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AIR LAW CONVENTIONS AND THE NEW STATES

By Reni H. Mankiewicz†

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I. Introduction

THE principle is well established in international law[1] that a newly emerging State is not bound by any treaty entered into by the State of which it was a part or by which it was represented in its international relations before independence.[2] However, having regard to the expanding jurisdiction of international organizations and to the increasing complexity of the network of treaties establishing or regulating international services and exchanges of all kinds, the unrestricted application of the principle so stated is likely to create many inconveniences to other States. The principle may hamper the regular functioning of these services by preventing, at least temporarily, the application of the relevant rules in the territory of a new State. As will be shown, international civil aviation provides a case in point. The question may therefore properly be asked whether any or all of the international air law conventions continue to apply *ipso jure* in newly independent States in accordance with a second principle of the law of nations which has been stated as follows by Oppenheim: "When . . . a part of the territory of a State breaks off, and becomes a State and an international person itself, succession takes place with regard to such international rights and duties of the predecessor as are locally connected with the part of the territory . . . broken off . . . ."[3]

In order to demonstrate the importance of this query it might be useful to give a few examples of the difficulties which may arise with respect to the continuous and unhampered application of certain air law conventions if a new emerging State is not considered to have succeeded *ipso jure* in the treaty rights and obligations of the State from which it has seceded.

A. Under Article 5 of the Chicago Convention, aircraft of a contracting State engaged in non-scheduled international air services have the right to fly over, and to make non-traffic stops in, the territory of any other contracting State. They also have the privilege of taking on or discharging passengers, cargo or mail in any contracting State. Similar rights

[1] I Oppenheim 159 (Lauterpacht 8th ed. 1955). See also Brierly, The Law of Nations 144 (5th ed. 1955): "The new State starts its career without any [treaty rights or obligations]. . . ." See also Spiropoulos, Traite theorique et pratique 75 (1933).

[2] This is the case, for instance, of protectorates, territories under suzerainty, etc. In this article, they are, for all practical purposes, treated as new States when the link with the protecting, suzerain, etc., State has disappeared.

[3] Oppenheim, *supra* note 1, at 159, 165. This principle is stated by Brierly *supra* note 1, at 145, in the following terms:

> There are treaties, sometimes called "dispositive" treaties, which are regarded as impressing a special character on the territory to which they relate, and creating something analogous to the servitudes or easements of private law; and there is some authority for saying that when a State takes over territory affected by a treaty of this kind it takes over not the mere territory itself, but the territory with rights and obligations attached to it.

are granted to scheduled flights under Article I of the International Air Services Transit Agreement,[4] and additional rights are accorded to them under Article I of the International Air Transport Agreement.[5] If we suppose that State *A* was a party to these treaties but that a part of its territory became independent as State *B*, then airlines which had planned scheduled or non-scheduled flights so as to take advantage of any or all of the above-mentioned privileges in the territory belonging previously to State *A* — but now under the jurisdiction of State *B* — would have to rearrange all these flights, pending the accession of State *B* to the said treaties.[6]

B. Regional plans adopted by ICAO describe the air navigation facilities to be provided by each contracting State for international services. Other ICAO approved regulations prescribe the establishment of flight information centers and air traffic control services for international civil aviation in specific States which agree to create, finance and operate these services. If these facilities happen to be established in a part of a territory of a contracting State *A*, which suddenly becomes the territory of a new State *B*, the latter, pending its adherence to the Chicago Convention, would be under no obligation to continue the operation of these facilities for the benefit of international civil aviation.

C. Bilateral agreements on commercial rights provide traffic stops in foreign countries for aircraft operating on trunk routes. If one of these stops is located in a territory which acquires independence, it may be necessary to re-schedule the trunk route until a bilateral agreement is concluded with the new State.

The argument could conceivably be made that the duties of State *A* described above which are based on international conventions "are locally connected with the part of a territory broken off" and that therefore the relevant international rules and regulations are *ipso facto* binding on the new State *B*. It will, however, be observed that these duties infringe on national sovereignty and, consequently, should not be imposed on the new State without the latter's specific consent. Moreover, as far as concerns rights and duties derived from the Chicago Convention on International Civil Aviation, it will be noted that the latter also contains the Charter of ICAO and that membership in an international organization can be acquired only in accordance with the rules of its constitution,[7]

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[4] Signed at Chicago on Dec. 7, 1944.

[5] Signed at Chicago on Dec. 7, 1944.

[6] According to recent press releases, Ugandi, independent since 9 October 1962, is in fact considering not to adhere to the Chicago Acts in order to frustrate airlines of certain States, the politics of which Ugandi disapproves.

[7] Oppenheim, *supra* note 1, at 167, states that rule only with respect to membership in the United Nations, quoting as the view of the Assembly that: "When a new State is created, whatever may be the territory and the populations which it comprises and whether or not they form part of the State *member* of the United Nations, it cannot, under the system of the Charter, claim the status of a member of the United Nations unless it has been formally admitted as such in conformity with the provisions of the Charter." It is submitted that the rule applies also where no special action of admission is required on the part of the Organization or of its members. Membership in international organizations entails a restriction in the exercise of certain sovereign rights and, always, creates the financial obligation to partake in the expenses of the Organization, all which are limitations and duties requiring the express consent of the State concerned. It should be noted that membership in ICAO is generally acquired by the mere ratification of, or adherence to, the Chicago Convention, without any approval or other action by the Organization or its members being a prerequisite. But the situation is different with respect to former enemies of the United Nations and States associated with them; their admission to "participation in the Con-

which, in the case of ICAO, provide specifically for ratification or adherence.

The conclusion, therefore, is offered that international air law conventions, including the law-making and regulatory decisions of the ICAO Council, are not binding upon a new State unless it has formally consented thereto, either through ratification or by an equivalent formal declaration.[8] This principle, however, will not necessarily apply to conventions for the unification of air law, as will be shown in a later part of this article.[9]

In view of the foregoing, it may be of some interest to state the practice adopted by ICAO and by the new States with respect to air law conventions. The first part of this article will deal with public air law conventions and the latter part will be devoted to private air law.

II. Public Air Law Conventions

A. *The Chicago Convention*

As has already been stated, the Chicago Convention on International Civil Aviation is a dual purpose treaty. It contains an international civil aviation code[10] and in addition, it establishes the constitution of the International Civil Aviation Organization.[11] The latter imposes certain duties on States which are members thereof. The rules of the aviation code also create rights and duties for contracting States, *e.g.*, Article 5 aforementioned, and Article 15 which provides that every public airport in a contracting State shall be open under uniform conditions to aircraft of all other contracting States.

The geographical scope of the Convention is defined in Article 2. Accordingly, the territory of a contracting State to which it applies comprises "the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State." Because no reservation can be entered by a contracting State as regards the exclusion of dependent territories from the application of the Convention, it follows from its Article 2 that participation of a contracting State in the Chicago Convention extends the latter's geographical scope not only to the metropolitan territory but also to the territories of colonies, protectorates and similar dependent territories. The question therefore

vention" is governed by Article 93 thereof which requires a four-fifths vote of the Assembly, the fulfilment of "such conditions as the Assembly may prescribe," as well as "in each case the assent of any State invaded or attacked during the present war by the State seeking admission."

[8] As already pointed out, the problem here discussed is of special importance for "technical" international organizations the achievements of which could partly be jeopardized if new States were not to comply with the undertakings given previously by the State to which they belonged, or which was responsible for their international relations. In order to meet the difficulty, the International Labour Organization has developed a practice whereby new independent States simply "declare" that they will continue to apply international labour conventions which have previously been applied within their territories. See Wolf, Les conventions internationales du travail et la succession d'Etats, in 1961 Annuaire Francais de Droit International 742-51:

> Désormais il est bien établi qu'au moment même de l'admission d'un nouvel Etat celui-ci peut figurer, à la date de l'admission, sur les registres de ratifications en temps que successeur immédiat comme partie aux conventions internationales du travail qui étaient jusque-là applicables à ses territoires, sans passer par une nouvelle procédure de ratification.

[9] See *infra* part III.

[10] Part I and certain Articles of Part III.

[11] Part II.

arises as to whether any area or portion of the latter territories, after acquiring independence, remains within the scope of the Chicago Convention with the result that the new State, having jurisdiction over that area or portion, must be considered as being *ipso jure* a party to, and bound by that Convention.

Supporters of an affirmative answer, could argue that when several obligations of a State party to the Chicago Convention are "locally connected" with certain areas or portions of its territory, the new State whose sovereignty extends over that area or portion succeeds to these obligations. If that were so, the new State wishing to be liberated from these obligations which reflect on its sovereignty, would have to resort to a formal denunciation of the Convention in accordance with its Article 95. However, such denunciation would take effect only "one year from the date of the receipt of the notification" by the Government of the United States of America which is depository of the Chicago Convention. Furthermore, if the new State were automatically a party to the Chicago Convention, it would also be *ipso facto* a member of ICAO and be obliged to pay its share of the budget of the Organization as assessed by its Council.

This writer's view has already been stated to the effect that the restrictions on the rights of a sovereign State as established by the international aviation code contained in the Chicago Convention, as well as the obligations attached to membership in ICAO, are of such nature that they cannot bind a State without its express consent. Accordingly, a new State, although it exercises jurisdiction over a territory which formerly belonged to a State party to the Chicago Convention, will be bound by the rules of that Convention only after it has accepted them by a formal declaration by its competent authorities.

The competent organs of ICAO have never dealt explicitly with the question here discussed. However, none of the new States has been considered as being a party to the Convention and, hence, a member of ICAO, unless it had assented thereto by an official act.

That official act is normally contained in a formal adherence to the Convention and the deposit of the instrument of adherence with the Government of the United States of America, in conformity with Article 92 of the Convention. However, special problems arose in the following instances in connection with the participation of certain new States in the Chicago Convention.

1. *Adherence of Pakistan*

Prior to the partition of India there was issued the Indian Independence (International Arrangements) Order, 1947 which gave force to an Agreement providing, *inter alia,* that (a) "membership of all international organizations together with the rights and obligations attaching to such membership, will devolve solely upon the Dominion of India"; (b) "the Dominion of Pakistan will take such steps as may be necessary to apply for membership of such international organizations as it chooses to join"; and (c) except as otherwise provided "rights and obligations under all international agreements to which India is a party immediately before the appointed day will devolve both upon the Dominion of India and upon the Dominion of Pakistan, and will, if necessary, be apportioned between the two Dominions."

After Pakistan became an independent State its Director General of Civil Aviation informed the President of the ICAO Council that "Pakistan has automatically accepted the Civil Aviation Convention, and the Air Transit Agreement, which were ratified by the former Government," in accordance with the rules of the India Independence Order, 1947, and also that "the successor Government of India (but not of Pakistan) continues to enjoy membership of the Council, pending future elections." ICAO did not share the view of the Government of Pakistan for the reason that membership in ICAO is inseperable from adherence to the Chicago Convention and that, according to the said Order of 1947, membership in all international organizations had solely devolved upon the Government of India. Following a suggestion by the Organization, Pakistan therefore officially notified the Government of the United States of America, as depository of the Chicago Convention, of its adherence to the Convention. While Pakistan had become independent as early as August 15, 1947, its adherence to the Chicago Convention became effective only on November 6, 1947, namely ninety days after the deposit of its instrument of adherence.

2. *Establishment and Dissolution of the United Arab Republic*

Egypt and Syria had been member States of ICAO before joining in the establishment of the United Arab Republic. After that event on March 25, 1958, the Minister of Foreign Affairs of the United Arab Republic sent to the Secretary General of ICAO a communication which read in part as follows:[12]

> The Government of the United Arab Republic declares henceforth that they are a single member of the International Civil Aviation Organization, bound to the provisions of the Chicago Agreement, and therefore appoint Mr. Mohammed Sadek El Karmouty as their Permanent Representative to the Organization. He is empowered to participate in all decisions on all matters to be submitted to the Organization.
>
> Furthermore the United Arab Republic affirms that all agreements, arrangements and obligations existing between the International Civil Aviation Organization on one hand and either Egypt or Syria on the other immediately before the constitution of the United Arab Republic will continue in their terms, *Jux Mutatis Mutandis,* as if they were agreements, arrangements and obligations duly concluded between the International Civil Aviation Organization and the United Arab Republic.

This note was followed on May 17, 1958, by the following telegram:

> Have by the presents designated Mr. Mohammed Sadek Karmouty[13] Permanent Representative United Arab Republic to International Civil Aviation Organization Stop Will participate in all deliberations and take all decisions on questions submitted to Organization—Minister Foreign Affairs.

On the basis of these communications, the ICAO Council was to decide (a) whether the United Arab Republic was a contracting State or should be considered as such; (b) whether the United Arab Republic was a member of the Council; and (c) whether the cable of the May 17, 1958,

[12] ICAO Working Paper A11-WP/23, P/4.

[13] Mr. Karmouty was the representative of Egypt on the Council of ICAO at the time of the establishment of the United Arab Republic.

could be considered as credentials of Mr. M. S. El Karmouty as representative of the Republic on the Council of ICAO.

In the view of the Council, the Republic, established by two States which had been parties to the Chicago Convention, was bound by the obligations accepted by these States under the Chicago Convention. Consequently, the Council decided that "for the matters within the competence of the Council, the United Arab Republic is to be considered as a contracting State and as a member of the Council." However, the Council also noted "that this decision cannot prejudice the right of the Assembly to determine for itself questions concerning the United Arab Republic in relation to the Organization."[14]

Being informed by the Council of the foregoing decision the Eleventh Session of the Assembly of ICAO (Montreal, 1958) accepted the credentials of the delegate of the United Arab Republic and assessed the latter's contribution to the ICAO budget in Resolution A11-13.[15]

When the union with Egypt had been dissolved, the Government of Syria sent the following cable to the Secretary General of ICAO:

> I have the honour to inform you that Syria has been a member of ICAO since 1949 and has been a member thereof jointly with Egypt under the designation: United Arab Republic (Stop) The union having been dissolved on 28 September last the Syrian Arab Republic reassumes its place in ICAO (Stop) I take this opportunity to assure you that the Syrian Arab Republic remains bound *mutatis mutandis* by all conventions, arrangements and obligations which existed between ICAO and the United Arab Republic in conformity with the Convention on International Civil Aviation (Stop) Please confirm receipt of this cable and transmit copy of the cable to all States members of ICAO (Stop)

The President of the Council of ICAO transmitted copies of this cable to all Council members and stated that unless any views to the contrary were received by him before November 1, 1961, Syria would in the future be considered as a contracting State. The Council of ICAO noted this communication by the President at the Third Meeting of its Forty-fourth Session and endorsed a Report of its Finance Committee by readjusting the assessments of Egypt and Syria to the budget and the working capital fund of the Organization for the period from September 28 to December 31, 1961.[16] The latter decision was noted by the ICAO Assembly at its Fourteenth Session (Rome, 1962).

B. *Amendments To The Chicago Convention*

Under ICAO practice, adherence to the Chicago Convention has not the effect of ratification of the amendments thereto adopted by the Assembly. A new State which adheres to the Chicago Convention must also ratify by a special act the amendments to the Convention which it desires to accept.

The ICAO practice of requiring specific ratification of amendments in addition to the adherence to the Chicago Convention is based on Article 94 of that Convention. According to paragraph (a) of Article 94, amendments approved by the Assembly and ratified by the number

[14] Declaration of March 29, 1958 (ICAO) Doc. 7878 C/905-18.

[15] ICAO Doc. 7888 All-P/12; Doc. 7886 All-P/11-2-4.

[16] ICAO Doc. 8192 C/934-3; Working Paper CWP/3434 and CWP/3449; Doc. 892 C/934-14.

of contracting States specified in the Assembly Resolution "shall come into force in respect of States which have ratified such amendment." Hence, in the case of a new State which accepts any of the amendments approved by the Assembly, a special ratification of any or all of these amendments is required in order that they may apply in respect of that State. Moreover, for practical reasons, it is not possible for the ratification of amendments and for the adherence to the Convention to be contained in one single instrument. The text of the Convention is deposited with the Government of the United States of America and the instruments ratifying the amendments must be deposited with ICAO itself.[17]

There are at the present time two classes of amendments to the Chicago Convention, namely those which have become effective and those which have not yet come into force because they still lack the required number of ratifications.

As regards amendments which have been approved by the Assembly but have not yet come into force (because of the lack of the required number of ratifications), there is no doubt that a new State is under no obligation to ratify such amendments. Whether it is under such obligation with respect to amendments which have already come into force is at least debatable. One may indeed argue that once an amendment has become effective, the original rule of the Convention has definitely been replaced by the one formulated in the amendment, at least with respect to States which adhered to the Convention after the amendment became effective. On the other hand, it must be noted that an amendment which has come into force is not necessarily binding on all member States even though they were members of ICAO at the time the Assembly approved the amendment or at the time it came into effect. The reason is that, as mentioned above, Article 94 of the Convention provides specifically that an amendment comes into force only "in respect of States which have ratified such amendment." As a matter of fact, amendments which have become effective have not always been ratified by all the States who were members of ICAO when the amendment was adopted by the Assembly.[18] These amendments, therefore, are not legally binding upon these States although they have never opposed the application of the amendments, *e.g.*, the holding of triannual instead of annual assemblies, the increase of the membership of the Council, etc.[19]

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[17] This is due to the fact that once the Assembly has approved an amendment with the required majority of votes, it instructs the Secretary General of ICAO to prepare a protocol of amendment embodying the amendment as adopted and clauses dealing with the required number of ratifications and other related matters. The protocol of amendment is deposited with ICAO, and ratification of the amendment is effected by ratifying the protocol of amendment, certified copies of which are to be "transmitted to all States parties or signatories to the Convention on International Civil Aviation"; for examples see Resolutions A1-3, A1-4 (ICAO Doc. 7670) and Resolution A13-1 (ICAO Doc. 8167).

[18] For example, when the first amendment introducing a new Article 93 bis, adopted on May 27, 1947, came into force on March 20, 1961, by the deposit of the twenty-eighth instrument of ratification, only fourteen of the States which had been members of ICAO on May 27, 1947, had ratified that amendment. The amendment to Article 45, adopted on June 14, 1954, came into force on May 16, 1958, by the deposit of the forty-second instrument of ratification. On this day it had been ratified by fifty-two States, only thirty-eight of which had been members of the Organization on June 14, 1954. The amendments to Articles 48(a), 49(e) and 61, adopted on June 14, 1954, had been ratified on Dec. 12, 1956, by forty-two States, only one of which had not been a member of ICAO at the time of the adoption of the amendment.

[19] While paragraph (b) of Article 94 authorizes the Assembly to provide in its resolution recommending adoption of an amendment "that any State which has not ratified within a specified

Finally, it is observed that, for all practical purposes, no new State can possibly ratify, or adhere to, an "amended version" of the Chicago Convention. As it is well known, ratification of an international instrument is effected on the basis of a certified true copy of the instrument and such copy can only be delivered by its depository. However, neither the Government of the United States of America nor ICAO is in a position to deliver a certified true copy of an instrument containing the "amended version" of the Chicago Convention since such an instrument does not exist. Moreover, certified copies of the Chicago text of the Convention can only be made out by the Government of the United States of America while certified copies of the protocols of amendments, as well as statements regarding their applicability cannot be issued by that Government but solely by ICAO.

The Council of ICAO has adhered, at least implicitly, to the thesis that an amendment which has entered into force does not have the effect of replacing *erga omnes* the original text by the amended text of the Convention. For instance, when the Council approved a trilingual text of the Chicago Convention, established by the Secretary of ICAO, it agreed to substitute the rules as amended (provided the amendment had come into force) for the original text of the Convention; but it also decided to add a footnote which states that "in respect of the States which have not ratified the amendment, the original Chicago text is still in force." The original text is reproduced in that footnote.[20]

The number of ratifications required to make an amendment effective is specified by the Assembly, which is free to choose any number of ratifications provided that "the number so specified shall not be less than two-thirds of the total number of contracting States." The Assembly has decided that the "total number" to be taken into account is the number of States which are members of ICAO at the time of the approval of the amendment by the Assembly.[21] However, in deciding whether an amendment has obtained the specified number of ratifications, the instruments of ratification from States which have adhered to the amendment after its adoption by the Assembly are counted alongside those deposited by States which had been parties to the Convention at that moment. It is therefore possible for an amendment to come into force without having been ratified by two-thirds of the total number of States which were members of ICAO at the time the Assembly approved the amendment. For example, the amendment incorporating a new Article 93 bis, approved by the First Session of the Assembly in 1947 and requiring 28 ratifications became effective on March 20, 1961, upon its ratification by the Ivory Coast which became a member of ICAO on November 30,

period after the amendment has come into force shall thereupon cease to be a member of the Organization and a party to the Convention," the Assembly has never taken such step, and no inconvenience has yet resulted from the non-ratification by certain States of amendments which have come into force. Still, serious inconveniences may result from that state of affairs in the future. See 1961 Annuaire Francais de Droit International 446. It could be avoided only by applying paragraph (b) of Article 94 to the new amendment, or by amending paragraph (a) of that Article (being understood that paragraph (b) be applied in that case). The relativity of the binding effect of an amendment might not be too dangerous in the case of amendments to the rules of international civil aviation; but it is an entirely different matter when constitutional rules of ICAO are involved, as was the case with the last three protocols of amendments. See 1961 Annuaire Francais de Droit International 448.

[20] ICAO Doc. 7300-2. For discussion in the Council see ICAO Doc. 7934-15 and Doc. 7988-3-7.

[21] Resolution A1-4, ICAO Doc. 7670.

1960. Yet twenty-one States which were represented at the 1947 Assembly have not yet ratified that amendment.

Because adherence to the Convention by a new State does not automatically encompass ratification of the amendments which have been approved by the Assembly or which have already come into force, the Secretary General of ICAO, on being informed by the Government of the United States of the adherence of a new State, addresses to that State certified copies of all protocols of amendments (whether or not in force) in order that such State may decide whether it wishes to ratify any or all of these amendments.

It might be of interest to note that the most recent amendment which increased the membership in the Council from twenty-one to twenty-seven[22] was adopted by an Extraordinary Session of the Assembly on June 2, 1961, and became effective on July 17, 1962, with the deposit of the fifty-sixth instrument of ratification. On that date the amendment had been ratified by fifty States which were members on June 2, 1961, and by six States which became parties to the Convention thereafter.

C. *International Air Services Transit Agreement*

Paragraph 2 of Article VI of International Air Services Transit Agreement, which was opened for signature at Chicago on December 7, 1944, provides that "any State a member of the International Civil Aviation Organization may accept the present Agreement . . . ." This means that only States which are parties to the Chicago Convention can also become parties to the Transit Agreement. Consequently, the latter applies in and with respect to new States only after they have become members of ICAO by adherence to the Chicago Convention, and have also accepted the said Agreement.

The Agreement has been accepted by the following new States: Cameroun, Ceylon, Cyprus, Israel, Ivory Coast, Malagasy Republic, Malaya, Morocco, Niger, Nigeria, Pakistan, Senegal and Tunisia.

D. *International Air Transport Agreement*

The rules governing acceptance of the International Air Transport Agreement, which was also opened for signature on December 7, 1944, correspond to those governing acceptance of the Air Services Transit Agreement. The principles outlined in the preceding paragraph apply, therefore, with respect to the Air Transport Agreement. However, no new State has accepted that Agreement.

III. Private Air Law Conventions

It would appear that the question of the application by new States of air law conventions on private law matters is substantially different, and should be distinguished from, the one discussed in Section II of this article.

A. *The Rome Convention*

Among these private air law conventions, the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed on October 7, 1952, occupies a special place, and is discussed here in the first instance, because it deals specifically with our problem.

[22] Article 50(a).

According to its Article 36, the Rome Convention, like other private air law conventions, applies to all "territories for the foreign relations of which a contracting State is responsible" unless a declaration to the contrary had been made by the contracting State at the time of deposit of its instrument of ratification or adherence. The Convention further stipulates that a contracting State has the right to denounce a convention "separately" for any of the territories for the foreign relations of which it is responsible. The question of whether the Convention continues to apply to such territory after it has become independent is settled in explicit terms by Article 37, paragraph (2) of the Convention which provides that "this Convention shall cease to apply [to such territory] as from the date on which it becomes independent."

B. *The Warsaw Convention*

Private air law conventions other than the Rome Convention do not contain any such specific rule with respect to their application in a territory which has become independent. On the other hand, they normally follow the example which was first established by the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed on October 12, 1929, which provides in its Article 40 that (a) any contracting State may at the time of deposit of ratification or accession declare that its acceptance of the Convention "does not apply to all or any of its colonies, protectorates, territories under mandate, or any other territory subject to its sovereignty or its authority, or any territory under its suzerainty"; (b) that any State may subsequently adhere separately to the Convention in respect of any or all of such colonies and territories; and (c) that it may denounce the Convention separately for all or any of them. Similar rules, adapted to the changes which have subsequently in the international status of dependent territories, are found in Article XXIII of the Convention on International Recognition of Rights in Aircraft, signed at Geneva on June 19, 1948; Article XXV of the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air [the Warsaw Convention] done at The Hague on September 28, 1955; and Article XVI of the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other Than the Contracting Carrier, signed at Guadalajara on September 18, 1961. It will be noted that the last two agreements amend and supplement, respectively, the 1929 Warsaw Convention and, therefore, their final clauses dealing with application of the agreement to dependent territories were, by necessity, to tie in with those of the Warsaw Convention.

It follows from the foregoing that, except where a contrary declaration has been made at the time of ratification or adherence, all private air law conventions apply to metropolitan territories of the contracting States and also to their colonies and other dependent territories. Many of the latter have now become independent. Consequently, the question arises again of whether one can apply, with respect to these territories and the relevant air law conventions, the principle stated above that a newly emerging State is not bound by a treaty entered into on its behalf

prior to its independence. It is this writer's opinion that the answer should be in the negative.

When examining possible conflicts between the Warsaw Convention of 1929 and the Warsaw Convention as amended at The Hague, 1955,[23] this author has expressed the view that, as regards the law of treaties, private law conventions are basically different from public law conventions. The only obligation which the former imposes on a contracting State is to incorporate the substantive law rules of the convention into its own national law, either by merely ratifying the Convention, or by enacting additional legislation when required by the constitutional law of the State concerned or by the convention itself.[24] Once this obligation is compiled with, there remains no further international duty for the contracting State arising out of a private law convention except to denounce the latter in the proper way if and when it is desired to modify or amend any national law based on the convention. Public law conventions, on the other hand, normally establish or entail permanent obligations to do, not to do, or to tolerate, certain acts during the whole lifetime of the convention.

If this view is correct, then a private law convention applicable in a dependent territory does not impose any international obligation on the State acquiring sovereign jurisdiction over that territory. Hence, the application of the convention does not infringe upon, nor restrict, its sovereignty, and the substantive law formulated by it will continue to apply in the territory after independence.

This conclusion may also be supported by the following argument. Once a private law convention has been ratified by, and implemented in, a contracting State its rules become part of the private law applicable in the territories of that State. It is, moreover, a well-established principle of law that the creation of a new State in a given territory does not entail *ipso jure* a change in its domestic law.[25] The new State, whether created by secession of the territory or by a colony becoming independent, continues to apply the municipal law which has been in force before its creation, until such law is changed by the appropriate national authorities.

It follows from the foregoing that when a contracting State had agreed to apply, for example, the Warsaw Convention in a dependent territory, the liability of the carrier in international air transportation is determined by the courts of that territory through application of the domestic rules corresponding or identical to the Warsaw articles. The fact that any of these territories become independent does not of itself affect the con-

[23] 1957 Annuaire Francais de Droit International 405-12.

[24] In many countries, international conventions, whether for the unification of law or for other purposes, become part of the law of the land by the mere act of ratification. Elsewhere special legislation is required for the implementation of the convention. On the other hand, it should be noted that some conventions require States which become parties thereto to enact special legislation in order to fill specific gaps left open by the convention, *e.g.*, Art. 24, para. 2 of the 1929 Warsaw Convention which leaves it to the national law to specify, in case of damage sustained in the event of death, "who are the persons who have the right to bring suit and what are their respective rights."

[25] Veteran scholars will remember the complexities and numerous conflicts of law which resulted from that principle after World War I when several new States had been created and were composed of parts of territories which had been under different sovereignties. It is also a result of that principle that the common law, with various later modifications, has been maintained in former British territories, beginning with the United States of America and Canada.

tinued application of these rules in that territory with respect to liability arising from international carriage by air.[26]

As far as is known to this writer, the question under discussion has not yet been decided by any international court of authority. Still, French courts sometimes had to deal with it.[27] The last case arose after Viet Nam and Laos became independent. The courts' decisions were substantially similar to the conclusions of the author of this article. In the last reported case[28] an aircraft flying from Vientianne, capital of Laos, to Saigon, capital of Viet Nam, crashed in the territory of Laos. Both countries, namely Laos and Viet Nam, had been protectorates of France. The Warsaw Convention had applied in their territories by virtue of its ratification by France. So long as these countries remained French protectorates, the Warsaw Convention did not apply to flights from one to the other because that flight would have been a domestic one, having regard to the definition of international carriage in the Warsaw Convention. However, at the time of the crash, June 16, 1953, Laos and Viet Nam had become independent. Therefore, the court arrived at the following conclusions.

> It follows from Article 30 of the [Warsaw] Convention that it applies to all territories under the authority of the French Republic and to all countries under French protectorate, for neither the law of September 16, 1931, ratifying the Warsaw Convention, nor the implementing decree of December 12, 1932, nor, finally, the instruments of ratification themselves contain any reservation as to the application of the said Convention in the French colonies and protectorates. Therefore, there can be no doubt that Laos and Viet Nam were and remain bound by the undertakings given in their name by France prior to their independence, as long as Laos or Viet Name have not proceeded to formally denounce these understandings, which is not the case. Therefore, the Warsaw Convention is applicable to the accident which had occurred on June 16, 1953.

It should finally be noted that—as illustrated by the decisions of the French courts—the question of the continued application of a private air law convention to and within the territory of a newly independent State may be of decisive importance not only as regards the law applicable *in* that State, but also with respect to the rights and interests of individuals and companies which have no direct relations with that State. For instance, the scope of the Warsaw Convention, and consequently, the rights of passengers and shippers of goods, is linked to the definition which that Convention has adopted for the expression "international carriage." Therefore, in order to establish whether a claim of a passenger or shipper is governed by that Convention, it becomes pertinent to establish whether the States of departure and destination of the passenger, or goods, are contracting States, *i.e.*, States in the territory of which the Warsaw Convention is applicable.

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[26] For like views, see Ginchard, La notion du transport international d'Apres la convention de Varsovie, 1956 Revue Francaise de Droit Aerien 14, 17-18; Bosquet, L'Article 40 de la convention de Varsovie, 1961 Revue du Secretariat General a l'Aviation Civile 19; and 1961 Journal de Droit International 86.

[27] Tribunal civil de la Seine, 24 avril 1954, 1954 Revue Francaise de Droit Aerien 184, and 1954 Revue Generale de l'Air 415. Tribunal civil de la Seine, 14 janvier 1955, 1955 Revue Generale de l'Air 61.

[28] Tribunal de grande instance de la Seine, Tresor Public contre Compagnie Aigle Azur, 1 février 1960, in 1960 Revue Francaise de Droit Aerien 214.

In conclusion, it may be stated that while public air law conventions do not apply to new States unless they are explicitly accepted by them, private air law conventions continue to apply therein, except when formally denounced in accordance with the relevant provisions of the convention concerned.[29]

[29] This point of view has been adopted by the following new States: Cameroun, Congo (Brazzaville), Dahomey, Lebanon, Niger, Ivory Coast, the Malagasy Republic, which had intimated to the Government of Poland, depository of the 1929 Warsaw Convention, that they consider themselves bound by the ratification of that Convention made on their behalf prior to their independence. On the other hand, the following new States have deposited their instrument of adherence with the Government of Poland: Guinea, Israel, Jordan, Malaya, Mali, Morocco, Pakistan, Upper Volta. The problem here discussed does not arise with respect to the continued application of the 1948 Geneva and the 1952 Rome Conventions in new States established in territories which formerly belonged to, or were represented by, France or the United Kingdom: neither of these States has ratified the said Conventions.