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(a) *La Convenzione Panamericana Sull'Aviazione Commerciale,* Amedeo Giannini, pp. 425-437.

The first two sections of the review present a detailed chronicle of the activities of the Pan-American Conference on Commercial Aviation, with comparative notes upon the Conventions of Paris and of Madrid. It contains an epitome of the 37 articles adopted by the Conference, many of which are adopted from the previous conferences mentioned.

In the third and fourth sections, the writer offers a summary and critical commentary upon the work of the conference. He says: (1) Many of the articles are literal reproductions (i. e. of the articles of the previous conventions). (2) Others are reproduced with modifications, most of which are relatively unimportant. (3) Few of the articles are new, and of these extremely few represent radical departures from those of the Convention of Paris.

All three of the conventions concur in conceding the sovereignty of the air, of innocent passage established in the conventional way, of prohibited zones and transports, of classifications of aircraft, of national registrations, of nationality, etc.

"Without exaggerating, we may conclude that the Pan-American Convention is an adaptation of the Paris Convention to the exigencies of Pan-American aviation, just as the Madrid Convention was an attempt to apply the pronouncements of the Paris Convention to the Ibero-American needs."

In considering the juridical importance of the convention, it is well to remark that the results of the convention are predicated upon an identity of continental interests, although the convention affords an opportunity for participation by every state. But such participation is of little importance to states other than American.

The author criticizes what he conceives to be an exaggerated emphasis upon "Pan-Americanism," and regrets that the conference has not exerted its power toward establishing a universal norm. He feels that commercial aviation is of sufficiently universal importance to elicit some more general, less particularized policy than lately announced. He expresses the hope, however, that future coöperation between the Paris and Pan-American Conventions may obviate the embarrassments of the present relatively disunited efforts.

(b) *Le Concessioni Di Linee Aeronautiche,* C. Savoia, pp. 447-467.

In (1) the state's sovereignty of the air is universally affirmed, although predicated upon diverse theories, such as dominion *usque ad coelem,* right of state to protection, and other hypotheses.

In (2) the authorizations accorded by the State to private lines are called "concessions of air lines." In (3) concessions are divided into two categories: (a) concessions for regular public service; and (b) other concessions, such as for instruction, etc. It is with the first of these clauses

that the present paper is concerned. The right of the sovereign to accord permission to private companies is sustained, as a jurisdiction proposition, upon several hypotheses. It is sometimes supported as a contract between the sovereign and the company, the consideration being the reciprocal obligations and rights incurred. A more elaborate theory conceives it as a delegation by the sovereign of a privilege in the nature of that which Anglo-American scholars would term a franchise or public license. These two theories are the subject of commentaries by the author.

(4) and (5) deal with a detailed catalog of privileges already granted. (6) treats of the nature of the privileges, and notes the tendency toward a uniform policy of the law in granting such privileges. (8) suggests the provisions of the grants, and enumerates the prerequisites for such grants—citizenship, good character, technical and financial ability, and collection of sums due by virtue of the grant.

(9) contains statistical data upon the adjustment of subsidies, justifying them as necessary to an uncertain and infant public service. (10) discusses the termination of concessions. (11, 12, 13, 14, 15) present fiscal data, such as rates, routes, time-schedules, etc., licenses, etc. (16) discusses tax exemptions. (17, 18) discuss the regulations imposed by the Convention of Paris, and the right of the government to inspect, control and supervise the exercise of the concession.

(19 provides for possibility of revocation in the case of war, and for pre-emption of equipment, but makes provision for indemnities. (20, 21, and 22) discuss provisions for revocation, penalties, and arbitration of disputes by the judiciary at Rome. (23) expresses gratification over the present progress, and expresses the hope that experience will be able effectively to meet the exigencies of practical aviation, and to subjugate the domain of the air space to the uses of man.

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2. DROIT AÉRIEN (Jan.-Feb.-Mar.) 1930.

(a) *La codification du domanie aérien,* Alejandro Alvarez, pp. 1-3.

Here is set out a part of one of the addresses on the codification of international air law, by the Legal Adviser of the Chilian Legations in Europe who presided at the 17th session of the CINA. The author's position is that the Convention of 1919 represents the best means of international regulation and that it may well serve as the model for future codification in the law of nations, since it considers the interests of each state, endeavors to harmonize these diverse interests with the general interest and gives an increasingly greater weight to the latter.

The codification exists in part already and consists: (1) in a general international agreement—the CINA Convention and (2) in the unification of national legislation made possible by international accords—such as those reached in Paris in 1925 and in Warsaw in 1929.

To meet the changing conditions and avoid the rigidity of codification of private law, two processes exist: (1) legislative means—often tardy, and (2) interpretation of existing legal texts by tribunals—which are not always in agreement.

The codification need not be complete nor rigid; it can progress gradually and be modified as conditions change. The mechanism exists in the CINA and its sub-committees.

(b) *La convention de Varsovie et la responsabilité du transporteur aérien,* Maurice Maschino, pp. 4-26.

In this valuable article, the author first briefly reviews the developments of the convention adopted at Warsaw in 1929 (See 1 JOUR. AIR LAW 239) showing that the object of the 1925 meeting at Paris was to provide uniform rules of liability before too great a conflict grew up from the legal differences in the various countries. It was also thought desirable to include in the same convention provisions as to transportation papers.

The convention applies only to commercial air transportation of passengers and goods when that transportation is international in character, but gratuitous carriage is included, except for a non-commercial carrier. The convention applies to international transportation effected by the State in its commercial undertakings, which provision was opposed by representatives of the British Empire and Russia. It was not entirely clear as to whether or not the convention would govern international transport by State aircraft in the interests of the State itself—not in any commercial undertaking. It was thought desirable to add a protocol to Article 2 allowing the dissenting States an opportunity, at the time of the deposit of their ratifications, to reserve from the application of the convention international air transport carried or directly for the State, its colonies, etc. But, it is suggested, this protocol reservation may cause considerable difficulty when the carrier's liability is in question.

The international character of the transport is determined by the contracting parties, the intention of the parties, the place of landing, etc. Transport which, in any way, touches foreign territory is international (Paris-Algiers being national; Paris-Naples-Algiers being international). When the carriage is effected by successive carriers, the whole carriage is considered as a single transaction or operation having international characteristics, but, the author states, the convention does not apply to the carriage by an international air service of persons and goods not destined beyond the frontier. He illustrates the point by taking the case of the Paris-Prague line with intermediate stops at Strasbourg and Nuremberg. If a passenger is bound only for Strasbourg, the convention does not apply to him but does apply to a fellow-passenger destined to a point beyond the French border. This, it is asserted, will result in greater difficulty instead of providing for uniformity.

Having thus defined the scope of the convention, Chapter II is concerned with the transportation papers—tickets, baggage tickets, and bills of lading.

The passenger ticket is readily separated from a stub and contains the place and date of issue, points of departure and destination, stops provided for, name and address of the transporter, and statement as to the governing international liability. Some difficulty arose as to the idea of mentioning the route to be followed at stopping points—due to the fact that, in air transportation, it is sometimes quite necessary to deviate from the scheduled route. Hence, it has been necessary to provide that stops and routes may be modified without having the contract of carriage lose its international character.

The amendments requiring mention of the names, addresses and nationalities of the passengers, as well as the price of the tickets, have not been retained. It had been provided that failure to include these items would leave the carrier unable to invoke the benefit of the convention, but this was thought too rigid a requirement. The absence, irregularity, or loss of the ticket is of no effect, but the voluntary default of any ticket prevents the carrier from availing itself of the convention provisions. National regulations, in such a case, will prevail. The author wonders if this might provide a strategical method through which to avoid the convention.

Luggage tickets are to be made out in duplicate and contain the place and date of issue, points of departure and destination, name and address of the carrier or carriers, number of the passenger ticket, number and weight of packages, declared valuation for anything over the 250 francs per kilogram allowed, and indication that the carriage is subject to the convention.

The bill of lading is issued in triplicate, carries the name of the initial carrier (since the shipper has recourse against him. The consignee has recourse aganst the delivering carrier), the points of departure and destination, the stops, names and addresses of the shipper, and information as to the nature of, weight, etc., of the goods. These items are to be included; others are not essential except for the shipper's own protection in case of loss. The consignee may proceed against the carrier seven days after the goods are due to arrive, and while this seems a short period the writer points out that this period is added to that normally anticipated by the carrier as necessary for the carriage.

Chapter III of the convention deals with responsibility and the author compares the principles therein established with those of common law. In the latter, the carrier liability is entire—so that if the shipper proves the contractual relationship to exist, the carrier can only escape by showing that the loss or injury resulted from an Act of God, etc. But the liability of the air transporter has been modified so that the passenger or user of the service is said to be associated in the air venture and so knowingly takes part or all of the risks encountered. This allows clauses of limitation or of non-responsibility. From a practical point of view, it is difficult for a carrier to show force majeure, or a case of fortuitous circumstances. The aircraft is often burned or destroyed. The French law has authorized the exoneration of the carrier in consideration of the risks of the air and faults committed by its officers in the conduct of the apparatus; faults of navigation would escape from all recourse.

The air carrier continues to enjoy a privileged position, but the convention adopts the position of limited liability and a clause which exempts the carrier or seeks to establish a lower limit of liability is void. In what situation will this principle of limited liability apply? Relative to passengers, the carrier is liable in case of death, injury, or bodily harm sustained in an accident on board or in the course of embarcation or debarcation operations. If the consequences of the accident do not manifest themselves for a considerable time afterwards, the injury is covered by the law, as shown later. Relative to goods, the carrier is responsible for damages sustained in case of destruction, loss, or injury when the initial cause resides in the air carriage; this transportation extends from the moment when the carrier assumes charge of the goods, in the aerodrome, on board the aircraft, or, in case of

landing outside an aerodrome, in the place of landing until the moment of delivery; the air transportation does not include any land or water transport outside the aerodrome.

Under the provisions of the convention in the case of injury to passengers, if the carrier shows that all measures necessary to avoid the damage have been taken, or that it was impossible to take any measures, it is not liable. Failure to make this proof renders the carrier liable as for its negligence. But note that the air carrier is not liable, in case of goods, if it proves fault of pilotage, conduct of the aircraft or of navigation, or if, in other regards, the carrier and its officers have taken all necessary measures to avoid the injury. This difference in rules was vigorously debated and originated with the German delegation which was impressed with the fact that no real difference had been made between responsibility for persons and for goods. The French delegation proposed to abolish this discrimination, favoring an exoneration for faults of pilotage as much in a carrier of persons as in that of goods; this on the ground that one could demand of the carrier care in providing for the condition of his aircraft and in the selection of personnel for their conduct, that insurance is available to passengers and for goods, and that there is no legal reason for the application of a different standard. The author believes that the system which results from the distincion made will be a conflict between fault and risk—conducive to uncertainty.

Again, if the carrier is to be excused provided all necessary measures are taken, it becomes necessary to have a definition of terms and, according to English common law, this would mean a standard of reasonableness. To prove that these measures have been taken is to prove an absence of fault, but, in either case, what shall be the proof required? The French law provides: "The clause of non-responsibility discharges the carrier only if the aircraft was in a good state of navigation at departure and the personnel furnished with licenses and certificates according to regulations, the special administrative certificates establishing a presumption in favor of the aircraft and crew which can be rebutted by evidence to the contrary."

While severe in one sense, the convention, from another point of view, possesses rules favorable to the carrier. Responsibility for persons is limited to 125,000 francs, 250 francs per kilogram for baggage and freight, and 5,000 francs per passenger for goods in his own possession. Of course it is possible by express agreement to enlarge the amount, provided the declaration of extra value be made at the time of delivery to the carrier and is not a false valuation. The author believes the limitation for passenger liability is too low, in consideration of the class of persons using this method of transportation.

Unlimited liability would work an undue hardship on the air companies and the liability can be covered by insurance, since the insurance companies can clearly measure the risks and cover them. If insurance is to be relied upon, the sum recoverable is not so important. And a general system of insurance seems probable.

One other matter is to be considered:—the fact that, with rare exception, the indemnities are borne, in the last resort, by the public funds through subsidies to the companies assuring them of a balanced budget.

The last section deals with the procedure of recovery against the air companies, showing the time limit for filing written claims, etc. The author

states the effect of the convention as follows: In place of a contractual non-responsibility, which has been rejected, there has been instituted a limited legal responsibility sufficiently precise to allow a calculation of probabilities both for the risks to cover and the amount of premiums to cover them. He does think the convention is not inclusive enough—that there are too many services outside the provisions. National laws are, and should be, made with reference to this convention, and the work at Warsaw, while possessed of some imperfections, has been a great achievement.

(c) *La circulation aérienne au-dessus de la mer,* Cesare Savoia, pp. 27-30.

This is the report of the Italian section of the CJIA at the session of July 21, 1929. In summary, it contains the following principles: (a) The extra-territorial sea is *res communis,* above which aerial navigation remains free. (b) Interior countries can lay claim to no servitude of passage. (c) Assistance to aircraft in peril should be rendered obligatory and the rules of maritime law in force shall govern the question of salvage. (d) Relative to floating islands (sea dromes), stations of supply, posts of assistance, etc., it seems opportune to await government opinion, since political as well as juridical questions are involved. See also part (5) as to the situation in case of war.

(d) *Le Commité International Technique d'Experts Juridiques Aériens et l'Unification internationale du Droit privé aérien,* Edmond Sudre, pp. 31-40.

The author, who is secretary-general, reviews the history of the CITEJA, showing that it came into being through invitation on the part of the French government, through M. Poincaré, to participate in an international conference held at Paris in October and November, 1925, for the purpose of unification in international private law. The initial study concerned itself with the responsibility of the air carrier, but it was soon evident that other questions demanded attention and that a permanent body was necessary to represent the 43 nations.

In January of 1926, another proposal from France suggested the creation of a Committee of Experts—an independent organization for consultation, it being understood that each State was to preserve its entire sovereign rights. Twenty-eight nations were represented in Paris in May 1926 and established the CITEJA. (The U. S. was represented among the 28.)

The Comité has four Commissions as follows: (1) Dealing with nationality and registration of aircraft, ownership, mortgage, etc., (2) Considering commercial and private carriage, responsibility of carriers to persons for goods carried, etc., (3) Responsibility to persons and for property on the ground, limitation of liability and insurance, and (4) Legal status of commander and personnel, accidents, laws applicable to acts committed on board the aircraft, etc.

The author then states the record of meetings and the tentative drafts already prepared by the various commissions of the CITEJA, and points out that there is a real need for such an organization. This article will be found valuable for its clear statement as to the origin, history and functioning of this highly important body. It furnishes information that has been lacking for some time.

(e) *Commission Internationale de Navigation Aérienne,* 17th session, pp. 159-163.

Among the resolutions adopted at this session in Paris, Dec. 10-11, 1929, is one which brings a change in Articles 34 and 40 of the CINA, and by which The Dominions of the British Empire acquire the quality of member states of the Commission. Thus, paragraph 3 of Article 34 now reads: "Each State represented on the Commission shall have one vote," and the first paragraph of Article 40 which reads: "The British Dominions and India shall be deemed to be States for the purposes of the present Convention" is omitted.

At the 15th session the Commission adopted the following resolutions:

No. 471 relative to radio provided in Convention Article 14—(1) Every aircraft destined to public international transport and capable of accommodating at least ten persons, including crew, shall, from January 1, 1930, be equipped with radio apparatus (sending and receiving radio telegraph and radio telephone). (2) Such apparatus shall be employed according to the conditions provided by the International Radio Convention at Washington. (3) Deals with types of radio prohibited in aircraft (Type B of the General Regulations of the Washington Convention). (4) Deals with suspensions of the regulation when the use of radio would be of no avail due to lack of radio services on the ground useful to air traffic.

No. 483 relative to making it easier for overflying aircraft to determine the nationality of vessels at sea, it is proposed that the national flags be kept hoisted or that nationality marks should be placed on the vessels so that they can be determined easily from above.

(f) *Comite Juridique International de L'Aviation,* pp. 164-166.

Contains the essential comments made to Articles 1-2 regulating air navigation over the seas. Compare the Italian position in (c).

(g) *Union Postale Universelle,* pp. 167-186.

The ninth Congress of the Postal Union was held in London from May 18-June 28, 1929, and from it issued the text which from July 1, 1930, will regulate the international postal relations for the next five years. The entire text is set out, with new and modified parts shown in italics.

(h) *Corcoll v. Latécoère* (Montpelier Court of Appeal July 26, 1929).

(1) In personal actions, the proper tribunal is that of the domicile of the defendant except in case of legislative provisions to the contrary. (2) In case of damage caused by the evolutions of an aircraft or objects which become detached from it, Article 56 of the Law of May 31, 1924, allows the plaintiff the choice between the tribunal at the place where the injury has been caused and that of the domicile of the defendant. (3) The fact that the defendant alleges the fault of the victim does not affect the jurisdiction.

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