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HABANA CONVENTION ON COMMERCIAL AVIATION

STEPHEN LATCHFORD*

The Habana Convention on Commercial Aviation which was one of several conventions adopted at Habana on February 20, 1928, by the delegates to the Sixth International Conference of American States, was approved by the Senate of the United States on February 20, 1931.

The representatives of the United States at the Habana Conference were: Charles Evans Hughes, Noble Brandon Judah, Henry P. Fletcher, Oscar W. Underwood, Dwight W. Morrow, Morgan J. O'Brien, James Brown Scott, Ray Lyman Wilbur, Leo S. Rowe.

Pursuant to the terms of Article XXXIV the convention will come into force as to the United States in respect of other countries which have ratified it, forty days from the date of the deposit by the United States of its ratification with the Cuban Government, which, under the terms of Article XXXIII is made the depository of ratifications.

The delegates to the Fifth International Conference of American States held at Santiago, Chile, from March 25 to May 3, 1923, adopted a resolution providing for the creation of an Inter-American Commercial Aviation Commission to meet at a place and date to be determined by the Governing Board of the Pan-American Union to consider problems relating to aviation. The conclusions of the commission were to be drawn up in the form of a convention or conventions, and submitted to the consideration of States members of the Pan-American Union. The commission met at Washington on May 2, 1927. The United States was represented at the sessions of the commission by three delegates: Mr. William P. MacCracken, former Assistant Secretary of Commerce for Aeronautics, Mr. Harry F. Guggenheim, and Mr. John Lansing Callan. A draft of a convention on commercial aviation approved by this commission constituted the basis for the convention on commercial aviation adopted at Habana on February 20, 1928. The convention has so far been ratified by Mexico, Nicaragua, Panama and Guatemala.

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The convention includes provisions relating to marking of aircraft, landing facilities, prohibited transport, competency of airmen, registration of aircraft, prohibited areas and the rights of each state to prescribe the route to be followed over its territory by the aircraft of other States.

The convention was designed to meet conditions existing in the Western Hemisphere and to permit the gradual adoption of such rules and regulations in conformity with the principles established by the convention as may be found by experience to meet the requirements of aerial navigation in the Western Hemisphere. Provisions relating to action to be taken to bring about uniformity in laws and regulations regarding aerial navigation are to be found in Articles XXXI and XXXII. By the terms of Article XXXI the contracting states obligate themselves in so far as possible to cooperate in inter-American measures relative to:—(a) the centralizing and distribution of meteorological information, whether statistical, current or special; (b) the publication of uniform aeronautical charts, as well as the establishment of a uniform system of signals; (c) the use of radiotelegraph in aerial navigation, establishment of the necessary radiotelegraph stations and the observance of the inter-American and international radiotelegraph regulations or conventions at present existing or which may come into force. It is provided in Article XXXII that the contracting states shall procure as far as possible, uniformity of laws and regulations governing aerial navigation. It is further provided in the same article that the Pan-American Union shall cooperate with the Governments of the contracting states to attain the desired uniformity of laws and regulations for aerial navigation in the states parties to the convention.

Other provisions of importance are found in Articles IV, V, XXI and XXII. By the terms of Article IV each contracting state undertakes in time of peace to accord freedom of innocent passage above its territory to the private aircraft of other contracting states, subject to observance of the conditions laid down in the convention. Article V accords to each of the contracting states the right to prohibit, for reasons which it deems convenient in the public interest, flights by aircraft of other contracting states over fixed zones of its territory, with a reservation that no distinction shall be made in this respect between its own aircraft engaged in international commerce and those of other contracting states likewise engaged. Article XXI provides that aircraft engaged in international air commerce shall be permitted to discharge or take on at different

airports in a contracting state passengers or cargo from or destined to points beyond the borders of such state.

Article XXII accords to each contracting state the right to establish reservations and restrictions in favor of its own national aircraft in regard to the commercial transportation of passengers and merchandise between two or more points in its territory, and to other remunerated aeronautical operations wholly within its territory.

A permanent international commission for air navigation was established pursuant to the terms of Article XXXIV of the International Convention Relating to the Regulation of Aerial Navigation signed at Paris, October 13, 1919. This commission is clothed with certain executive and administrative functions, and has authority to make amendments in annexes A to G inclusive, of that convention. These annexes contain technical rules and regulations designed to give effect to the convention. No such commission is provided for in the Habana convention on commercial aviation, nor are there any annexes to that convention. However, in addition to the provision in Article XXXII of the Habana convention that the Pan-American Union shall cooperate in obtaining uniformity of laws and regulations in regard to aerial navigation, there are provisions in a number of other articles of this convention to the effect that the Pan-American Union shall be furnished by each of the contracting states with data on various subjects such as nationality marks, registrations and cancellations of registration of aircraft, regulations governing the rating of aircraft as to airworthiness, and restrictions in regard to prohibited transport.

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