

1939

International Control of Aviation in Time of Peace

Samuel E. Gates

Follow this and additional works at: <https://scholar.smu.edu/jalc>

Recommended Citation

Samuel E. Gates, *International Control of Aviation in Time of Peace*, 10 J. Air L. & Com. 439 (1939)
<https://scholar.smu.edu/jalc/vol10/iss4/1>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

THE JOURNAL OF AIR LAW AND COMMERCE

Volume 10

OCTOBER, 1939

Number 4

INTERNATIONAL CONTROL OF AVIA- TION IN TIME OF PEACE*

SAMUEL E. GATES†

Just two weeks ago today, the Dixie Clipper, one of the 72-passenger Boeing 314 flying boats, taxied out into Manhasset Bay, and took off for Marseilles, France, over the southern route via the Azores and Lisbon, with the first commercial load of passengers, express and mail to be transported by air across the Atlantic. Thus had aviation crossed the last of the seven seas, linking all of the important trade centers of the world with a network of commercial airlines. Two collateral developments have made possible the aeronautical conquest of this, the most lucrative of the great oceanic trade routes. First, the development of aircraft that could make the long over-ocean hop and safely overcome the severe weather conditions frequently encountered on the North Atlantic, and second, the cooperative activity of the governments concerned in working out international arrangements and specifying reasonable conditions under which the service might be operated.

The history of the technical development of aviation during the last twenty-five years is an Arabian Nights tale. From aircraft powered with small rotary engines, an instrument panel with a gas gauge, a tachometer, and an ignition switch, a framework of plywood covered with fabric and bound together with a network of struts and wires, capable of flying eighty miles an hour, we have advanced in twenty-five years to all-metal ships weighing 41½ tons, powered with four 1500 h.p. motors, manned by a crew of eleven, capable of transporting 72 passengers with all the comforts of an hotel, at a speed of 160 miles an hour. With this technical development have come all manner of legal problems—entry and clearance,

* Address delivered before the International and Comparative Law Committee, American Bar Association, San Francisco, California, July 12, 1939.

† Chief, International Division, Civil Aeronautics Authority.

customs, quarantine, immigration, public health, traffic rules and regulations—in fact, practically every legal problem known to the field of international transportation. But by reason of the physical characteristics of the aircraft and the medium through which it moves, these problems have not been answered by the application of well-defined legal precedent. International control of aviation might be answered in one phrase—it is done by governments. Necessarily, a discussion of governmental control involves a consideration of applicable treaties and conventions and their histories.

It is perhaps not generally realized that the concept of freedom of the seas and access to the ports of the world so fundamental to admiralty law has no counterpart in international aviation. Prior to the World War, a number of able legal scholars ardently advocated the "freedom of the air," and contended that above certain altitudes the airspace should be free to navigation of aircraft of all nations. Even at that time, the military and commercial potentialities of aviation had become apparent. But as a result of experiences with aircraft during the World War, it is perhaps fair to state that national expediency convinced statesmen and legal scholars alike that they could not accept the doctrine of freedom of the air and that complete and exclusive jurisdiction of the airspace over its territory was requisite in order not to impair a country's national sovereignty. This doctrine became the first and fundamental principle of the International Convention for the Regulation of Aerial Navigation signed at Paris on October 13, 1919, by representatives of twenty-six countries and it has been incorporated expressly or by implication in all subsequent multi-lateral or bi-lateral air navigation treaties. The United States has never ratified the Paris Convention of 1919 and although its legal scholars were among the last to desert the ranks of those who urged "freedom of the air," the refusal of other nations to adhere to this principle has compelled this nation to assert its exclusive national sovereignty over its airspace. In the original Air Commerce Act of 1926, and the amendment made thereto by the Civil Aeronautics Act of 1938, there is an assertion of this concept.

The universal acceptance of this doctrine of exclusive national sovereignty as applied to the airspace closed at once the opportunity for free development of commerce and private aviation, for no aircraft could fly over or land within the jurisdiction of a foreign country without first obtaining permission for the flight. This has resulted in a veritable network of international aviation treaties and agreements providing for innocent passage of private and commercial aircraft through the airspace of foreign countries. Most sched-

uled international air services, whether over land or between countries separated by the high seas, are based upon one or more aviation agreements. This country has ten air carriers engaged in international air transportation, and the inauguration of service by each air carrier has contributed to the body of public international aviation law.

Since the adoption of the Civil Aeronautics Act of 1938, this Government has favored, with few exceptions, a policy of having arrangements for any new international air service dealt with in agreements concluded between governments rather than between a private company and a foreign government. This is a departure, since under the Foreign Air Mail Act of 1928, air carriers engaged in air transportation were required to make their own arrangements for flying over and into the territory of foreign countries.

A discussion of the international control of aviation becomes more realistic when related to actual cases. In preparation for transatlantic service, Pan American Airways entered into a tripartite agreement with Imperial Airways and Aeropostale, a French company which had obtained an exclusive concession to use the Azores as an intermediate landing area in transatlantic service. When the French company was dissolved and lost the concession, Pan American Airways and Imperial Airways entered into contracts with the Portuguese Government which, in so far as American and British companies were concerned, gave them exclusive landing rights in the Azores and Portugal for use in the conduct of transatlantic air service. Beginning in 1935, and continuing for almost two years, negotiations were conducted between the Government of the United States and the Governments of the United Kingdom of Great Britain and Northern Ireland, the Dominion of Canada, and the Irish Free State, resulting in an agreement for a reciprocal transatlantic air service operating on a frequency of two round trips per week each, by an American company acceptable to this Government and a British company acceptable to the English Government. Thus, the United States had obtained for an American air carrier the right to land twice each week in British, Canadian, and Irish territory in the operation of a transatlantic service. In addition, early this year and pending the conclusion of a permanent air traffic agreement with France, this Government obtained temporarily four landing rights per week in French territory for use by American air carriers engaged in transatlantic service.

The naked right to land American registered aircraft in English or French territory does not satisfy all legal requirements for air transportation service. In addition to the requirements of do-

mestic law, providing for a certificate of public convenience and necessity, an air carrier operating certificate, certificated aircraft and certificated pilots, ground personnel and radio operators, the American company, in making a flight to London over the northern route, is subject to the provisions of the basic air navigation agreements between this Government and the Governments of Great Britain, Canada, and Ireland, effected by exchanges of notes between the respective Governments. Although such executive agreements are primarily applicable to the flight of private civilian aircraft, if regularly scheduled air transportation service is provided for in a collateral agreement, the terms of these general arrangements become binding upon the air transport enterprises. Once the American air carrier has been authorized to engage in international air transportation, and has been allocated by the Civil Aeronautics Authority the use of certain of the landing rights in the foreign country, then permission for the service is issued to the American air carrier by the foreign government.

A foreign air carrier seeking to fly into this country pursuant to the reciprocal arrangements between Governments, must obtain from the Civil Aeronautics Authority after application, notice and hearing, what is commonly known as a foreign air carrier permit. International aviation therefore is subject to more detailed international regulation than is any other means of transportation.

The pattern for most of the international arrangements for the control of aviation is to be found in the International Convention for the Regulation of Aerial Navigation, signed at Paris, October 13, 1919, and now in force in 32 countries, including most of the important commercial countries except the United States, Germany, Russia, and Brazil. Designed to permit the regulated development of international aviation, this was the first important multi-lateral agreement to recognize exclusive national sovereignty of airspace, and at the same time to recognize and control the "freedom of innocent passage" of aircraft of each of the contracting states above the territory of the other member states. No attempt is made to regulate the flight of aircraft in time of war. The control exercised by the Paris Convention over such innocent passage of aircraft may be divided into four headings: safety, military, commercial, and nationality.

The control of safety relates to the structural condition of aircraft, the equipment thereon, the competency of the flight personnel, and the circumstances under which flight may be conducted. The minimum standards prescribed by the Convention are applicable in all contracting states and are intended to assure safety of flight to

the occupants of the aircraft and protection to persons and property on the ground. Recognizing that the technical development of aircraft would require constant change in airworthiness requirements and in the regulations concerning the operation of aircraft, the Convention created a permanent commission, known as the International Commission for Air Navigation, commonly called by its French initials CINA, composed of representatives of all the member nations. The CINA is given broad legislative power to promulgate, revise and amend uniform technical regulations published in "annexes" to the organic agreement by which CINA was created and corresponding to the Civil Air Regulations promulgated by the Civil Aeronautics Authority. This delegation of regulatory power to an international commission has caused some legal scholars to question whether the United States can constitutionally ratify the Paris Convention, claiming that it is an invalid delegation of legislative power.

The Convention reserves to each contracting state, in the interests of public safety or for military reasons, the right to establish prohibited areas and to prescribe the routes which may be utilized by foreign aircraft in flight over its territory. This plenary power which may be exercised without limit, except that there shall be no discrimination, seems in some instances to have seriously handicapped flight over certain countries for in some instances the air routes prescribed have no reasonable relationship to the commercial convenience of foreign aircraft. The transportation by air of explosives, arms, and munitions of war over the territory of another state is prohibited and each state is free to regulate or prohibit the carriage of photographic apparatus and under certain circumstances the carriage of other articles.

The Paris Convention does not of itself accord the right to conduct scheduled international air transportation, but by specific language provides that the operation of such service into and over the territory of each contracting state shall be conditioned upon specific authorization normally covered by supplemental agreements. In other words, the Convention establishes only the general conditions of flight of commercial aircraft, and does not purport to be an air traffic agreement permitting the aircraft of one contracting state to engage in scheduled operations into or over the other member states, even to the extent of a non-stop service. Cabotage, or intra-country air transportation, may be reserved by a country to aircraft of its own registry.

Since the Convention seeks to regulate the conditions of international flight and to prevent discrimination between aircraft registered in the various contracting states, the provisions relative to

nationality are extremely important. The aircraft may be registered in only one state, taking the nationality of that state. On international flight it must carry an extended list of documents issued by the country of registry, thereby advising the other contracting states over which the flight is made that the aircraft is airworthy and the pilots competent.

A second Convention, and one which has more importance in so far as this country is concerned, is the Convention on Commercial Aviation adopted at Habana, Cuba, February 20, 1928, by the United States and other American Republics. The Habana Convention has been ratified by the United States, Mexico, and ten of the Central and South American countries. Like the Paris Convention, the Habana Convention recognizes exclusive national sovereignty of airspace, and upon this premise prescribes the conditions for freedom of innocent passage of aircraft of one state through the airspace of other member states. At the same time, it is made quite clear that foreign aircraft shall at all times be subject to the laws and regulations of the country over which the aircraft is being navigated.

The political philosophy behind the Habana Convention differs materially from that of the Paris Convention. The Paris Convention seeks to prescribe uniform minimum standards which must be accepted by all of the contracting states, leaving them free to impose higher standards for their own aircraft and flight personnel. On the other hand, the Habana Convention does not establish even basic minimum standards but leaves that to the member states and provides for acceptance by the other parties to the Convention of certificates of airworthiness and of airman competency issued by any contracting state. Furthermore, since the Habana Convention does not contain a uniform set of technical regulations, there was no occasion at the time of its adoption for a representative organization such as CINA empowered to promulgate such regulations. Upon each of the contracting states is imposed the duty of exchanging technical data and other information necessary to make the Convention operative, making use wherever possible of the available facilities of the Pan American Union.

Since no uniform standards relative to safety are imposed by the Convention, it is provided that an aircraft engaged in international flight must comply with the airworthiness requirements of each of the contracting states over which it is to fly and the state registering the aircraft is required to issue a certificate of airworthiness stating that in the opinion of the issuing authorities the aircraft complies with the airworthiness requirements in each of the contracting states in which it is to be operated. The state over which

the aircraft is to be navigated is given the right to refuse to recognize as valid a certificate of airworthiness of a foreign aircraft if inspection reveals that the aircraft is not in fact reasonably airworthy under the requirements of the inspecting state. Although creating certain administrative difficulties, in this way a state can protect itself against the flight of aircraft which are not believed to be airworthy. In much the same fashion, the pilot's certificate of competency is required to contain a provision that the pilot has "passed a satisfactory examination with regard to the traffic rules existing in the other contracting states over which he desires to fly."

Each state in the protection of its domestic commerce is authorized by the Convention to reserve in favor of its own national aircraft the commercial transportation of passengers and goods between two or more points in its territory, but it expressly provides that aircraft engaged in international air transportation shall be permitted to embark and disembark passengers and cargo at one or more airports provided that all of such traffic originates at or is destined for some point in a foreign country.

The control of the transportation of munitions of war, flight over prohibited zones or restricted areas, the establishment of customs airports, the designation of civil airways, and the requirement of equality of treatment of the aircraft and crew of all contracting states exercised by the Habana Convention is comparable to that found in the Paris Convention.

It has been urged by some authorities that the main purpose in adopting the Habana Convention was to facilitate the establishment of international commercial air transportation whereas the Paris Convention merely prescribes general rules of flight for foreign aircraft. Some force is lent to this argument by the fact that unlike the Paris Convention there is no provision in the Habana Convention requiring the conclusion of special air traffic arrangements before an international airline may be established. However, the Habana Convention does not prevent the states from entering into special air traffic agreements with one another so long as such agreements do not impair the rights of other contracting states accorded under the Convention. Suffice it to say that although the United States has been a party to the Convention for eight years, every American air carrier operating in Central or South America has been required to obtain specific authorization for the conduct of such service, as has a Mexican company for operations into the United States.

As heretofore indicated, the Paris Convention was not ratified by all countries nor was the Habana Convention accepted by all the

American Republics. It was quite natural therefore that a series of bi-lateral agreements for the control of international air navigation should be entered into between states not parties to these Conventions, or between parties and non-parties. Fortunately, the confusion which reasonably might be expected from such a multiplicity of texts has been avoided by the fact that these arrangements have been modeled after the Paris Convention. Approximately fifty of such general air navigation arrangements have been consummated throughout the world. By these agreements, one contracting state grants to the aircraft of the other contracting state freedom of innocent passage in time of peace. Many of them specify the corridors of entry, and all of them reserve to the member states the right to prohibit flight over restricted areas. They likewise provide that in foreign flight the aircraft and crew must be possessed of all certificates and licenses required in the country of registration, and contain a provision that the other contracting state will accept such certificates and licenses as valid. The aircraft crew and passengers are required to abide by the applicable laws, rules and regulations of the country over which the flight is made, and the foreign aircraft, in general, are accorded equality of treatment. Usually the agreements reserve cabotage rights to aircraft of the particular state, and specifically provide that regularly scheduled commercial services into the territory of the other contracting state can be inaugurated only after the granting of special permission by such latter state. The United States is a party to twelve of such general air navigation arrangements and has four other such arrangements in the process of negotiation.

It is customary to permit the flight of a foreign aircraft in a given country only if it is operated by a pilot certificated as competent to navigate the particular aircraft by the same foreign country. However, occasions arise where a foreign pilot desires to navigate an aircraft registered in another country. For example, a British certificated pilot desires to fly an American aircraft. To meet this situation a second type of bi-lateral arrangement has been utilized providing for the issuance by each country of airman competency certificates to nationals of the other country. Such agreements make it possible for this Government to issue a certificate of competency to the British pilot thereby enabling him to fly an American aircraft. The United States has entered into eight of such arrangements and there are several others pending.

To expedite the exportation of aircraft a third category of bi-lateral arrangements providing for the mutual acceptance of certificates of airworthiness for export has been negotiated. Such

agreements are particularly important to the manufacturers for by their terms they provide that aircraft of United States manufacture for sale abroad, if certificated as airworthy for export, will be accepted as airworthy by the aeronautical authorities of the country to which they are delivered without further inspection. In some cases the exporting country must certify that the aircraft meets special requirements of the importing country. This Government has negotiated nine of such arrangements and has a number of others pending.

At the outset, I mentioned the air traffic arrangement which had been concluded between the Governments of the United States and of Great Britain, Canada, and Ireland for transatlantic air service which might be said to fall within a fourth category. That agreement represents those entered into between Governments. In addition there are special arrangements between a Government and a foreign air transport company, or between the competent aeronautical authorities of the contracting states, or finally, those arrangements, sometimes called "pools," between two or more national air transport companies. It is impossible to state accurately how many of such arrangements actually are in existence, but the most recent information available would indicate that there are in excess of sixty such arrangements. All such traffic agreements either specify the route to be operated by the air carrier nominated by the other party to the agreement or contain provisions for the specification of such route by the competent authorities. In some of the arrangements the route specified is between a terminal in each contracting state, and is operated by the respective national companies on a strictly reciprocal basis. Such an agreement is that providing for the transatlantic service. Another group of arrangements permit each national company to operate over and beyond the territory of the respective contracting states. A third type is that where one company operates a service over and beyond the other state, while the other operates only between terminals in the two states. An example is found in the Convention between Great Britain and Greece wherein the British company flies through Grecian territory to Asia and Africa, while the Greek company terminates its service in English territory.

All of the air traffic agreements provide for the acceptance of the airworthiness and airman competency certificates issued by the other state. Some of them specify in detail such matters as frequency of service, route to be followed, airports to be utilized, radio and meteorological service to be made available, etc. Others are brief and general, leaving the details to the competent aeronautical

authorities of the respective countries, and in some instances, leave such arrangements to the operating carriers. Several of such agreements require that the flight personnel shall be nationals of the country of registration of the aircraft, while others require that the ground organization of the air carrier stationed in the other contracting state shall be nationals of such latter state. The agreement between Italy and Greece contains an interesting provision relative to the nationality of the respective air carriers engaged in such international service, and gives to each of the contracting states the right to check the nationality of the company registered in the other country.

Practically all of these air traffic agreements prohibit cabotage and exempt from customs duties the aircraft and equipment and fuel supplies used in the international service. Some of them contain provision for exemption from income and other corporate taxes. All of them require the air carriers to observe the air traffic rules, laws, and regulations in force in the other state and provide that the carriage of mail shall be subject to agreement between the postal administrations.

The sanitary and public health precautions that an aircraft employed in foreign air transportation must comply with is a field of international control that has not been dealt with directly by the conventions and bi-lateral agreements I have discussed. In linking distant ports of the world by swift transportation, aviation, without proper safeguards, could become a spreader of contagious and infectious diseases. It is well known that carriers of tropical fevers generally die during an extended voyage of an ocean-going steamer and that during such a voyage the period of incubation for most diseases passes. This is not equally true of the flight of the swift air transport. To prevent the carriage of disease by aircraft the United States Public Health Service and the companies engaged in international air transportation fumigate and employ other scientific methods to minimize the danger. No uniformity of procedure existed for each country applied its own national regulations. With a view to the codification of the procedures to be followed, the International Sanitary Convention for Air Navigation was signed at The Hague, April 12, 1933, establishing uniform sanitary procedures to permit the entry of aircraft from one country into another without unnecessary delay or hazard when the aircraft comes from an infected district. It also provides for the establishment of sanitary airdromes and the medical services and facilities to be maintained at such airdromes as well as for the measures to be applied when infectious diseases are found to exist. The Convention was ratified

by the United States in 1935 and is now in effect in 24 other countries, including Bolivia, Brazil, and Chile in the Western Hemisphere.

While the speed of aircraft offers a new means of transmitting disease, it likewise offers facilities for the prevention of the spread of such disease in the event of epidemics or catastrophes. In February of this year, a Sanitary Aviation Conference at Montevideo considered the organization in Pan American countries of air services for the purpose of rendering medical assistance to, and the transportation by aircraft of, the sick and wounded.

No discussion of the international control of aviation is complete without consideration of the International Conferences on Private Air Law, which have dealt with the legal relationship of the air carrier as an individual to other air carriers, to passengers, to shippers, and to third persons and property on the ground. As private and commercial flying became more important, so also did the question of the liability of the carrier. This question did not logically come within the scope of the Paris Convention of 1919. Furthermore, by 1924 only seventeen states had ratified the Convention. In order that all countries might participate in the codification of private international air law, the French Government called an international conference which met in October, 1925, to consider the codification of private air law. The most important accomplishment of the conference was a recommendation for the creation of a permanent international committee of aerial legal experts to study and make recommendations for the codification of private air law. The committee was created the next year, and is popularly known as CITEJA, the initials of its French name. Since its organization it has met semi-annually to draft proposed conventions on private air law which from time to time are submitted to diplomatic conferences for final adoption and signature. The outstanding achievement of CITEJA was the drafting of what is commonly called the Warsaw Convention, adopted in 1929 and ratified by 29 countries including the United States, on October 29, 1934. This Convention attempts to unify rules concerning liability of international air carriers to persons and property on board the aircraft. It applies to all international transportation of persons, baggage and goods performed by aircraft for hire. Fault is the basis of the air carrier's liability, but elaborate provision is made for the exoneration of the carrier and its agents from liability. Contributory negligence of an injured party may wholly or partially excuse the air carrier depending upon the *lex fori*. Liability of the carrier is limited to 125,000 French francs or about \$8,300 per passenger, and the Convention specifies limits for damage to baggage or goods. None of the limi-

tations on liability is applicable in case of willful misconduct of the carrier.

Under the Warsaw Convention, some very intriguing problems of law are certain to arise. Suppose a person in Berlin buys a through ticket to San Francisco and proceeds over a European, a transatlantic and a domestic airline, taking advantage of stop-over privileges en route; is the trip between Chicago and San Francisco of such character as to be considered international air transportation and thus within the purview of the Warsaw Convention?

The second phase of the air carrier's liability is that *vis-a-vis* third persons and property on the ground. This is one of the most important and at the same time, most controversial subjects of private air law. The Rome Convention, signed in 1933, attempted to solve this problem, but it has never been ratified by a sufficient number of states to become effective. The Convention is applicable only to cases of ground damage in one contracting state caused by aircraft registered in another contracting state. Liability arises upon a showing of damage caused by the aircraft but is limited in amount and the recovery is guaranteed by compelling the carrier to carry insurance or to maintain a cash deposit sufficient to satisfy the payment of all claims. Contributory negligence is a defense available to the air carrier.

A complicated formula based upon 250 French francs per kilogram times the gross weight of the aircraft with a minimum limit of 600,000 francs and a maximum limit of 2,000,000 francs or about \$132,000 per accident establishes the limitation upon liability. Of the total amount for which the operator may be liable, one-third is appropriated to damage to property and the remaining two-thirds to damage to persons but the recovery of any one individual is limited to 200,000 francs or about \$13,200. In case of gross negligence, willful misconduct, or failure to insure, the liability of the operator is unlimited.

By way of contrast it may be noted that the Habana Convention, to which the United States is a party, provides that "reparations for damages caused to persons or property located in the subjacent territory shall be governed by the laws of each state." This is a frank recognition of the difficulty or impossibility of obtaining uniformity in this field of private air law.

The Rome Convention failed to prescribe the precise terms of and the exemptions which might be contained in the required insurance contracts, and until the defenses available to the insurance companies were determined, the insurance carriers were opposed to the ratification of the convention. As a result, the Fourth Inter-

national Conference on Private Air Law, held at Brussels in September of last year, adopted a protocol providing that the insurer might interpose certain defenses in addition to those available to the operator. Since this protocol has not been ratified by any of the signatory states, no discussion of these defenses appears necessary, except to point out that there is some doubt as to whether the insurance protocol as signed at Brussels is satisfactory to the insurance carriers.

A second accomplishment of the Brussels Conference was the adoption of a "Convention for the Uniformity of Certain Rules Relating to Assistance and Salvage of Aircraft or by Aircraft at Sea." This Convention offers a uniform set of rules specifying the assistance an aircraft must give to other aircraft and vessels in distress at sea, and the assistance a vessel must render to aircraft in distress. The commanding officer of an aircraft is obligated to render assistance to any person who is at sea in danger of being lost, but the obligation exists only in so far as he "may do so without serious danger to the aircraft, her crew, her passengers, or other persons." A similar duty is imposed upon the captains of surface vessels. Assistance means any help which may be given to a person in distress and may consist of "merely giving information, consideration being given to the different conditions under which maritime navigation and air navigation operate."

The Convention recognizes the type of assistance that can be rendered in an aircraft disaster at sea, and rewards the saving of human life by providing that one who saves human life at sea may be indemnified for all expenses incurred in such service, but a volunteer is not entitled to indemnity, unless he has obtained a useful result. Liability of the aircraft operator for the expenses so incurred is limited to 50,000 francs per person saved with a maximum limit of 500,000 francs or approximately \$33,000. This indemnity for life salvage under the Brussels 1938 Convention is unique, having no precise counterpart in the Brussels 1910 Maritime Salvage Convention. Even though the salvage operation is unsuccessful the one rendering assistance may secure an indemnity for the expenses incurred not exceeding the maximum indemnity provided for saving one life.

The Convention follows the maritime practice in establishing the rights and obligations concerning the salvage at sea of the aircraft and its cargo. In addition to the indemnity for saving life, if a useful result is accomplished the salvor is entitled to remuneration which is determined by the value of the property salvaged and other specified considerations, with a maximum limit of the value of the

property salvaged at the conclusion of the operations of assistance or salvage. So far as is known, this Convention has not yet been ratified by any country.

Before closing, I wish to direct your attention to an organization now being established in the Western Hemisphere—the Permanent American Aeronautics Commission, commonly referred to as CAPA. Since 1916, the American Republics have been interested in the preparation of a uniform code of international air law. Only Argentina, Uruguay and Peru are members of the Paris Convention with its CINA which has developed under European influence. The Habana Convention is in effect in only 12 countries. Bi-lateral agreements are in effect between the United States and Canada, and between Argentina and Uruguay, and there is a bi-lateral commercial aviation agreement between this Government and Colombia.

The vast network of commercial aviation now connecting the Americas has been made possible by agreements reached between the governments of the states flown over and the operating companies. All flying between countries of the Western Hemisphere not parties to international agreements or flight not within the terms of such agreements depend upon special permissions being granted for the particular flight. The delays incident to obtaining such permissions through diplomatic channels constitute a serious impediment to the growth of international aviation in this hemisphere. In the field of private air law the only active organization is CITEJA, with which in this hemisphere only the United States, Argentina, Brazil, Dominican Republic, Guatemala, Mexico, and Peru are associated. In this hemisphere the Warsaw Convention has been ratified only by the United States, Brazil, and Mexico.

Eventually, at the Buenos Aires Commercial Conference held in 1935, it was decided, among other things, to hold a technical aviation conference. This conference, known as "The Inter-American Technical Aviation Conference" met at Lima, Peru, in September, 1937. Outstanding among many important resolutions adopted is the one providing for the creation of the CAPA, a permanent aeronautical organization to perform in this hemisphere certain of the functions now performed by CINA and by CITEJA. The mission of CAPA is to bring about (1) the gradual and progressive unification and codification of international public and private air law; (2) the coordination and development of mutual interest in technical subjects related to aircraft, pilots, airways, and facilities for air navigation, including airports and operating practice and procedure; and (3) the organization and marking of inter-American air routes and the possible coordination of local air serv-

ices as between themselves and in relation to the services of international air lines.

The resolution of the Lima Conference providing for the creation of CAPA recognizes that the American Republics are confronted with peculiar and difficult legal and technical problems, and emphasizes the need of uniformity of public and private international air law throughout the Americas. Although much can be gained from a study of the Paris Convention and the conventions either now completed or in preparation by CITEJA, they may not be suitable in their entirety in all Pan American countries. The charging of the same organization with the mission of coordinating and developing mutual interest in technical subjects and in developing inter-American air routes and services reveals that the framers of this resolution recognized that legal codes cannot be prepared without considering the present status of the development of aviation and the peculiar problems of flying in the Americas.

CAPA will not come into being until national commissions, composed of jurists, professors and aviation experts have been organized in seven countries, and within twelve months thereafter the first session is to be held at Bogota, Colombia. One of the chief functions of the national commission is the maintaining of close contact with other national commissions, exchanging proposals and making recommendations for the uniform treatment of the juridical and technical problems of international aviation for consideration by CAPA.

The United States is presently engaged in the organization of its national commission, and it is hoped that the other American Republics will do likewise in order that CAPA may soon commence its functions. A provision in the resolution contemplates that conventions prepared by CAPA and adopted by member countries shall be open to adherence by non-member countries. In this organization there is an opportunity for the American Republics to study and codify the legal and technical problems of international aviation, bringing about in a practical manner uniformity and the orderly development of international aviation which should serve further to promote friendly intercourse between the countries of the Americas.

The international influence of aviation, molding the conduct of nations and dictating their policies, was not apparent until Munich. We may reasonably expect that with the extension of airlines and routes to all points of the compass, linking together the continents and bringing together the remote corners of the earth, international problems will multiply. These circumstances will compel the simplification and codification of the rules controlling international aviation.