ICAO was requested earlier to express its views. The Air Transport Committee of ICAO dealt with these matters and presented a statement on the economic aspects of possible changes in the liability limits of the Warsaw Convention. The Council of ICAO, at its 19th Session, May 22nd, 1953, decided not to express its views or to enter into substantive discussions of the matter, but directed that the statement of the Air Transport Committee should be communicated to the Legal Committee and all Contracting States for their consideration in connection with further discussions of the Revision of the Warsaw Convention. The Council also directed that in so circulating the statement an indication be given of the division of opinion which was recorded by the Air Transport Committee on certain matters in its consideration of the liability limits: these matters will be dealt with subsequently.

The Committee was divided in opinion as to the need for changing the limit of liability for death, some members being convinced that the evidence before the Committee fully justified a substantial increase in the present amount of 125,000 Poincaré francs (approximately U.S. $8,000), others feeling that although some increase was justified it should be of moderate extent, and others maintaining that there was no demonstrated need for changing the limit either upwards or downwards. Six members voted in favor of some increase in the limit, 4 were opposed and 1 abstained. A specific proposal that the limit be increased by 25%, an amendment thereto proposing that the increase be 100%, and a further amendment proposing that the increase be 50% were voted upon by the Committee with the following results: the amendment proposing a 100% increase was lost with 7 votes against, 3 for and 1 abstention; the amendment proposing a 50% increase was carried with 5 votes for, 3 against and 3 abstentions; and the original proposal as amended by the Committee’s decision, namely that the limit for death be increased by 50% (i.e., from 125,000 Poincaré francs to 187,500 Poincaré francs), was carried with 6 votes for, 3 against and 2 abstentions.

There was a fairly general opinion in the Committee that there was justification for a higher limit of liability in the case of non-fatal injury than in the case of death. A proposal that a limit of liability of 250,000 Poincaré francs be established for non-fatal injury was lost with 6 votes against, 4 for and 1 abstention; a vote of 6 for, 3 against and 2 abstentions was recorded on a subsequent proposal that the recommended limit of liability for death of 187,500 Poincaré francs also be applied to non-fatal injury, but that, should it ultimately be decided to leave the limit of liability for death unchanged, the limit of liability for non-fatal injury should be established at a somewhat higher figure. The complete statement of the Air Transport Committee has been circulated to Contracting States under LC/Working Draft No. 402.

On December 1st, 1952, the International Air Transport Association advised the International Civil Aviation Organization as follows:

"The 8th Annual General Meeting of IATA placed on record, as it has done before, their conviction that general revision of the Warsaw Convention is still premature. The Warsaw Convention Special Committee of IATA presented a report to the Assembly in Geneva with the following as its concluding paragraphs:

‘The Warsaw Convention is in force in a large percentage of those countries of the world which are engaged in international
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air transport. Its rules are daily being applied as between air carriers and their passengers and shippers in every part of the world. The continued and healthy growth of air transportation since the Warsaw rules have been in effect cannot be denied. Even while revision of the Convention has been under consideration, certain countries that were not previously parties have adhered. Also, by national action, in various parts of the world, the basic rules of the Convention are being more and more applied to domestic and other flights not covered by the Convention itself. Your Committee is in fact advised that the Warsaw Convention is the most widely accepted Convention in international private law and comes closer to universal international legislation than any other Convention now in existence.

Your Committee feels that it should again, therefore, direct your attention to the basic problem as to whether any new Convention should be substituted for the present Warsaw Convention. It is convinced that developments during the past years have justified the position which IATA has taken in opposing such substitution. In the efforts to prepare a new Convention or to revise the Warsaw Convention, it has become continuously apparent that no unanimity exists as to how the Warsaw Convention should be revised, nor has any overwhelming demand appeared which would justify replacing the Warsaw Convention with another Convention whose success would be purely problematical.

The International Chamber of Commerce, at its 13th Congress in Vienna on May 23rd, 1952, passed the following Resolution:

"In view of the world-wide ratification of the existing Convention, and the fact that many signatory States have incorporated the Convention rules into their national laws, the International Chamber of Commerce believes that it would be unwise at the present time to attempt to revise the Convention and that in any case the basic principles should remain untouched.

If, however, there is general agreement among the signatory States on the need for certain amendments, such amendments should be incorporated into a Protocol to the existing Convention and this Protocol should not become effective until ratified by at least three quarters of the signatory states to the existing Convention.

Any amendments of this kind should, however, be confined to a few essential points. In the opinion of the I.C.C., these points appear to be three:

Scope—The I.C.C. believes that it would be desirable to widen the scope of the Warsaw Convention along the lines of the Draft Revision drawn up by the Sub-Committee "Warsaw" of the International Civil Aviation Organization (I.C.A.O.).

Surface transport connecting with air transport should not in the view of the I.C.C. be included in the scope of the Convention.

Passenger Ticket—Details of the particulars to be included in the passenger ticket should not be laid down in the Convention. Some form of ticket is necessary, but its description in the Convention should be kept as simple as possible.

Air Waybills—All details concerning such documentation should be omitted from the Convention and the precise form of the docu-
ments should be left to air carriers and users to evolve in the light of commercial experience.

As regards the limits of liability, those laid down in the Warsaw Convention have on the whole worked satisfactorily and have the merit of being accepted by all the signatories of the Convention. It would be a great mistake to extend these limits, and any additional cover required by a passenger or consignor of cargo can be provided through the normal insurance channels as is the usual practice."

III.

CONVENTION ON DAMAGE CAUSED BY FOREIGN AIRCRAFT TO THIRD PARTIES ON THE SURFACE*

(Opened for Signature at Rome on October 7th, 1952)

This Convention—a revision of the Convention for the Unification of Certain Rules Relating to Damage Caused by Aircraft to Third Parties on the Surface (Rome, 1933) and the Insurance Protocol thereto (Brussels, 1938) was completed by the first plenipotentiary conference on private air law since the Second World War. Convened under the auspices of ICAO, it was held in Rome, on the invitation of the Italian Government, from September 9th to October 6th, and was attended by delegates and observers representing thirty-two States and seven international organizations. (See 20 Jrl. Air L. 89.)

As of August 1st, 1952 the Convention had been signed by nineteen States—Argentina, Belgium, Brazil, Denmark, the Dominican Republic, Egypt, France, Israel, Italy, Liberia, Luxemburg, Mexico, the Netherlands, the Philippine Republic, Portugal, Spain, Switzerland, Thailand and the United Kingdom. It will remain open for signature until it comes into force, i.e., ninety days after five of the signatory States have deposited their instruments of ratification.

The Federation of Air Line Pilots Associations (IFALPA) discussed the new Convention at their meeting held April 6th to 10th, 1953 in Chicago. It was pointed out that Article 10 contained a clause which was of concern to pilots. This clause reads as follows:

“Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.”

Fear was expressed that the clause in effect meant that if damages were awarded against a carrier on account of error on the part of a pilot, the carrier could seek recourse against the aircraft commander. It was hoped that such a clause would not be implemented in this sense at all. It was recognized that a similar clause was inherent in various national legislation and that it would not be appropriate to excuse pilots completely for their errors.

IV.

CONVENTION ON THE INTERNATIONAL RECOGNITION OF RIGHTS IN AIRCRAFT**

(Opened for Signature at Geneva on June 19th, 1948)

The Government of Pakistan deposited its instrument of ratification of the Geneva Convention with ICAO on June 19th, 1953. As this is the second instrument of ratification received without reservation the first

* For Text See 19 Jrl. of Air L. & C. 447.
** For Text See 15 Jrl. of Air L. & C. 348.
such instrument having been deposited by the Government of the United States of America on September 6th, 1949, the Convention will come into force between Pakistan and the United States on September 7th, 1953, which is the ninetieth day after the date of the deposit of the instrument of ratification of Pakistan. Brazil ratified without reservation on July 3, 1953, and the Convention will come into force for that country on October 1st, 1953. It will be recalled that Mexico and Chile had previously deposited instruments of ratification with reservations.

V.

ANNEX 9 — TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION
(Chicago, 1944)

AMENDMENT 1 TO ANNEX 9

On March 25th, 1949, the Council of ICAO adopted Standards and Recommended Practices pursuant to provisions of Article 37 of the Convention on International Civil Aviation (Chicago 1944). These Standards were designated as Annex 9 to the Convention. They came into force March 1st, 1950.

On November 7th, 1952, the Council of ICAO adopted Amendment 1 to Annex 9 which became effective on March 1st, 1953 and was put into force on July 1st, 1953.

The FAL Standards and Recommended Practices are the outcome of Article 37 of the Convention, which provides inter alia that the “International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with... customs and immigration procedures... and such other matters concerned with the safety, regularity and efficiency of air navigation as may from time to time appear appropriate.” The policy with respect to the implementation of States of the FAL Standards and Recommended Practices is strengthened by Article 22 of the Convention, which expresses the obligation accepted by each Contracting State “to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territories of Contracting States, and to prevent unnecessary delays to aircraft, crews, passengers, and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance,” and by Article 23 of the Convention, which expresses the undertaking of each Contracting State “so far as it may find practicable, to establish customs and immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended from time to time pursuant to this Convention.”

It was expected that by July 1st, 1953, the date of implementation of the Annex including Amendment No. 1, States will have introduced its provisions into their national usages. The following Resolution adopted by the Council on April 13th, 1948, urges Contracting States to use in their own regulations, as far as practicable, the precise language of those ICAO Standards that are of a regulatory character:

“WHEREAS many of the benefits of international standardization of practices and of regulatory requirements may be lost through diversity of form and arrangement in the publications through which they are promulgated in the various States; and

“WHEREAS it is desirable that those engaged in international
air navigation should be freed to the greatest possible extent from
the necessity of detailed examination of national laws and regula-
tions upon crossing international boundaries;

"THE COUNCIL RESOLVES THAT:

1) Contracting States be, and they are hereby urged, in com-
plying with ICAO Standards which are of a regulatory character,
to introduce the text of such Standards into their national regula-
tions, as nearly as possible, in the wording and arrangement em-
ployed by ICAO;

2) where a Contracting State finds it necessary to depart from
the ICAO text, it limits such departure to an absolute minimum;

3) in any regulations or other publications based upon ICAO
standards or other recommendations, Contracting States indicate
conspicuously their relationship to the ICAO text and the extent
and substantive effect of any differences between the national text
and its ICAO prototype."

MEETING FOR THE FACILITATION OF INTERNATIONAL
AIR TRANSPORT IN EUROPE

The Meeting for the Facilitation of International Air Transport in
Europe was convened in the Palais des Festivals, Cannes, on May 26th,
1953, under the Chairmanship of M. Rene Lemaire, Secretary-General for
Civil and Commercial Aviation of France. Fourteen European States and
the Government of Saar were represented (Belgium, Denmark, France,
Iceland, Italy, Luxemburg, Norway, Netherlands, Sweden, Switzerland,
Turkey, U.K., Yugoslavia, German Federal Republic) and three Interna-
tional Organizations, ICAO, IATA and FITAP had observers present.

The objectives of the meeting were twofold; (i) to seek measures for
the implementation of the standards and recommended practices of Annex
9; and (ii) to obtain measures simplifying procedures in a more liberal
manner than provided in Annex 9. The following recommendations were
adopted:

General Declaration — States should use the General Declaration,
as prescribed by Annex 9, and should not require log books for
entry and departure of aircraft in commercial operations. Non-
commercial flights should be permitted to clear either by General
Declaration or by the use of the log book.

Passenger Manifest — States should not require separate Pas-
enger Manifests on entry and departure of aircraft engaged in
transport between European States. They should only require a
statement on the General Declaration of the number of passengers
embarked or disembarked. States may require that the information
as to the number of passengers embarked or disembarked should
be given on the basis of origin and destination.

Embarkation/Disembarkation Card — States should study the pos-
sibility of the elimination of the E/D Card as such a document is
not being used in surface transport, and for the time being. States
should adopt a uniform standard E/D Card with the following
characteristics:
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a) the format of the card should be as that given in Appendix 3 of Annex 9, i.e., of the following dimensions: 4 x 6 inches (102 x 152 mm);

b) the languages used in the printed matter should be one or more of the three official ICAO languages and possibly the language of the operator;

c) the following items should be retained:

1. name, 1a. maiden name, 2. christian name, 3. date of birth, 4. place of birth, 5. nationality, 6. occupation, 7. legal residence, 8. airport of destination or of origin.

Written Baggage Declaration — States should not require a written Baggage Declaration from passengers on entry of aircraft at an international airport.

Crew Member Certificate and Licence — States are requested not to require current crew lists but to accept crew licences and crew member certificates as identification documents.

Cargo Manifest — States should accept the Cargo Manifest as provided in Annex 9 and airlines should do their utmost to use Cargo Manifests which are uniform in color, format and dimension.

Forms not Prescribed by Annex 9 — States are requested not to require forms not provided for in Annex 9.

Lifting of Passenger’s Passport — States are urged not to remove temporarily passenger’s passport in transit or otherwise.

Interchange of Spare Parts — States should facilitate in every possible way the loan of spare parts between operators and to reduce formalities to a minimum in this regard.

24 Working Hour Service by Customs Authorities — The meeting expressed the desirability that governments should provide for customs service at international airports on a 24 hour basis.

Sanitary and Health Control — No sanitary control should exist for air traffic between airports situated in the territory of participating States under normal health conditions. With respect to traffic arriving from areas outside the metropolitan territory of participating States and passing through their territories, Article 34 of the International Sanitary Regulations (WHO 2) should apply, etc.

Fines — States should apply without reservation Paragraph 11.3 and 11.4 of Annex 9, and should also refrain from imposing penalties upon operators for errors in documents, for the issue of which neither they nor their representatives are responsible.

National FAL Committees — States which have not already done so should without delay establish national FAL Committees.

Non-Scheduled International Air Services — The meeting recommended that in conformity with the provisions of paragraphs 2.15 and 2.16 of Annex 9, States are invited to apply as liberal a regime as possible to non-scheduled international operations motivated to this end by the following procedures which represents the maximum demand:
(1) Permission may be sought for a single flight or a specified series of flights.

(2) Operators or their agents may apply direct for permission to the competent authority in each country.

(3) Application may be made by letter, telephone, or a reply-paid telegram.

(4) Operators are expected to file applications at least twenty-four hours before the time of arrival or departure. This requirement may be waived in cases of genuine emergency.

(5) Applications for permission need not include more than the following details:
(a) Name of operating company;
(b) Type of aircraft and registration marks;
(c) Name of pilot and number and composition of crew;
(d) Date and time of arrival at, and departure from, the State in question;
(e) Route of flight;
(f) Purpose of flight and number of passengers or nature and amount of freight;
(g) Name, address and business of charterer.

Unofficial Deviations — States should satisfy themselves that the practice laid down in Annex 9, subject to differences notified, are applied by their executive authorities and that no other requirements will be made.

It is to be noted that all reference to reciprocity — notwithstanding continuous efforts by several delegations — has been omitted from the final recommendations. It would have been very dangerous to introduce the idea of reciprocity in the Facilitation work as it could have affected Annex 9 which heretofore was always considered as a multilateral document, and part of the Chicago Convention.

The closing paragraph of the final draft report sums up the spirit in which these recommendations were made. It reads as follows:

"The Representatives of States unanimously considered that substantial results, in the field of facilitation, were obtained at Cannes in spite of the short session, but that it was possible to hope, after further studies carried out nationally and internationally, that a more radical simplification of formalities might be achieved."

The meeting adopted a resolution that a second meeting be held in 1954, the initiative to be taken by one of the European governments.

VI.

AIRCRAFT ACCIDENT INQUIRY PRELIMINARY REPORT ON COMET I CRASH IN CALCUTTA, MAY 2nd, 1952

The report prepared by the Indian Court of Inquiry and issued simultaneously in London and New Delhi on June 15th indicated that "structural failure of the airframe during flight through an unusually severe thundersquall," resulting in fire breaking out aboard the aircraft probably caused the crash of the BOAC de Havilland Comet I jet airliner near Calcutta on May 2nd, 1952. The inquiry was conducted by N. S. Lakur, assisted by three assessors: K. M. Raha, Deputy Director-General of Civil Aviation in India; W. Srinivasan, design engineer of Hindustan Aircraft Ltd.; and T. R. Nelson, Senior Inspector of Accidents, British Ministry of Civil Aviation.
"A study of the different components and the nature of their failures strongly suggests primary failure of the elevator spar in bending, due to a heavy download imposed in a pull-up by the pilot when the aircraft encountered a sudden down-gust during its flight across a nor'wester squall. During the flight in down-gust, the aircraft not only loses altitude, but it takes a nose-down attitude. The airspeed increases. The pilot immediately reacts to maintain the attitude of the aircraft by a pull-up and the co-pilot throttles back the engines for reducing the speed to keep it within the specified limits... The aircraft (Comet) had responded to corrective action, but a sudden elevator failure must have imposed a heavy load on the wings with the resulting wing failure at about rib No. 7. The structural failures which caused fire to break out have been so rapid that crew and passengers were subjected to a high positive 'G' during the pull-up and perhaps a higher negative 'G' on elevator failure... which can have caused a temporary blackout."

It is understood that the wing was subjected to static tests by the manufacturing firm during the development state of the aircraft. On one test piece static and fatigue tests were conducted alternately. The wing failed in fatigue test and after modification was subjected to a static test. The wing failed again at 90% of the ultimate load. The failure was attributed to the fatigue test conducted before. Modifications were carried out again and, without a retest, the wing was found satisfactory for the ultimate load on theoretical considerations. The fatigue failure during static test had occurred at rib No. 7. In this accident, again the wings have significantly failed at rib No. 7. This theory was supported by examinations of the wreckage.

Discussing the evidence, the Court said that the Comet made a normal take-off from Dum Dum, Calcutta. Six minutes later radio contact was lost, and witnesses saw the aircraft falling in flames in a severe thunderstorm and rain. Weather conditions at take-off were well above the minimum requirements laid down for the aircraft. The captain (Capt. Maurice W. Haddon) was warned of the approaching thunderstorm with squalls. Unfortunately, the storm which the Comet encountered was unusually severe. The captain was not only well qualified but had considerable experience of conditions on this route. He was therefore fully competent to judge the weather forecast en route and the warning given, and make up his mind whether to take off or not. It would not be just to accuse him of any imprudence in taking off in spite of the warning.

CONCLUSION AND RECOMMENDATIONS

In view of the fact that there was no sign of sabotage, lightning damage, faulty workmanship, defective material or engine failure, the structural failure must have been caused by over stressing which resulted from either severe gusts encountered in the squall, or over-controlling or loss of control by the pilot when flying through the thunderstorm.

The Court recommended that the wreckage be transported as soon as possible to Britain and a detailed technical examination be undertaken with a view to determining the primary failure and to consider if any modification in the structure of the Comet is necessary; and that consideration be given to the desirability of modifying the power-boosted flying control system of the Comet in order to give the pilot a positive "feel" of the loads exerted on the control surfaces.
The examinations of the remains of the aircraft in England have already started and the design study has also begun. The problem of power-boosted flying controls seems to have been raised already by the Rome-Ciampino crash of a Comet in October 1952. Study was intensified after the crash of a CPAL Comet IA at Karachi last March.

BOAC and de Havilland Aircraft commented on the Indian report in a joint statement issued on June 15th and said "It is not possible until the detailed examination of the aircraft wreckage and under way has been completed at the Royal Aircraft Establishment, to determine the sequence of structural failure. Until such a sequence is determined it is only possible to theorize on the cause of the accident . . . ."

VII.

OBSERVATIONS AND COMMENTS ON FOREIGN CASES

Cie Air France v. Nordisk Transport, Cour d'appel de Paris, (5e Chambre), February 28, 1953. On October 6th, 1948, Nordisk Transport delivered to the Cie Air France for carriage from Paris to Saigon, a package of metal watches weighing approximately 8 lbs. 3 oz. and valued at $1,810. No special declaration of value at delivery was made by the consignor when delivering the package of watches. The package was lost during the carriage and the circumstances of the loss were never clarified.

The Court of first instance directed the Cie Air France to pay to Nordisk Transport an amount corresponding to the full value of the goods, on the basis that the loss of the goods was due to gross negligence of the carrier, deemed equivalent to wilful misconduct, and of such a nature as to set aside, according to Article 25 of the Warsaw Convention, the limitation of liability provided for in Article 22 of that Convention.

The Court of Appeal set aside the judgment of the Court of first instance and directed the Cie Air France to pay an amount of 925 Poincaré francs (approximately $60.), which corresponds to the limit provided for in Article 22 of the Warsaw Convention. The Court of Appeal considered that neither wilful misconduct ("dol") nor gross negligence ("faute lourde") can be presumed, and that it is for the plaintiff to make out the proof of those facts to which he attributes the cause of the damage. The Court of Appeal also considered that it is not possible to deduce, solely from the fact that the Cie Air France was unable to give exact information as to the circumstances of the loss, that there had been lack of vigilance on its part, complete lack of organization or inadequate surveillance, which would amount to gross negligence, particularly when it is not denied that the aircraft on which the consignment was loaded made several stops in foreign countries and that the general requirements to which air carriers are subject at each stop, such as custom and police controls, may render problematic the effectiveness of supervision methods, however well the latter may be conceived and applied.

G. C. B.

Horabin v. British Overseas Airways Corporation, Queen's Bench Division, November 4th, 1952. The facts may be summed up as follows: On a flight from London to Bordeaux in January 1947, a BOAC Captain was prevented by weather conditions from landing at his destination. His two alternative airports were Toulouse and Marignane but both the maps and let-down procedures for these alternatives had been omitted from the navigator's bag. The Captain decided to return to London for which he had sufficient fuel though with an inadequate margin for emergencies. While
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on route for London he changed his mind and decided to make for Le Bourget (Paris). Weather conditions there were also bad with many aircraft waiting their turn to land and the Control Authorities diverted him to Corbeilles. Here again there was a long delay and the Captain decided to attempt the return to Lympne or Manston Aerodrome on the South East Coast of England. Weather conditions at Lympne prevented the landing and before he could reach Manston he ran out of petrol and crashed.

The Plaintiff, Mr. Horabin, M.P., sustained injuries in respect of which, assuming that liability was not limited by the Warsaw Convention, the damages were agreed at £11,395.8.1d. plus whatever sum the Jury might award for pain and suffering.

The case was of particular importance and interest as it was the first in British Law, since the war, to deal with the difficult question of Article 25 in the Warsaw Convention. Though the Jury charged with the case failed to agree to a verdict, the clear examination of the difficult legal question involved by Justice Barry will make this case a leading authority on the subject.

Justice Barry defined wilful misconduct as misconduct "to which the will is a party, and it is something which is wholly different in kind from mere negligence or carelessness, however gross that negligence or carelessness may be." To establish wilful misconduct it must be shown "not only that the pilot knowingly (and in that sense wilfully) did the wrongful act, but also that when he did it he was aware that it was a wrongful act — that is to say that he was aware that he was committing misconduct." Further, in order to establish wilful misconduct, the plaintiff must satisfy the jury, not beyond reasonable doubt, but satisfy "that the person who did the act knew that he was doing something wrong, and knew it at the time, and yet did it just the same, or alternatively that the person who did the act did it quite recklessly not caring whether he was doing the right thing or the wrong thing, quite regardless of the effects of what he was doing upon the safety of the aircraft and the passenger for which and for whom he was responsible." So much for the definition of wilful misconduct.

The directive by Justice Barry touches upon the question of inference. He quotes Lord Birkenhead (in a case decided before 1914 in the House of Lords) who expressed the view that if there are certain facts which give rise to conflict and alternative inferences, then the jury is left in a state of complete uncertainty as between the two possibilities and nothing really has been proved. But, "where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where reasonable men may hold that the more probable conclusion is that for which the applicant contends (in the present case, the Plaintiff), then the jury is justified in drawing an inference in his (the Plaintiff's) favor."

Finally, the point was raised that there have been things done and not done by BOAC which could be regarded as evidence of carelessness, and these acts of omission and commission have been sufficiently repeated to suggest that they amount, to misconduct. "Many of these acts, or some of them, at any rate, were, to the knowledge of those who did them either contrary to what is in accordance with plans, instructions, documentary provision, or departing from the standards of safe flying." The Jury wanted to know "whether misconduct can arise as a summary of a series of acts of carelessness, or whether, if that series of acts was done on many occasions and they were done contrary to instructions or departing from the standards of safe flying, and must have been known to those who did them to be so contrary to and departing from in that way, that was wilful."
The answer by Justice Barry was elaborate and it will be appropriate merely to point out that he was of the view that the jury could not add up a number of acts or omissions each of which is of a minor character, and each of which in itself, does not amount to a misconduct. It would be wrong to say that though none of these misbehaviors themselves would amount to wilful misconduct, taken altogether and lumped into one, amount to wilful misconduct on the part of the defendant as a whole.

J. G. G.

OFFICIAL TEXT OF
PROTOCOL TO AMEND THE CONVENTION OF WARSAW
FOR THE UNIFICATION OF CERTAIN RULES
RELATING TO INTERNATIONAL CARRIAGE BY AIR (1929)
ADOPTED BY THE NINTH SESSION OF THE
LEGAL COMMITTEE OF ICAO*

THE Governments undersigned
Considering that it is desirable to amend the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on October 12, 1929 (hereinafter referred to as "the Convention")

Have agreed to amend the Convention as follows:

1. In Article 1 —
   (a) Paragraph 2 shall be deleted and replaced by:
       "2. For the purpose of the Convention, the expression 'international carriage' means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purpose of the Convention."
   (b) Paragraph 3 shall be deleted and replaced by:
       "3. A carriage to be performed by several successive air carriers is deemed, for the purposes of the Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same High Contracting Party."

2. In Article 2 —
   (a) Paragraph 2 shall be deleted and replaced by:
       "2. The Convention shall not apply to: (a) Carriage of persons, cargo and baggage for military authorities by aircraft the whole capacity of which has been reserved by such authorities. (b) Carriage of mail and postal packages on behalf of postal authorities."

3. In Article 3—
   (a) Paragraph 1 shall be deleted and replaced by:
   "1. For the carriage of passengers a ticket shall be delivered containing particulars which show that the carriage is international in the sense of Article 1, and a statement that the carriage is subject to the rules relating to liability established by the Convention."
   (b) Paragraph 2 shall be deleted and replaced by:
   "2. The passenger ticket shall constitute prima facie evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of the Convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered or if the ticket does not include the statement that the carriage is subject to the rules relating to liability established by the Convention, he shall not be entitled to avail himself of any provisions which limit his liability in respect of passengers."

4. In Article 4—
   (a) Paragraphs 1, 2 and 3 shall be deleted and replaced by:
   "1. For the carriage of registered baggage a baggage check shall be delivered which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3(1), shall contain particulars which show that the carriage is international in the sense of Article 1, and a statement that the carriage is subject to the rules relating to liability established by the Convention."
   (b) Paragraph 4 shall be deleted and replaced by:
   "2. The baggage check shall constitute prima facie evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or validity of the contract of carriage which shall none the less be subject to the rules of the Convention. Nevertheless, if the carrier accepts baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3(1) does not include the statement that the carriage is subject to the rules relating to liability established by the Convention, he shall not be entitled to avail himself of any provisions which limit his liability in connection with registered baggage."

5. In Article 6—
   (a) Paragraph (3) shall be deleted and replaced by:
   "3. The carrier shall sign prior to the commencement of carriage of the goods."

6. Article 8 shall be deleted and replaced by:
   "8. The air waybill (consignment note) shall contain particulars which show that the carriage is international in the sense of Article 1 and a statement that the carriage is subject to the rules relating to liability established by the Convention."

7. Article 9 shall be deleted and replaced by:
   "9. If the carrier carries goods without an air waybill (consignment note) having been made out, or if the air waybill (consignment
note) does not include the statement that the carriage is subject to the rules relating to liability established by the Convention, he shall not be entitled to avail himself of any provisions which limit his liability.”

8. In Article 10 —
   (a) Paragraph (2) shall be deleted and replaced by:
   “2. The consignor shall be liable for all damage suffered by the carrier, or any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.”

9. In Article 11 —
   (a) Paragraph (2) shall be deleted and replaced by:
   “2. Any statements in the air waybill (consignment note) relating to the weight, dimensions and packing of the goods, or relating to the number of packages, are prima facie evidence of the facts stated: and any statements relating to the quantity, volume or conditions of the goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill (consignment note) to have been checked by him in the presence of the consignor, or relate to the apparent condition of the goods.”

10. In Article 20 —
    Paragraph (2) shall be deleted.

11. In Article 22 —
    (a) In Paragraph (1) the figure “125,000” shall be replaced by “200,000.”
    (b) At the end of paragraph (2) the following provision shall be added:
    “In the case of loss, damage or delay of part of registered baggage or cargo, or of any article contained therein, the weight to be taken into consideration in determining the amount to which the carrier’s liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an article contained therein, affects the value of other packages covered by the same baggage check or the same air waybill (consignment note), the total weight of such a package or packages shall also be taken into consideration in determining the limit of liability.”
    (c) Paragraph (4) shall be deleted and replaced by:
    “4. The sums mentioned in francs in this Article refer to a currency unit consisting of 65½ milligrammes of gold of millelimal fineness 900. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment.”

12. In Article 23 the following shall be added:
    “Provided that this Article shall not apply to provisions governing loss or damage resulting from the special nature, latent defect or inherent vice of the cargo carried.”
13. In Article 25 —
   (a) Paragraphs (1) and (2) shall be deleted and replaced by:
   "The limits of liability specified in Article 22 of the Convention shall
   not apply if it is proved that the damage resulted from a deliberate
   act or omission of the carrier, his servants or agents, done with in-
   tent to cause damage; provided that, in the case of a deliberate act
   or omission of a servant or agent, it is also proved that he was acting
   in the course of his employment."

14. After Article 25, the following new article shall be inserted:
   "25A. If under applicable law, an action is brought against a serv-
   ant or agent of the carrier [acting in the course of his employment],
   before a court in the territory of a High Contracting Party, for any
   damage contemplated in the Convention, he shall be entitled to avail
   himself of all defenses and limits of liability which are available to
   the carrier under the provisions of the Convention. In any event, the
   total amount recoverable from the carrier, his servants and agents
   together, shall not exceed the amount which could be recovered from
   the carrier under the provisions of the Convention."

15. Article 34 shall be deleted and replaced by:
   "34. The Convention does not apply to carriage performed in
   extraordinary circumstances outside the normal scope of an air
   carrier's business."

16. Article 35 shall be deleted and replaced by:
   "35. The expression 'days', when used in this Convention, means
   calendar days, not working days, except in Article 26 where, in the
   case of damage, the expression shall mean 'working days'."

17. The following new article shall be added to the Convention:
   "42. (1) In Article 37(2) and Article 40(1), the expression 'High
   Contracting Party' shall mean "State'. In all other cases, the ex-
   pression 'High Contracting Party' shall mean a State whose ratifica-
   tion of or adherence to the Convention has become effective and
   whose denunciation thereof has not become effective.
   (2) The word 'territory' used in Article 1(2) means not only the
   metropolitan territory of a State but also all other territories for the
   foreign relations of which that State is responsible."