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SCANDINAVIAN CO-OPERATION IN THE FIELD OF AIR LEGISLATION

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REGIONAL legislative co-operation in Scandinavia dates back to the end of the 19th century. In 1876, the Swedish Parliament recommended a program for such co-operation in the field of civil and commercial law. The first practical result was a statute on bills of exchange (since 1932 founded on a wider international basis); this has been followed by a considerable number of important statutes on patents, insurance, family relations, etc.¹ The most well-known result of this close collaboration is perhaps the Scandinavian Sale of Goods Act.² Air legislation in the Scandinavian countries is also a result of joint efforts.

At present the most important statute on Swedish public air law — the one which contains the basic principles governing civil aviation — is the Royal Decree on Air Navigation of May 26, 1922 (No. 383), which, in the course of time, has had to be amended several times as aviation developed technically. On April 20, 1928, the decree was followed by a Royal Proclamation regarding its application (No. 85), regulating in greater detail certain of the matters dealt with by the decree in a more general manner. In addition, the proclamation contains a number of enactments on matters not dealt with in the decree. Both these statutes must be studied against the background of the Paris Convention of 1919, to which Sweden adhered in 1927. In addition to the above decree and the proclamation regarding its application there are a number of other laws dealing with aviation.³ The Danish and the Norwegian statutes relating to the same subject correspond, in substance, with each other and with the Swedish statutes, although legislative co-operation at the time of their enactment was not so close as it is today.

¹ For general information about Scandinavian co-operation in the field of law, see, for instance, S. Ljungman, "L'unificazione del diritto privato scandinavo," *Rivista trimestrale di Diritto e Procedura Civile* 1949, fasc. 4; M. Matteuci, "The Scandinavian legislative co-operation as a model for a European co-operation," *Liber Amicorum of Congratulations to Algot Bagge*, Stockholm 1956; and A. Malmstrom's report in *Europäische Zusammenarbeit im Rechtswesen*, Tübingen 1956.

² See, e.g., T. Almén, *Das skandinavische Kaufrecht* (ed. Neubecker), Vol. 1-3, Heidelberg 1923, and G. Lagergren, *Delivery of the Goods and Transfer of Property and Risk in the Law on Sale*, Stockholm 1954.

³ For a short survey of current Swedish legislation in the field of air law, see K. Grönfors, "Grundzüge der schwedischen Luftfahrtgesetzgebung," *Zeitschrift für Luftrecht* 1952, p. 44 et seq.

The rapid development of civil aviation during the final phases of World War II made it clear, however, that further international rules for civil aviation must be evolved. An international aviation conference was therefore held in Chicago in 1944 and charged with replacing the Paris Convention by a new treaty. The work of the conference resulted in the Convention on International Civil Aviation, signed at Chicago on December 7, 1944, as well as in the International Air Services Transit Agreement, and the International Air Transport Agreement, to all of which Sweden has adhered; Denmark and Norway have not adhered to the Transport Agreement, but have adhered to the others.

When, on September 27, 1946, Sweden ratified the Chicago Convention, the need to revise the provisions of Swedish public air law became urgent. In November, 1946, the Ministry of Communications declared that such a revision should be undertaken and that the work should, as far as possible, be carried on in co-operation with the other Scandinavian States.⁴ An expert was charged with making a preparatory analysis, and a secretary was appointed to assist him in this task. A preparatory report on the matter was handed in to the Ministry of Communications during 1949.⁵

In 1948 a group of experts, appointed in 1945 to revise the provisions of Swedish private air law, were charged by the Ministry of Justice with the drafting of the acts that had to be adopted following the ratification by Sweden of the Convention on the International Recognition of Rights in Aircraft, opened for signature at Geneva on June 19, 1948. In 1950 — after the above-mentioned preparatory report regarding new provisions as to public air law had been concluded — the task of the experts in private air law was extended to embrace public air law as well, their work to be based on the preparatory report. While this work was in progress, several conferences were held with the Danish, Norwegian, Finnish, and Icelandic legal experts; at these meetings specialists possessing practical aviation experience have also, as a rule, been present.⁶

On October 31, 1955, the group of Swedish experts submitted a draft of an Aviation Act to the Ministry of Justice. It should also be pointed out that in the meantime a special committee in the Ministry of Communications has been charged, in 1950, with drawing up proposals for regulations for the application of the Aviation Act. It is assumed that the work of this committee will be concluded in time to permit the new regulations applying the Act to come into force simultaneously with the Act, which is expected to take effect on January 1, 1958. In Denmark and Norway there are similar committees, and all these committees co-operate to a certain extent.

⁴ We refer here to Finland and Iceland as well as to Denmark and Norway.

⁵ The report was handed in in parts, on January 18 and 31, and on August 26, 1949.

⁶ For a closer study see protocols of conferences held at Lillehammer and Helsinki in 1949; at Stockholm and Copenhagen in 1950; at Sola (Stavanger) in 1951; at Abo, Helsinki and Stockholm in 1952; and at Copenhagen in 1954.

In this connection a few words describing how the draft Act will be dealt with in Sweden before it is adopted may be of interest. Upon receipt of the draft of the experts, the Ministry of Justice transmits it to the authorities and other institutions concerned for comment. When their comments have come to hand, a legal expert of the Ministry of Justice sets up a protocol which, in addition to the proposed text of the Act, contains a survey of its origin and evolution, the report of the group of experts appointed to make the revision, and the comments made by the authorities concerned, together with the comments of the Minister of Justice.

This protocol is transmitted to the Law Council, which normally consists of three members of the Supreme Court and one member of the Supreme Administrative Court. It is presented to the Law Council either by an official of the Ministry of Justice or, has been the case with the Aviation Act by someone who himself has taken part in the preparatory work. The Law Council examines the text with the object of making sure not only that its provisions are comprehensible, clearly formulated, and in accordance with each other, with other Acts, and with general legal principles, but also that they are practical and suitable.

All observations, if any, are noted, and a further protocol is prepared, which is sent to the Ministry of Justice. The Minister of Justice then reports upon the matter to the King in Council, i.e., the Government, which must come to a decision regarding the draft and the possible observations of the Law Council. When the draft has been approved by the Government — possibly with amendments based on the observations of the Law Council — a Government Bill incorporating the protocol and the comments of the Law Council is drawn up and submitted to Parliament. Before being dealt with by the two Chambers the Bill is submitted to a Parliamentary Legal Committee, which gives its views on the proposal. As a rule, the Committee proposes that Parliament should adopt the draft. The matter is then taken up by both Chambers of Parliament. By letter addressed to the Ministry of Justice, Parliament then informs the government of the decision adopted, whereupon it is incumbent upon the Ministry to cause the requisite practical measures to be taken, such as having the Act printed and published⁷ and, in the case under discussion, having regulations for the application of the Act promulgated.

One of the first problems of more general interest to the legislators when starting the revision was the question of whether the basic statute of Swedish public air law should be given the form of an act, or whether it should be issued administratively — in other words, whether it should be submitted to and adopted by Parliament by parliamentary decision, or whether it was sufficient that it should be issued by the Ministry of Communications. The current Decree on Air Navigation

⁷ Publishing takes place in "Svensk Författningssamling (SFS)," an official Swedish publication containing new statutes and amendments to statutes in force.

of 1922 stands between these two extremes, since it was issued by the Ministry of Communications after consulting Parliament.

The Aviation Act is to contain regulations regarding the following important subjects, viz., the nationality of aircraft; rules concerning an aircraft register; safety regulations as to aeronautical material and the manning of aircraft; aircraft accident investigation procedure, and the related question of liability of the owner or aircraft commander for violation of safety rules; penalty rules, which, if compared to the present ones, have been made much more severe, etc. The importance of these subjects would indicate that the basic principles — or at least part of them — should be in the form of an act. Other countries have not held to any uniform pattern. The present legislation of Finland, on the whole, adopts the same attitude as the Swedish Decree on Air Navigation. In Denmark and Norway, however, the corresponding statutes have the character of acts. In Switzerland the basic regulations are issued in the form of an act, while the details have been left to administrative regulations.⁸ Germany, too, has divided her civil aviation laws into an act and administrative regulations.⁹ In Swedish maritime law, the corresponding provisions have been given the form of acts. The circumstance that development of aviation is still proceeding extremely speedily, and that it must therefore be expected that the present regulations will have to be amended from time to time, is an argument against regulation by an act; it is, as a matter of fact, indispensable that the rules which are given the form of acts should be so stable that, at least for some time, they do not have to be modified. In this connection a further circumstance of particular importance is the work done by the International Civil Aviation Organization (ICAO) regarding International Standards and Recommended Practices, which finds expression in the Annexes to the Chicago Convention.

In the course of Scandinavian co-operation, these divergences of opinion were discussed in great detail. It was finally decided that the reasons in favor of regulating the basic prescriptions in the field of public air law by an act predominated. Sweden has, in this connection, aimed at including in her Aviation Act none but fixed general rules of essential importance which may be expected not to be affected by the continuing development of aviation; detailed regulations of a technical character, etc., will be included in the proclamation on the application of the Act to be published administratively, and in the regulations issued by the Board of Civil Aviation. It will be easier to adapt such a proclamation and such regulations to changed conditions. In Denmark and Norway basically the same system has been adopted.

⁸ Bundesgesetz Über die Luftfahrt vom 21. Dezember 1948, and Vollziehungsverordnung zum Luftfahrtgesetz vom 5. Juni 1950.

⁹ Luftverkehrsgesetz vom 1. August 1922, and Verordnung über Luftverkehr vom 19. Juli 1930.

The above serves to show that, in the legislative sphere here discussed, the method applied is the one called frame-legislation. The Swedish Aviation Act is the basic statute containing rules of essential and basic importance and granting far-reaching powers to the Ministry. In the regulations for the application of the Act, published in the form of a Royal Proclamation, the Ministry will issue detailed specifications regarding the rules to be observed under the Act—some with explanatory material. From the text of the Swedish, Danish and Norwegian Draft Acts, it can be seen that provisions granting the Ministry such powers may be found in a great number of articles; in addition, a special article grants general powers in this respect. Finally, the Board of Civil Aviation or another authority appropriately empowered by the Aviation Act or by the proclamation on its application will issue regulations containing detailed instructions in questions regarding civil aviation—for instance, air traffic rules—which are based on the Annexes to the Chicago Convention.

As pointed out before, one of the most important tasks of the legislators has consisted in conforming Swedish air law to the Chicago Convention and its Annexes. The legislators have had, moreover, to consider still other international conventions in the field of air law. Special mention in this connection must be made of the Geneva Convention, which was ratified by Sweden in 1955 and, during the same year, incorporated in Swedish law by adopting special acts on registration and nationality of aircraft, salvage, and rights in aircraft.¹⁰ In drafting these regulations the Act of 1901 regarding Rights in Sea-going Vessels was largely taken into consideration, naturally with the changes called for by the provisions of the Mortgage convention. Certain enactments connected with the recognition or rights in real estate have also served as a pattern.

The Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw on October 12, 1929, which was incorporated in the Swedish law by the Carriage by Air Act of March 5, 1937 (No. 73), has also been taken into consideration.¹¹ There was some discussion as to whether the Carriage by Air Act should be embodied in the Aviation Act or whether it would be more suitable only to refer therein to the Carriage by Air Act. The central importance to aviation of carriage by air may, on the one hand, in itself be regarded as a reason for embodying the Carriage by Air Act in the Aviation Act. On the other hand such an incorporation would, to a certain degree, mean a break in the system of the structure of the Aviation Act. Besides, the Carriage by Air Act may, within a comparatively near future, have to be revised in conformity with the Hague

¹⁰ See following Acts of May 12, 1955, viz: No. 227 on the Recognition of Rights in Aircraft; No. 228 on the Registration of Aircraft and Salvage of Aircraft, etc.; and No. 229 on the adherence of Sweden to the Convention on the International Recognition of Rights in Aircraft of 1948.

¹¹ The Carriage by Air Act goes further than the Warsaw Convention in the respect that, on principle, the Act is applicable also to domestic air transport, and to transportation between Sweden and a non-Warsaw country.

Protocol of 1955. For these reasons, so far as Sweden is concerned, the Aviation Act contains no more than a reference to the Carriage by Air Act. Denmark and Finland have followed the same course, while Norway is embodying the Norwegian counterpart of the Carriage by Air Act in her Aviation Act.

Further, the legislators have had to consider the Convention for the Unification of Certain Rules relating to the Precautionary Attachment of Aircraft, signed in Rome on May 29, 1933, which was incorporated in Swedish legislation in 1939. The Aviation Act only contains a reference to the Swedish Act of 1939. Here, too, it has been debated whether this Act should be embodied in the Aviation Act. However, in view of the provisions of Art. 4 of this 1939 Act, which provide that it shall be applicable to foreign aircraft only in case the King, after agreeing to that effect with a foreign State, so decrees. It was considered that this provision would not be consistent with the general character and structure of the Aviation Act. In Denmark and Finland the same line has been followed, while Norway has embodied the provisions in question in her Aviation Act.

Finally, account has been taken of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, opened for signature at Rome, October 7, 1952, and signed by Sweden in 1954, though not yet ratified. The corresponding provisions are included in the Swedish Act of May 26, 1922 (No. 382) on the Liability for Damage Caused by Aviation. Even in this instance, for reasons similar to those given above in relation to the Carriage by Air Act, the draftsmen have preferred to include no more than a reference in the Aviation Act. It should be pointed out that Denmark and Norway have used the same method.

Swedish, Danish, and Norwegian co-operation in the field of scheduled air services, i.e., in the activities of the consortium Scandinavian Airlines System (SAS), has not been without its effect on legislative work.¹² As an example of a provision stemming from such collaboration one may mention an article of the Swedish draft Aviation Act regarding the delegation of the inspection of aeronautical material to a special expert or authority.¹³ The SAS co-operation will also considerably affect the detailed rules which will be contained in the regulations for the application of the Aviation Acts.

In the course of Scandinavian co-operation certain differences have arisen in the views held by Sweden, Denmark, and Finland, on the

¹² For detailed information regarding this consortium see Report on the Scandinavian Airlines System (SAS), ICAO Circular 30-AT/5, 1953; R. A. Nelson, "Scandinavian Airlines System Co-operation in the Air," *JOURNAL OF AIR LAW AND COMMERCE* 1953, p. 178 et seq; and P. Burguet, "Les Relations entre les Etats Scandinaves (Danemark, Norvège, Suède) et le Scandinavian Airlines System," *Revue générale de l'Air* 1956, p. 126 et seq.

¹³ Art. 2 Ch. 3, has the following wording: "In order to have its air-worthiness established an aircraft shall undergo inspection at the times and in the manner prescribed by the King or, by authorization from the King, by the Board of Civil Aviation, and even otherwise be subject to supervision by the Board. If prescribed by the King, the Board may charge a special expert or authority with assisting it in or with carrying out the duties envisaged in para. 1."

one hand, and Norway, on the other regarding the principles to be applied in the regulation of aircraft registration and recording rights in aircraft. These differences have become apparent in the Aviation Acts drafted in the respective countries. According to the Swedish, Danish, and Finnish draft Acts there are to be two registers, one related to matters of Public Law, which is kept by the Civil Aviation Authority (the Aircraft Register), and one related to matters of Private Law, kept — as regards Sweden — by the Division of the Lower Public Court of Stockholm which deals with matters regarding the recording of rights in aircraft (the Aircraft Record). The Norwegian draft, on the other hand, looks toward the maintenance of its present arrangement, a joint register, to be managed by the administrative authority.¹⁴

Accordingly, the Swedish Aviation Act contains the provision that the Board of Civil Aviation shall keep an aircraft register, and that special regulations will deal with the recording of rights in aircraft, which is a matter of Private Law. As a matter of fact, this procedure corresponds to the one adopted when the act dealing with mortgages on ships was drawn up.

Detailed provisions regarding the Aircraft Register and its contents, the form of application to be made for the registration of aircraft, the notification of change in the title to an aircraft, etc., will be found in a Proclamation issued administratively.¹⁵

The Swedish Aviation Act furthermore contains a provision, that all physical and juridical persons of Swedish nationality — but not non-nationals — shall be entitled to own aircraft in Sweden and to have them registered as of right. The policy behind this rule is the one that lies behind many provisions of other Swedish Acts, which, on principle, forbids foreigners to acquire legal title to real estate in Sweden, to work there, etc. It has been questioned whether special guarantees should not be created to prevent a corporation, nominally Swedish but in reality owned by foreign nationals in whole or in part, from being entered on or remaining on the register. It was considered, however, that the question lacks practical importance since no one may engage in scheduled air transport or other commercial aviation activities without a special permit, in the granting of which the Board inquires into the question of nationality.¹⁶

Besides, the Swedish draft Aviation Act creates a possibility for the registering even of an aircraft owned by a foreign individual or

¹⁴ See Government Bill No. 13 submitted to the Swedish Parliament in 1955 as regards the adoption of a Convention on International Recognition of Rights in Aircraft, and submitting the draft of an Act on the Recognition of Rights in Aircraft, etc., pp. 294 et seq.

¹⁵ Royal Proclamation of December 2, 1955 (No. 635) on Detailed Regulations regarding the Aircraft Register, etc., which entered into force on February 1, 1956.

¹⁶ See Articles 8 and 79 of the Swedish Stock Corporation Act of September 14, 1944; the latter article decrees that "the members of the board and the managing director shall be of age and legally competent and, except where in a special case the King permits otherwise, they shall be Swedish nationals domiciled in Sweden. Such sanction may not be obtained for more than one-third of the total number of the board members."

corporation. By introducing this stipulation, certainly novel in relation to current legislation, Sweden has relaxed the strict rule prohibiting the registration of aircraft in the name of non-nationals. Equivalent provisions may be found in the Danish, Finnish, and Norwegian draft Acts.¹⁷ As an absolute premise for the registration of aircraft owned by foreign nationals it is, however, in so far as Sweden, Denmark, and Finland are concerned, provided in the articles in question that its provisions cover only those aircraft which, as a rule, are operated from a point of departure within the country where the foreign owner is located.

It has been regarded as self-evident that, when the question arises whether such a dispensation should be granted, the domicile of the owner or, in the case of corporations, the seat of the Board or Head Office will be taken into account. In the Norwegian draft Act there is no condition regarding point of departure.

The introduction of this arrangement covers a long-felt want. The situation which allowed a foreign national domiciled in Sweden and who owns an aeroplane used exclusively or principally for flights within Sweden to have his aeroplane entered on the register of his native country only, but not on the Swedish Aircraft Register, was certainly far from satisfactory. From the point of view of the Board of Civil Aviation, which has to keep watch over flight safety, it is an additional advantage that the supervision of the airworthiness of the aircraft and such other checking as is required be carried out by a Swedish authority, which is the case where aircraft registered in Sweden are concerned.

In the course of the Scandinavian deliberations regarding the penalty rules of the Aviation Acts, the question arose whether a detailed catalogue of all the punishable offenses should be made, or whether it would be sufficient to limit oneself to one or several articles on penalty rules in general. Norway has chosen the former alternative — the chapter on penalties of the Norwegian draft Aviation Act consists of 34 articles — while Denmark has followed the opposite line, including no more than 2 articles in its chapter on penalties. Sweden and Finland have chosen a middle course by specifying the offenses for which imprisonment or hard labor instead of a fine may be imposed (8 articles), and then summarizing all other offenses, where no more than a fine may be imposed, in a general article.

Another question which was dealt with at length in the course of the Inter-Scandinavian co-operation was that of the legal status of the aircraft commander. It was agreed that all the national Aviation Acts

¹⁷ Most States still restrict registration of aircraft to their own nationals. There are, however, certain exceptions, viz.: Australia, El Salvador, Iran, and Nicaragua place no limitations on the right to register from the point of view of nationality; Argentina, Bolivia, Cuba, Panama, and Uruguay allow registration by a person who is merely domiciled in the State, irrespective of nationality; Colombia, Greece, India, the Netherlands, Switzerland, the Union of South Africa, and Venezuela do provide in certain circumstances for registration by a non-national.

should contain a special chapter on the aircraft commander. The problem was discussed on the basis of a draft convention on the subject,¹⁸ and of the relevant chapter of the Maritime Code. From a realistic and systematic point of view it would appear fully correct that all the rules referring to the privileges and duties of the aircraft commander which bear relation to Public Law, such as those defining the order and conduct to be observed on board aircraft, the disciplinary authority exercised by the commander, his obligation to see to it that log books are kept, etc., should be set out in a special chapter of the Aviation Acts. It has not however, been possible to adhere strictly to such a plan, since no clear distinction between the elements of Private and Public Law in respect of the functions of the commander can be made. This is apparent, *inter alia*, from the text of the Draft Convention of 1947 on the Legal Status of the Aircraft Commander, which deals with questions of both Public and Private Law.

In his thesis on the legal status of the master of a sea-going vessel, the Finnish Judge Rudolf Beckman also states that, in a ship, the exercise of command comprises elements of both Public and Private Law, and that, since those functions of the master that recur most frequently are, according to their nature, specifically related to Public Law, he — Beckman — agrees with the German legal expert H. Wüsten-dörfer that, in this respect, the elements of Public Law predominate.¹⁹ It should be added that the legislators, in view of the uncertainty of the international situation, have limited themselves to only the most important practical questions connected with the commander. For this reason a subject which, in maritime law, is of such importance and has been so widely discussed, *i.e.*, the legal power of the commander, has not been dealt with in the Aviation Acts. It has been considered that, in aviation law, regulation is not so indispensable as it is in maritime law, because the structure of air transport differs so essentially from that of maritime transport. However, the need for regulations in this connection should not be underestimated.²⁰ The legal power of the commander is, besides, recognized by the national

¹⁸ In 1931 CITEJA presented a proposal for a Draft Convention on the Legal Status of the Aircraft Commander (*Avantprojet de Convention sur la Situation Juridique du Commandant de l'Aéronef*). Subsequently, the subject was dealt with by CITEJA both before and after the recent World War. At the CITEJA meeting held at Cairo in November 1946—by which time, pursuant to the Interim Agreement on International Civil Aviation concluded in Chicago, CINA had been replaced by the Provisional International Civil Aviation Organization (PICAO)—it was decided, *inter alia*, to submit to PICAO the draft of a Convention on the Legal Status of the Aircraft Commander. This draft was studied and to some extent revised by a special Legal Committee instituted by PICAO. The Legal Committee of ICAO then elaborated the Draft Convention on the Legal Status of the Aircraft Commander, as revised by the Paris Legal ad hoc Committee, February, 1947.

¹⁹ See R. Beckman, *Om fartygsbefälhavarens rättsliga ställning*, Vol. 1, Abo 1936, p. 101.

²⁰ See K. Grönfors, *Om trafikskadeansvar*, Stockholm 1952, pp. 360-361. See also M. S. Kamminga, *The Aircraft commander in commercial air transportation*, s Gravenhage 1953, p. 140 et seq., as well as H. Beaubois, "Le Statut juridique du Commandant d'aéronef," *Revue française de droit aérien* 1955, p. 248 et seq.

legislations of France (Act of May 25, 1936), Italy (Act of February 8, 1934), and Uruguay (Decree of December 3, 1922), etc.²¹ As indicated above it has nevertheless appeared preferable to watch developments while the work on the Draft Convention on the Legal Status of the Aircraft Commander is in progress.

In this connection it may be mentioned that the desirability of a definition of "aircraft commander" contained in the national Aviation Acts has been discussed. It was, however, decided that, pending the adoption of a distinct international definition, one should restrict oneself to the regulations set out in the Draft Acts, that there shall be a commander, and that he shall exercise the highest authority on board the aircraft. In our opinion it must from the point of view of Continental Law be regarded as hazardous to give definitions of any general concept in the brief text of an act. Experience has shown that the wording of a definition often leaves room for critical comments, the definition either being too narrow in scope, so that it fails to embrace all that should actually be included in it, or too wide, so that its applicability exceeds the envisaged scope. For those reasons an ample and detailed explanation of a term aiming at a clear interpretation seems preferable to a brief definition.²²

The wording of the Draft Acts as stated above thus implies that there shall be a commander in every Swedish, Danish or Norwegian aircraft irrespective of its size. This question was discussed by CITEJA in connection with the drafting of Art. 1 of the draft convention of 1931.²³ It was agreed then that, as regards international air transport, a person having "les pouvoirs d'autorité et de discipline" must always be present on board an aircraft. It was also agreed that, in this connection, a distinction between large and small aircraft should not be made, and that the presence of a commander should be made an absolute rule as soon as aircraft were engaged in the international transport of passengers or goods. While the text of the Swedish, Danish and Norwegian Aviation Acts were in preparation, it was proposed that the prescriptions regarding the presence of a commander should only be made compulsory if there were more than one pilot on board an aircraft. This proposal was not, however, accepted. Neither was it considered suitable to limit this requirement to aircraft used for commercial air transport. Consequently, the respective national regulations regarding the commander will be applicable to any person operating an aircraft.

The provisions in question also establish that the commander exercises the highest authority on board the aircraft, which is fairly

²¹ See ICAO Legal Committee, Minutes and Documents, 7th Session, DOC 7157-LC 130, p. 325.

²² Cf. the critical comments as to the activity of ICAO in order to work out general definitions, made by K. Grönfors, "Några anmärkningar rörande charterbegreppet i lufträtten," *Verkehrs-wissenschaftliche Veröffentlichungen, Heft 32, Beiträge zum internationalen Luftrecht, Festschrift zu Ehren von Prof. Dr. Jur. Alex Meyer, Düsseldorf 1954*, pp. 57-58.

²³ See *supra* footnote 18.

self-evident; it has nevertheless been considered suitable to be explicit here. This provision corresponds to those prevailing in maritime law,²⁴ which stipulate that the master's authority embraces control over and supervision of the vessel and cargo as well as power over all persons on board, adding that this authority not only is a privilege enjoyed by the master, but also a duty incumbent upon him.²⁵ A corresponding prescription may also be found in certain foreign aviation laws, for instance, in the French Act of March 25, 1936 (Art. 8).

The safety of traffic demands, unconditionally, that the physical and mental condition of all those who serve on board aircraft shall be such that they are able to carry out their duties in a way to ensure full safety. Internationally, the relevant provisions may be found in Annex 2 to the Chicago Convention, Rules of the Air, where para. 2.5 stipulates that "no person shall pilot an aircraft, or act as a flight-crew member of an aircraft, while under the influence of intoxicating liquor or any narcotic or drug, by reason of which his capacity so to act is impaired." The Swedish Decree of 1951 on Road Traffic contains a corresponding provision as regards the drivers of motor cars and other motor vehicles.²⁶ This question has also been dealt with by special delegates working for co-operation in establishing uniform Scandinavian rules as regards temperance in traffic.²⁷ Scandinavian medical experts have dealt with the problem in great detail and have undertaken several investigations on the effects of alcohol and fatigue. The problem has also been dealt with during negotiations between an association of pilots and other persons in the service of air carriers and the Scandinavian Airlines System (SAS), and regulations on the subject are included both in the collective agreement to which this association and SAS are parties, and in the Service Rules which SAS have issued for their flying personnel. It may be expected that certain instructions on the subject will be included in the regulations for the application of the national Aviation Acts.

The modification of the principal statutes of public air law, which will be concluded by the adoption of the Swedish Aviation Act and of the proclamation on its application, is only to be regarded as a link in the work of revision in the sphere of air law which is being carried on in Sweden and the other Scandinavian States. The scope of this revision depends, naturally, on the work which will be done by the Legal Committee of ICAO and other international bodies interested in the study of air law.

²⁴ Cf. Art. 14 as the Swedish Seamens Act of June 15, 1922.

²⁵ This is also the case in the Soviet Maritime Code, although the commander is considered to be a member of the crew. See H. Wikander, "Den nya sovjetryska sjölagen," *Svensk Juristtidning* 1930, p. 489 et seq.

²⁶ Para. 1 of Art. 28 is worded as follows: "No one who, owing to illness, fatigue, or the effect of spirituous liquor or other stimulants or narcotics, or for some other reason, fails to meet the necessary requirements for conducting a vehicle in a manner ensuring safety shall be allowed to drive a vehicle on the road."

²⁷ 1949 års trafiknykterhetsutredning (Committee of 1949 of investigation of temperance in traffic).