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Menachem Sheffy

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THE AIR NAVIGATION COMMISSION OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION*

Part II

A Study of Its Functions and Powers and an Outline of Its Main Fields of Activity

BY MENACHEM SHEFFY

LL.M., The Hebrew University, Jerusalem, 1954

VI. TECHNICAL REGULATORY MATERIAL

A. Annexes

Annexes, that is, International Standards and Recommended Practices, and the Organization's regulatory material of the highest status. The adoption and promulgation of Annexes are governed by the Convention. Article 37 of the Convention provides for the promulgation of Annexes as follows:

Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

To this end the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with:

- (a) Communications systems and air navigation aids, including ground marking;
 - (b) Characteristics of airports and landing areas;
 - (c) Rules of the air and air traffic control practices;
 - (d) Licensing of operating and mechanical personnel;
 - (e) Airworthiness of aircraft;
 - (f) Registration and identification of aircraft;
 - (g) Collection and exchange of meteorological information;
 - (h) Log books;
 - (i) Aeronautical maps and charts;
 - (j) Customs and immigration procedures;
 - (k) Aircraft in distress and investigation of accidents;
- and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.²⁴⁵

All but one of the above listed matters are in the field of air navigation; customs and immigration procedures may be considered matters

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²⁴⁵ Chicago Convention, Article 37.

of air transport. Hence Annexes are almost exclusively concerned with air navigation. Even Annexes developed to deal with matters not listed in the above Article are to fall within the category of air navigational material.

The responsibility with respect to Annexes rests with the Council, one of its mandatory functions being the adoption of Annexes and notification to all contracting States of the action taken.²⁴⁶

The procedure for the adoption of Annexes is also laid down by the Convention as follows:

(a) The adoption by the Council of the Annexes described in Article 54, subparagraph (1), shall require the vote of two-thirds of the Council at a meeting called for that purpose and shall then be submitted by the Council to each contracting State. Any such Annex or any amendment of an Annex shall become effective within three months after its submission to the contracting States or at the end of such longer period of time as the Council may prescribe, unless in the meantime a majority of the contracting States register their disapproval with the Council.

(b) The Council shall immediately notify all contracting States of the coming into force of any Annex or amendment thereto.²⁴⁷

The obligations of contracting States with respect to Annexes are covered by Article 28 of the Convention applicable to all regulatory material referring to air navigation. Under this Article, contracting States undertake, in so far as they find practicable, to implement the technical legislation of the Organization. However, with regard to Standards, States are under obligation to report deviations, as indicated in Article 38 reading:

Any State which finds it impracticable to comply in all respects with any such international standards or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard.²⁴⁸

KEY TO THE SYMBOLS FOR ICAO DOCUMENTS LISTED IN FOOTNOTES

A—Assembly
AN, ANC—Air Navigation Commission
C—Council
Doc—Document
P—Plenary Session
Rec.—Recommendation
TE—Technical Commission of Assembly
WP—Working Paper

A combination of the above symbols should be interpreted as illustrated in the following examples:

A1-1—First Assembly Resolution 1
A4-Rec. 4—Fourth Assembly Recommendation 4

A10-WP/20, TE/6—Tenth Assembly Working Paper, Technical Commission, sixth meeting

A10-WP/148, P/15—Tenth Assembly Working Paper, number 148, fifteenth plenary meeting

C-WP/2040—Council Working Paper 2040

Minutes of the Air Navigation Commission are designated as Working Papers:

AN-WP/MIN, X-20—Air Navigation Commission Minutes, Tenth Session, twentieth meeting

²⁴⁶ Chicago Convention, Article 54(1).

²⁴⁷ Chicago Convention, Article 90.

²⁴⁸ Chicago Convention, Article 38.

The material of which Annexes are comprised is divided into two categories, that of Standards and that of Recommended Practices, which by definition have different status, although both of them are applicable in the same manner and call for the same procedures of adoption and amendment. A "Standard" by definition is:

. . . any specification for physical characteristics, configuration, materiel, performance, personnel, or procedure, the uniform application of which is recognized as necessary for the safety or regularity of international air navigation and to which Member States will conform in accordance with the Convention; in the event of impossibility of compliance, notification to the Council is compulsory under Article 38 of the Convention.²⁴⁹

A "Recommended Practice" is defined in the very same terms with two crucial differences:

(1) A Recommended Practice is recognized as "desirable" for the safety or regularity of international air navigation; it is not recognized as "necessary," as is a Standard; and

(2) States are required to ". . . endeavor to conform in accordance with the Convention."²⁵⁰ The compulsory notification under Article 38 of the Convention is not mentioned.

Thus, a Recommended Practice may be viewed as of somewhat lesser importance than a Standard, though both categories of specifications are embodied in one document termed "Annex" to the Convention, for the sake of convenience.

Although Standards and Recommended Practices are designated as Annexes to the Convention, it should not be assumed, once approved and accepted, they acquire a status similar to the provisions of the Convention. The adoption of Annexes is a unilateral act of the Council, while international treaties are usually formulated by the signatory States. Furthermore, Annexes do not require formal ratification by States, their very nature demanding more flexible methods for their coming into force.

The Convention is not perfectly clear as to the status of Annexes. The present President of the Council briefly stated the problem involved in determining their status in this way:

The attachment of provisos on technical standards to an international agreement creates some interesting legal problems. The permanent Convention will have the form of a treaty; but nations could scarcely be expected to ratify a document which might be greatly changed without renewed reference to the ratifying authorities. Yet the arts of aircraft design and air navigation are constantly developing, and standards governing them must obviously be kept highly flexible. Hope of keeping the standards up to date would disappear if they were to be incorporated in the Convention and fresh ratification by all the participating governments were required whenever a change were made. The expedient chosen was to give the permanent Council full power to adopt, amend or annul technical annexes to the Convention at any time by a two-thirds

²⁴⁹ First Assembly Resolution A1-31, ICAO Doc 7670, p. 26.

²⁵⁰ *Ibid.*

vote; but those annexes are not to be given compulsive force. There will be no binding obligation on any nation to keep to an international standard.²⁵¹

Evidently, Annexes are international regulations of an unusual character. The following elements with respect to Annexes should be noted:

- (1) Annexes are in no way international treaties requiring formal ratification.
- (2) Annexes are, in effect, recommendations of the greatest importance directed by the Council to contracting States.
- (3) The basic objective of Annexes is to achieve uniformity in measures promoting safety, regularity and efficiency in air navigation on a worldwide scale.
- (4) Although Annexes have no compulsive force, States are obliged to report to the Council any departures from Standards. It is doubtful whether the same obligation exists with respect to Recommended Practices.
- (5) Annexes may be annulled or amended by the Council unilaterally. This is another point indicating that Annexes are not international treaties, the latter not being instruments which can normally be revoked unilaterally by one of the parties.
- (6) Annexes come into force three months after being submitted to contracting States, ". . . or at the end of such longer period of time as the Council may prescribe, unless in the meantime a majority of the contracting States register their disapproval with the Council."²⁵² It is noteworthy that disapproval of an Annex has to be actively demonstrated, and that lack of response from a State may be interpreted as tacit agreement. It is, however, not clear whether silence on the part of States implies acceptance of the Annex or whether disapproval of an Annex is the same as a departure under Article 38 of the Convention.

Let us examine first the question of when an Annex "becomes effective" and what this term implies. Article 90 of the Convention presents a difficulty in this respect, since it is inconsistent semantically regarding the use of the term applying to the time an Annex becomes formally effective. Paragraph (a) of the Article uses the expression "become effective," while paragraph (b) of the same Article decrees that "The Council shall immediately notify all contracting States of the coming into force of any Annex or amendment thereto."²⁵³ This discrepancy presents a problem as to the intention of the drafters of the Convention. Does the term "become effective" in paragraph (a) mean that an Annex formally comes into force after the lapse of time specified in that paragraph, independently of Council notification to

²⁵¹ Edward Warner, "The Chicago Air Conference," *Blueprint for World Civil Aviation, Publication 2348, Conference Series 70, Department of State (Washington, 1945)*, p. 24.

²⁵² Chicago Convention, Article 90(a).

²⁵³ *Ibid.*, Article 90(b).

contracting States, or is such notification an essential element? The Commission was of the opinion that both terms used were identical in their meaning.²⁵⁴ If this is the case, paragraph (b) has no effect on the validity of an Annex adopted by the Council pursuant to paragraph (a) of Article 90, constituting only a directive to the Council. The "Revised Form of Resolution of Adoption of an Annex" adopted by the Council²⁵⁵ considers the terms "become effective" and "coming into force" identical, discarding the latter term and employing the former.²⁵⁶

The question of how and when contracting States should report to the Council departures from Standards was another point that required clarification and a practical solution. Article 38 provides that States ". . . shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard."²⁵⁷ The Article leaves us in darkness as to the meaning of the word "immediate." Does it mean that States should report differences promptly after adoption of an Annex by the Council, or only after the Annex becomes effective? The Council recognized the difficulties involved for contracting States by establishing an additional date, the date of applicability of the Standards and Recommended Practices included in the Annex. A different date of applicability might be set of each separate Standard and Recommended Practice. This method was devised in order to avoid the reporting of differences by States for the sole reason that the latter found the time allotted for implementation insufficient.

Article 38 of the Convention lists three cases of non-compliance requiring notification, as follows:

- (a) Non-compliance resulting from a State finding it ". . . impracticable to comply in all respects with any such international standards or procedure. . . ." ²⁵⁸
- (b) Non-compliance resulting from the inability of a State ". . . to bring its own regulations or practices into full accord with any international standard or procedure after the amendment of the latter. . . ." ²⁵⁹
- (c) Non-compliance resulting from adoption by a State of regulations differing from those established by an International Standard.

Unfortunately, this important Article is worded in a way which renders it unclear. Case (b) above refers to amendments of International Standards and Recommended Practices, which are dealt with later in this section. Presumably, notification is required under cases (a) and (b) whenever a departure from "international standard or procedure" occurs. Case (c) requires notification only where the departure occurs with respect to an "international standard." The Con-

²⁵⁴ ICAO AN-WP/MIN, VII-10(25/6/51), paragraph 23.

²⁵⁵ ICAO Doc 7361-15(Open), C/858-15(23/4/53), Appendix "A," p. 199.

²⁵⁶ *Ibid.*, paragraphs 2 and 4(i).

²⁵⁷ Chicago Convention, Article 38.

²⁵⁸ Chicago Convention, Article 38.

²⁵⁹ *Ibid.*

vention does not define international standards and procedures. Neither does it define Recommended Practices. Hence we must presume that their definition was left to the Organization. The Organization did adopt definitions of Standards and Recommended Practices²⁶⁰ and the question now arises whether we should read case (c) as implying that notification of differences is required only when the departure is from "Standards" as defined by the Organization, or whether the term "international standard" does not have any specific technical meaning but refers to technical regulations of the Organization in general. A practical solution was found by specifying which regulations required notification of differences and which differences should be reported. A further simplification was the introduction of a practice that makes notification a general requirement for Standards and Recommended Practices and Procedures for Air Navigation Services, whenever such departures affect the safety or regularity of international civil aviation.²⁶¹ Even Supplementary Procedures require notification, though they cannot be considered as international in character.²⁶²

Pursuant to resolutions of the Assembly,²⁶³ simplified procedures for the reporting of differences were evolved. Annexes were to be accompanied by a memorandum ". . . analyzing the types of differences to be reported and indicating the form in which the notification of differences was desired."²⁶⁴

It should be stressed that the notification of differences, in itself, does not constitute a rejection of a Standard, but serves more as a point of information, enabling States and the Organization to learn to what extent uniformity exists and where, geographically, departures occur.

The question of notification of differences is closely connected with the implementation or non-implementation of ICAO's regulations. For some time the Organization adhered to the view that non-notification of differences should be interpreted as acceptance of its regulations.²⁶⁵ Although such an interpretation is correct in the case of registering disapproval with an Annex under Article 90 of the Convention, where lack of response from States may be taken to mean tacit acceptance, there is no reason to think that the same reasoning applies to Article 38. The Commission rightly emphasized this point in commenting that the ". . . present practice of accepting non-notification of differences as evidence of compliance with an Annex was regarded as unsound. . . ."²⁶⁶ The Commission followed this observation by evolving a procedure for the notification of difference which, at least with respect to Standards relating to facilities, required States to report

²⁶⁰ First Assembly Resolution A1-31, ICAO Doc 7670, p. 25, and see also *supra* p. 95.

²⁶¹ ICAO Doc 7037-3, C/814-3 (19/9/50), para. 34, p. 38, and ICAO Doc 7361-15 (Open), C/858-15 (23/4/53), Appendix "A," para. 4 (iii).

²⁶² Tenth Assembly Resolution A10-24, ICAO A10-WP/148, P/15 (16/7/56), preamble, para. 2, and clause (3).

²⁶³ First Assembly Resolution A1-30, and Seventh Assembly Resolution A7-9, ICAO Doc 7670, pp. 24 and 208.

²⁶⁴ ICAO Doc 7464-8, C/871-8 (24/3/54), para. 38, p. 103.

²⁶⁵ ICAO Doc 7037-3, C/814-3 (19/9/50), para. 34, p. 38.

²⁶⁶ *Ibid.*

compliance or non-compliance. "The Commission's view was that in respect of such Standards a State's obligation under Article 38 was merely to notify whether it intended to comply or not to comply. . . ." ²⁶⁷

Proposals for amendment of Annexes are accepted by the Commission only after full agreement is secured, ²⁶⁸ and involves extensive consultation with contracting States. ²⁶⁹

Acceptance of Standards and Recommended Practices does not necessarily imply their consequent implementation. States may wholeheartedly agree with the principles embodied in an Annex, yet find themselves unable to comply with them. ²⁷⁰ Sometimes States lack the knowledge of how to implement an Annex and to assess its economic and technical aspects. The following paragraph illustrates the case:

It is not always a simple matter for States with small administrations, where one person often carries responsibilities in several technical fields, to determine precisely what the various Annexes and Standards and Procedures involve in terms of the administration, provision and cost of technical personnel equipment and facilities. Perhaps more important, is the difficulty experienced in such States in assessing the trend of these requirements to avoid expenditures on facilities that may not have a clearly defined and adequate period of utilization. Uncertainty on any of these points causes a delay in implementation and is often a reason for failing to ask for assistance. ²⁷¹

Difficulties which hamper States' implementation of Standards and Recommended Practices are the same as those that are detrimental to the implementation of Regional Plans. ²⁷² The Organization's work does not stop with the promulgation of regulatory material, but is followed by a phase of assistance in implementation. The Assembly formulated a policy of priority in assistance, resolving:

That primary emphasis be placed upon assisting States in the application of Standards, Recommended Practices and Procedures in the fields of Aerodromes and Ground Aids, Communications, Meteorology, Air Traffic Services, Aeronautical Information Services and Search and Rescue, including the Personnel Licensing and Training aspects of these fields. ²⁷³

Assistance to States for the implementation of Standards and Recommended Practices comes mainly from the Air Navigation Bureau of the Secretariat and the Regional Offices. The policy for assistance was broadly outlined in an Assembly Resolution. ²⁷⁴ The Convention also provides for economic and technical assistance to be granted by the Organization upon the request of a State. ²⁷⁵

²⁶⁷ ICAO Doc 7464-8, C/871-8(24/3/54), para. 38, p. 103. See also Tenth Assembly Resolutions A10-27 and A10-29, ICAO A10-WP/148, P/15(16/7/56), pp. 21 and 23.

²⁶⁸ ICAO AN-WP/MIN, V-5(11/10/50), para. 6, p. 40.

²⁶⁹ ICAO AN-WP/MIN, XVI-7(6-7-54), para. 6, p. 38.

²⁷⁰ ICAO Doc 7564, A9-P/2(27/4/55), p. 29.

²⁷¹ ICAO A10-WP/20, TE/6(20/3/56), para. 2.1.2, p. 3.

²⁷² *Supra* p. 36.

²⁷³ Seventh Assembly Resolution A7-10, clause (2), ICAO Doc 7670, p. 209.

²⁷⁴ Tenth Assembly Resolution A10-27, clause (1), ICAO A10-WP/148, P/15(16/7/56), p. 21.

²⁷⁵ Chicago Convention, Articles 70, 71 and 74.

The development of Annexes has been discussed in the chapter dealing with technical meetings.²⁷⁶ A few additional remarks, however, will serve to further clarify this matter.

An Annex is a product of careful and prolonged efforts on the part of several of the deliberative bodies of the Organization.²⁷⁷ It requires constant coordination between Divisions, where Annexes normally originate, the Commission, contracting States, the Secretariat, and finally the Council, the adopting agency of the ICAO.

The Annexes, developed and adopted through a process of meticulous and lengthy deliberations and examinations, frequently imposing costly economic and administrative burdens on contracting States, cannot be changed and revised often, lest its implementation never be effected. On the other hand, progress in aviation and air navigation cannot be conditioned by the state of the technical regulatory material adopted. The reverse is the case, for it is legislation which follows normally changing conditions. This situation breeds two tendencies which are seemingly in conflict, the need for stability, and the inevitable changes and technical progress in international aviation.²⁷⁸

Admittedly, this situation is something of a dilemma. Both tendencies have to be carefully weighed and the solution must be practical and attainable by contracting States.

The Seventh Assembly, stating that "... there is a need to maintain a correct balance between the stability of International Standards, Recommended Practices and Procedures and keeping their provisions up to date;"²⁷⁹ resolved:

(1) That, pursuant to Recommendation A4-Rec.4 of the Fourth Session of the Assembly, amendments to International Standards, Recommended Practices and Procedures be limited to those significant to the safety, regularity, or efficiency or international air navigation and that editorial amendments be kept to the essential minimum;

(2) That, with respect to amendments to International Standards, Recommended Practices and Procedures of a regulatory nature, the Council establish a program for the application of such amendments, so that the relevant national aeronautical regulations of Contracting States will not require to be amended more frequently than at intervals of one year, and that departures from this policy be made only in exceptional circumstances.²⁸⁰

Inclusion of material in an Annex is governed, as the above Resolution states with regard to amendments, by considerations of safety, regularity or efficiency, but it should be noted that, although the criteria are clear, no material would be considered for inclusion in an Annex unless it is deemed mature.²⁸¹ Maturity of material can be a

²⁷⁶ *Supra* p. 50.

²⁷⁷ ICAO Doc 7215-AN/858 (1951), Introduction, p. 1.

²⁷⁸ For complete discussion of this matter, see ICAO A10-WP/19, TE/5 (20/3/56).

²⁷⁹ Seventh Assembly Resolution A7-8, ICAO Doc 7670, p. 203.

²⁸⁰ *Ibid.*

²⁸¹ ICAO AN-WP/MIN, VII-5(11/6/51), para. 5, p. 24.

question of timing, economic practicability, political considerations, or good prospects of compliance. Often, material considered not yet mature enough for inclusion in Annexes would be included in secondary technical regulations such as Procedures for Air Navigation Services or Supplementary Procedures.²⁸²

Annexes, when developed on the Division level, constitute a compromise between different national views and economic capacities. Thus Annexes establish minimum requirements, often below the requirements laid down by national regulations of some States, but this is the price to be paid by the more developed countries for the sake of uniformity of air navigation. Progress in international air navigation implies that the less developed countries be given an opportunity to approach the level of the more advanced countries, so as to guarantee some degree of uniformity.

So far, fourteen technical Annexes have been adopted, covering all important aspects of air navigation. These are:

1. Personnel Licensing
2. Air Traffic Services
3. Meteorology
4. Aeronautical Charts
5. Dimensional Units
6. Operation of Aircraft
7. Aircraft Nationality and Registration
8. Airworthiness
9. Aircraft Accident Investigation
10. Telecommunication
11. Rules of the Air
12. Search and Rescue
13. Aerodromes
14. Aeronautical Information.

These Annexes constitute a system by which international air navigation is governed and regulated, with the result that civil aviation is attaining levels of safety, regularity and efficiency not known hitherto. Although, at present, separate Annexes exist for different fields of air navigation, the trend is ultimately to combine all Annexes into an integrated system of regulations²⁸³ contributing to further uniformity and progress.

The efforts of the Organization in technical legislation would not have been as successful had they not won the complete cooperation of contracting States. The following passage makes this evident:

Experience has shown that contracting States take the obligations imposed by Article 37 of the Convention very seriously and accordingly view compliance with the international Standards that stem from Article 37 as a basic national policy. Although Article 38 of the Convention makes provision for any State which finds it imprac-

²⁸² ICAO Doc 7689 (May 1956), Part IV, Section 2, p. 20.

²⁸³ ICAO AN-WP/MIN, IX-9 (25/2/52), para. 13, p. 41.

licable to comply in all respects with an international standard to give notification to the organization of the differences between its own practice and that established by the international standard, contracting States view with disfavor the creation of any situation which would make it impracticable to comply with a standard. This attitude is entirely in keeping with the spirit of the Convention.²⁸⁴

B. *Procedures for Air Navigation Services (PANS)*

Procedures for Air Navigation Services (PANS) are worldwide regulatory provisions, supplementing Standards and Recommended Practices and second to them in importance and status.

The Convention does not specifically provide for any technical legislation other than Annexes. Hence procedures for the promulgation of PANS had to be developed independently, and to some extent the methods for the promulgation and approval of PANS are modelled after those utilized with respect to Annexes.²⁸⁵

The difference between Standards and Recommended Practices and PANS is clarified by the following passage:

Procedures for Air Navigation Services (PANS) are approved by the Council for worldwide application. They comprise, for the most part, operating procedures regarded as not yet having attained a sufficient degree of maturity for adoption as International Standards and Recommended Practices, as well as material of a more permanent character which is considered too detailed for incorporation in an annex, or is susceptible to frequent amendment, for which the processes of the Convention would be too cumbersome.²⁸⁶

Since PANS are secondary to Standards and Recommended Practices, they must conform with the latter. Furthermore, PANS are promulgated with the intention of eventually incorporating them in Annexes.²⁸⁷

The processing of PANS is similar to the processing of Standards and Recommended Practices, and the same bodies engaged in the formulation of the latter are engaged in the formulation of PANS. PANS normally originate in technical meetings, are reviewed by the Commission, and, accompanied by its recommendations, are submitted to the Council for approval.

Although States are under no statutory obligation to report differences and departures from PANS, the Organization has extended this practice, when such differences affect the safety, regularity and efficiency of air navigation, to PANS.²⁸⁸ This is done in order to facilitate assistance in implementation and attain maximum uniformity.

PANS obligate States to the extent stated in Article 28 of the Convention. Their importance should not be minimized, since they constitute a definite step towards uniformity, enabling States to make

²⁸⁴ ICAO A10-WP/19, TE/5 (20/3/56), para. 4, p. 2.

²⁸⁵ ICAO Doc 7215-AN/858 (1951), Introduction, p. 2.

²⁸⁶ ICAO Doc 7689 (May 1956), Part IV, Section 2, p. 20.

²⁸⁷ Fourth Assembly Resolution A4-7, ICAO Doc 7670, p. 135.

²⁸⁸ Ibid.

systematic progress towards improved air navigation facilities and procedures.

Approval of PANS and amendments thereto are functions of the Council, with one exception. The Commission has authority delegated to it by the Council to approve amendments of PANS consequential upon the adoption or approval of Standards and Recommended Practices and other sets of PANS.²⁸⁹ This procedure lessens the burden of the Council, since PANS have to be revised and amended whenever a change occurs in regulations of higher or similar status.

C. *Supplementary Procedures (SUPPS)*

The third category of technical regulations consists of Regional Supplementary Procedures (SUPPS), which have a lower status than PANS and are limited to specific regions. SUPPS were rightly described as "regional additions to PANS"²⁹⁰ since they vary from region to region, supplementing PANS and Annexes, in a manner designed to best cope with regional problems.

SUPPS are formulated by Regional Air Navigation Meetings.²⁹¹ It is not completely clear whether SUPPS are part of the Regional Plan or not. The Commission, however, has decided that there is a definite difference between SUPPS and Regional Plans, the latter being primarily concerned with facilities, as distinct from procedures.²⁹² The question has no practical significance since specific procedures govern the development and amendment of SUPPS. Nevertheless, it should be emphasized that the introduction of SUPPS constitutes a phase in regional planning, if not a formal part of the Regional Plan.

The Convention does not define SUPPS, and certainly says nothing about procedures applied on a regional basis. Nevertheless, this silence has no restrictive implications. The SUPPS have proven to be of great importance in gradually eliminating the procedural differences between regions, thus laying the ground for worldwide procedures. Often SUPPS are re-formulated as PANS for worldwide application.²⁹³

SUPPS must conform with PANS and Annexes and must consist of procedures not included in ICAO's other regulatory material which has been given worldwide application.²⁹⁴

SUPPS, like PANS and Annexes, are approved by the Council after review by the Commission. The Commission has no authority to approve SUPPS and amendments thereto.²⁹⁵ It has, however, authority to approve "consequential amendments" to SUPPS whenever the approval of Standards and Recommended Practices and PANS requires

²⁸⁹ ICAO C-WP/2040, Appendix "A," para. 4.1, and ICAO Doc 7328-1, C/853-1 (24/9/52), para. 8, p. 3.

²⁹⁰ ICAO Doc 6913-2 (14/10/49), Annex "A," para. 3, p. 45.

²⁹¹ ICAO Doc 7214-C/831 (11/11/52), Part II, paragraphs 1 and 3, p. 11, and ICAO C-WP/673 (7/6/50), Appendix "A," p. 7.

²⁹² ICAO AN-WP/MIN, XIX-2 (20/5/55), para. 20, p. 8.

²⁹³ ICAO C-WP/673 (7/6/50), Appendix "A," p. 7.

²⁹⁴ ICAO Doc 7214-C/831/1 (11/11/52), Part II, para. 3.1, p. 11, and ICAO AN-WP/MIN, XI-16 (2/11/52), para. 4, p. 71.

²⁹⁵ ICAO C-WP/2040, Appendix "B," para. 1.6.

revisions in SUPPS.²⁹⁶ The Commission's authority to effect consequential amendments, does not imply that it may add new substance to SUPPS, but merely that it may bring them into line with regulations of superior status.²⁹⁷

The procedure for amendment of SUPPS²⁹⁸ aims at simplifying and facilitating such amendment without prolonged deliberations, whenever possible. Proposed amendments are submitted by contracting States to the Regional Offices, together with the facts which have led the States to conclude that amendment is necessary. The Secretary General circulates the proposal to all States considered affected by it, except when he considers the proposed amendment to be in conflict with established ICAO policy or to require the special attention of the Commission. In the latter case, it is the Commission which decides what action should be taken on the proposal. If no States raise objections to the proposal as circulated, and if no Commissioner desires formal discussion, the proposal is submitted to the President of the Council, who is authorized to approve the amendment on behalf of the Council. If States do raise objections, the proposal is referred to the Commission, which, after study, submits it with appropriate recommendations to the Council.

Consequential amendments are drafted by the Secretary General, circulated to the Commission members, and automatically approved by the Commission. If, however, a Commissioner raises an objection or requests formal discussion, the Commission considers the proposal and approves it only after deciding that the amendment is necessary.²⁹⁹

The above procedure allows for great flexibility and constant adjustment of SUPPS, relieving the Council of an appreciable burden. As in the cases of Annexes, PANS and Regional Plans, it is the Regional Offices which check implementation of SUPPS and assist in the attainment of full compliance. It should be noted that the practice of notification of differences applies also to SUPPS, with the Regional Offices acting as monitors.³⁰⁰

CONCLUSIONS

It is difficult to assess the work of the Air Navigation Commission without due regard to the activities of the ICAO as a whole. The Commission functions as an integral part of a larger machinery and its work constitutes only a segment of a wider range of activities. Nevertheless, the Commission's record is impressive.

With the accumulation of experience, the Commission has steadily expanded and consolidated its authority, and developed effective methods for the facilitation of safe and efficient civil aviation services. Within the framework of the Organization, the Commission has

²⁹⁶ ICAO C-WP/2040, Appendix "A," para. 3.6, and ICAO Doc 7328-1, C/853-1 (24/9/52), para. 8, p. 3.

²⁹⁷ ICAO AN-WP/MIN, XX-23 (24/11/55), p. 119.

²⁹⁸ ICAO A.N.C. Procedural Documents, p. V-1.

²⁹⁹ *Ibid.*

³⁰⁰ ICAO Doc 7464-8, C/871-8 (24/3/54), para. 5(c), p. 96.

assumed an increasingly important role coupled with the undertaking of greater responsibilities. Consequently, the Council has come to rely heavily upon the advice of the Commission, with the latter, as a result, widening its autonomy.

The success achieved by the ICAO in the field of air navigation is inconceivable without the hard work and painstaking efforts of the Commission to ensure the finding of practicable solutions to innumerable problems within its field of operation. The practice of the Commission to seek, whenever necessary, the advice and views of contracting States, has successfully paved the way to international agreement on basic questions of air navigation. The same practice has also served to make the Commission an instrument by which international collaboration is facilitated.

The task of the Commission has not always been easy. Political obstacles and economic difficulties have often deterred the Commission's efforts and desire to secure the best solutions to technical problems. States' policies have not always been in line with the essential interests of air navigation, making the task of the Commission rather difficult. The complexities of the international community often require the Commission to steer a course which has not always been purely technical in character. Compromise, however, is an integral part of international cooperation.

The increasing effectiveness of the Commission's work gradually brought about a change which has led to the conversion of some of its powers. Action-taking functions were added to the Commission's primary duty of advising the Organization, relieving the Council from discussing problems already explored and decided upon by the Commission. Since deliberations in the Council are basically an exchange of views between national representatives, the practice of the Commission to consult contracting States prior to arriving at a decision upon important matters made discussion of technical subjects in the Council less necessary.

The delegation of wider authority to the Commission, enabling it, in some cases, to take action and not merely to recommend it, proved to be profitable. Unnecessary delays were thus avoided, resulting in a greater measure of efficiency and flexibility in the development of air navigation.

The continuous improvements in the methods of operation of the Commission have been of substantial proportions. Yet there is still room for further improvement. Most of the work of the Commission is conducted by oral deliberations, examination of reports of technical meetings, secretarial studies, and conclusions of panels of experts. The Commission draws most of its information regarding the status of air navigation in contracting States, indirectly and from intermediary sources. Intercourse with States is maintained by correspondence or by liaison with representatives to the Organization. The situation in this respect suggests that Commissioners would do well to familiarize them-

selves personally with specific problems that different States are encountering in the field of air navigation, by visiting those States and studying the problems on the spot. Such a course would undoubtedly impose further strain on the tight work schedule of the Commission; but, on the other hand, it would facilitate the finding of solutions and promote understanding and good relations.

The changes in the membership of the Commission caused by the rotation of Commissioners has its obvious advantages and disadvantages. Commissioners returning home after the expiration of their term with the Commission, enrich with their experience civil aviation administrations in their respective States and promote cooperation with and understanding of the ICAO. On the other hand, changes in membership too frequently effected might bring about a state of affairs in which Commissioners would not stay long enough to gain sufficient experience and contribute fully to the work of the Commission. Such changes might also affect the functioning of the Commission as a highly integrated group. Hence it would seem desirable to make terms of membership long enough, in order to secure the necessary stability and prevent a state of flux in the Commission's membership.

The status of Commissioners is another point of extreme importance. Clarification of this matter is essential to the prestige of the Commission. Undoubtedly, the making of Commissioners international officers paid by the Organization would fortify the position of the Commission as an impartial and unbiased body, and would lend more weight to its decisions.

A further matter requiring urgent action is the filling of the remaining vacancies on the Commission. The failure to secure the necessary nominations in order to appoint the full number of Commissioners required by the Convention, raises a fundamental legal question concerning the status and establishment of the Commission. It is suggested that if no further nominations are advanced by contracting States not represented on the Commission, an effort be made to secure further nominations from States already represented. Appointment of such nominees could be made on a provisional basis and with the understanding that their term of membership would expire shortly after appointment of nominees whose States are not yet represented.

In conclusion, the observation should be made that the Commission has demonstrated a remarkable spirit of cooperation and understanding between its members, serving as an excellent example of what nations can achieve and what progress mankind can make when guided by a sense of mutual respect and sincere collaboration.

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