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International Review

INTERNATIONAL REVIEW

I.

INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

EUROPEAN CIVIL AVIATION CONFERENCE

The First Session of the European Civil Aviation Conference, convened on 28th November 1955 at Strasbourg, France, by the Council of the International Civil Aviation Organization, ended on December 20th, 1955, after extensive discussion on the possibilities of a standardization of regulations and a more integrated system of economic arrangements in Europe, an area where these problems are particularly important.

The Conference agreed on a constitution and on its working methods. It prepared a draft multilateral agreement for rapid solution of the problems involved in the organization of the non-scheduled services in Europe. A lengthy exchange of views took place in connection with the discussion on a multilateral agreement for intra-European scheduled services and in connection with recommendations for an orderly solution of the problems involved in the interchange of aircraft and in helicopter services.

There are several reasons why most of the 18 European countries represented at the Conference regard better coordination and a liberalization of air transport in their part of the world as desirable. The frequency of services is still relatively low on European networks, the utilization of aircraft is lower than on the domestic networks of the United States and the revenue-producing ability of European airlines is considered rather poor.

The creation of the European Civil Aviation Conference reflects the common desire of European states to deal with specific aspects of air transport within the boundaries of Europe and to remove obstacles to a better coordination of air services in this part of the world.

The Conference chose as its President Pierre Nottet of Belgium and as its three Vice-Presidents Luis de Azcárraga of Spain, Alf Heum of Norway and Antonio Ambrosini of Italy. The Council of ICAO was represented at various stages of the discussion by its President, Dr. Edward Warner, and its First Vice-President, Mr. Henri Bouché.

Constitution of the European Civil Aviation Conference

The Conference will call its own meetings and fix its own Agenda. It will maintain close liaison with ICAO. It will hold annual plenary sessions, the main task of which will be to review the development of intra-European air transport in order to promote coordination, better utilization and an orderly development. Financial arrangements for the Conference will be considered at a meeting to be held concurrently with the Tenth Session of the ICAO Assembly at Caracas, Venezuela, in June, 1956.

Draft Multilateral Intra-European Non-Scheduled Services Agreement

The Conference prepared a draft agreement establishing freedom of operation for a number of categories of non-scheduled commercial flights, for example (1) aircraft engaged in humanitarian or emergency missions; (2) transportation of passengers in air taxis, that is small aircraft with a maximum seating capacity of six passengers; (3) charter flights when there is no resale of space; (4) any flights which have a maximum frequency of

once a month; and (5) all freight and passenger operations between regions which have no reasonably direct connection by scheduled services.

This draft agreement, which applies to the metropolitan territories of states situated in Europe and to the part of Asia Minor adjacent to Europe, will become open for signature at the ICAO Regional Office in Paris from April 1956.

Interchange of Aircraft

Interchangeability of aircraft refers to the ability of airlines operating internationally under governmental agreement or authorization to use aircraft belonging to a foreign airline and registered in a foreign state, with or without using the crew of the aircraft.

The Conference considered it would be useful if the problems connected with interchange of aircraft were examined by a "study group." It recommended that the legal consequences of agreements concerning interchange of aircraft without crew, when the transfer of functions of the state of registry to the state of the operator is envisaged, should be considered by the Legal Committee and by the Council of ICAO in order to determine whether an international convention on the hire and charter of aircraft is necessary.

Helicopter Ferries

Helicopter services problems differ from those connected with fixed-wing aircraft services. The conference exchanged views on the problems raised by the development of helicopter services and heliports, and concluded that improvements are necessary as far as operating economy, safety, all-weather operation and noise reduction are concerned. The attention of states was drawn to the necessity of safeguarding adequate sites for future provision of heliports in central locations of cities.

The question of helicopter services will be on the Agenda of the next ICAO Air Navigation Meeting in the European/Mediterranean Region.

Views on Multilateral Intra-European Scheduled Services Agreement

There was a wide exchange of views regarding the principles which ought to serve as a basis for a multilateral agreement on an exchange of commercial rights for intra-European scheduled air services. The Conference recognized that the time has not yet come to attempt to develop a multilateral agreement to replace the bilateral agreements in Europe.

Some delegations emphasized that in their opinion cooperation "in the two levels of governments and airlines" was the policy which could best obtain the greatest improvement in the situation. Advocates of this approach preferred a formal declaration by the states that were represented to the effect that they favored direct services between states and would refrain from opposing the establishment and operation of air services of other member states unless they considered such services actually harmful to their own national airlines, or decided that they did not serve the best interests of the users. Other delegations considered that more promising immediate results could be obtained by concentrating on "cooperation between airlines" and that the role of governments should be limited to the facilitation of such cooperation.

The delegations that supported this view pointed out that, in fact, some major airlines already had made considerable progress in cooperating among themselves during the last 18 months. The following 18 countries were represented by delegations: Austria, Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, United Kingdom, Spain, Sweden, Switzerland and Turkey. Nine countries had sent observers: Canada, Egypt, Israel,

Japan, Lebanon, Liberia, Mexico, United States, and Yugoslavia. Of international organizations the following were present: Council of Europe, United Nations Economic Commission for Europe (ECE), Organization for European Economic Cooperation (OEEC), European Conference of Ministers of Transport (ECMT), International Chamber of Commerce (ICC), International Federation of Airline Pilots Associations (IFALPA), International Union of Aviation Insurers (IUAI), Air Research Bureau (ARB), International Air Transport Association (IATA), Institut du transport aérien (ITA).

TECHNICAL ASSISTANCE PROGRAM FOR 1956

Details of the International Civil Aviation Organization's technical assistance plans for 1956, which include regional projects in Latin America and the Middle East and aid to 27 countries, were announced here by ICAO Secretary General Carl Ljungberg. Total cost of next year's program, which is part of the Expanded Program of Technical Assistance of the United Nations and the Specialized Agencies, will be $1,146,750.

ICAO's participation in the Expanded Program of Technical Assistance is based upon the fact that, in many of the less developed countries, quick improvement in the means of transport is essential for their economic expansion. Roads, railroads and waterways are often few in number and poor in quality; in some countries no channels of communication exist other than camel or donkey tracks. Under these circumstances aviation offers very speedy transport in return for a much lower capital outlay than is necessary for the construction of roads and other means of surface transport. But the development of civil aviation for national and international air transport requires the construction and operation of aerodromes, the training of mechanics and other technical personnel, the provision of radio, meteorological and air traffic services. The ICAO program therefore brings knowledge and experience from those countries which are technically advanced. Under the Technical Assistance Program, emphasis is on advice and training with the intention of helping states to help themselves.

Nationals of the less developed states have been trained in their own countries when the number to be trained is large, and in other countries when training is more specialized. Missions have established technical training centers; fellowships have been granted to permit study in advanced countries; on-the-job training has been carried out in many nations.

Included in the 1956 program are the following:

Latin America. The civil aviation center originally established in Mexico City by ICAO and the Government of Mexico in 1953 for the training of all categories of civil aviation personnel is now being transformed into a regional center for Latin America. More than 200 mechanics, wireless operators, air traffic controllers, aeronautical inspectors, and other technicians required to operate and maintain safe aeronautical services, many of them from other Latin American countries, have already graduated, and estimates show that the center will be able to supply about one-half the needs of the region for newly-trained staff during the next two years.

Middle East. An aviation safety program will be carried out in the Middle East where there are several small ICAO training centers, and where civil aviation problems of the various states are similar. Participants in the program will include an expert in personnel licensing and training, an expert in aircraft maintenance and certification, and a check-pilot examiner. They will help ensure the proper maintenance and continued airworthiness of aircraft, and will assist Middle Eastern states to improve their

training methods, the content of their training courses, and their standards for licensing personnel. Instruction will also be given in fire fighting and rescue training.

Afghanistan. Aviation activity has increased rapidly in Afghanistan since the arrival there of an ICAO civil aviation adviser in 1952. There are now frequent and regular transport flights to neighboring countries; a desirable internal development is held up by lack of trained personnel and facilities. The 1956 program provides for continuing advice to the government and for technical training already begun in radio operations and repair, meteorology and airport management. The Government has purchased considerable equipment and aid will be given in its installation and operation. Assistance will also be given in the construction of airports.

Egypt. The mission to Egypt will continue its work at the Civil Aviation Center at Almaza Airport, which until now has been mainly concerned with offering refresher training to existing employees, and with giving ab-initio training. In 1956 the mission will expand its activities to include on-the-job instruction of staff in the government aviation services and will aid in the installation of new radio equipment, which will also require an expansion of practical instruction in the field. The Center has for some time past been receiving students from neighboring states.

Ethiopia. ICAO has maintained a technical assistance mission in Ethiopia since 1951. In addition to advising the government on civil aviation matters, a civil aviation school has been established at Addis Ababa, training aircraft and engine mechanics, radio operators and maintenance personnel, air traffic controllers and meteorologists. The 1956 program will continue the work of the school and provide for more on-the-job training. Although more than 200 technicians have graduated from the school, the development of aviation in Ethiopia has been such that the supply of graduates has failed to keep up with the demand.

Guatemala. The Government has embarked on a vigorous policy of expansion of aviation throughout the country. In 1955 an ICAO expert on radio aids and communications gave assistance; in 1956 he will be joined by an aeronautical meteorologist and an aerodromes expert.

Indonesia. The Indonesian government has been given material assistance in providing the aviation services needed for the development of air transport in its territory. The assistance given so far is the first step in a major development plan covering radio communications, radio maintenance, air traffic services, aerodromes, etc. A large ab-initio training program has been set up and a permanent training center established. The main effort so far has been to supply staff for government air safety services. As these needs are filled and as Indonesians take over responsibility for training of replacements, an expansion of training in basic trades can be made. The Indonesian Aviation Academy, with the support of the government, has steadily trained local personnel in all aspects of civil aviation.

Iran. A mission of nine experts arrived in Iran in 1951 to give advice to the government on airline operations and to conduct training in meteorology, air traffic control, radio operation and radio maintenance. The 1956 program provides basically for a continuation of the training work being done by the ICAO mission, together with assistance in the development of air navigation facilities throughout the country.

Iraq. The 1956 plans provide for the continuation of the existing mission, including the assistance of a second air traffic services expert who was employed for only part of 1955. Help is being given in the organization of weather services, communications, airport lighting, and navigation aids, as well as air traffic control.

Lebanon. Provision is made for a continuation of the present mission, together with six fellowships for Lebanese nationals and a small amount of equipment for training. Emphasis will continue to be placed on the improvement of air traffic services, communications and meteorology. In addition the government desires to improve its safety program, centering on the inspection and maintenance of aircraft and the examination and licensing of pilots.

Syria. The Syrian mission, which has been operating since 1953, will be broadened in 1956 to help in the examination of airline pilots, and to provide advice on the inspection and maintenance of aircraft and on the organization and administration of Syrian Airways. The existing training program in air traffic services, radio operating, rado installation and maintenance and aeronautical meteorology, will be continued.

In addition to those projects listed above, technical assistance in the form of expert advice, training, and fellowships for study abroad will be given by ICAO to: Burma, Chile, China, Dominican Republic, Ecuador, El Salvador, Finland, Greece, India, Israel, Japan, Pakistan, Paraguay, Philippines, Saudi Arabia, Thailand, Venezuela and Yugoslavia.

Further information on the ICAO Technical Assistance Program may be obtained from the Public Information Officer, International Civil Aviation Organization, International Aviation Building, Montreal 3, Canada. Photographs illustrating the work of the missions are available for newspaper or periodical use.

AIR NAVIGATION MEETING

The Pacific Regional Office of the International Civil Aviation Organization held an Air Navigation Meeting in Manila between October 27th and November 25th, 1955. During the Conference, plans were prepared for the improvement in air navigation facilities, as well as in services and procedures designed to meet the current operational needs of international civil aviation in this area and the future requirements of high-flying turbine-propelled aircraft expected to be introduced within the next three years. The Conference recommended a major addition to the world's air route network connecting the West Coast of South America to Australasia, Oceania and the Far East. Altogether, 145 recommendations were passed which should insure the greater safety, regularity and efficiency of air operations throughout the Pacific region.

167 technicians, representing 17 states and four international organizations, attended this meeting which was presided over by Mr. Urbano Caldoza of the Philippines. The Secretary General was Mr. E. M. Asistores and the ICAO Senior Adviser was Mr. Alan Ferrier.

VERTICAL SEPARATION OF AIRCRAFT

The first meeting of a panel of experts in the field of altimetry commenced on February 14th, 1956, at the headquarters of the International Civil Aviation Organization. These experts have been appointed by the Governments of Australia, Brazil, Canada, France, Sweden, United Kingdom and the United States, as well as by the International Air Transport Association and the International Federation of Air Line Pilots Association.

Vertical separation is described as one method employed by air traffic controllers to allow more aircraft to make use of today's crowded airways; the panel was set up by the ICAO Air Navigation Commission as a result of concern which has been felt for some time about the accuracy of current separation methods, particularly at the high levels at which jet aircraft

fly. The panel will consider the use of new methods of vertical separation and of new types of instruments that may be developed for this purpose.

ICAO'S ABC

Since 1947, ICAO has been working on the current alphabet, i.e. the alphabet composed of the words, *Able, Baker, Charlie, Etc.*, because it was realized that if difficulties were to be avoided, especially in the Spanish speaking areas, changes would have to be made.

In this connection, the help of Professor J. P. Vinay, University of Montreal, was invoked and during the years 1948 and 1949 considerable work went into various kinds of tests, with a view to replacing certain words or, if necessary, establishing a new alphabet.

As a result of this work, the following was adopted: *Alfa, Bravo, Coca, Dental, Echo, Foxtrot, Golf, Hotel, India, Juliett, Kilo, Lima, Metro, Nectar, Oscar, Papa, Quebec, Romeo, Sierra, Tango, Union, Victor, Whiskey, Extra, Yankee, Zulu.* It was thought that, at the time this alphabet was communicated to the various countries, i.e. 1952, this would eliminate most troubles and it was suggested that the period of one year be allowed for transition. However, contrary to what had been expected, many complaints were received from diverse sources which indicated that the alphabet proposed was more likely to cause trouble than the former one and again, it is understood, hundreds of thousands of tests have been made with a view to eliminating confusion under conditions of noise and disturbance.

As a result of the latest experiments, it is now suggested that, in the event of the majority of ICAO's members approving the following five new words: *Charlie, Mike, November, Uniform and X-ray* to replace the words: *Coca, Metro, Nectar, Union and Extra,* these new words will become operative as from March 1st, 1956.

OUTER SPACE SOVEREIGNTY AGREEMENT NEEDED

Agreement on the use of outer space by the nations of the world have to be reached soon, according to a report which will be put before the Assembly of the International Civil Aviation Organization when it meets in Caracas, Venezuela this June. The report, which describes the activities of ICAO in the field of air law, points out that there is good reason to believe that "mechanical contrivances" will travel beyond the earth's atmosphere in the near future.

None of the rules which furnish legal guidance to states on problems of sovereignty apply to trips into outer space. The Convention on International Civil Aviation, which has been ratified or adhered to by all of ICAO's 67 member nations, gives each of these nations complete and exclusive sovereignty over the airspace above its territory, but it makes no mention of whether this sovereignty extends upwards beyond the boundary of the air. There is at present no United Nations Specialized Agency responsible for working out agreements on sovereignty and rights and privileges in this area, but the ICAO report notes that, as any space craft would have to pass through the atmosphere before it reaches outer space, ICAO itself will be interested in the matter.

II.

INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA)

TRAFFIC CONFERENCES — OCTOBER, 1955

On October 9th, 1955, the IATA Traffic Conferences completed their study of approximately 30,000 fares and rates, together with other commercial agreements, by which their 74 members will carry on the business

of scheduled international air transport during the traffic year commencing April 1st, 1956.

The major results of the Conferences were as follows:

—The price of basic international air transport service in tourist class will remain unchanged, despite upward cost pressures on the airlines.

—First class fares will be raised in many parts of the world by about 10 per cent in order to pay for more luxurious service for those who want it.

—While levels of general air cargo rates will be increased slightly in some areas, substantially lower charges for bulk shipments of specific commodities will be continued.

—Fares and rates for new Polar route services between Europe and the Far East via the Arctic, starting in the Fall of 1956, have been made part of the worldwide pattern of agreement for the first time.

—The special off-season family fares over the North Atlantic which became effective on November 1st, 1955, will be offered again during the 1956-57 winter season.

—A new, simplified cargo rating system over the key North Atlantic route will be extended until December 31, 1956, without radical change.

Emphasis was laid on the fact that the IATA Conference agreements were voted unanimously by the delegates of airlines from more than 40 countries, and that none of these resolutions could become effective until approved by all interested governments.

In dealing with the resolutions which govern the application of fares and rates and their sale in 107 different currencies throughout the world, the airlines took a number of steps to simplify their tariffs and other commercial procedures in order to cut selling and handling costs and increase the amount of net revenue from the existing price structure. This included the abolition of the open-jaw discount, hardly noticeable to passengers, but of considerable importance to airlines.

Study Groups were set up to deal with the following problems: concerted action by the industry to expand air cargo; new promotional measures to increase off-season passenger traffic over the North Atlantic; integration of helicopter services into the existing commercial network; simplification of fares and rates rules; and remedies for the no-show and late cancellation problems.

Passenger Fare Levels

Under the terms of the Miami Beach agreements, international fares in North and South America will remain largely unchanged, as will international tourist fares throughout the world, except for a $10 increase on the mid-Atlantic route between Central and South America and Europe.

A very wide range of reduced fares for night services will be maintained inside Europe. An example is a new round trip fare of only £9.10 (about $26.25) between London and Brussels on night services.

Within the Middle East, the number and extent of "B" class fares—i.e. appreciably lower than tourist, will be increased. Low-cost excursion fares elsewhere will be revalidated.

While it has been possible to maintain price lines for basic transport service on tourist aircraft, it has been necessary to increase the charge for first-class service in order to meet the demands of those passengers demanding more luxury. First-class passengers have not been satisfied with tourist and standard services, e.g. they require sleeperette accommodation which

precludes an airline from carrying as many passengers as they otherwise would do.

With exceptions, first class fares will be increased by 10 per cent on many international routes. There will be no increases at all with the Americas or on routes from Australia to South Africa, Tokyo and New Zealand; and smaller increases, running about 5 per cent in first class fares between Europe and India and over Pacific routes.

Effective in April, the key international fare between New York and London will thus become $440 one-way and $792 return during the on-season and $742 round trip during the off-season for first class, and $290 one-way and $552 round trip in the on-season and $482 round-trip in the off-season for tourist class.

Sleeper surcharges for berth accommodation on all first class services will also be raised 10 per cent to $55.

Tourist Class. After study by traffic and engineering experts, the Conferences concluded that it is impossible at this stage to find an acceptable standard formula for tourist seating accommodation that will fit all the variations of existing and prospective aircraft. The Conferences were accordingly forced to agree upon stipulated minimum seating charts for 29 different aircraft types, from DC-3s to Brittania 300s.

Passenger Traffic Promotion. Because North Atlantic family fare reductions were scheduled to go into effect only last November 1st, 1955, the Conferences took no new steps to attract additional winter traffic on that route, beyond extending the plan to cover the 1956-57 off-season.

Further consideration will be given to promotional proposals, including special group fares for off-season travel on regular services.

No-shows and Late Cancellations. In an effort to reduce serious "no-show" losses (caused by passengers who fail to turn up for their flight or who cancel their reservations too late for the airline to sell their seats), the Conferences agreed to run statistical samples of booking situations in 26 companies during representative peak and off-season weeks to provide a basis for discussion of remedies at their 1956 sessions. The Working Group appointed to deal with this subject will maintain close contact with a similar group of the Air Traffic Conference of America which is trying to solve the same problem domestically for the United States.

Elsewhere, air cargo rates will remain largely unchanged except for increases of about 5 per cent on the South Atlantic route; and on routes between Europe and the Middle and Far East, excluding Australia and New Zealand; and, southbound only, from Europe to points in Africa.

The normal structure of specific commodity rates in the other regions will be continued, but several of the Commodity Rates Boards will be amalgamated for greater efficiency. They were also instructed to seek greater uniformity in commodity descriptions as between the various areas.

The special Cargo Development Working Group, set up a year ago, to outline concerted action by the scheduled airlines to expand air cargo traffic, will continue. In fact, the Group will be enlarged and concentrate on broad policy, rather than on rating and documents.

Work on the IATA Restricted Articles Code was also completed. This is the first universal agreement in transport history on the packing, labeling and stowing of goods requiring special handling and became effective generally from January 1st, 1956.

Cargo Rates Continued with Minor Changes

The new simplified system of North Atlantic cargo rates, which went into effect only two months ago, was revalidated by the Conferences for an additional 12 months, until December 31, 1956 with few changes. At the same time, the Commodity Rates Boards for the route were instructed to keep a close analysis of the results of the new system, which introduced substantial reductions within the framework of 50 broad categories of commodities.

Helicopters

Fares for helicopter services were voted into the worldwide tariffs structure for the first time by the Conferences, but a special committee of American and European operators of the new aerial vehicles was named to study how this new kind of service can best be integrated into the international commercial pattern. It is going to be necessary to discover ways of handling the combination of the two kinds of services, i.e. helicopter and fixed-wing, on interline journeys.

Simplified Fares and Rates Rules

A group of 12 traffic experts was asked to review the whole method of working out international fares and rates in order to make them easier to express, understand and apply; additionally, to stop "revenue leaks" in the present structure.

This group in their review will cover the tariffs of specified fares and rates as well as those which are constructed by rule for indirect routings.

Message Procedure — AIRIMP

The Conferences adopted a new Reservations Interline Message Procedure worked out jointly by IATA and the Air Traffic Conference of America. Called AIRIMP, it will be used as between IATA airlines and between them and domestic U. S. companies as a uniform system of abbreviations and sequence of elements in reservations messages.

Action Subsequent to the Traffic Conferences

In February, 1956, the U. S. Civil Aeronautics Board announced that it intended to disapprove the proposed 10 per cent increase in first class fares over the North Atlantic and Pacific, and that it would permit the tourist fares to remain in effect only until December 31. The Conferences had proposed these fares for the normal traffic year ending March 31, 1957. CAB took the position that while the 10 per cent increase on first class offerings might in itself be justified, it felt that the tourist fares were too high and that tourist revenues were subsidizing first class services.

A number of other governments who had approved the Miami resolutions formally protested this action by CAB. Carriers pointed out to the Board that it would not be possible, between mid-February and the start of the new traffic on April 1 to reach and obtain government approvals of new agreements and to calculate new traffic for actual sales purposes. Meanwhile, their sales efforts for the Summer season were already begun and the effect of the CAB order would produce commercial chaos. The CAB therefore agreed to approve the Miami fares for a limited period until September 30.

As a consequence, it has been necessary to convene the 1956 IATA Traffic Conferences four months early—on May 29, instead of in September as in normal course—to deal with fares and rates for an 18-month period from October 1, 1956 until March 31, 1958; and to defer until the 1957

sessions consideration of a number of constructive projects which were to have been put to them this September.

III.

THE INTERNATIONAL CHAMBER OF COMMERCE

REVISION OF THE WARSAW CONVENTION

At the 85th Session of the ICC Council held on 26/27 October, 1955, a Resolution was passed noting with appreciation the sympathetic hearing which its representatives had received from the Diplomatic Conference called to revise the Convention for the Unification of Certain Rules Relating to the International Carriage by Air, signed in Warsaw in 1929.

The Council called upon Governments to ratify the Protocol adopted in The Hague in September 1955 at the Diplomatic Conference without delay.

IV.

OBSERVATIONS AND COMMENTS ON CASES

ALLEGHENY AIRLINES, INC., ET AL., VS. VILLAGE OF CEDARHURST, ET AL.

Civil Action No. 12680/1952 June 27, 1955. United States District Court, Eastern District of New York. (Ref.: W. Bruchhausen, U.S.D.J.)

This action involves the constitutionality of an ordinance prohibiting air flight over the Village of Cedarhurst below 1000 feet with the background of the legal concept, that is, state sovereignty versus federal sovereignty of usable air space. More specifically, this case concerns what—if any—air space below the altitude of 1000 feet the U. S. Congress has determined as navigable space, and subject to flight control.

The Administrator of Civil Aeronautics and the Civil Aeronautics Board intervened as Plaintiffs in the action, representing ten airline companies, the Port of New York Authority, the Airline Pilots' Association International and nine air pilots in their individual capacities, having interests in and concerning the so-called Idlewild airport as located in Queen's County, State of New York, instituted this action against the Village of Cedarhurst and various named defendants in their official and individual capacities for the aforesaid ordinance to be declared unconstitutional and void and enjoining the enforcement of this decree adopted by the Village of Cedarhurst situated within a mile of the Idlewild Airport.

Idlewild Airport was incorporated on July 1, 1948. It has ten miles of runways, each runway being one to two miles long. At present, eleven domestic and thirteen foreign carriers are engaged in services to and from this airport, one of the largest of the world.

According to the Civil Aeronautics Act of 1938, the Administrator and the CAB are empowered "to promote safety of flight in air commerce by prescribing and revising from time to time certain rules." Pursuant to the Statute, the aforesaid agencies adopted air traffic rules, controlling operation of aircraft throughout the United States, including the establishment of Civil Airways, comparable with a system of highways for surface traffic (14 C.F.R.). Each airway is a path of ten miles wide between two airports ranging from an altitude of 700 feet above the surface to infinity. The pilot in the aircraft is guided by radio navigational aid and a number of ground control devices located around and at the airports.

According to the above regulations, in the case where an aircraft approaches Runway No. 4 for an instrument landing, and misses it, the aircraft is required to climb straight ahead to 500 feet, execute a right

turn to a heading of 130°, climb out to the southwest leg of the Mitchell range and from thence to the Long Beach intersection. Such aircraft is then guided back to the Scotland Beacon for another approach to Runway No. 4. The Village of Cedarhurst is situated under at least one of these civil airways and, as the absolutely reliable testimony showed, under these circumstances, some aircraft necessarily fly over Cedarhurst at less than 1000 feet. Whether the pilot does so or not depends upon the precise point at which he "declares his missed approach," being the point along the instrument path leading to Runway No. 4 at which the pilot determines it is unsafe for continuance of the landing.

This technical problem involves the legal one in this action. Therefore, it is necessary to throw light onto the development of the Latin, though non-Roman maxim, "cujus est solum, ejus est usque ad coelum"—meaning, "he who owns the land owns the air space above it."

Has the landowner any rights in the air column above his property according to Roman Law? Academicians are divided on this subject, but probably the best conclusion was reached by Francesco Larodone whose opinion is that to the "Wording" of the Roman texts: the landowner enjoyed under Roman Law the ownership above his property at low altitudes (the height of buildings, of trees) and according to the "Spirit" of the Texts, such private control could be extended to any altitude (Francesco Larodone —"Air Space Rights in Roman Law," Air Law Review, Vol. 2, 1931, p. 455).

Regardless of divergencies in legal opinion on this subject, most lawyers agree that there was a territorial status of the Roman air space and the Roman State retained control above the surface of the earth. The legal development of these principles—the sovereignty—the private ownership—clearly indicate that since Roman times the sovereign states, by recognizing and protecting certain rights of the surface owners in the space above their land, claimed, held and exercised sovereignty in the usable air space above their national territories. The concept of state sovereignty creates logically the concept of usable air space control by the State, which naturally became, by powered flight, more and more crystallized. We have sufficient precedents in various Court cases from all over the world throughout the centuries to prove this principle.

The authority of the U. S. Congress to legislate in matters of commerce extending over State boundaries was conferred by Article I, Section 8, Clause 3 of the Constitution . . . "The Congress shall have power . . . to regulate commerce with foreign nations and among the several states . . ."

The clear reference to that power in connection with navigation by water was made by Justice Marshall writing for the United States Supreme Court: (Gibbons v. Ogden, 9 Wheat. 1 (1824)). "All America understands and has uniformly understood the word 'commerce' to comprehend navigation." Later and more recent cases in that Court have held that the said power of Congressional regulations includes all means and instrumentalities by which commerce is carried on, including traffic by air (Monongahela Navigation Co. v. U.S. 148 U.S. 312, 342 (1892); Braniff Airways v. Nebraska Board, 347 U.S. 590, 596 (1953)).

In 1926, by the adoption of the Air Commerce Act, the United States, although it did not attempt to fix the extent, but had legislatively declared its national air space sovereignty (Civil Aeronautics Legislative History of the Air Commerce Act of 1926 corrected to August 1, U.S. Gov't Printing Office (1943)). In Section 10 of the Act, the term navigable air space was defined as "airspace above the minimum safe altitudes of flight as prescribed in the Act." The House Committee commenting on the Act was of the opinion . . . that the Federal Government may assert under the commerce clause and other constitutional powers of public right of navigation in the

navigable air space regardless of the ownership of the land below and regardless of any question as to the ownership of the air or air space itself (Civil Aeronautics Legislative History of the Air Commerce Act of 1926, corrected to August 1, 1928, U.S. Gov't Printing Office (1943)).

The Civil Aeronautics Act of 1938 reasserted with still broader terms the principles of the Act of 1926. Title VI of the Act of 1938 (49 U.S.C. 551) entitled "Civil Aeronautics Regulations" providing in section 601 (9)(7) (49 U.S.C. 551 (a)(7)) that the Board is . . . "empowered and it shall be its duty to promote safety of flight in air commerce by prescribing and revising from time to time . . . air traffic rules governing the flight of . . . aircraft, including rules as to safe altitudes of flight . . ." This section of the Act of 1938 seems to be rooted in Section 10 of the Air Commerce Act of 1926 (49 U.S.C. 180) and also in Section 1(24) of the Civil Aeronautics Act of 1938 (49 U.S.C. 401(24)) which make the definition of navigable air space contingent upon the determination by the Board of the "minimum safe altitude" of flight. The Civil Aeronautics Board, according to the Act of 1938 prescribed the minimum safe altitude of flight and adopted the rule under Par. 60.17 . . . "Except when necessary for takeoff or landing no person shall operate an aircraft below the following altitudes . . . (b) . . . over the congested areas of cities, towns or settlements, or over an open-air assembly of persons an altitude of 1000 feet above the highest obstacle within a horizontal radius of 2000 feet from the aircraft . . ." The obvious meaning of this rule is that the minimum safe altitude for takeoff or landing is whatever altitude is necessary for these operations. The Court and the CAB interpret this in the same concept.

These aforementioned rules form the legislative legal and technical background and basis of the action in question.

The Defendants claim that air space below 1000 feet is not navigable air space and as such was not regulated by the Congress. Therefore, the Village of Cedarhurst has complete jurisdiction over it. The Plaintiffs pointed out Section 10 of the Air Commerce Act of 1926 (. . . "Navigable air space"). As used in this Act, the term "navigable air space" means air space above the minimum safe altitude of flight prescribed by the Secretary of Commerce under Section 3 and such navigable air space shall be subject to a public right of freedom of interstate and foreign air navigation in conformity with the requirements of this Act. Legal principles are reasserted in the Act of 1938, 49 U.S.C. 401(24), 403, 551(a)(7) with the power to make air traffic rules vested in the CAB, instead of the Secretary of Commerce.

The Defendants claim that by Para. 60.17, the CAB constitutes legislation and that legislative power is vested in Congress and in no other body by Article 1, Section 1 of the Constitution. The Defendants do not challenge the rule that the Congress may empower an administrative agency to set rules provided that the Congress declares its policy with sufficient clarity to enable the agency to fulfill the Congressional intent. The Board in this case—claiming that the Defendant—by failing to define or furnish a guide as to the meaning of "minimum safe altitudes," the Title of regulation, Congress permitted the said Board to make the law. The Plaintiffs and the Intervenors assert that the necessary standard is expressed and defined in the rather self-explanatory word "safe." The Plaintiffs sustained by the testimony of pilots and other experts that, although the aircraft using Idlewild, necessarily must fly over Cedarhurst below 1000 feet, they must never fly below 450 feet.

No satisfactory substitutes were suggested by the Defendants. The Defendants claim that the so-called August 1950 traffic pattern for Idlewild was illegally adopted. That pattern superseded an earlier one in effect

between February 3rd, 1949 and August 1950, providing for the routing of aircraft to and from Runway No. 4 over the old Valley Stream Airport to the north of and outside of the Cedarhurst area. Experience proved that the earlier pattern was unsafe, especially for certain types of aircraft operating under certain weather conditions. The new revised and adopted pattern, known as Regulation 60.18-2, serves "to promote safety" (15 F.R. 5046).

Furthermore, if the Ordinance, paragraph 4 of the Village of Cedarhurst which makes such flights unlawful would be enforced, it would result at times in the complete closing of the Idlewild Airport which for all practical purposes would cease to function.

The Defendant brought with much vigor into action the so-called air space reservation rule applied to Washington, D. C. as a prohibited air space above governmental structures, north of Washington National Airport, established by Presidential Order (E.O. 10.126, 15 FR 2867). The Defendant claims the same applied to the Cedarhurst area. The Plaintiffs alleged that the Cedarhurst area has not been legally designated as an air space reservation and they emphasized the great difference between the Washington National Airport and Idlewild. The first has mainly short haul operation, passenger load and cargo load totaling gross weight much lighter while the latter has the opposite characteristics in operations.

The Defendants erroneously contend that Administrative Order (TSO—No. 18) resulted in the digging of an air channel over Cedarhurst as low as 162 feet, without compensation to the underlying landowners. As it appears, this Administrative Order was issued as a means of identifying those structures of Cedarhurst of a safety measure following the rules, expressed in the Act of 1926, Section 2 of the 1938 Act (49 U.S.C. 402), which structures might endanger the navigation to and from the aforesaid airport. The Order apparently has no relevancy.

The contentions so made by the Defendant have no merit. The Ordinance of the Village of Cedarhurst is declared unconstitutional and void, and the Defendants are permanently enjoined and restrained from enforcing it. No costs are allowed.

PAUL J. DE DONGO, D.C.L., LL.M.,
Trans Canada Air Lines, Montreal.

CAISSE PARISIENNE VS. AIR FRANCE AND AIR LIBAN

Tribunal civil de la Seine, Paris, January 14, 1955.

Facts: Under a Warsaw contract of transportation concluded with Air France, Caisse Parisienne sent 16 gold ingots in 8 cases to Beyrouth. Air France flew the shipment to Cairo, where it was taken over and flown to Beyrouth by Air Liban. After arrival, the cases were weighed and handed over to the customs agents. With regard to one case, the latter falsely entered a weight deficiency of 15 kgs., against which the emplyoees of Air Liban charged with handling the shipment did not protest, nor did they inform their superiors or the consignee. When the cases were delivered, one ingot was wanting, probably having been stolen while the shipment was in charge of customs authorities. Caisse Parisienne claimed $16,370 from Air France, and the latter impleaded Air Liban.

The Court: If a shipment is lost while transported by the second of two successive carriers, the consignor has a right of action against the first carrier according to Article 30, para. 3, of the Warsaw Convention, and may charge him with a negligence committed by the second carrier's agents, without prejudice to the first carrier's right of recourse against the second carrier. The acts of Air Liban's employees at Beyrouth were held to constitute (at least) "des fautes lourdes équivalentes au dol" within the mean-

ing of Article 25 of the Convention. The transportation by air within the meaning of Article 18, para. 1, of the Warsaw Convention comprises the period during which the goods are in charge of the carrier, and the particular risks of air navigation cannot discharge the latter of his liability during the handling of the goods when the transportation is interrupted or after arrival until delivery to the consignee.

Remarks: There is no doubt as to the correctness of the application of Articles 25 and 30 of the Convention. The same, however, cannot be said with regard to Article 18, because it would seem that after the cases were delivered to the customs agents they were no more "in charge of the carrier" within the meaning of Article 18, para. 2 (similarly: Prof. Meyer in 1955 Zeitschrift für Luftrecht 328, and Dr. Georgiàdès in 1955 Revue française de droit aérien 443).

DR. WERNER GULDIMANN (Zurich).

MARTIN VS. QUEENSLAND AIRLINES PTY. LTD.

Supreme Court of the State of Queensland (Australia).

Full Court (Macrossan C. J. Mansfield S.P.J. Hanger J.)—10 August, 55.

This is the first case in Australian courts of record raising the question of the liability of an airline for the death of a passenger where the ticket purported to exclude any liability by the airline and whether such an exclusion of liability was void as against public policy. In cases dealing with other forms of transport the English and Australian Courts have refused to pronounce as unreasonable or against public policy contracts for carriage of passengers containing conditions diminishing or excluding a carrier's common law duty of care to his passengers, in the absence of statutory restrictions on the imposition of such conditions. This rule apparently differs from that in force in the United States—See e.g. Conklin v. Canadian-Colonial Airways Inc. 1935 U.S. Av. R. 97, Curtiss Wright Flying Service Inc. v. Glose 1933 U.S. Av. R. 26. The rule had been applied to carriage by aircraft by the Privy Council (whose decisions are binding on Australian Courts) in *Ludditt v. Ginger Coote Airways Ltd.* (1947 A.C. 233), a Canadian case.

The plaintiff's husband had been killed in the crash of an aircraft operated by the defendant on which he was a passenger. The Contract of Carriage comprised in a ticket supplied to the deceased before the flight, contained a comprehensive term excluding the liability of the defendant, reading (so far as material) as follows:

> "The passenger, his luggage and goods are carried entirely at his own risk and the carrier accepts no responsibility for damage, including death—arising out of or incidental to the said carriage—and the passenger for himself and his executors, administrators and dependents expressly renounces all claims against the carrier in respect thereof whether the same be due to or alleged to be due to negligence or misconduct on the part of the carrier or not."

The plaintiff's Statement of Claim alleged that the accident and the death of her husband was caused by the negligence of the defendant's servants. In an attempt to forestall the defense that liability for negligence was excluded by the contract, the plaintiff set out under the heading "Particulars of Negligence" in the Statement of Claim that the defendant was guilty of eight separate "breaches of statutory duty which it owed to the plaintiff" of which a typical example is:

> "The pilot and/or pilots of the aircraft made a turn to the left after taking off *contrary to the provisions of the Air Navigation Regulations.*"

The words in italics appeared in each of the eight items of particulars. This pleading in effect set up that the breach by the defendant of provisions of the Air Navigation Regulations itself created a right of action in favor of the plaintiff, quite distinct from negligence.

The airline company in its defense, as expected, denied any negligence or breach of statutory duty, and set up the terms of the contract as an answer to the claim. The plaintiff demurred to the defense on the ground that the contract did not by its terms exempt the defendant from liability for a breach of statutory duty, and that in so far as it purported to do so it was contrary to public policy and void.

The three issues raised on the argument of the demurrer before the trial of the action were therefore—

(1) whether any of the acts or omissions set out in the Particulars of Negligence, if proved, would establish a breach of a statutory duty owed to the deceased passenger.

(2) if so, whether it was competent for the defendant to contract out of liability for damages caused through a breach of the Regulations.

(3) whether the terms of the particular contract relieved the defendant from liability for the death of the plaintiff's husband.

A judgment was delivered by the Chief Justice, in which the other members of the Bench concurred. The great part of this judgment dealt with the first of the three questions referred to.

The Air Navigation Regulations are made under powers conferred by the Air Navigation Act 1920-1950 of the Commonwealth Parliament. The Regulations provide a comprehensive set of rules governing all aspects of air navigation. The matters alleged in the particulars of negligence were all breaches of these Regulations or, in one case, a direction in an Air Navigation Order made by the Director-General of Civil Aviation under authority conferred on him by the Regulations. Regulation 312(1.) provides that any person who contravenes or fails to comply with any provision of the regulations or a direction issued in Air Navigation Orders shall be guilty of an offense against the Regulations. Regulation 312(2.) provides that the owner, operator, pilot or pilot in command of an aircraft which flies in contravention of, or fails to comply with, any of the Regulations, including any direction in an Air Navigation Order, shall also be guilty of an offense against the Regulations. Rgeulation 313 provides that the penalty for an offense against the Regulations shall, unless otherwise provided, be a fine not exceeding £200 or imprisonment for any period not exceeding 6 months or both.

The Chief Justice said that the question was whether the legislature in creating statutory duties by the provisions of the Air Navigation Regulations had given to any person who suffers damage in consequence of a breach of those Regulations a right of action against a person guilty of the breach to recover compensation for the damage resulting from the breach, or whether the imposition of the statutory penalty provided for a breach of the Regulations was the only remedy available. The fundamental principle laid down in the English authorities was that where an Act creates an obligation and enforces the performance in a specified manner, the general rule is that performance cannot be enforced in any other manner.

He cited with approval the following passage from the judgment of Atkin L. J. in *Phillips v. Britannia Hygienic Laundry Co. Ltd.* 1923 2 K.B. 832 at p. 841

> "When an Act imposes a duty of commission or omission, the question whether a person aggrieved by a breach of the duty has a right of action depends on the intention of the Act. The question

> is whether the Regulations, viewed the circumstances in which they were made and to which they relate, were intended to impose a duty which is a public duty only or whether they were intended, in addition to the public duty, to impose a duty enforceable by an individual aggrieved."

There was nothing in the provisions of the Air Navigation Regulations to lead to the conclusion that they were made for the special protection of any class of the public. The duties imposed by the Regulations were not duties enforceable by individuals injured by a breach of them, but public duties only, the sole remedy for which is the remedy provided by the Regulations themselves by way of fine or imprisonment.

The plaintiff had relied strongly on the case of *Hesketh v. Liverpool Corporation* (1940 4 All E. R. 429). In that case the plaintiff was injured through striking some trees when landing an aeroplane at night on an aerodrome under the relevant legislation. The trees in question were sited in breach of a condition in the license that no obstruction should exist in the line of flight within specified limits beyond the perimeter of the aerodrome, and were not indicated by red fixed lights as required by the legislation. Stable J. held that the presence of the trees constituted a breach of the statutory conditions and that on this ground the plaintiff was entitled to succeed at common law on the ground that the trees constituted a nuisance.

The Chief Justice pointed out that there appeared to be no specific consideration in the reasons for judgment of Stable J. of the point whether a breach of the statutory condition gave a civil right of action and the judgment can clearly be supported on the other ground. In fact the greatest part of the judgment deals with the defense of contributory negligence, and the question of whether the breach of the statutory condition gave a cause of action for damages does not seem to have been seriously argued. The Chief Justice therefore did not follow Hesketh's case.

It thus became strictly unnecessary to determine the second question but the Chief Justice nevertheless made some brief observations on the subject. He cited *Ludditt v. Ginger Coote Airways Ltd.* (supra) as authority for the proposition that a carrier of passengers has complete freedom at common law to make such contracts as he thinks fit enlarging, diminishing, or excluding his common law obligations, and observed that there were no statutory restrictions applicable to the facts of this case.

The Chief Justice also dealt with the third question very shortly, stating that in his opinion the language used in the contract clearly relieved the defendant from all liability for the death of the passenger.