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Fred D. Fagg Jr.

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THE REFERENCE COLUMN

1. ZEITSCHRIFT FÜR DAS GESAMTE LUFTRECHT, Vol. II, No. 1, 1928.

(a) *Freedom of the Air and the Paris Convention of 1919,* K. M. Beaumont pp. 1-3.

Mr. Beaumont undertakes to interpret paragraph 3 of Article 15 of the Convention of 1919 (CINA) wherein the French text reads, "L'établissement des voies internationales de navigation aérienne est subordonneé à l'assentiment des États survolés." His conclusion is as follows: (1) All private aircraft of contracting States without distinction have the right to use the air space of other contracting States without landing provided that they (a) follow the route (itinéraire), if any, fixed by the State (b) land if required to do so, by signals. (2) All private aircraft of contracting States without distinction have the right to fly from one contracting State to another provided, if required, they land at a specified aerodrome and follow any route (itinéraire) which may have been duly defined. (3) No route (itinéraire) followed by foreign aircraft shall be adopted or considered as a regular air way (voie aérienne) without the previous consent of the State overflown.

(b) *Le régime juridique de l'espace atmosphérique et la question de la nationalité des aéronefs,* Fernand de Visscher, pp. 4-25.

The author of this article urges the acceptance of a concept of sovereignty which recognizes a sort of community of interest in the air space, and which would divide the air space above the territory of a State into theoretical zones —allowing liberty of aerial navigation to foreign aircraft, yet insisting that the extent of the rights of the State, within its "zone propre," have not been prejudiced. For the acceptance of this concept, it is proposed that there be a declaration by the Powers—a declaration of the principle of freedom—not of the air—but freedom of international aerial navigation. The author asserts that the present criterion of nationality determination is a direct corollary of the principle of "complete and exclusive" sovereignty, and that the criterion has been expressly selected for the purpose of securing the benefits of aerial navigation to nationals of certain States to the exclusion of nationals of other States. Assuming that the aircraft should possess some nationality, the author chooses that as determined by the port d'attache. (See The International Air Navigation Conventions and the Commercial Air Navigation Treaties, Fred D. Fagg, Jr., in 2 So. Cal. L. Rev. 430-454, for this analysis.)

(c) *Deutschland und das Pariser Luftverkehrsabkommen vom 13 Oktober 1919* (CINA) Dr. Alfred Wegerdt, pp. 25-49.

The author traces, in Part I, the history of the Convention and shows how it was dominated by the spirit of the Versailles treaty, especially in Article 5, and how it was only after December 14, 1926, that the contracting States were free to enter into agreements with Germany. Also what restrictive requirements are necessary to permit Germany to adhere to the Convention. The purpose of the article is to determine the conditions under which Ger-

many will adhere to the CINA Convention or some other. Part II is devoted to an outline of the Convention of 1919 and its principal features. Part III briefs the essential provisions of the Convenio Ibero-americano de navegación aérea of 1926 (CIANA). Part IV outlines the Pan-American Convention of 1928 (PAC).

In Part V, the author indicates the undesirability of having three separate organizations, and shows that the CINA, founded by the first agreement, might well endeavor to bring about a merger of the other two organizations with itself. If this should be attempted through a revision of the Convention, the author then points out the twenty considerations that Germany would desire to have given careful attention. Part VI deals with the status of Germany in coming into the CINA and contains many detailed references to the Versailles treaty.

2. Droit Aérien (Jan.-Feb.-Mar.) 1929.

(a) *Quelques expériences récentes en matière d'assurance obligatoire,* Robert Le Gall, pp. 1-6.

The purpose of this article is to discuss the arguments pro and con relative to the question of compulsory insurance. The purpose of enforcing compulsory insurance is to safeguard interests which would suffer from irresponsibility or from the impossibility of determining the cause of the injury. The author traces the strict responsibility doctrine through the law of sea and land carriers and then questions how far the conditions in air commerce are analogous. Actuarial figures are not available for statistical purposes, but he cites the Spanish decree of 1928 as one dealing with a limitation upon the strict rule, and as one which merits careful consideration.

(b) *Du statut juridique du passager d'aeronef,* Charles Lortsch, pp. 7-17.

What law shall apply to acts arising and acts completed on board an aircraft? The author states that the first solution offered is to follow maritime law and determine all questions by the law of the flag. This solution is rejected because air navigation and its problems are radically different from sea carriers. During flight over a country, there is a necessary relation between the aircraft and the territory below, although the law of the overflown State should not be applied without discrimination. After a careful analysis, the author submits seven propositions by way of a summary, the first of which follows: (1) For wrongs committed on board an aircraft the law of the place possessing jurisdiction shall apply as follows: the jurisdiction being that of the overflown State if the wrong has produced its main consequences on the ground, and the jurisdiction being that of the place of landing if the wrong has produced its principal effects on board the aircraft.

3. Il Diritto Aeronautico, Feb. 28, 1929, Vol. VII, No. 1.

(a) *L'Unione internazionale aeronautica,* S. Cacopardo Melita, pp. 1-21.

This article, which is the second installment and which is continued in the issue for August, 1929, deals with the Convention of 1919 (CINA), the sovereignty doctrine, the grant of the right of innocent passage, prohibited zones, establishment of air lines, the territorial concept, Article 5 and particular agreements with non-member States, the effect of war, and Article 25 relative

to the duty of contracting States to see that aircraft comply with the provisions of Annex D.

(b) *Atmosfera ed etere, due elementi—due problemi,* G. Patricolo, pp. 22-37.

This article, appearing under the head of Chronicles and Notes, will be interesting to those concerned with radio law. It discusses the question of sovereignty over the air and over ether, the advantages of distinguishing between them, the difficulties involved, the limitations upon sovereignty over air-space—the objections and counter-arguments, the Convention of 1919 (CINA), the scientific hypothesis relative to ether, and the Washington convention of 1920.

4. IL DIRITTO AERONAUTICO, April 30, 1929, Vol. VII, No. 2.

(a) *La Germania e la convenzione di navigazione del 13 ottobre,* Dr. Alfred Wegerdt, pp. 77-115.

This is a translation, by Dr. Francesco Lo Faro, of the article under the same title appearing in 2 Zeitschrift für das Gesamte Luftrecht, 25 (1928) and is reviewed in No. 1 (c), supra.

(b) *Il diritto aeronautico e l'Italia,* Guido Chialvo, pp. 116-127.

The author sketches the historical development of the juridical problems connected with air navigation from the Congress of Verona in 1910 to the setting up of the Italian legislation, through January, 1925, and the other recent developments.

(c) *Note sul diritto aero di guerra,* Dr. Ernesto Errera, pp. 128-138.

The author is here concerned with the Project of the Hague of 1923 relative to search and seizure and aerial bombardment, wherein, relative to the latter, he indicates the difficulty of drawing a satisfactory distinction between the civil and military population, and the war zone as contrasted with the non-military zone, yet urges that a distinction must be made to protect the civil population from unlimited peril from bombardment.

5. DROIT AÉRIEN (April-May-June) 1929.

(a) *Immunisation des aeronefs sanitaires en temps de guerre,* Ch. L. Julliot, pp. 141-168.

This article very clearly presents the problem raised by this special type of aircraft. The legal questions have been of importance since 1912, although the principles involved go back to agreements made many years before. The author discusses the question as to whether or not such aircraft should be allowed to fly up to and over the battle lines, and then shows at what height such flying is necessary if the occupants of the aircraft are to locate the wounded. He shows the great difficulty of landing in the real war zone and how such aircraft can actually serve to obtain information while mainly concerned with their mission of aiding the injured. But he states that both sides will benefit and suffer alike from any military use of the craft. He raises the question as to the status of the pilot and whether he must be trained for and used only in such service or whether he can alternate—so as to be in a fighting plane one day and in this special service at another time. The aircraft, of course, will be specialized equipment—not suitable for military purpose—other than observation if it should cross the lines, or be at a

high altitude behind its own lines. The author cites the regulations which already govern, and shows the need for even more careful consideration of the problem.

(b) *L'Allemagne et la Convention de navigation aerienne de Paris du 13 Octobre 1919 (CINA),* Dr. Alfred Wegerdt, pp. 169-203.

This is a French translation, made by Captain Albert Roper, secrétaire général of the International Commission for Air Navigation, of the article appearing in 2 Zeitschrift für das Gesamte Luftrecht, 25 (1928), and has been reviewed in No. 1 (c) supra.

6. IL DIRITTO AERONAUTICO, June 30, 1929, Vol. VII, No. 3.

(a) *La figura giuridica del comandante dell'aeromobile,* C. Savoia, pp. 195-208.

In discussing the legal significance or status of the person in command of an aircraft, the author traces the parallel between the ship captain and the former, indicating the historical development of the maritime position. To determine the position of this person, the author analyzes his contract, his fitness for the purpose, his technical knowledge, the function he performs—commercial and disciplinary, and his legal responsibility. These questions are, in the article, closely related with the Italian legislation.

(b) *La quarta sessione del Comité international technique d'experts juridiques aériens, (CITEJA), Paris, May, 1929,* Amedeo Giannini, pp. 209-211.

This is a resume of the Madrid session (May 24-29, 1929) of the commission of the CITEJA before the October meeting of the international meeting at Warsaw.

7. DROIT AÉRIEN (July-Aug.-Sept.) 1929.

(a) *De la circulation aérienne au-dessus des mers,* Dr. Herman Döring, pp. 281-284.

This article comes from a report presented by the German delegation at the session of the Comité juridique international de l'aviation (CJIA), April 24, 1929, and is concerned primarily with certain features of the Code de l'Air and the resolutions of the International Law Association at the Conference in Stockholm, in September, 1924. The author offers some ten suggestions relative to the Code de l'Air, wherein he advocates the adoption of a part of Article 23 of the Code which gives jurisdiction over persons committing acts in aircraft flying over the open sea to the tribunals of the country as determined by the nationality of the aircraft. The lex fori is to apply to indemnity for injuries caused by one aircraft to another unless of different nationalty, in which case the law of the flag is to apply. Sovereignty over floating aerodromes will exist, by analogy to maritime law, and will be determined by the State installing them or the State to which the proprietor belongs. The author urges that, in the interest of air navigation in war time, aircraft over the high seas shall not be subject to search and seizure.

(b) *Crimes et délits commis à bord des aéronefs,* Victor Niemeyer, pp. 285-288.

The author is here concerned with Articles 23, 24, and 30 of the Code de l'Air and, after considering the revisions necessary following the strict enun-

ciation of the sovereignty doctrine, he suggests the adoption of three principles, as follows: (1) Wrongs committed on board an aircraft during the course of flight are deemed to be committed in the territory of the overflown State, unless they affect neither the interest of the overflown State nor that of its inhabitants, concerning their persons or their goods, in which case they are deemed to be in the country to which the aircraft belongs. They are equally deemed to be committed in this last country if they have been committed above the high seas, etc.; (2) When in one of the preceding cases, the aircraft does not carry marks of nationality, or carried false marks of nationality, the wrong is deemed to be committed in the country to whose jurisdiction the author of the wrong is amenable; (3) The dispositions relative to wrongs committed on board aircraft are not modified wherein the flights are limited to a single country.

(c) *Des crimes et délits commis à bord d'aéronefs en vol,* M. Pholien, pp. 289-296.

The viewpoint of the author of this article can be best explained by way of his summary, which is essentially as follows: (1) In case of a crime or of a wrong committed on board an aircraft, whatever its nationality may be and whatever may be the place of violation, the courts of the country where the landing is made are to take cognizance. (2) The person invested with authority on board shall take all measures necessary for the verification of the fact, the preservation of the evidence for conviction and the placing of the accused at the disposition of the judicial authority. (3) He shall advise by radio, or by the most rapid means, the competent judicial authority of the nearest port and, at the moment of landing, deliver to it, along with the accused, the evidence for conviction and the essentials of the investigation. He shall take care to make certain that the witnesses do not depart. (5) In case the judicial authority at the place of landing decides that it is not necessary to institute proceedings, it shall free the accused and shall bring its decision to the attention of the Government over the territory of which the crime or wrong has been committed and shall transmit to it, at the same time, the documents of the procedure. The latter government remains free to proceed. (Sections 4 and 6 are here omitted.)

(d) *L'hydravion,* Rudiger Schleicher, pp. 297-298.

The author raises the question as to whether or not special regulation for this class of aircraft is justifiable, and then demonstrates that no general regulation will meet the facts of the situation. He indicates that the regulations must be somewhat different for the various classes of water dealt with—whether it be an open sea, a great navigable stream, a smaller stream, etc. He compares an aircraft upon the water with a steamer and shows wherein the aircraft is more or less manoeuvrable, and then summarizes by offering certain principles which should govern several important situations.

8. Il Diritto Aeronautico, August, 1928, Vol. VII. No. 4.

(a) *Il protocollo di revissione della Convenzione di Parigi per il regolamento della navigazione aerea (first installment),* Amedeo Giannini, pp. 273-282.

The discussion of this subject centers on proposed changes in the Convention of 1919 (CINA), particularly in Articles 1, 3, and 5. The author

reviews the existing situation under the provisions of the Convention of 1919 (CINA), the Convenio Ibero-americana navegación aérea of 1926 (CIANA) and the Pan-American Convention of 1928 (PAC), and presents the suggestions advanced for re-stating the three articles mentioned, together with a discussion of their merits and defects.

(b) *L'Unione internazionale aeronautica* (concluded), S. Cacopardo Mleita, pp. 283-317.

The third and final installment of this article deals primarily with the function and work of the International Air Navigation Commission (CINA). The author discusses the creation of the Commission, debatable questions concerning organization phases and representation; the nature of the functions of the Commission—administrative, etc.; the dual nature of the institution; duties of the Commission—administrative, legislative, legal, etc.;—the independence of the Commission and its relation to the League of Nations; the silence of the Convention of 1919 on the question of private law, and the international movement for the codification of private law.

9. NIEMEYERS ZEITSCHRIFT FÜR INTERNATIONALES RECHT, Vol. 40, Nos. 5-6, August. 1929.

(a) *Patentverletzungen durch den internationalen Luftverkehr,* Dr. Günther Alexander-Katz, pp. 410-418.

The author is here concerned with the legal conflicts, relative to patent infringement, between the Convention of 1919 (CINA) and the revision, in November, 1925, at the Hague Conference, of the Agreement of 1883, together with the provisions of the particular national patent law. The provision in Article 18 of the CINA Convention deals with precedural matters, and makes aircraft passing through the territory of a contracting State exempt from seizure, under certain conditions, on the ground of infringement of patent, design, or model. The particular agreements made by Germany with France, Great Britain, Italy and Spain, etc., follow this general provision. On the other hand, the provisions as revised in 1925 at the Hague Conference (Art. 5, No. 2) deal with substantive law and refer to the use of patents in the construction and operation—together w ihthe accessories. The author indicates the difficulty involved in these various provisions—where aircraft of various countries are involved, and shows an added complication brought into the problem, through the question of aircraft nationality determination.

10. THE CANADIAN BAR REVIEW, Vol. VII, No. 8, October, 1929.

(a) *Le Droit Aérien,* Pierre Frank, pp. 491-499.

The article presents the address of the author before the faculty of law of the University of Montreal, and offers an interesting resume of the problems and developments in the field of air law. The paper deals with the sovereignty problem, the question of nationality, and immunity of certain classes of aircraft. The liability of the carrier by air to passengers, to personnel and to third parties is discussed, and the author cites a case coming before the Paris Court of Appeal relative to the liability of an operating company for forcing a pilot to fly during bad weather. The Convention of 1919 is briefly outlined together with the work of the CJIA relative to the Code international de l'Air.

11. Il Diritto Aeronautico, October, 1929, Vol. VII, No. 5.

(a) *Il protocollo di revissione della Convenzione di Parigi per il regolamento della navigazione aerea* (concluded) Amedeo Giannini, pp. 361-376.

The author continues his detailed analysis of the provisions of the Convention of 1919 and discusses at considerable length the ideas advanced by Dr. Alfred Wegerdt, of Germany. The articles considered are Nos. 15, 18, 19, 23, 26, 30, 32, 34, 37, 41, and 42. He also considers the question of what language or languages shall be officially recognized for the text of the Convention, the possiblity of revision of some of the annexes, particularly Annex H, relative to customs, and the need for as much uniformity as possible to obtain in the existing agreements to promote the development of international air traffic.

(b) *La classification des aeronefs et le role du Bureau Veritas,* George Ripert, pp. 384-393.

This article deals with the Lloyd organization, founded in France in 1822, which, by decree of October 2, 1922, was authorized to supervise French civil aircraft in much the same way as it had served for sea carriers. An aviation section was created and rules were issued showing the conditions of classification, necessary requirements for approval, etc. However, approval by this section is not to be considered as a guaranty for the owner or manufacturer is to be held responsible for any damage done after approval has been given by mistake as to the real qualities of the aircraft. According to the author, the private organization has functioned extremely well and has rendered Governmental supervision unnecessary.

Fred D. Fagg, Jr.

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