

1956

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Gerd Rinck

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Recommended Citation

Gerd Rinck, *Recent Developments in German Air Law*, 23 J. Air L. & Com. 479 (1956)
<https://scholar.smu.edu/jalc/vol23/iss4/2>

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RECENT DEVELOPMENTS IN GERMAN AIR LAW

By DR. GERD RINCK

Honorary Professor at Johannes Gutenberg-University, Mainz,
Ministerial Councillor at the Federal Ministry of Justice, Bonn.

AIR SERVICES IN GERMANY 1955

IN 1955 there were 1.4 million passengers and 46,000 tons of cargo flown over the territory of the Federal Republic of Germany. The statistics show the following breakdown:

TABLE 1¹

<i>Departed in 1955</i>	<i>Total</i>	<i>Destination Abroad</i>
Airplanes (number)	95,700	28,200
Passengers (number)	1,439,000	442,000
Cargo (tons)	46,070	9,902
Mail (tons)	5,553	2,530

Considering the size of the country, the share of cabotage appears high. This is largely to be explained by the fact that much of the transportation to Berlin must go by air. Most important nearly all refugees from the Soviet occupied part of Germany—252,900 in 1955—are flown to the West.

German carriers run but a moderate part of the services offered. Deutsche Lufthansa, the only carrier providing scheduled service, started on March 1, 1955, and through December 31, 1955 had carried: 75,000 passengers, 500 tons of cargo, and 350 tons of mail. Besides it there were about 10 smaller companies offering non-scheduled service, mostly with planes chartered abroad.

The Soviet occupied part of Germany launched a Lufthansa of its own which in 1955 maintained service only between Berlin and Warsaw but which will in the summer of 1956 also serve Prague.

Within the Federal Republic air transportation is growing at a fast rate. The volume of transportation (passenger/kilometers, etc.) in December 1955 exceeded that of December 1954 by 30.8 per cent. The increase is largely due to international transportation, e.g. the number of passengers arriving from abroad was in 1955: 429,000 while in 1954: 294,000.

Supreme Authority in Aviation

This volume of aviation is the result of a gradual but radical change. Proclamation No. 2 of the Control Council, dated September 20, 1945 had prohibited "the production in Germany and the posses-

¹ Condensed from *Statistische Berichte, Statistisches Bundesamt Wiesbaden; Arb. Nr. V/27/61.*

sion, maintenance or operation by Germans of any aircraft of any kind."²

While the principle was extended and carried out by a number of laws, orders and directives, civil aviation was one of the fields reserved to the Allied High Commission.³ The operational, technical and administrative control was conferred on the "Civil Aviation Board," one of the Allied High Commission's subordinate groups.⁴ This body's competence was transferred step by step to German authorities, first for gliders, aircraft models, airports, then for air navigation services and so on⁵ until the Civil Aviation Board had assigned all of its authority to the Federal Republic of Germany and had declared itself dissolved on May 5, 1955.⁶ Only air transport to and from Berlin is not under German jurisdiction. It is open to American, British, French and Russian planes without any approval while flights by planes of other nationality are subject to approval by the four powers. Crossing over Western Germany is subject to permission by the Federal Ministry of Transport, Department of Aviation, Bonn.

FEDERAL AND STATE ADMINISTRATION

This increase in authority brought some problems to the German administration, for the Basic Law⁷ provides in Art. 30 that in principle all administrative authority rests with the states (laender) even if the legal basis is federal law (Art. 83.) Although aviation by its very nature calls for a centralized authority, there is no federal authority provided for in the Basic Law. In order to cope with this general problem a new doctrine for "Governmental Acts of super regional character" was developed. It says that Federal authorities may act authoritatively if the matter in question bears upon more than one state and can properly be decided upon only from a level above that of state.⁸ Largely following this doctrine it was held possible to establish by law three administrative agencies on the federal level.

- a) The Aeronautical Meteorological Service (*Deutscher Wetterdienst* in Frankfurt-Main, Bockenheimer Landstr. 42. This body is charged with ensuring meteorological safety of air navigation.⁹
- b) Federal Board for Air Navigation Services (*Bundesanstalt fuer Flugsicherung*) in Frankfurt-Main, Opernplatz 14.¹⁰ The organi-

²No. 30 of Proclamation No. 2 Official Gazette No. 1 p. 16.

³No. 2-a of the Occupation Statute, dated May 12, 1949, Official Gazette p. 13.

⁴Art. III Nr. 4 — c — IV of the Charter of the Allied High Commission dated June 20, 1949; and Law No. 44 dated December 12, 1950 Official Gazette p. 730.

⁵See for references to all occupational air law Zeitschr.f.Luftr. 1952 p. 72-83. This is no longer the law.

⁶Notice to Airmen A 20/55 Zeitschr.f.Luftr. 1955 p. 220; Law A-37 and A-38 both dated May 5, 1955 Official Gazette p. 3267, 3271.

⁷i.e. the Provisional constitution dated May 23, 1949 Bundesgesetzbl. p. 1.

⁸Fuesslein, Deutsches Verwaltungsbl. 1951 p. 34.

⁹Law dated November 11, 1952 Bundesgesetzbl. I p. 738. For details see Zeitschr.f.Luftr. 1953 p. 158.

¹⁰Law dated March 21, 1953. Bundesgesetzbl. I p. 70. Its functions are described by Darsow Zeitschr.f.Luftr. 1953, p. 295.

zation and work of this Board comply with annexes 2, 10 and 11 of ICAO. One section is the NOTAM Office working in compliance with ICAO annex 15.

- c) Federal Aviation Authority (*Luftfahrtbundesamt*) in Braunschweig, Flughafen.¹¹ This authority is charged with the control of safety of aircraft and accessories; it keeps the aviation register and cooperates with the search and rescue service.

Even with the creation of these three federal agencies, the administrative problems are not as yet fully solved. These bodies are and can be competent only to give advice and assistance on technical, factual matters and (according to the new doctrine) to act authoritatively in matters of super regional character. All other administration still lies with the laender. As the wording of the present aviation law has not yet been adapted to the new distribution of authority, the Federal Government and the states have reached a written though informal understanding on their respective competencies.¹² The main fields reserved to the states are: licensing of gliders and balloons, licensing and training of pilots, licensing of aerodromes. The licensing and control of air transport enterprises is left to common action between the federal and state governments.

The Chicago Convention Applied

The standards, procedures and recommended practices as provided for by the 1944 Convention are applied all over Western Germany. The Federal Government undertook to do so in Art. 2-b, chapter twelve of the Convention on the Settlement of Matters Arising out of the War and the Occupation.¹³ Under the same Art. 2 Germany is bound to adhere to the Chicago Convention and pending such adherence to abide by the provisions of that Convention. Meanwhile the ICAO Assembly voted for the admission of Germany in June 1955 while the General Assembly of the United Nations concurred in October 1955. On the basis of these votes the Federal Government introduced into Parliament a bill to approve Germany's adherence to the Chicago Convention.¹⁴ This bill also provides for the acceptance of the International Air Services Transit Agreement of 1944, the provisions of which are already being applied on a reciprocal basis (according to Art. 2-a mentioned above). Thus the free part of Germany in effect and practice is acting like a full member of ICAO.

¹¹Law dated November 30, 1954. Bundesgesetzbl. I, p. 354. For description in detail see Zeitschr.f.Luftr. 1955 p. 131.

¹²For Text see Wegerdt Deutsche Luftfahrtgesetzgebung 2nd edition, (1955) p. 78.

¹³So called Bonn Treaty as amended at Paris on October 23, 1954, for text see Bundesgesetzbl. 1955, I p. 405, 456.

¹⁴Dated March 7, 1956. Bundestags-Drucks. II/2192, passed by Bundestag and Bundesrat March 23, 1956.

Private Air Law

Private Air Law in Germany stands unamended since 1943. Its basic conceptions are these: The carrier is liable to passengers and consignors under the Warsaw principles which have applied since 1943¹⁵ as well as for transportation inside Germany. The operator on the other hand is under an absolute liability for surface damages. Both the carrier and the operator can as a rule avail themselves of a limitation on liability. Those are the fundamental principles for which no changes are being considered. There are however a few new authorities and changes in detail.

International Transportation

Germany has ratified the Warsaw Convention of 1929¹⁶ and the Federal Republic has since 1945 declared its re-application with the consent of nearly all states except those of the Eastern block.¹⁷ The People's Republic of Rumania has refused to recognize the re-applicability of the Warsaw Convention in relation to the Federal Republic of Germany.¹⁸ The same appears to be the attitude of the other members of the Eastern Block.

The Warsaw Convention is non-political and more specifically it is an agreement on Private International Law. It has therefore been submitted that in the case of war this Convention remains applicable to neutral states and that even in relation to states at war it is only suspended and becomes automatically re-applicable as soon as normal relations develop again.¹⁹ Diplomatic practice, however, does not accept this view and considers an (informal) agreement on the re-applicability necessary. Moreover, these agreements usually give a definite date from which the Warsaw Convention shall again be applied. This shows that the agreements are not a mere confirmation or elucidation of what has been the law before, but they propose to change the law by making the Warsaw Convention applicable anew. Most German authorities therefore hold that without such notification the Convention is not in force even between Germany and states that stayed neutral during the last war.²⁰

The re-applicability of the Warsaw Convention was only once raised before a German Court. The Landgericht Hamburg did apply the Warsaw Convention to a flight from Germany to Italy even though there had been no relevant diplomatic agreement between those two

¹⁵Fourth amendment to the Luftverkehrsgesetz January 26, 1943 Reichsgesetzbl. I, p. 69 (sect. 29a—29f).

¹⁶Date of ratification: September 30, 1933 Reichsgesetzbl. 1933 II, p. 1039.

¹⁷The re-application is notified in the Official Gazette, the latest notification so far dated November 2, 1955, Bundesgesetzbl. II, p. 919 (Finland).

¹⁸Letter of the Allied High Commission, dated September 8, 1952; Zeitschr.-f.Luftr. 1953 p. 73.

¹⁹Achtlich Zeitschr.f.Luftr. 1952 p. 327; Drion Zeitschr.f.Luftr. 1953 p. 302; see also Raenk, the effect of war on non-political Conventions, Uppsala 1949 p. 182, 203.

²⁰Abraham, Der Luftbefoerungsvertrag (contract on Transport by Air) 1955, p. 7 note 6, with further references.

states. The court, however, refused to give an opinion on the re-applicability of the law in general and enforced the Warsaw principles as part of German national law rather than as an international convention.²¹

Limit of Liability

Article 22 of the Warsaw Convention grants the carrier the benefit of the much discussed limits of liability. On ratifying the convention Germany took advantage of Art. 22 (4) and fixed a rate of exchange for converting the gold francs into German marks. This was in 1933²² and the price of the gold franc has gone up considerably since. In order to harmonize the limits of liability with the official gold price prescribed by the International Monetary Fund the Federal Government introduced a bill to raise the limits in German currency. This bill²³ has nearly passed the parliamentary stages and is most likely to effect the following increases:

TABLE 2

<i>Liability</i>	<i>To Each Passenger</i>	<i>Per Kilogram Baggage & Goods</i>	<i>For Objects in Charge of Passenger</i>
Goldfranc	125.000	250	5000
At present	DM 20.000	DM 40	DM 800
	S 4.760	S 9,50	S 190
According to bill	DM 35.000	DM 70	DM 1.400
	S 8.330	S 16,70	S 334

This will not touch any of the principles of the Warsaw Convention but will merely adapt the amounts in national currency to the present value of gold as many other countries have done before. The bill also allows that future adaptations may be made by an executive regulation.

The limits of liability may be raised again sometime later as Germany has signed the Hague Protocol of September 28, 1955 to amend the Warsaw Convention.²⁴ There the limit of liability to each passenger is increased from 125.000 to 250.000 gold francs. Germany appears likely to ratify this.

Damage by Delay

The carrier is liable for damage occasioned by delay. This is the rule in Art. 19 of the Warsaw Convention and some light has been shed on its scope by the Hamburg Landgericht.²⁵ A spare part for a

²¹Landgericht Hamburg, judgment of April 6, 1955, Zeitschr.f.Luftr. 1955 p. 226, 231. Its persuasive power on the re-applicability problem is rather doubtful: Guldemann Jrl of Air L & C 1955 p. 353.

²²Statute to execute the Warsaw Convention, December 15, 1933, Reichsgesetzbl. I p. 1079.

²³A Bill to introduce Amendments in the law of transport and liability; Bundestagsdrucksache II/1265 (March 15, 1955).

²⁴For Text see 23 Jrl. of Air L. & C.

²⁵Judgment of April 6, 1955. Zeitschr.f.Luftr. 1955 p. 226; commented upon in Jrl. of Air L. & C. 1955 p. 353.

car was sent by air from Germany to Italy where it arrived at least 1½ days later than both the carrier and the consignor had anticipated. The delay was due to Italian customs clearance at an intermediate stop. The carrier had told the consignor what date the spare part would reach its destination according to the time tables, but the carrier had not—as the court construed the contract—guaranteed the arrival at a fixed date.

Instead the Court regarded Art. 10 par. 1 of the IATA conditions of carriage—briefly referred to in the air waybill—as a valid part of the contract and therefore held that “no time was fixed for the completion of carriage.” Consequently the carrier was under obligation to perform the transport within a “reasonable” time.²⁶ The carrier had done this to the best of its ability the court held. The essence of the court’s opinion is that the time-table is not part of the contract and that the IATA condition, Art. 10–1, is not contrary to Art. 23 of the Convention which makes all provisions relieving the carrier null and void. This IATA condition is an admissible interpretation of the time-tables²⁷ to the effect that there is no liability of the part of the carrier if the transport goes off schedule.

Liability in Non-Warsaw Transportation

In 1943 the Luftverkehrsgesetz was amended to make the carrier’s liability the same whether the transportation fell within the Warsaw Convention or not. This is still the law in Germany and no provisions relieving the carrier are allowed (sect. 29 f). There is, however, one incongruity in the wording: While the chapter is called “liability out of a contract for transportation” the following sections declare the operator liable (*Halter des Luftfahrzeugs*) and not as one should expect, the carrier (*Luftfrachtfuehrer*). This is not a mere inaccuracy on the part of a war-time legislator as has been suggested²⁸ but rather a deliberate extension of the carrier’s liability to the operator. The reasons for this rather unsystematic provision is that under wartime conditions civil servants as well as other persons working for the government went by air without any proper contract having been concluded. As carrier and operator were always identical in wartime Germany, it seemed safe and would thereby exclude any legal doubt to throw the liability on the operator.²⁹ As these wartime conditions have ended, the statute should again be construed to its true meaning which apparently was to hold liable the person who went into contractual relation with the passenger. This true meaning of the statute is expressed clearly enough in the chapter headings. So it is fair to

²⁶The court insofar relied on the textbook by O. Riese, *Luftrecht*, 1949 p. 450.

²⁷A. Meyer, *Zeitschr.f.Luftr.* 1955 p. 236

²⁸Abraham p. 27, 69.

²⁹Schleicher *Archiv fuer Luftrecht* 1943 p. 5; Buelow, *Zeitschr.f.a.u.i.Privat-recht* 1955 p. 557.

expect that any court called upon would not hold the operator liable but the carrier.³⁰

Apart from this incongruous terminology the amendment follows the Warsaw Convention exactly. The same limitation on liabilities was even prescribed for cabotage transportation (sect. 29-c), so that it now must be raised in German currency. The Government bill mentioned in Note 23 proposes to introduce the same limits as those for the Warsaw Convention in table 2.

Default Equivalent to Wilful Misconduct

The amendment of 1943 also serves a useful purpose by establishing a kind of authoritative interpretation as to what is meant by "such default . . . as, in accordance with the law of the Court to which the case is submitted, is considered to be equivalent to wilful misconduct" (Art. 25 par. 1 of the Warsaw Convention). In transforming this rule into national law the amendment simply uses the term "gross negligence (*grob-fahrlaessig*)" (sect. 29-e par. 1 second sentence). The amendment thereby simply confirms what has been the undisputed doctrine before.³¹ Gross negligence is a well-known term in German law. It connotes that "due care was neglected to an especially severe degree."³² Or as the supreme civil court once put it: if even the most simple and obvious considerations had been lacking.³³ Only once has a German court had to apply Art. 25 par. 1 of the Warsaw Convention. It followed the same line exactly and came to the conclusion that gross negligence on the part of the pilot in question had not been proved.³⁴

Exemption: All Necessary Measures

The same court in the same case also had to judge whether or not the carrier had succeeded in proving that his agents had taken all necessary measures to avoid the damage (Art. 20 Warsaw Convention). The true reason of the disaster had not been discovered. This uncertainty went to the disadvantage of the carrier. If the reason remains unknown the carrier is not exempted from liability.³⁵ The court admitted, however, that under special circumstances the (German conception of) *res ipsa loquitur* could lead to the result that the pilot even with the highest degree of care could not have avoided the disaster. This the court would accept only if for instance a sudden storm had caught the airplane. Only under such very exceptional

³⁰A. Meyer, *Zeitschr.f.Luftr.* 1955 p. 160; Buelow p. 558.

³¹Drion, *Limitation of Liabilities* 1954 p. 204 Abraham, *Zeitschr.f.Luftr.* 1954 p. 71.

³²Bundesgerichtshof, December 11, 1951. *Versicherungsrecht* 1952 p. 118.

³³Reichsgericht RGZ 163 p. 106 for further references see Palandt, BGB 1956 sect. 277 Note 2 Abraham *Zeitschr.f.Luftr.* 1955 p. 260.

³⁴Landgericht Frankfurt-Main. March 8, 1939, *Archiv f.Luftrecht* 1939 p. 180, 188.

³⁵Landgericht Hamburg *ibid.* p. 187. This is the general view in German law see Achtnich *Zeitschr.f.Luftr.* 1952 p. 339.

circumstances would the court hold the carrier exempted.³⁶ As a rule there is no exemption from liability in any unexplained disaster.

Damage to Third Parties

Ever since 1922 the operator of an aircraft has been under an absolute liability to compensate any person who suffered damage—to body or property—in connection with the use of an aircraft. This is still the law in Germany under sect. 19 par. 1. There are different rules to be applied only to damage to passengers (which we have just discussed) and to the liability of the airforce. The absolute liability has always been limited to fixed sums. In 1936 the limitations of the 1933 Rome Convention were inserted into the German civil aviation law.³⁷ The official gold price of that time was taken as a basis. As those sums no longer correspond either to the present gold price or to the present standard of living the Government bill already mentioned (see Note 23) provides for a raise in these limitations. The two more important limitations are shown in table 3 in comparison with the corresponding sums under the 1952 Rome Convention.

TABLE 3

<i>Liability of Carrier</i>	<i>Actual Law Sect. 23</i>	<i>Government Bill</i>	<i>Rome Convention 1952</i>
To each person injured	DM 30.000 S 7.150	DM 55.000 S 13.100	DM 140.000 S 33.350
Overall limitation for an aircraft	DM 300.000 S 71.500 (if weighing more than 7500 kg.)	DM 550.000 S 131.000 (if weighing more than 7.850 kg.)	According to weight. No absolute limitation.

The government bill purposely refused to raise the limitation to the much higher level of the 1952 Rome Convention³⁸ as it was not yet certain whether this convention would come into force and whether Germany would adhere to it. Only two minor points of the 1952 Rome Convention were accepted in the bill. There will be an especially low overall limitation for aircraft weighing less than 1000 kilogrammes (100.000 DM, S 23.800). Furthermore the bill follows to some extent Art. 14-b of the 1952 Convention in appropriating one third of the sum to meet claims in respect to damage to property, but a remainder of that third may be distributed to meet claims in respect to bodily harm, not already covered.

Since the war there has been some discussion in Germany concerning surface damage especially by noise.³⁹ But there is no new case or

³⁶Riese *Luftrecht* 1949, p. 456 gives further references and details.

³⁷Sect. 23; Statute dated July 29, 1936. *Reichsgesetzbl.* I p. 582.

³⁸Bundestagsdrucksache II/1265, dated March 15, 1955 p. 14.

³⁹A comprehensive survey is given by Achtnich *Zeitschr.f.Luftr.* 1954 p. 259, 265 especially in regard of aerodromes; Wegerdt *Zeitschr.f.Luftr.* 1954, p. 132, 140 discusses the liability for acts of a passenger. Weimar, *Zeitschr.f.Luftr.* 1955, 23 discusses the liability for things dropped from an airplane.

statute on that. Therefore the only authority is the silver fox case decided by the supreme civil court in 1938.⁴⁰ There is no legally relevant causation, the court held, if an airplane flies over a farm at normal height and speed. Damage to the terrified silver foxes is due to their inherent nature, so there can be no liability on the part of the operator.

THE ROME CONVENTIONS

Germany is a party to the 1933 Rome Convention but not to the 1952 Convention.⁴¹ There has been considerable discussion and some reluctance to recommend adherence.⁴² It is Art. 12 which is objected to. There an unlimited liability of the operator is provided for only if it is proved that the damage "was caused by a deliberate act or omission of the operator or his servants done with intent to cause damage." It is contrary to the German legal mind that even in the case of utter recklessness there shall be but limited liability. It is felt inconsistent that the careless act of a pilot-operator may be a criminal offense and yet give rise to but limited liability.

Besides the rule would probably lead to different results before Anglo-Saxon and German courts. The rule of *res ipsa loquitur* is rather restricted in German law and will not allow a court to construe the "intent to cause damage."⁴³ Therefore unlimited liability would be adjudicated before US-Courts under the *res ipsa* rule in cases⁴⁴ where German courts could recognize but limited liability.

Perhaps the opposition against Art. 12 of the 1952 Convention has gained strength, since the Hague Protocol of September 28, 1955 in amending Art. 25 of the Warsaw Convention⁴⁵ did not follow the 1952 Rome pattern but allowed unlimited liability if the act or omission was done "recklessly and with knowledge that damage would probably result." It may further be observed that the passenger assumed some risk by choosing air transportation while the person on the surface surely did not assume any risk. Is it not inconsistent that the one who assumed a risk shall enjoy the benefit of unlimited liability more often than the third party who assumed no risk?

As the only thing mitigating Art. 12 of the new Rome Convention may be considered the very high level of the limitations, so that there

⁴⁰Reichsgericht judgment dated July 4, 1938. RGZ 158 p. 34, Archiv f.Luftr. 1939 p. 290; Kammergericht judgment dated October 30, 1940, Archiv f.Luftr. 1941 p. 75.

⁴¹For Text see 19 Jrl. of Air L. & C. 447.

⁴²A. Meyer Zeitschr.f.Luftr. 1954 p. 42 Legal Committee of the Society for research in Airtransport problems October 2, 1953, Zeitschr.f.Luftr. 1954 p. 144-150.

⁴³German civil courts apply a *res ipsa* rule only in cases of a typical course of events. Bundesgerichtshof judgment of December 18, 1952 NJW 1954 p. 854. Intent to cause damage on the part of a pilot is a highly untypical—suicide-like—thing.

but limited liability.

⁴⁴Prosser on torts ch. 6 paragraph 37.

⁴⁵For Text see 23 Jrl. of Air L. & C. p. ?

would hardly be a case in Germany where the third party's damage would exceed the limits.⁴⁶ So far, however, the German government has not yet prepared its adherence to the Convention. It apparently prefers to observe the progress of ratifications by other countries.⁴⁷

Obligatory Insurance

German Aviation Law requires that there be two types of insurance against third party risks: one in respect to surface damage (sect. 29) and one in respect to passenger accidents (sect. 29-g). The former corresponds in principle to the security for operator's liability required under Art. 15, 16 and 17 of the 1952 Rome Convention. Both may be replaced by a bank deposit.⁴⁸ The German provisions do not present any special legal problem.

The obligatory insurance concerning passenger accidents does, however. It is safe to say that no such insurance is required for transportation under the Warsaw Convention⁴⁹ and no German authorities ask a foreign carrier to produce it. For this would be contrary to Art. 20 of the Warsaw Convention which sets the carrier free from any responsibility whatsoever for damage not attributable to negligence. For non-Warsaw transportation, *i.e.*, mainly cabotage flight, the situation is less certain.⁵⁰ Under the terms of its license, Lufthansa is bound to maintain such insurance for all passenger damage. The same insurance could be asked from foreign carriers only if the relevant bilateral air transport agreement so provides. For the time being the German authorities do not require the carrier to hold collective passenger insurance.

RIGHTS IN AIRCRAFT

There are no registrable rights in aircraft under German law as provided for in Art. 1 par. 1 (ii) of the 1948 Geneva Convention.⁵¹ Nor has Germany so far adhered to the Convention. In theory an aircraft may be used as a pledge for payment of an indebtedness (requiring detention by the creditor) or an aircraft may be transferred conditionally to the creditor remaining in the possession of the debtor (any *bona fide* purchaser would, however, enjoy priority over the creditor). This in fact prevents an aircraft from serving as a security under German Law.

⁴⁶Rinck Zeitschr.f.Luftr. 1954 p. 101 Riese Luftrecht 1949 p. 353.

⁴⁷Bundestagsdrucksache II/1265 dated March 15, 1955 p. 14.

⁴⁸As to a foreign aircraft, sect. 103 par. 3 of the Air Traffic Regulation (latest amendment: June 21, 1955 Bundesgesetzbl. I, p. 321) declares sufficient a certificate on security issued abroad.

⁴⁹Riese p. 493 Weimar Zeitschr.f.Luftr. 1953, 226. The actual wording of section 29 g confirms that, because it only refers to sect. 29-a as opposed to sect. 29-h which governs Warsaw transportation.

⁵⁰Huebener Betriebsberater 1952 p. 382, Achtnich Zeitschr.f.Luftr. 1952, p. 341 consider an insurance against passenger accidents to be required under present law. So far only Swiss Air complies with this provision, thereby following its general voluntary practice see Abraham Zeitschr.f.Luftr. 1955 p. 257.

⁵¹For Text see 15 Jrl. of Air L. & C. 348.

As Lufthansa had and has to buy all her aircraft abroad, the need for a practical form of security is keenly felt. Therefore the bill for a "Law on mortgages in aircraft" was drawn up within the Federal Ministry of Justice but the draft has not as yet an official character.⁵² Broadly speaking the draft follows the pattern of the law on ship mortgages. There shall be no mortgages on fleets but only on individual airplanes. The parties may extend the mortgage on spare parts stored abroad but not within Germany (which is rather a doubtful restriction). According to the draft the only public record shall be kept with the local court (*Amtsgericht*) at Braunschweig.⁵³ The bill is planned as a preparation for the adherence of the Federal Republic of Germany to the 1948 Convention.

To summarize this survey, there appears to be no structural changes in German Air Law although a rather conservative trend. National Civil Air Law shows no amendments except for adjustments to the price of gold and the standard of living. Germany follows the European line which does not favor further limitation on liabilities. As far as international law is concerned, the German attitude is more progressive, applying the Chicago Convention, signing the Hague Protocol and preparing to adhere to the Geneva Convention.

⁵²A "preliminary draft" was reproduced in the *Zeitschr.f.Luftr.* 1955, p. 298 which has been superseded by a new one dated January 16, 1956. There will be a report on that in No. 2 of *Zeitschr.f.Luftr.* 1956.

⁵³The bill may still be introduced into parliament in 1956, but it is doubted whether the Bundestag will find time to discuss and pass it before the general election in the summer of 1957.