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INTERNATIONAL AIR LAW IN THE
AMERICAN REPUBLICS*

Brower V. York†

I. DEVELOPMENT AND CHARACTER OF INTERNATIONAL AIR LAW IN AMERICAN REPUBLICS.

The first flight by man in a heavier-than-air machine was accomplished by the Wrights at Kitty Hawk, North Carolina, on December 17, 1903. Many flights in lighter-than-air craft are known to have occurred in the eighteenth century and earlier; the first in the western hemisphere appears to have been that by a Frenchman who ascended at Philadelphia carrying a passport from President Washington, whose duties then were carried out in that city.

Learned societies had given some attention to air law before the turn of the present century but in 1903 Fauchille undertook

*NOTE—This article was prepared as a thesis in the seminar of the School of Foreign Service, Georgetown University, under the supervision of James Brown Scott, President of the American Society of International Law, President of the American Institute of International Law, and Secretary of the Carnegie Endowment for International Peace. Dr. Edmond A. Walsh, Regent of the School of Foreign Service, has very kindly given consent to have the manuscript published in The JOURNAL OF AIR LAW.

†This paper is prepared to fulfil in part the requirements of the School of Foreign Service of Georgetown University to be met by a candidate for the degree of Master of Science. The subject was chosen because it has not been developed and in the hope that it will soon receive the wider attention it deserves. It is intended here to treat the subject without bias but in the fair, constructive way that my instructor, Dr. James Brown Scott, deals with matters of international law and international relations.

Some writers appear to see nothing but good in the International Convention for Air Navigation and in the International Commission for Air Navigation. The American republics have been urged to ratify the convention and to apply its detailed rules as well as those which may be made by the commission. It is submitted that the American republics are following the proper course. Conditions vary with continents. In ours we are working out the problems of aviation in the way that seems best to us. We accept that from others that seems better just as they borrow from us. In these great American countries we like to determine our course and to cooperate. It seems that progress is more certain in that way than if we followed an international leadership no matter how competent.

It is hoped that additional interest will soon be aroused in this subject. Aviation is certain to have a greater future (greater than can now be visualized) and greater nowhere than in the Americas. Additional principles are already needed and as fast as they can be borrowed from other branches of law or developed in other ways they should be given that consideration they must have in every country in order that progress may be well regulated and well based.

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to draw up a code of air law in compliance with a resolution of the Institute of International Law. Advancement in the sciences and arts involved in building and operating aircraft was slow up to the outbreak of the World War, but although increasing attention was directed to air law, its advancement appears to have been much slower. There was an extraordinarily rapid advance during the war years; since that time the progress in building aircraft and in flying has been rapid but the development of air law has been slow.

**Air Laws**

There was but little statutory air law enacted prior to 1914. Many such laws and regulations followed shortly after the armistice of 1918, particularly in European countries. Early air laws in American countries were promulgated in Colombia and Venezuela in 1920. Some other American countries had air laws in 1925; several enacted such legislation in the following years, particularly from 1928 to 1931.

**Air Conventions**

There were international declarations at the First and Second Hague Conferences\(^1\) and other agreements and conventions affecting air navigation to some extent but the first treaty provisions of first importance are those embodied in the Treaty of Peace, signed at Versailles, June 28, 1919. In that treaty, Articles 198-202 and 313-320, rigid restrictions were imposed on aviation in Germany and the allied nations were guaranteed certain rights in German airspace for a fixed period of time. The first distinctly air convention is the International Convention for Air Navigation, signed at Paris October 13, 1919, by twenty-nine nations in all continents. (It is now in effect in twenty-six countries, sixteen of which are in Europe.) The American republics which signed are Bolivia, Brazil, Cuba, Ecuador, Guatemala, Nicaragua (on December 31, 1920) Panama, Peru (on June 22, 1920), the United States of America and Uruguay. Bolivia, Panama and Uruguay ratified the convention. Chile adhered on January 1, 1926. Bolivia

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\(^1\) At the First Hague Conference a declaration was signed on July 29, 1899, prohibiting the discharge of projectiles and explosives from balloons. *Documents Diplomatiques Conférence Internationale de la Paix, 1899*, p. 100. At the Second Hague Conference the same declaration was renewed October 18, 1907. *Documents Diplomatiques, Conférence Internationale de la Paix, 1907*. France, Ministère des Affaires Étrangères.
renounced the convention effective August 30, 1924. Panama renounced it effective about October, 1931. The convention is in effect in the Dominion of Canada and in all the colonies in the Americas, since the Dominion of Canada, Great Britain, France and the Netherlands are parties to it.  

The second collective international air convention is the Ibero-American Convention on Air Navigation, signed at Madrid in October, 1927, by Spain, Portugal and all the American republics except Haiti and the United States of America. It has been ratified by Spain, and by Costa Rica, the Dominican Republic, Mexico and Paraguay; thus four American republics are parties to the Ibero-American Convention.

The third and last of the three collective international air conventions is the Pan American Convention on Commercial Aviation, signed at Habana on February 20, 1928, by all the American republics. Ratifications have been deposited with the Government of Cuba by Guatemala, Mexico, Nicaragua, Panama and the United States of America. The dates on which the treaty became effective in each of these countries are, in order: February 6, 1930; June 3, 1929; June 13, 1929; June 18, 1929 and August 26, 1931.

Of the nearly one hundred bilateral air conventions, many are agreements covering the operation of scheduled air services and several are between nations not members of any collective air convention and between such nations and members of a collective convention. Only five of these bilateral arrangements apply to American republics. The first is that between Argentina and Uruguay, effective November 18, 1922. The other four are between the United States of America and the Dominion of Canada, the United States of Colombia, the Union of South Africa and the Kingdom of Italy. The Argentine-Uruguayan general air convention, granting reciprocal rights, is in accord with the principles set forth in the Pan American Convention on Commercial Aviation.

The arrangement with the Dominion of Canada deals with the admission of civil aircraft, the issuance of pilots' licenses and the acceptance of certificates of airworthiness for aircraft imported.

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3. Text is contained in Gaceta de Madrid, April 23, 1927.
4. Text may be found in Sixth International Conference of American States, Report of the Delegates of the United States of America to Department of State, Washington, 1928, pp. 177-189.
5. Reported by the American Consulate General, Buenos Aires, June 16, 1922.
as merchandise. It became effective October 22, 1929. The arrangement with the United States of Colombia, effective February 23, 1929, concerns the privilege of aircraft of Colombia to fly over the Panama Canal Zone and along the Atlantic and Pacific coasts of the United States and to land, receive aid and supplies, and to discharge and take passengers and cargo, and reciprocal privileges for United States aircraft along the Atlantic and Pacific coasts of Colombia. The arrangement with the Union of South Africa deals with the acceptance by the competent authorities of one country of certificates of airworthiness for aircraft imported from the other. This limited trade arrangement became effective December 1, 1931. The arrangement with Italy is less limited than those with Colombia and the Union of South Africa and is similar to that with the Dominion of Canada; it is effective from October 31, 1931. All these arrangements were effected by an exchange of notes and they are of a more limited and less formal character. They are in strict accord with the Pan American Convention.

Air Conferences

An important conference influencing the development of international air law was that held at Santiago, Chile, in March, 1916, and known as the Pan American Aeronautical Conference. This unofficial conference was attended by delegates from Argentina, Bolivia, Brazil, Chile, Ecuador, Paraguay, Peru, the United States of America and Uruguay. A review of the recommendations of this conference is given in a footnote because it appears to be a summation of the best thought to that time.

11. The following was received through the kindness of Edward Schuster, Esquire, of New York. It was translated from a work by Dr. Daniel Antokoletz, Professor of Public International Law in the Faculty of Law and Social Sciences of Buenos Aries, entitled Tratado de Derecho Internacional Público en Tiempo de Paz, 2nd. edition, Buenos Aires, 1928; vol. II, pp. 373-4. Dr. Antokoletz gives a source: Documentos Diplomáticos
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A number of other conferences, official and unofficial, have been held, most of them in Europe. The first appears to have been that at Paris in 1889. This was a semi-official conference with delegates from Brazil, France, Great Britain, Mexico, Russia and the United States of America. Cuba, Ecuador, Mexico and the United States were represented officially at the second, at Paris in 1890. Eighteen European nations attended the International Conference on Air Navigation at Paris in May, 1910. The licensing of aircraft and of airmen, the responsibilities of airmen and of aircraft owners, control of the airspace and other questions were discussed. In recent years international air conferences have been more numerous but most of them consider phases of the work of developing air law and other aeronautic subjects rather than the whole field of aeronautic development. A notable exception is the International Civil Aeronautics Conference, Washington, October, 1928. American republics give considerable attention to aeronautic conferences and contribute greatly to the settlement of questions of international air law.


We should also recall the Pan American Aeronautical Conference, unofficial, which met in Santiago, Chile, in March, 1916, and recommended to the American republics that, in legislating on aerial locomotion they take into account the following principles: States have a right of sovereignty in the space which overlies their territories; private airships belonging to citizens and juridic persons of a State, should enjoy the right of innocent passage across the air space of other States; navigation over the American continent and its adjacent seas must be free for all American and foreigners domiciled in America, without other restrictions than respect for the laws which each country may issue on the subject; States should regulate international aerial circulation, harmonizing State rights with aeronautics; the space beyond the height which can be utilized by the owner of the subjacent land, is national property of public use; the nationality of airships is that of their owners; the aerial ship must be registered; in aerial warfare it is a duty to expose pacific areas of population to the least possible perils, and the employment of aerial ships is lawful whenever they do not present greater perils than land or maritime warfare; the discharge of projectiles—especially everything which may serve the success of military operations—is permitted; private property in the air is inviolate; States at war must endeavor not to embarrass the commerce of neutrals, saving the destruction of contraband of war; neutral States are inviolate; aerial navigation should be utilized by the Red Cross; the American countries should render uniform their aerial legislation and prepare an international air code; it is desirable that, by means of an international accord, free transit be facilitated, as well as the arrival and departure of airships through the aerial territory of each American State.

Organizational Activities

The International Conferences of American States have undoubtedly strengthened the bonds between American republics and contributed to the development of international air law. The Inter-American Commercial Aviation Commission was appointed by the Fifth Conference, held at Santiago, Chile, in 1923, to draft a bill of laws to be recommended to all American republics with a view to providing reasonable and proper rules for the control of international air navigation. The commission prepared a draft which was revised by the Sixth International Conference of American States at Habana; there the approved document was signed by the delegates of all American republics.

The International Aeronautic Federation, the International Air Traffic Association, the International Juridical Aviation Committee, the International Technical Committee of Juridic Aeronautic Experts, the International Chamber of Commerce, international and national law associations and other organizations contribute to the development of international air law. American republics take part in much of the work of these organizations.13 The Air Law Institute and the American Academy of Air Law are active; they publish the "Journal of Air Law" and the "Air Law Review", respectively, in the United States. These publications, like the Revue Juridique Internationale de la Locomotion Aérienne, the new Rivista di Diritto Aeronautico and other international law journals contribute a great deal toward the advancement of the law.

Present International Air Law

The existing international air law, so far as the American republics are concerned, is limited almost entirely to that contained in conventions. The cases brought before courts of justice and published diplomatic correspondence have not contributed to a measurable degree. Domestic legislation is highly indicative of the doctrines of law supported and of the policies of the republics.

Practically all the international air law accepted in American republics is public air law. A proposed code of private international air law is being drawn up by the International Committee of Technical Juridical Air Experts composed of representatives

13. The organization, the history and the work of these international aeronautic organizations, and others which deal with the subject, are described in the Revue Aéronautique Internationale, numbers 1 and 2 of which have been published by Albert Roper, at Paris.
from thirty-three nations, including Argentina, Brazil, Colombia, the Dominican Republic, Guatemala, Mexico, Peru and the United States of America. A convention for the unification of certain rules relative to international air transport was signed at Warsaw, Poland, late in 1931 for twenty-three nations including Brazil. That preliminary code, the product of the International Committee of Technical Juridical Air Experts, may soon become operative and it is expected that the work of the committee will result in the addition of and wider acceptance of principles of private international air law.¹⁴

The rules of air warfare are in such an unsettled state that it is thought better not to attempt to set them forth. It is believed that there are certain reasonably well settled rules of war applying in the Americas which would be adapted to air warfare and used if necessary.

The accepted doctrines of international air law have been taken largely from existing principles, some of them principles of maritime law. Some have urged that admiralty law might be taken over bodily but while there is much similarity in the two means of travel there are many differences. The rules governing railways cannot be used without alterations. The matter of jurisdiction in cases of acts done in the air is a mooted one. The law of the country of the aircraft might govern; or should the law of the country over which the aircraft was flying at the time (provided it were known exactly) or the law of the country whose national was injured by the act apply? Births and deaths offer problems. Spaight said:

Flight, of its nature, has been the creator of new difficulties in both public and private international law. It is something so inherently and preeminently international itself that it was bound to have this effect.

Then he observed that, "Justinian never foresaw that Icarus would disturb so inconsiderately the Code, the Digest, the Institutes and even the 'Novels'".¹⁵ It is not difficult to realize that most of the questions of international air law and particularly of private air law remain for determination.

International rules for the conduct of international air navigation are becoming more and more necessary. Aeronautic interests clamor for more freedom of action, fewer restrictions upon the

¹⁴. Revue Aéronautique Internationale, No. 1, September, 1931, pp. 11-16. (The text of the code is on pp. 83-86.)
movement of the most speedy vehicle man has used for travel and transportation. There are some seventeen thousand civil aircraft in use; some two-thirds of them are in American countries and a few hundreds of them are used in international air navigation. In the American republics alone, last year aircraft flew over fifty million miles in scheduled services and about one-eleventh of that mileage was flown in international air services. Some six hundred thousand passengers were carried on scheduled services in these republics last year; over fifty thousand of them on international services. About one-third of the two hundred thousand miles of scheduled air services in the world are in American republics where six-tenths of the world's scheduled service flying was done last year. But in Europe, Asia and Africa a larger proportion of the flying is international in character. Aeronautic activity increases rapidly.

It was said that practically all the international air law recognized in American republics is that included in conventions. The principal portion of such law is that set forth in the Pan American Convention for Commercial Aviation. That convention is in force in five countries. It has been signed by all of them, and since (in point of time) they thus indicated their approval of the two preceding conventions. That it has not been ratified by more of the signatories may properly be ascribed, to a considerable degree, to more pressing national problems in these recent trying years. Indeed many of them have revised old air laws to make them harmonize with the convention and others have promulgated their first laws and/or regulations all of which are in harmony with it. Its influence is shown in concessions granted by governments to air service operating companies. Mr. Gonzalo Garcia writing in "La Nacion" urged against the ratification by Argentina of any collective international air convention. The argument was based upon the ground that Argentina had not developed aviation activities of international importance and that that country should not compromise its potential future development in this field but leave such arrangements until they might be more needed. The declaration might have been made in some other American republics, all of which are slow about ratifying conventions—and perhaps properly so. (Most European countries have state-operated or state-aided air services and most of their services cross international

16. The Ibero-American Convention runs in four American countries and the International Convention in two.
17. Buenos Aires, April 6 and 7, 1927.
boundaries; that explains why it was necessary to have international air laws in effect immediately after the World War.) It will be remembered that the Pan American Convention applies in five of the twenty-one republics (Guatemala, Mexico, Nicaragua, Panama and the United States); one of these—Mexico—with three others has ratified the Ibero-American Convention; two others are members of the International Convention; so that only ten of the republics are members of collective international air conventions and five of these are members of the most recent and the only one signed by all of them.

The Three Collective Conventions

That nations should agree upon at least some basic principles of law governing international flight long has been obvious. But that all phases of air navigation, including the domestic control of it in every detail, should be controlled by an international convention and its operating organization which is at once a study, legislative, administrative and judicial and advisory body, all nations are not agreed. Nor are they of the same mind upon some basic principles of international law and of national and international policies which are so largely responsible for the shaping of international air law. Doctrines on neutrality, for instance, vary. Some countries are more inclined to international cooperation than others. For example, some European nations, small in area and economically bound together, find the bonds of the League of Nations more agreeable than do many nations in quite different circumstances.

The International Convention for Air Navigation was drawn up hurriedly, in the midst of European conditions, and largely by men who had carried on the work of the Interallied Aviation Committee (a part of the Supreme War Council), rather than by jurists. If we examine this regulation objectively (Article 5 of the convention) we must admit that it was directed not only against Germany and its former allies, but against every State, even against a State forming part of the Allied and Associated Powers, if it did not adhere to the CINA. Originally Article 5 prohibited a contracting nation from granting

any but a temporary and special authorization for flight above its territory by an aircraft of a non-member nation. After protests by neutral nations and upon the entry into force of the convention in 1922, Article 5 was changed to permit member nations to authorize such flights under special conventions with non-member nations. But such conventions could not fail to conform to the rules in the convention and its eight annexes. Member nations were still unduly limited.

Article 43 was complained of because it gave control of the International Commission for Air Navigation to five nations. It was corrected to some extent by a protocol which did not come into effect before the Ibero-American Convention, which gave equal representation, a principle followed in the Pan American Convention, was formulated. After the correction three European nations, neutrals during the war, adhered to the convention. After an international conference at Paris in 1929 the third and fourth protocols to the convention were made subject to the approval of member nations. These protocols were intended to meet all the objections and they should, when they become operative, make the International Convention more acceptable to non-member nations.

No provision has been made in the Pan American Convention for such an operating organization as the International Commission for Air Navigation about which it has been written:

One of the most admirable features of the convention of 1919 was the creation of the Commission Internationale de Navigation Aérienne frequently referred to as C.I.N.A. or I.C.A.N. In origin, this organization is the outgrowth of the Interallied Aviation Committee, an important cog in the machinery that won the war against Germany. In practice, it is the principal organ of an international arrangement requiring administrative, legislative and judicial agents. The judicial work of the air regime was assigned by the convention of 1919 to the Permanent Court of International Justice. The administrative and legislative functions were intrusted to the International Commission for Air Navigation.

According to the secretary-general of the International Commission it is:

A Council charged with ensuring the application of the Convention and its normal evolution by proposing in due season to the contracting States the amendments called for by the development of international air navigation; an international parliament having power at all times to adapt

the technical regulations to the requirements of air traffic; a tribunal settling in first and last instance disagreements which may arise between contracting States with regard to the technical regulations which it has power to enact: an advisory committee giving its opinion on questions which the States may submit for examination; and an organization for the collection and dissemination of all information a knowledge of which is indispensable to airmen. No other international organization has been invested with duties so vast.  

It may be considered unlikely that many American republics will be willing to accept such an international organization. Upon the basic principles of international air law they have agreed, as indicated by their approval of international air conventions (so far as they have been approved by signing and ratification) and as indicated by air laws and regulations in American republics. The three conventions are in substantial harmony on such points as national sovereignty over airspace, nationality of aircraft, admission of aircraft of foreign nationality. The Ibero-American and the Pan American Conventions have gone progressively toward less centralized control and more national control or toward the excellent principles laid down at the Santiago conference in 1916, and toward cooperation among the member nations in the interest of uniformity. The Ibero-American and the Pan American Conventions provide for the settlement of disputes by arbitration, a popular means in the Americas. The Pan American Convention leaves the rules contained in the annexes of the International Convention and covering the regulation of the display of nationality and registration marks on all aircraft; the certificates of airworthiness; the log-books; the lights and signals and rules for air traffic; the issuance of certificates for pilots and navigators; the collection and dissemination of meteorological information; and customs formalities to the member nations in whose province they must belong.

The way is open for additions to the code of international air law. American republics are advancing along that way in accordance with their circumstances and the desires of each of them. There should be no difficulty in attaining uniformity, but it is the American way to act individually rather than to follow or to set up any central authority.

II. AIRSPACE

Airspace has been defined as all that space in the air above

the surface of the land or water. National airspace is that airspace above the lands and waters of the nation, including the territorial waters extending the customary and arbitrary distance of three miles to sea. The airspace over the seas is generally considered to be international airspace in the same manner as the seas beyond territorial limits are considered to be beyond the control of any nation or group of nations. Whether the airspace over internationalized rivers and other small bodies of water within a country, as the Amazon or Danube rivers, is also internationalized or not remains for determination. No record of an attempt to determine the point either in America or other countries has been found. Some importance attaches to the point since Chinese authorities protested the use of Japanese military aircraft in the airspace over the international settlement at Shanghai and insisted that the airspace above that small area is subject to the same international control as is the surface of the earth there. It was believed that the language of national laws and treaties would be interpreted to the effect that the airspace above internationalized rivers and other small bodies of water, or land, is not internationalized but that it is within the airspace of the adjoining territory. The purpose of international control of waters for surface vessels would not be influenced by such an interpretation; nor would the practice of it since it is practically impossible to control aircraft to such an extent that they may be confined within these narrow spaces. At this point air law must differ from admiralty law. It would seem better to consider such spaces within the adjoining territory than to close them to air navigation.

**Sovereignty over Airspace**

Exclusive and complete sovereignty over its airspace is exercised by every republic in the western hemisphere. That is true in the Dominion of Canada, all the colonies in the Americas, and elsewhere. The rule is universal. It is declared in each of the three collective international air conventions and it is declared or implied in all other air treaties or arrangements. It is set forth in the laws and regulations in effect in American countries. It is generally found as the first item; it is always there.

The terms of Article I of the Pan American Convention for Commercial Aviation are:

The high contracting parties recognize that every state has complete and exclusive sovereignty over the airspace above its territory and territorial waters.
Much of the remainder of the treaty specifically indicates the recognition of the right of a nation to control aeronautics within its airspace. Article 1 of the International Convention and of the Ibero-American Convention indicates:

The contracting States recognize that every State has complete and exclusive sovereignty in the airspace above its territory and territorial waters.23

The language in the laws of American countries regarding sovereignty is clear and emphatic. In Brazil the words are:

The United States of Brazil shall exercise full and exclusive sovereign rights over the space situated above Brazilian territory and territorial waters.24

In Chile the language is:

The State shall exercise full and exclusive sovereignty over the air above Chilean territory and its jurisdictional waters.25

In Cuba:

The sovereignty that the Republic of Cuba exercises over its territory, defined in Article 2 of the Constitution, equally comprises, in a complete and exclusive manner, the atmosphere above such territory, including in it its territorial waters.26


The United States of Mexico exercises sovereignty over the airspace comprised within the limits of their territory and territorial waters.

In Venezuela:

The Republic of the United States of Venezuela exercises complete and exclusive sovereignty over the atmospheric space that covers its territory inclusive of its waters.27

In the United States of America the language is found in section 6 of the “Air Commerce Act of 1926”:

The Congress hereby declares that the Government of the United States of America has, to the exclusion of all foreign nations, complete

23. Reference might be made to Articles 2, 3, 4, 21, 25, 32, and 33 and to paragraph 12 of Annex H (Customs) of the International Convention.
24. Article 1, Decree 16,983, July 22, 1925.
25. Article 22, Decree 221, June 15, 1931.
26. Article 1, Decree 548, April 21, 1928.
27. Article 1, Decree 17,184, Aug. 1, 1930.
sovereignty of the airspace over the lands and waters of the United States, including the Canal Zone.

There are two significant points in connection with the declaration of the United States. In the "Air Commerce Act of 1926" we find that:

The term 'United States' when used in a geographical sense, means the territory comprising the several States, Territories, Possessions, and the District of Columbia—including the territorial waters thereof,—and the overlying airspace; but shall not include the Canal Zone.\(^2\)

Thus sovereignty is maintained over the Panama Canal Zone, for recognized reasons; but a special set of regulations, peculiarly fitted to treaty and other conditions, is in effect for the Zone.

Again, with regard to any division of sovereignty between the States and the United States of America:

The section (section 6.) in no wise affects the apportionment of sovereignty as between the several States and the United States, but only as between the United States and the rest of the world. In so far as the States had sovereignty in airspace at the time of the adoption of the Constitution and such sovereignty was not by that instrument delegated to the Federal Government, and in so far as the States may have subsequently acquired sovereignty in airspace in accordance with the Constitution, such sovereignty remains unchanged.\(^2\)

It is submitted that the States had sovereignty over the airspace overlying their land and water territories and that that sovereignty was not impaired in any way by the adoption of the Constitution of the United States except that the States delegated certain duties and privileges to the United States which apply alike to the airspace and the surface area of the States. This principle is in accord with that adopted by American countries with respect to sovereignty over airspace.\(^3\)

28. Sec. 9, par. b, Air Commerce Act of 1926.
29. Civil Aeronautics, Legislative History of the Air Commerce Act, of 1926, corrected to Aug. 1, 1928; printed for the Committee on Interstate and Foreign Commerce, House of Representatives; p. 38.
30. At this point a decision of the juridical committee of the Privy council, London, Oct., 1931, might be of interest. The Supreme Court of the Dominion of Canada had ruled that the jurisdiction over aeronautics in the Dominion lay principally in the Provinces. On appeal of the Dominion Government, the Privy Council determined that in accord with section 132 of the British North American Act and "to the terms of the Convention (International Convention for Air Navigation) which covers almost every conceivable matter relating to aerial navigation; and (c) to the fact that further legislative powers in relation to aerial navigation reside in the Parliament of Canada by virtue of section 91, it would appear that substantially the whole field of legislation with regard to aerial navigation belongs to the Dominion." It is understood from the decision that the
The general recognition that sovereignty over its airspace rests in each nation is important. This may be considered the outstanding and basic principle of international air law as understood and applied in American countries. This foundation stone in air law, about which the whole structure is built in this hemisphere, was recognized in American countries as soon as there was any need for it. But there was much difficulty in the matter before air laws were written in the new world and it is believed that less weight is laid upon the principle in Europe. It was approved at Santiago, Chile, in March, 1916, by the First Pan American Aeronautical Conference. It was followed in all the successive national laws, regulations and official acts of American countries. It was explained at the time of the passage of the Air Commerce Act of 1926 that the Congress declares that the United States adheres to the principle of national sovereignty over its airspace and not to that urged by some international jurists that there is a free right of flight in the airspace above a nation regardless of the consent of the restrictions by law of that nation.  

A conflict of authority as to the sovereignty over the airspace over the territory of a nation existed at the beginning of the twentieth century, according to Hotchkiss who explained that a group, led by Lycklama, Guibé and Hazeltine contended that the nation possessed absolute sovereignty although admitting that in times of peace a right of travel should be accorded to air commerce. Another group headed by Fauchille, Henry-Couannier and others thought that the upper airspace was open to all. The air was likened to the roving, free waters of the sea—without ownership. But they said that in times of war the right of travel might be curtailed or prohibited. A middle ground was taken by some who attempted to reconcile the opposing views by proposing that air sovereignty was absolute up to the point of five hundred meters above the surface. Bolivia, in temporary regulations adopted October 24, 1930, followed this middle course in the language of the regulations by specifying complete sovereignty up to three thousand meters above the surface. In practice this amounts

Provinces have jurisdiction in private and property rights enabling them to prevent aircraft from interfering with business or violating any provincial law. It should be remembered that sovereignty rested in the Crown and that whatever part of it may have been transferred to Canada was granted to the Dominion rather than to the Provinces. It is significant here that the United States have not accepted the International Convention.

31. Legislative History, supra, p. 38.
32. Hotchkiss, Henry G., Aviation Law, p. 5.
to complete national sovereignty resting in Bolivia because much of that country lies at an altitude of twelve thousand feet. Few civil aircraft are capable of flying at an altitude of eighteen thousand feet. Bolivia signed all three collective international air conventions and all indications indicate that there is no limit to national sovereignty over Bolivian airspace.

The first learned body to favor national sovereignty over airspace was the International Law Association which acted at Madrid in 1913. At the same time the association did add to its acceptance the declaration:

Liberty of passage of aircraft ought to be accorded freely to the aircraft of every nation.

The institute of International Law had accepted the principle of free circulation at its Madrid session in 1911. The Comité Juridique International de l'Aviation acted in the same manner at its Paris session in 1911. It is said that the majority of the representatives of European nations who met in an official conference at Paris in 1910 favored freedom in the airspaces and that the British representatives turned the tide by declaring for sovereignty. The prevailing principle was quickly agreed upon during the World War when every nation, whether neutral or belligerent, found it the only workable rule during war. Henry-Coüannier, in his "Éléments Créateurs du Droit Aérien," in 1929, said that the principle was based upon the prevalent fear of danger from the air and he believed that the recognition of this doctrine, although based upon cold fact and universal approval, was the weakest part of the International Convention. Just before the war Professor Méquignac of Toulouse declared that nations, having an unquestioned right to preserve themselves, must have something upon which to base that right. He said that that right is nothing more nor less than sovereignty over their airspace. Roland said in 1916:

There is a veritable custom . . . the prohibition issued seems to have been considered quite natural everywhere . . . All the elements of

a custom are here combined; practice, a doctrinal solution in agreement with it, public opinion to support it.\textsuperscript{39}

Hotchkiss declared that:

The discussion has ceased to have any but historical interest. With the outbreak of the war, it became immediately apparent that violation of the airspace was as important as violation of the territory beneath.\textsuperscript{40}

The doctrine of national sovereignty over airspace becomes more definitely fixed each year, and nowhere more than in American countries.\textsuperscript{41}

\textit{Navigable Airspace}

Navigable airspace may be defined as that airspace in which it is safe to operate aircraft and in which they are authorized to fly. Under the rule of national sovereignty in the airspace the designation of navigable airspace is left to each nation. Most of the American countries have designated the height above groups of persons, or villages, towns and cities above which aircraft may not fly but generally the airspace open to navigation has not been limited except by the nature of air navigation and the qualities of present-day aircraft which dictate that flight be, as a rule, above 500 feet above the surface. In section 10 of the "Air Commerce Act of 1926" the words are:

\begin{quote}
As used in this act, the term 'navigable airspace' means airspace above the minimum safe altitudes of flight prescribed by the Secretary of Commerce under section 3,\textsuperscript{42} and such navigable airspace shall be subject to a public right of freedom of interstate and foreign air navigation in conformity with the requirements of this act.
\end{quote}

There is much unsettled law in matters of private rights, trespass, nuisances, etc. There is not much written law in American countries on these phases. Brazil holds that the right enjoyed by aircraft to fly over private property may not be exercised so as to dis-

\textsuperscript{39} Reeva de Droit International, 1916, p. 577.
\textsuperscript{40} Hotchkiss, Henry G., Aviation Law, p. 6.
\textsuperscript{41} A review of the substance of the international correspondence and of the acts of neutral and belligerent governments during the war is given in Appendix III by Spaight who shows that the nations did close their frontiers and enforce neutrality in their airspaces as well as upon their lands and waters, and the lengths to which they went.
\textsuperscript{42} Section 3 provides under par. e: Established air traffic rules for the navigation, protection, and identification of aircraft, including rules as to safe altitudes of flight and rules for the prevention of collisions between vessels and aircraft.
turb the right of the property owner. With regard to section 10 of the "Air Commerce Act of 1926", the declaration is intended:

To assert a public right of freedom of navigation by aircraft, in the airspace above prescribed minimum safe altitudes of flight, which is superior to the right of the owner of the subjacent land to use such airspace for conflicting purpose. This public right of freedom of navigation is analogous to the easement of public right of navigation over the navigable waters of the United States. The primary source of power to impose such an easement is the commerce clause.

From a long list of cases it is taken that the courts will not permit interference with the navigable water space by the owner of the shore rights, and the owner will be protected from injury to his proper use of his property. This is believed to be a sound basis for a similar proposition with regard to airspace.

An old maxim goes, "Whose is the soil, his it is up to the sky" and Coke said:

And lastly, the earth hath in law a great extent upwards, not only of water as hath been said, but of aire, and all other things even up to heaven, for *cujus est solum ejus est usque ad coelum*, as it was holden.

But there have been many cases of trespass since Penruddock's Case; there have been several cases of alleged trespass in airspace over private properties in recent years. Practically, there could be no navigation over land if a trespass resulted from innocent flight high above it. The old decisions have been departed from sufficiently, everywhere to permit of flight at a safe height. Injunctive relief has been given where low flying has been injurious to property or the enjoyment of it by its owner. Hotchkiss concluded his chapter on proprietary rights in airspace by quoting the German Civil Code Provision adopted about 1900 which has been translated:

43. Art. 47, Decree 16.953, July 22, 1925.
44. Legislative History, supra, p. 42.
45. Coke on Littleton, Lib. 1, sec. 1, p. 4.
46. In the case of Johnson v. Curtiss Northwest Airplane Co. et al., it was held: Failure to sustain the plaintiff's contention, relative to upper air trespasses, does not deprive him of any substantial rights, or militate against his appropriate and adequate remedies for recovery of damages and injunctive relief in cases of actual trespass or the commission of a nuisance. Reported in *Revue Juridique de la Locomotion Aérienne*, 1924, p. 138.
47. Lardone, Francesco, "Airspace Rights in Roman Law," 2 Air Law Review, 455, concluded: "It is believed that the Romans could have met even the case of air navigation by permitting the aviator to cross a private air column when it was not used by the landowner himself, and provided such a crossing did not cause injury or damage to persons or property."
The right of the owner of a piece of land extends to the space above the surface and of the earth under the surface. However, the owner cannot prohibit interferences which take place at such height or depth that he has no interest in their exclusion.48

Privilege of Navigation in Airspace

With the doctrine of national sovereignty over airspace settled, it became apparent that international air navigation would be retarded if nations should close their airspace to foreign aircraft. It followed that a good method of bridging the difficulty was to grant the privilege of flight over nations to foreign aircraft by means of treaties, or other international arrangements. Aircraft are a potential source of danger to persons and property over which they may fly, though less than formerly. The risk is reduced by inspecting and testing aircraft and their crews. A nation, according to recognized doctrines, must have the right to require visiting aircraft to meet certain reasonable safety requirements and the operating personnel to be competent. For these reasons international conventions make provision for ensuring the safety of aircraft.

The Pan American Convention deals exclusively with private aircraft. The International Convention (as does the Ibero-American Convention)49 recognizes the accepted practice with regard to public aircraft by providing in Article 32 that no military aircraft of a member nation shall fly over the territory of another, nor land thereon without special permission. In such cases, in principle, the privileges usually accorded men-of-war are to be enjoyed unless special stipulations provide otherwise. The privileges may not go to police or customs aircraft, which depend upon special arrangements between nations for permission to cross national frontiers. These principles run in American countries; they prohibit the entry of foreign public aircraft before authorized through diplomatic channels. Authorizations specify the aircraft and airmen authorized to enter as well as the places of entry and departure, the route, the time and other pertinent details. Visiting aircraft of any category must land whenever ordered to do so. Unauthorized entries subject the aircraft to seizure and their personnel to arrest. To some extent the right of the nation flown over to order military aircraft to land countervenes the principle of

48. Hotchkiss, Henry G., Aviation Law, p. 27.
49. Public aircraft, other than military, naval, customs and police, are considered to be private aircraft. (Article III.)
extraterritoriality enjoyed by visiting men-of-war but this attaches only by the grace of the country visited.

In the absence of conventions aircraft must stay within the borders of their country or over the seas. When American aircraft have flown over foreign countries it was only after special authorization had been obtained through diplomatic channels. There has been much diplomatic correspondence on this subject in recent years. Some airmen have fallen into difficulties. The matter has been remedied to some extent by conventions but in many cases there are no conventions in effect. The practice remains, therefore, to secure special authorization for flight over foreign nations.

Article IV of the Pan American Convention for Commercial Aviation indicates:

Each contracting state undertakes in time of peace to accord freedom of innocent passage above its territory to the private aircraft of the other contracting states, provided that the conditions laid down in the present convention are observed. The regulations established by a contracting state with regard to admission over its territory of aircraft of other contracting states shall be applied without distinction of nationality.

Article 2 of the International Convention is identical except that the word “private” does not occur. In view of the provisions of that convention regarding the movement abroad of public aircraft, there is little difference; what there is tends to limit the Pan American Convention, by comparison, and to leave broader freedom to member nations.

Article XXIX of the Pan American Convention is identical with a provision in each of the other collective treaties. They proclaim that:

In case of war the stipulations of the present convention shall not affect the freedom of action of the contracting states either as belligerents or as neutrals.

Thus there is opportunity for a neutral nation to preserve neutrality in its airspace or, if it be a belligerent, it may control its airspace without violation of treaty provisions. It is to be expected that American nations will maintain the rules of neutrality which they have earnestly sought to develop and perpetuate.

50. American countries, in their laws and regulations, have declared that foreign aircraft must, in the absence of treaty stipulations, not enter their airspace without prior authorization obtained through diplomatic channels.
The right of a nation to prescribe the routes over its territory which shall be followed by foreign aircraft is based upon national sovereignty over airspace. It is well recognized and it is set forth in the conventions. Some writers have objected that a nation may seriously hinder international air navigation and that it is too much to concede to a nation. The objections do not seem well founded. The critics recognize that air navigation is aided by the marking of safe routes. The development of airways has been rapid in recent years and it may be expected that ground facilities will lie along most designated air routes. It must be recognized that if a nation could not prescribe the route for visiting aircraft it would be unable to control its frontier and its legitimate interests would not be protected.

The second part of Article V of the Pan American Convention for Commercial Aviation, like the International and the Ibero-American Conventions, provides:

Each contracting state may furthermore prescribe the route to be followed over its territory by the aircraft of the other states, except in cases of force majeure which shall be governed in accordance with the stipulations of Article 18 of this convention. Each state shall publish in advance and notify the other contracting states of the fixation of the authorized routes and the citation and extension of the prohibited zones.

Some American nations have designated the air routes to be followed by visiting aircraft; most of them have designated the points of entry and departure. It is the practice to designate both when authorizations are given for flights.

Forbidden Zones of Airspace

Airspace reservations may properly, and "must necessarily" be established to prevent domestic and foreign aircraft from flying over fortified areas, certain institutions, dangerous areas, and experimental and training fields of military and naval forces. Nearly every American country has, in its laws or regulations, proclaimed its right to set apart such zones over which its own civil and all foreign aircraft may not fly. They have designated

53. Legislative History, supra, p. 36.
these zones and the signals to be used to warn aircraft to change
direction or to land. In some European countries whole border
regions are closed with narrow corridors specified for the passage
of aircraft. By virtue of the "Air Commerce Act of 1926" and of
the "Panama Canal Act of 1912" the President of the United States
of America declared the Panama Canal Zone including the "Three-
mile-limit" to be a military airspace reservation.54

The international conventions are almost identical in their
provisions on forbidden zones of airspace. The text of part of
Article V of the Pan American Convention is:

Each contracting state has the right to prohibit, for reasons which it
deems convenient in the public interest, the flight over fixed zones of its
territory by the aircraft of the other contracting states and privately owned
national aircraft employed in the service of international commercial avi-
ation, with the reservation that no distinction shall be made in this respect
between its own private aircraft engaged in international commerce and
those of the other contracting states likewise engaged.

Every aircraft must land as soon as possible in the nearest airport
if it is found that, or if it is notified that, it is over a forbidden
zone, according to Article VI of the same convention.

III. ENTRY, PASSAGE AND DEPARTURE OF PRIVATE AIRCRAFT

Most of the subjects dealt with under this chapter heading
are subject largely to national policies. Some of them are con-
trolled almost entirely by the political requirements of nations;
this is due in part to the newness of the questions and consequently

54. Section 4, Air Commerce Act of 1926, provides: The President is
authorized to provide by Executive order for the setting apart and the
protection of airspace reservations in the United States for national defense
or other governmental purposes, and, in addition, in the District of Columbia,
for public safety purposes. The several States may set apart and provide
for the protection of necessary airspace reservations in addition to and
not in conflict either with airspace reservations established by the President
under this section or with any civil or military airway designated under the
provisions of this act.

The Executive order, number 5047, was dated Feb. 18, 1929.

The Chilean law provides: For reasons of military order or public
safety, navigation and rising of aircraft may be prohibited over certain
zones of national territory and waters. In case an aircraft has penetrated
a forbidden zone, it is obliged from the time of realization to give regula-
tion signals and land on the nearest national airport. (Article 26, Decree
221, May 15, 1931.) Again: Aircraft which infringe the prohibition from
flying over territory declared in a state of seige or forbidden zones, shall
be confiscated upon landing anywhere in the national territory, and its
crew shall be considered as spies and shall be taken before tribunals on
such cases and shall be subject to the punishment meted out in such cases.
(Article 27.)
to the lack of accepted standards or law. In all of these subjects it has been found that custom has influenced the law where it exists. In some there is hardly more than custom or practice.

All of these subjects are left by international law to the nations to some extent. All of them are affected directly and powerfully by the basic doctrine of international air law and it is believed that where there are differences in American and other law the former follows the principle of national sovereignty over national airspace more closely.

Aircraft

Aircraft, like ocean vessels, must have a nationality. There is no treaty provision for the international passage of those not having a nationality. Some American countries provide expressly for the exclusion of such aircraft. None of these countries allows a dual nationality; it is prohibited by the Pan American Convention. (Article VII.) Some consider an old registration automatically cancelled upon a new one, others act to remove the old one. All require all private aircraft to be registered. Argentina and Bolivia require that a foreign airplane must be registered and become nationalized if it remains within national territory more than four months. Should it then depart it would lose its acquired nationality. Presumably it would revert to the old status, or if its ownership were changed it would be charged to another registry and nationality. To avoid conflicts, members of the Pan American Convention are to notify each other of changes in registrations applying to aircraft used in international air navigation. Members of the International Convention notify of all changes of registry; in each case every month. Generally registration determines nationality, and registration generally is based upon ownership (as to this the laws vary but in the case of a corporation at least a majority of the shares must be owned by nationals to clothe it and its aircraft with nationality), airworthiness and native airport. This last matter is peculiar to American countries and the Pan American Convention; in Europe the home of the airplane, that is the airport, has not figured.

55. Decree 2020, Nov. 14, 1925. (Article 2.)
56. Decree of Oct. 24, 1930. (Article 5.)
57. Article XI.
58. Article 9.
Much remains to be settled on these points, as indicated by Kingsley.\textsuperscript{59}

The rules as to the registration of aircraft (in Articles VII and VIII of the Pan American Convention) are at variance with other conventions in that registration "shall be made in accordance with the laws and special provisions of each contracting state." This appears to be an improvement for a protocol modifying the International Convention will, when it becomes operative, make it harmonize in this regard with the Pan American Convention.\textsuperscript{60}

Identifying marks of nationality are prescribed by the conventions and by the legislation of nearly every American country. By the Pan American Convention, the matter is left to future determination and it is working itself out by legislation. By the other conventions the subject is covered down to the finest detail. (In Annex A. of the International Convention.)

A certificate of airworthiness, which indicates that the particular aircraft has been tested and passed as airworthy by the appropriate national authorities at a periodical inspection time or when it is new, is required in most countries. In some the registration is evidence of the airworthiness. In the Pan American Convention Article XII provides that every aircraft used in international navigation (as between contracting nations) shall be provided with a certificate of airworthiness issued by the government of its nationality. This document shall certify to the government of the nation to be visited that in the opinion of the issuing authorities the aircraft is airworthy as measured by the regulations of the nation to be visited. This document shall be in possession of the aircraft commander and open to inspection at any time upon demand of appropriate officials. Each contracting nation shall communicate its regulations (and changes) governing the rating of its aircraft as to airworthiness. While contracting nations affirm the principle that the aircraft of each of them shall have the liberty of engaging in air commerce with each of them without being subjected to the licensing system of any of them, each reserves the right to refuse to recognize the certificate of airworthiness as valid in its territory where inspection by a properly qualified commission of such nation shows the aircraft not to be airworthy. In such case further flight over its territory may be

\textsuperscript{59} Kingsley, Robert, "Nationality of Aircraft," 3 JOURNAL OF AIR LAW, 50.

\textsuperscript{60} Protocol of June 15, 1929.
prohibited until the aircraft in question may meet the tests. The nation of the aircraft and the Pan American Union must be notified of such action. Much of this is in contrast with the absolute validity of certificates of airworthiness in all member nations, as provided in the International Convention. The latter, however, prescribes a long list of rules which must be followed by each member nation in issuing the certificates. The matter of recognizing foreign certificates of airworthiness is governed by national legislation in the absence of membership in one of the conventions. In practice there has been no difficulty.

With regard to the documents required to be carried on all aircraft there is harmony in the conventions. The list of documents includes:

a) A certificate of registration, duly certified to according to the laws of the state in which it is registered;
b) A certificate of airworthiness, as provided for in Article 12;
c) The certificates of competency of the commander, pilots, engineers, and crew, as provided for in Article 13;
d) If carrying passengers, a list of their names, addresses and nationality;
e) If carrying merchandise, the bills of lading and manifests, and all other documents required by customs laws and regulations of each country;
f) Log books;
g) If equipped with radiotelegraph apparatus, the corresponding license.

There is some conflict between the convention and some national laws and regulations, and efforts are being made to harmonize them in the interest of the freer movement of aircraft between the nations.

**Airmen**

The safety of air navigation depends upon airmen as well as aircraft. Nations therefore require that airmen of all grades meet rigid tests and requirements as to health and physical character and professional ability. There are some variations in the standards prescribed in American countries and in the absence of conventions some of them reserve the right to test the competence of visiting airmen before allowing them to fly over their territory.

The Pan American Convention provides in Article XIV that each member nation shall recognize as valid certificates of com-

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61. Pan American Convention for Air Navigation, Article X.
petency issued in accordance with the laws and regulations of other contracting nations. Article XIII provides that all airmen engaged in international air navigation shall be in possession of appropriate certificates of capacity issued under the laws and regulations of the nation of the aircraft on which they fly. Such certificates shall indicate that each pilot is competent according to the requirements of the issuing nation and that he has passed a satisfactory examination with regard to the traffic rules existing in the nation over which he intends to fly. This latter provision is not necessary in other conventions, which outline in detail the standards for testing airmen and where traffic rules are fixed by the convention. Usually airmen must be nationals of the nation issuing the certificates, although this matter is not covered in conventions. Airmen must carry passports when beyond the borders of their country.

Entry and Departure, Administrative Matters

The conventions provide for the "freedom of innocent passage" of aircraft. No definition of "innocent" has been found; the intention appears to be that aircraft of member nations of the convention may navigate over each of them. There is a difference between this "innocent" passage and the passage during which one or more landings are made. It is said that the member nations tacitly recognize the right to land.\textsuperscript{62} Domestic law appears to run in the matter of the extent of the right to land; it is not defined in the conventions. The laws in American countries vary widely. Several countries provide that no foreign aircraft may fly over or land without having obtained authorization of the executive power through diplomatic channels. Chile provides that private aircraft of any nation which is a member of any of the three conventions "has the right to fly over the state without landing, if they follow the routes fixed by proper regulations."\textsuperscript{63} Guatemala provides:

In time of peace, aircraft of any nationality, duly registered, shall be permitted free passage over national territory, always provided that they comply with the regulations established in this law.\textsuperscript{64}

\begin{itemize}
\item \textsuperscript{62} This follows from the fact that the Conventions which contain no clause concerning the right of landing are precisely those which allow foreign aircraft to make use of public airports, or even compel them to land at specific airports. Oppikofer, Hans, "International Commercial Aviation and Administration," Enquiries into the Economic, Administrative and Legal Situation of International Aviation, League of Nations, Geneva, 1930.
\item \textsuperscript{63} Decree 221, May 15, 1921. (Article 14.)
\item \textsuperscript{64} General Regulations Governing Civil Aviation in Guatemala, Article 13. \textit{El Guatemalteco}, Sept. 23, 1929.
\end{itemize}
But that country, like several others, declares in existing legislation that for public reasons the airspace may be closed at any time to all navigation.

Nearly all American nations have indicated by law, regulation or other official act that definite routes shall be followed when entering or leaving and that designated airports must be reached at once or left from immediately prior to final departure. At these airports the customs, public health, immigration and other formalities must be complied with, both on entry and departure. This is a matter of practice in some countries, in the absence of specific law or regulation. Sometimes the customs and other regulations applicable to shipping are applied. Generally customs and other inspectors and officials have instructions to expedite the entry and clearance of aircraft. This is a result of the general interest of governments and peoples in air navigation and its advancement.65

The lack of uniform regulations has been complained of repeatedly and some concerted as well as individual efforts are being directed toward improvements. There is a tendency toward a simplification of the papers required for customs and other purposes and a more expeditious handling of them. The treaty provisions (Articles XVIII and XIX of the Pan American Convention) are in general accord with the legislation reviewed as well as with the Madrid Convention and Annex H (customs) of the International Convention.

The right of appropriate officials of the government of a member nation to visit and examine foreign aircraft while in the country in order to verify all documents and determine that all the laws, rules and regulations of such nation and all the provisions of the convention are complied with is recognized in Article XX of the Pan American Convention, the terms being analogous to those of Article 21 of the International and Ibero-American conventions. This principle is attested to in the laws and regulations applying in all American countries.

**Laws in Effect**

The general laws applying to persons and property on an aircraft are those of the country over which it is flying. This is based upon Article I of each of the conventions and upon the

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65. These matters were subjects given great attention by the Fourth Pan American Commercial Conference, as shown by Lambie, Margaret, "The Fourth Pan American Commercial Conference," 3 *Journal of Air Law*, 104-109.
national laws and regulations in all American countries. It is a necessary rule which is founded upon the basic rule of international air law—that of national sovereignty over airspace. The Pan American Convention, unlike either of the other collective conventions, deals with private law in Articles XXV and XXVIII. The first is:

So long as a contracting state shall not have established appropriate regulations, the commander of an aircraft shall have rights and duties analogous to those of the captain of a merchant steamer, according to the respective laws of each state.

The second is:

Reparations for damages caused to persons or property located in the subjacent territory shall be governed by the laws of each state.

Both reinforce provisions of law applying in practically every American nation. There appears to be no dissent from this principle in American countries.

Forbidden Air Transport

Just as the doctrine of national sovereignty over airspace is the basis upon which domestic jurisdiction runs, with respect to aircraft and their cargoes of persons, communications and goods, it is the foundation upon which rests the rule that the nation may prohibit the carriage of certain dangerous things in aircraft. The public interest of the nation and the interests of its nationals are involved and it is everywhere accepted that aircraft may not bring unnecessary dangers to either the citizen or his country. The laws and regulations are not uniform but generally explosives and implements of war may not be carried. By special permission, in some cases, national aircraft are authorized to carry explosives for industrial purposes. In some countries radio apparatus may not be carried except by public aircraft and by those in scheduled air services. In some cases they may be carried by special permission. Photographic apparatus generally may not be carried unless sealed and in some cases not under any circumstances. Some laws prohibit the carriage of any printed matter, photographs or other things which for good reasons may not be carried by any public carrier.

The Pan American Convention in Article XV prohibits the

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66. There are many problems involved, as indicated by Spaight, J. M., Aircraft in Peace and the Law, ch. 8.
carriage by aircraft of explosives, arms and munitions of war in international flights. It goes beyond Article 26 in each of the other conventions in that it does not permit such carriage even in a flight in which no landing is made in the foreign country over which it flies. Article XVI on the carriage of photographic apparatus is in accord with Article 12 of the other conventions. It is:

Each state may prohibit or regulate the carriage or use, by aircraft possessing the nationality of other contracting states, of photographic apparatus. Such regulations as may be adopted by each state concerning this matter shall be communicated to each other and to the Pan American Union.

Article XVII which provides that the transportation of articles in international air navigation may be restricted by any contracting nation as a measure of public safety or because of lawful prohibition, and that such nation shall notify the other contracting nations and the Pan American Union, and that all such restrictions shall apply to national and foreign aircraft equally in international air traffic, is in accord with Articles 18 and 19 of the other conventions.

Jettison, Aid and Salvage

Doctrines on these matters have been borrowed from admiralty law but it may be that they will not always be sustained. There are similarities and yet there are differences between navigation of the seas and of the airspaces. Spaight, in his chapter on Collisions and Wrecks found that authorities had determined that when applied to air navigation the matter of wrecks presents new problems for which doctrines may be developed. He believed that there should be a treaty stipulation that calls for the reporting of "aerial derelicts."  

American air laws and regulations generally do not prescribe in the matter of jettison. Brazil in Article 74 of Decree 16,983 of July 22, 1925, provides:

The commander of an aircraft has the right to jettison during flight any cargo carried, in the event it is necessary for saving the aircraft. Whenever it shall be possible for him to choose, he shall jettison the cargo of small value. No responsibility will attach to the carrier, either in

respect to the sender or the consignee, for the loss of said cargo. Damage to the ground, however, shall be enforceable.\textsuperscript{68}

Like provisions are found in Article 44 of the Chilean air law. (Decree 221, May 15, 1931.)

Aid to aircraft in distress is required of all persons by some laws. In some cases the publicly owned telegraph and telephone systems are to be used without cost for such purposes and in these case the messages are given preferred attention. There is not much written law on salvage but where it occurs it is taken from admiralty law.

The Pan American Convention provides that “The aircraft of all states shall have the right, in cases of danger, to all possible aid.” (Article XXVII.) In the preceding article it prescribes regarding salvage, “The salvage of aircraft lost at sea shall be regulated, in the absence of any agreement to the contrary, by the principles of maritime law.” The other conventions have like provisions.

\textit{Traffic Rules}

The matter of air traffic rules is left to nations but the conventions provide, at least by implication—and the doctrine of national sovereignty over airspace supports it—that these rules be followed by foreign and domestic aircraft. Uniformity of rules is sought in Article XXXII of the Pan American Convention; the International Convention provides a long series of rules in Annex D, entitled “Rules as to Lights and Signals. Rules for Air Traffic.”\textsuperscript{69}

Nearly every American country includes air traffic rules and rules for lights and signals in its regulations. Some are long and detailed as those of Guatemala (“General Regulations Governing Civil Aviation in Guatemala” dated September 23, 1929) and of El Salvador (“Regulations for Commercial Aviation” dated June 29, 1929.) These include detailed regulations for traffic on, over or near airports. The United States of America has detailed regulations. Some other countries have few regulations on this

\textsuperscript{68} It is presumed that the matter of “general average” loss is not covered by law and that no provisions are used in insurance contracts. Article 73 of the same law indicates that the liability of an air carrier is subject to the rules applicable to railroad transportation and to those in the Commercial Code, so far as they are not contrary to this law.

\textsuperscript{69} Article XXXII indicates that the nations shall make their rules uniform so far as possible; it requires them to exchange their regulations and to cooperate.
subject. The eight pages of traffic rules applicable in the Panama Canal Zone are detailed. They, like other prescribed rules, are much like those in Annex D of the International Convention.

In the matter of air traffic rules applicable over the seas there remains uncertainty. It is believed that the rules applicable at home are used by aircraft at sea. The United States of America, in the “Air Commerce Act of 1926”, Section 7a provides:

The navigation and shipping laws of the United States, including any definition of “vessel” or “vehicle” found therein and including the rules for the prevention of collisions, shall not be construed to apply to seaplanes or other aircraft or to the navigation of vessels in relation to seaplanes or other aircraft.

It was said that, “The navigation and shipping laws, including the rules for the prevention of collisions, are not suited to navigation of aircraft and should not be applicable to them.” Some of the difficulties in this matter are brought out by Spaight in his chapter on Collisions and Wrecks.

**Ground Facilities**

According to the Pan American Convention (Article XXIII), “The establishment and operation of airdromes (airports) will be regulated by the legislation of each country, equality of treatment being observed.” The next article insures that the aircraft of one contracting nation engaged in international commerce with another contracting nation shall not be compelled to pay higher or other charges in airports open to public use than are paid by aircraft of the nation visited, which also are engaged in international commerce. The Ibero-American and International Conventions are similar, in Article 24. There is some national legislation on airports all of which is in accordance with the conventions. Generally the governments do not allow landings at places other than established airports, except, of course, in case of emergency. Airports open to public use are open to foreign aircraft on an equal basis.

Meteorological and other information needed in air navigation is placed at the disposal of national and foreign airmen alike.

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70. Regulations to Govern Air Navigation in the Canal Zone, Secretary of State, Sept. 22, 1931.
71. Legislative History, supra, p. 39.
Governments publish maps and charts indicating the airways, air routes, obstacles to air navigation and other information of value. Special lighting and communicating facilities and emergency landing fields have been provided and their use by visiting airmen is encouraged. In Article XXXI of the Pan American Convention it is indicated that the member nations obligate themselves to cooperate in the centralization and distribution of meteorological information, the publication of appropriate maps and charts, the establishment of a uniform system of signals, the use of radiotelegraph in air navigation, the establishment of radiotelegraph stations and the observance of the inter-American and international radiotelegraph regulations or conventions, present and future.

Air Transportation, Cabotage, Mails

Two important articles of the Pan American Convention deal with air transportation. Article XXI indicates:

The aircraft of a contracting state engaged in international air commerce shall be permitted to discharge passengers and a part of its cargo at one of the airports designated as a port of entry of any other contracting state, and to proceed to any other airport or airports in such state for the purpose of discharging the remaining passengers and portions of such cargo and in like manner to take on passengers and load cargo destined for a foreign state or states, provided that they comply with the legal requirements of the country over which they fly, which legal requirements shall be the same for native and foreign aircraft engaged in international traffic and shall be communicated in due course to the contracting states and to the Pan American Union.

And Article XXII:

Each contracting state shall have 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. Such reservations and restrictions shall be immediately published and communicated to the other contracting states and to the Pan American Union.

Article XXII is in agreement with Article 26 of the other two conventions and with the legislation in several American countries. But Article 17 of the two conventions adds that the aircraft of a contracting nation which established reservations of this nature

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73. These matters are dealt with in great detail in annexes of the International Convention.
may be subjected to the same reservations in any other contracting nation, this even though the latter does not itself impose such reservations on other foreign aircraft. The principle of reciprocity has not been carried into this part of the Pan American Convention.

A special rule in favor of aircraft carrying mails and operating on schedule is embodied in Article XIX of the Pan American Convention to the effect that by authority of the nation flown over such aircraft may fly beyond the usual airport of entry and land at some designated inland airport where the mails may be transferred quickly and the formalities complied with. In practice the carriage of mails is done in compliance with international postal conventions and agreements.

Scheduled air transportation between American countries is carried on in accordance with conventions, laws, regulations and concessions, or contracts between the governments concerned and the transportation companies. In some cases the governments express policies not included in laws or regulations. That is not to say that they are in conflict but that a few countries have no general air laws. In a few instances laws have been promulgated since the concessions were approved and in these, as in all others, the effort is made to aid rather than to restrict air transportation. Numerous special decrees have been issued to this end in recent years.

Conclusions

International air law has not been much developed. That now recognized is almost all public law. International air law is found almost entirely in conventions all of which have much in common, that is, the basic, well and universally recognized principles are set forth or followed. The new branch of air law does not apply in all countries of the world, as indicated by the failure of some so far to accept any of the collective international air conventions or enter into special conventions.

The American republics appear to have accepted the recognized doctrines only after they were certain of the soundness of the doctrines. Consequently while the principles included in accepted international air law in the Americas are fewer than are recognized in Europe they are recognized universally. It appears fortunate that the American republics avoided starting the codification of international air law immediately after the World War at which time the minds of men were so upset that expediency was
often the ruling factor. It may not be out of order to suggest that international air law is being built upon a more firm foundation in the Americas; it is coming into existence only with the approval of sovereign nations rather than by an international organization. The work of building international air law deserves to have wide attention and the thought of those highly competent in other branches of law, and it needs to be built slowly. It is hoped that the new branch of law will stand the tests certain to come.
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