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INTERNATIONAL

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INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

I. INTRODUCTION

ON the fifth anniversary of the Convention on International Civil Aviation,¹ ICAO, the organization which it founded, was well on the road toward achievement of its objectives. ICAO has formulated international standards and recommended practices in nine different fields of air navigation—personnel licensing, rules of the air, meteorological codes, aeronautical charts, dimensional units in air-ground communications, operation of scheduled aircraft, aircraft nationality and registration marks, airworthiness and aeronautical telecommunications. These ICAO standards and practices already adopted represent the majority of the technical fields where the Convention says worldwide uniformity is needed for the safety, regularity and efficiency of international air transport. ICAO, through the holding of a series of regional air navigation meetings throughout the world, has made a complete survey of requirements for international air navigation facilities and services and established operating procedures necessary to meet conditions peculiar to the various regions. In accordance with the provisions of Chapter XV of the Convention, ICAO has arranged for joint international financing by user nations of essential air navigation services in Iceland, Greenland and the Faroe Islands and has sponsored the North Atlantic Ocean Stations Program.

In the field of air transport, ICAO has taken a long step toward simplifying international border-crossing procedures and documents through the adoption of standards and recommended practices for the facilitation of international air transport. The Organization is becoming successful in the collection of statistics, which may prove helpful in solving such problems as user charges for air navigation facilities. It is studying methods for differentiating between scheduled and non-scheduled air services. ICAO has proven a valuable forum for exploration of the possibility of concluding a multilateral agreement for the exchange of commercial rights in international air transport. Thus far, ICAO's outstanding accomplishment in the field of air law has been the opening for signature of the Convention on International Recognition of Rights in Aircraft, which will protect mortgage interests in aircraft flying along international routes and facilitate aircraft sales abroad. ICAO has a membership of fifty-six nations.²

II. EIGHTH SESSION OF THE COUNCIL

One of the outstanding conclusions reached by the ICAO Council during its eighth session, which ended on December 13, 1949, was the decision that no amendments should be made to the Convention on International Civil Aviation at the fourth annual assembly of the Organization.³ The Netherlands

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¹ The Convention on International Civil Aviation was drawn up at the International Civil Aviation Conference held at Chicago November 1-December 7, 1944.

² Syria became the fifty-sixth member of ICAO on January 20, 1950.

³ The Fourth ICAO Assembly will convene in Montreal on May 30, 1950.

was prepared to support amendment of Article 45 on the permanent site of the Organization and Article 52 on voting in the Council, and the United Kingdom pressed for changes in Article 94, the article on method of amending the Convention. Belgium and Switzerland took the attitude that there should be no amendments to the Convention until a general revision could be made. Majority sentiment, led by the United States and France, developed in favor of the following action, which was taken on November 29, 1949:

The Council decided

- (1) that it would not recommend any amendments to the 1950 Assembly, reporting to the Assembly on the reasons which had led it to this decision;
- (2) that it would recommend that the 1950 Assembly should not adopt any amendments to the Convention, giving reasons for this recommendation; and
- (3) that it would proceed to study the whole problem of amendment with a view to reporting to the 1950 Assembly on the principles, methods and procedures for the amendment of the Convention.

The next step that the Council will have to take will be to decide on a solution to the problem of how the Convention should be amended in future years.

Another action by the eighth session of the Council was the tentative adoption, after consideration of the recommendations of the Air Navigation Commission and the Air Transport and Joint Support Committees, of a provisional agenda for the Fourth Assembly. This agenda, in addition to procedural and administrative matters, includes the following items:

Plenary Items

- Election of Contracting States to be represented on the Council and obligations of Council Member States (Article 49(b) of the Convention).
- Policy and program with respect to the amendment of the Convention (Resolution A2-5).

Other Items

- Technical assistance for economic development.
- Review of the Structure of ICAO: the Council, its Commissions, Committees and Divisions (Resolutions A1-7 and A2-8).
- General review of the work of the Organization in the technical field.
- Commercial Rights in International Air Transport (Articles 5 and 6 of the Convention and Assembly Resolutions A2-18 and A2-19).
- Further action to secure a Multilateral Agreement on Commercial Rights in International Air Transport (Resolution A2-16).
- Joint Ownership and Operation of International Air Services on Trunk Routes (Resolution A2-13).
- Obstacles encountered in the implementation of Annex 9—"Standards and Recommended Practices for the Facilitation of International Air Transport."
- Statistical Programme of the Organization.
- Other business arising out of the Report of the Council on the progress of work in the economic field.
- Any business arising out of the review of the Report of the Council on the progress of work in the legal field.

Final action by the Council on the agenda was planned by February 1950.

Following endorsement by the United Nations General Assembly of the August 15, 1949 resolution of the Economic and Social Council on an ex-

panded technical assistance program, the ICAO Council formally accepted the observations and guiding principles set forth in the resolution. The ICAO Council also approved the recommendation of its Joint Support Committee that a communication be sent to all ICAO Member States, requesting their views on the role that ICAO should play in the UN program, outlining certain types of projects which ICAO might undertake and inquiring whether the Member States planned to request technical assistance from the Organization.

AIR NAVIGATION MATTERS

During the fall of 1949 the Air Navigation Commission completed a review of the major principles in the draft Standards and Recommended Practices for Aerodromes and Ground Aids (AGA). When the Secretariat attempted to incorporate proposals made by the fourth session of the AGA Division⁴ into the draft standards and it appeared that this long-awaited annex to the Chicago Convention might thus be further delayed, the Commission directed the Secretariat to prepare two separate working papers—one reflecting the Commission's discussions on the draft annex and one the findings of the fourth session of the AGA Division.

Another controversial annex, one which would establish international standards for accident investigation, was approved by the Air Navigation Commission for dispatch to Contracting States for comment by February 28, 1950. The Commission completed its review of the Manual of Aircraft Accident Investigation,⁵ and the Council authorized its publication as a guide for ICAO Member States.

The Council's approval was obtained for amendments to Annex 4 to the Convention, Standards and Recommended Practices for Aeronautical Charts. Contracting States have until June 1, 1950 to file any disapproval of the amendments, which will come into force on September 1950 unless disapproved by a majority of the States. The Commission approved for submission to the Council amendments to Annex 2, Standards and Recommended Practices for Rules of the Air, and completed substantially its review of amendments to Annex 1, Standards and Recommended Practices for Personnel Licensing.

The Air Navigation Commission and the Council approved the agenda for the Second Caribbean Regional Air Navigation Meeting, to be convened on April 11, 1950 at a site not yet determined. The Commission, in the hope of doing away with the practice of convening fact-finding groups about a week before each regional air navigation meeting, directed the Secretariat to tabulate all available information on facilities, services and operations in the Caribbean Region. States have been asked to correct and complete this tabulation by February 15, 1950. If the response of States is satisfactory, both the Organization and Member States will be saved the expense of the fact-finding group.

The Commission approved the recommendations of the second session of the International Administrative Aeronautical Radio Conference (IAARC) of the International Telecommunication Union (ITU) concerning utilization of frequency channels in the aeronautical mobile "R" service, and both the Commission and the Council approved the following schedule of regional frequency assignment planning meetings:

⁴ The fourth session of the Aerodromes, Air Routes and Ground Aids Division, held in Montreal from November 1 to December 2, 1949, was on the subject of aerodrome lighting problems.

⁵ ICAO Doc. 6920-AN/855.

	<i>Date</i>	<i>Site</i>
Caribbean-South American-South Atlantic Region	April 11, 1950	Site of Caribbean Regional Meeting
African-Indian Ocean and Middle East Region	March 21, 1950	Paris
South East Asia Region	March-April 1950	Undecided

The Commission, after discussing a plan proposed by the United States for the utilization of VHF for international air-ground services in the Western Hemisphere, decided to submit it to States for comment to determine whether it had general support throughout the hemisphere.

AIR TRANSPORT MATTERS

Following extensive work in the Air Transport Committee during the fall of 1949 on multiple taxation of air transport, the Council approved the Committee's recommendation that three draft resolutions and a questionnaire on the subject be circulated to Contracting States for comment by March 1, 1950:

- (1) A draft resolution recommending that ICAO Member States exempt, on a reciprocal basis, from all customs and other duties, the fuel, lubricants and other technical supplies taken on board a foreign aircraft for consumption during flights to another customs territory.
- (2) A questionnaire to determine whether or not it is generally feasible to extend exemption from customs duties to fuels, lubricants and other technical supplies consumed between two or more landing points within the same customs territory.
- (3) A draft resolution recommending that each ICAO Member State, to the fullest extent possible, grant reciprocally to air transport enterprises of other Member States exemption from taxation on income and gross receipts derived from international air transport; also exemption from property taxes, capital levies and other similar taxes on aircraft engaged in international air transportation. Inclusion of such exemptions in bilateral agreements dealing with taxation in general or with the exchange of commercial air transport rights and legislation granting such exemptions are recommended.⁶ (The Air Transport Committee had decided not to consider further the possibility of a multilateral agreement on income and property taxation of airlines and had agreed that the resolution approach alone was feasible.)
- (4) A draft resolution recommending that each ICAO Member State eliminate, or reduce to the fullest extent possible, taxes on the sale or use of international air transportation.

The Council adopted the Committee's recommendation that no action be taken by ICAO with respect to income and social security taxes imposed on employees of air transport enterprises as these taxes affect all international businesses and at the present time do not appear to constitute a serious problem in the field of aviation. The Council also accepted the Committee's recommendation that no action be taken with respect to customs duties and excise taxes on the ground equipment and supplies of international air trans-

⁶ ICAO Doc. 6929, LGB/26 of December 2, 1949, International Tax Agreements, List No. 1, General Agreements with Specific Reference to Air Transport, summarizes bilateral agreements concluded both before and after World War II. Many of these agreements, which are in general applicable to income from shipping as well as aircraft, provide for income taxation by the country in which the place of management of the concern is located and exempt the concern from taxation by the second country. In general, countries which tax income are also entitled to tax property.

port enterprises pending study of Member States' replies on the Facilitation Annex.⁷

In the final stages of its fall 1949 discussion of the problem of multiple taxation, the Air Transport Committee had the benefit of advice from members of the United Nations (UN) Secretariat, as a result of which further coordination of ICAO's work with that of UN on broader tax questions appeared desirable. Pending replies from ICAO Member States on the draft resolutions and questionnaire, the two secretariats will work together to expand and analyze the background data on international taxation so that it will be available to the Air Transport Committee and the Council before they take final action on the tax resolutions.

The Air Transport Committee devoted several meetings during the fall of 1949 to preliminary discussions of the policies to be followed in assessing user charges for airports and other navigation facilities. A working group will use these discussions as the basis for drawing up policy proposals to be examined by the Committee early in 1950.

The Committee directed the Secretariat to prepare a new paper on nationality of aircraft operated by international operating agencies, which would cover all the legal, economic, and administrative aspects and deal with the problem both from the point of view of (1) possible national registration of such aircraft and (2) possible international registration. The Committee agreed to recommend to the Council that no further action be taken on the matter of Contracting States' obligations under Article 21 of the Chicago Convention to supply the Organization with data on aircraft registrations. ICAO Air Transport Reporting Form T5 already provides for reporting of data on aircraft registration.

Before adjourning for its winter recess, the Air Transport Committee approved a statistical program for the guidance of the Secretariat during the next six months. Under this program, ICAO will publish eight statistical summaries a year and issue certain supplementary statistical information on a monthly basis.

III. GENERAL

The fifth session of the ICAO Legal Committee was convened at Taormina, Sicily on January 5, 1950. A report on this session, which was focused on the Rome Convention for the Unification of Certain Rules Relating to Damages Caused by Aircraft to Third Parties on the Surface, will be included in the next issue of the JOURNAL.

The third ICAO trainee program, which will extend over a five months' period beginning February 20, 1950, will provide six nationals of ICAO Member States with general instruction on the air navigation, air transport and legal work of ICAO or specialized study in one particular phase of the Organization's activities.

The Second North Atlantic Ocean Stations Agreement came into force on January 13, 1950 following its acceptance by the United States and the United Kingdom, States which together are responsible for operating eighteen out of the twenty-four ocean station vessels.

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⁷ Standards and Recommended Practices for Facilitation of International Air Transport, recommendation 4.5 provides that "ground equipment and technical supplies imported into a Contracting State for use within the limits of an airport by an airline of another Contracting State in connection with the establishment or maintenance of an international air service of such airline, should be admitted free of customs duty, subject to compliance with the regulations of the Contracting State concerned; such regulations should not reasonably interfere with the necessary use in such service of such ground equipment and technical supplies."

INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA)

IATA TRAFFIC CONFERENCES

THE world airline fare and rate structure laboriously erected by the IATA Traffic Conferences over the past four years was subjected to a severe test by the devaluation of the pound sterling on September 18, 1949. That structure was a carefully adjusted pattern of inter-related charges for service over thousands of route segments and, with the consent or approval of governments, it has been extended to cover the Atlantic, the Pacific, Europe, Africa, the Middle East and large parts of Asia.

The keystone of the whole rate pattern was the fact that the U.S. dollar was equal to five shillings in British sterling. Even though the world was divided into hard and soft currency areas, all other currencies maintained a reasonably stable relationship to these two and both costs and charges could be equated in them.

The change in this basic relationship by the 30 per cent devaluation of the pound cracked the rate structure down the center and the partial devaluation of other currencies caused other discrepancies. For a few hours, it was even impossible for international airlines operating in more than one currency area to sell tickets.

Fortunately, the basic IATA Traffic Conference resolutions had set up procedures for meetings to cope with possible devaluations. The pattern was temporarily cemented together within the week following September 18 by conferences in London and Paris which set up a new series of interim and necessarily approximate relationships between the various currencies.

These arrangements could, however, be only incomplete and temporary. Due to devaluation, costs of materials and services varied largely from one country to another. Many airlines collecting their revenues in devaluated currencies were still required to pay at least some of their costs in dollars. On routes operated in pool or in parallel by hard and soft currency airlines, one or the other was forced to take either a heavy cut in necessary revenue, or boost the price of transport far beyond the reach of its own nationals.

The regularly scheduled composite meetings of all three IATA Traffic Conferences at Mexico City in November provided the first opportunity for formal review and recalculation of the rate structure. Their task, which occupied three weeks, was to reconcile the widely separated positions into which devaluation had forced many of the airlines. For airlines in devaluated countries, a five pound fare represented as much of an expenditure as it did before September 18, regardless of the new relationship to the dollar. In addition, the lower scale of dollar equivalents gave them a point of attraction to dollar traffic which was, basically, the reason why their governments had devaluated and which they would not be allowed to sacrifice completely.

Hard currency airlines operating into soft currency countries, on the other hand, were still required to pay the bulk of their costs in dollars. If they were to cut their rates to the level of the devaluated currencies their revenues would have been pushed down into the economic danger zone.

The rate and fare structure finally recommended by the Mexico City Conferences to interested governments and effective, with their approval, on February 15 or sooner, represents a basic compromise between the currencies, taking into consideration all related traffic and economic matters.

It was agreed that, in general, rates for North and South America and the routes across the Atlantic and Pacific to gateways into Europe, Africa and Australasia are based on dollars. In the areas between the two great

oceans—the Eastern Hemisphere—sterling continues to be the basis of fares and rates.

Dollar area rates, as over the Atlantic, remain unchanged except for small decreases. In the sterling area, some rate increases were found to be necessary because certain operating costs—notably fuel and spares—must still be paid in U.S. dollars.

This means that in the sterling area, rates have been decreased about 20 per cent in terms of hard currency and have gone up about ten per cent in terms of soft currency. Fares for journeys over routes lying partly in dollar territory and partly in the sterling area are combined: thus, the fare for a trip from New York to Prague is calculated in terms of dollars to the European gateway and in terms of sterling from there to Prague.

The result of this arrangement is to keep airline rates in the sterling area as low as possible, so that inhabitants of the devaluated currency countries can get as much air transport as possible for their own money, and so that travel dollars from the Americas will be attracted by lower transport costs in the rest of the world.

At the same time, it was also found possible to extend the rate structure by bringing into it fares and rates between five South American countries—Argentina, Brazil, Chile, Paraguay and Uruguay.

The Mexico City Conferences also devoted considerable attention to special rate projects designed to encourage traffic over certain routes, particularly in the off-seasons. The most important of these off-season arrangements is a drastic reduction in winter round-trip rates across the Atlantic from North America to Europe, designed to test the historic seasonal downward trend of traffic on the North Atlantic. Limited to the first ten weeks of 1950, this experiment has brought the round-trip rate over the Atlantic to one and one-tenth the normal one-way fare for a 15-day round trip excursion. On the basis of the normal \$350 one way fare, from New York to London, the round-trip excursion rate became only \$385.

Among other special fares established are off-season excursions from South America to Europe; from Australia and New Zealand to Singapore and Rome; special round trip reductions within Europe for conducted, all-expense tours arranged by travel agents, etc.

The Conferences also approved a large number of resolutions having to do with conditions of carriage, traffic documents and the like. Particular concessions were made to travellers having large amounts of luggage.

IATA TECHNICAL COMMITTEE

A concerted attempt by IATA member airlines to coordinate existing navigation aids and air traffic control systems and to cooperate in planning for future needs is now under way on the basis of plans approved by the IATA Technical Committee at Dublin during December, 1949. Special and immediate attention will be given to air traffic control conditions in the Europe-Mediterranean area.

Member airlines are assigning experts to study navigation and traffic control problems in three groups:

IATA Flight Technical (FT) Group—to determine operational requirements for radio aids and all-over air navigation services now being used and for those which will be set up in future;

IATA Radio Aids (RA) Group—to map out technical characteristics of radio navigation aids and communications systems to meet these operational needs;

IATA Europe-Mediterranean Air Traffic Control (EUMED ATC) Panel—to examine traffic control services and standards provided and planned in

that area, to recommend coordination and remedies for deficiencies, where they are found, and to deal with local problems at individual airports.

All three groups will cooperate with the appropriate divisions of ICAO, individual governments and such special groups as the U.S. Radio Technical Commission for Aeronautics.

The Technical Committee agreed that strong IATA technical delegations will continue to assist at sessions of ICAO and the International Telecommunications Union which during 1950 will assign frequencies for aeronautical use in various regions. It was pointed out that the results of the ITU Administrative Radio Conferences in 1949, at which IATA experts assisted, had been satisfactory to the airlines; and that the ITU Administrative Telegraph and Telephone Conference had agreed to arrangements for sharing of airline leased circuits and the refiling by public telegraph of messages sent over leased teleprinter circuits.

The Technical Committee also commissioned a study of "duty time" requirements for flight crews, concentrating on operational demands before and after actual flight, to supplement investigations into flight fatigue being carried on by the IATA Medical Panel.

Customs free airports—which are international zones for airline transit operations as well as for trade purposes—were endorsed by the Technical Committee as most desirable from the operational point of view after a discussion of Shannon Airport, which is customs free.

A NEW APPROACH TO THE ROME CONVENTION ON DAMAGE TO THIRD PARTIES ON THE SURFACE

IN preparation for the Fifth Session of the ICAO Legal Committee at Taormina, Sicily in January, a new approach to the problems of the Rome Convention dealing with damage to third parties on the surface was circulated among the legal experts in the United States who were then working on the revision of the present Convention. The new draft sets forth a list of defenses that are to be universally recognized, allowing each country's underlying standard of liability (absolute or based on fault) to remain in force and proposes a system for discharging the operator from his liabilities upon the deposit of certain amounts with the forum in which the claims are to be presented. The text is set forth below.

1. This Convention shall apply to all claims for damages arising out of death, injury, or damage caused to persons or property while on the surface of a Contracting State by an airborne aircraft registered in another Contracting State.

2. Subject to the provisions of this Convention, all liability in connection with claims mentioned in Article 1 shall be governed by the law of the Contracting State in force where the injury or damage took place.

3. Each Contracting State undertakes to create a procedure whereby any person who may be held liable under the laws of such state in connection with a claim mentioned in Article 1 may petition a court in such state for the determination of all liabilities arising out of the occurrence concerned and for the adjudication of all claims involved. The right to file such a petition may, however, be conditioned upon the filing of a bond, guaranty, or other showing that all proved claims in the proceeding will be met, not exceeding in the aggregate the applicable amount indicated in Article 4 of this Convention. In such event a statement by an insurance company authorized to do business in the Contracting State of the aircraft's registry that liability insurance in such amount was in force at the time of the occurrence

and that funds in the currency of the forum are available for the payment of proved claims up to such amount shall be deemed sufficient for this purpose.

4. In proceedings brought pursuant to Article 3, the total liability, together with court costs and other allowable expenses shall not exceed in the aggregate the amount indicated below opposite the weight classification of the aircraft causing the damage:

Under 12,500 lbs.	\$ 150,000
Over 12,500 lbs.	1,500,000

5. In the event that the total claims proved in a proceeding brought pursuant to Article 3, together with court costs and other allowable expenses therein assessed against the party or parties to be charged exceed the appropriate limit set forth in Article 4, the priority in which such claims shall be paid or the manner in which they shall be reduced shall be determined by the law of the forum. In the absence of such law, all claims shall be reduced proportionately after payment of court costs and other allowed expenses.

6. In proceedings brought pursuant to Article 3, each person charged with liability shall have at least the following defenses with respect to each claim:

- (a) The damage arose through claimant's negligence
- (b) The damage arose through an act of God
- (c) The damage arose through *force majeure*
- (d) The damage arose through the wrongful act of a third party
- (e) The damage arose from some other cause and was not contributed to by the negligence of the party to be charged, his servants, or agents.
- (f) The damage arose from a cause not involving physical contact of the aircraft concerned or any part thereof with the surface.

In the event that the party to be charged shall affirmatively prove any one or more of the foregoing defenses in the proceeding, he shall be adjudged free from liability with respect to all claims to which the defense is applicable. In no event shall any claim be allowed in excess of the damage actually proved.

7. The filing of a petition pursuant to the procedure referred to in Article 3 shall constitute without further showing, in all Contracting States, absolute grounds for staying all other nations predicated upon the same occurrence, and responsibilities which may theretofore or thereafter be brought against any party to be charged in the proceeding. Such stay shall continue in effect until the proceeding is finally adjudicated. Thereafter proof of satisfaction of the judgment in accordance with its terms shall constitute a bar to recovery in any such other action.

8. As used in this Convention the expression:

- (a) "Airborne" means that period of time extending from the instant that an aircraft commences to take-off through the application of take-off power to the instant that it either comes to a stop or power is again applied for the purpose of moving on the surface.
- (b) Surface of a Contracting State means all land and water areas for the foreign relations of which a Contracting State is responsible and includes vessels and aircraft of its nationality on the high seas.
- (c) "Aircraft" means all aircraft excepting military, customs and police aircraft.