International Civil Aviation Organization
INTERNATIONAL REVIEW*

I.

INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)
AIR NAVIGATION

DURING the Second Air Navigation Conference meeting which commenced at the headquarters of the ICAO on August 30th, 1955, a series of experimental flights based upon present air traffic conditions and those expected in the future was called for by technical experts from 34 nations. The trials, which would be held in selected areas of high density air traffic, would help technicians work out international standards for long range air navigation aids accurate enough to keep aircraft separated safely in the heavy traffic expected to develop along the world's airways during the next 15 or 20 years.

During the Conference an attempt has been made to determine what the navigational accuracy requirements of future traffic will be. Estimates for the North Atlantic indicate that, in the period from 1970 to 1975, peak traffic may amount to as much as 18,000 individual oceanic crossings per month, and this traffic would crowd the airways and require aircraft to be flown with far less separation than at the present time. Improvement in the various facilities and procedures which ensure efficient separation will be gradual rather than abrupt; the series of actual trials is designed to show which direction of improvement is likely to prove the most productive.

The Conference described the ultimate objective of a long range navigation aid as the provision of a system regardless of weather, time or altitude. Included in the minimum essential requirements of such an aid are the following:

1. Range from any single transmitting unit of a ground based system should be in the order of 1500 nautical miles.
2. Position fixing error should not exceed 10 nautical miles at least 95% of the time and through the entire area of coverage.
3. Reliability must be of the highest order practicable; as a guide, the minimum acceptable figure would be 95% of all occasions throughout a 10-hour flight.
4. The system must be capable of accommodating an unlimited number of users, and most provide for the pilot continuous visual indications which will allow him to follow the required track without further processing.

AIR TRANSPORT

The Air Transport Committee of ICAO is, at present, working on its revised program in connection with the forthcoming Council Meeting, i.e., the 26th Session.

The main items are:

Charges for Air Navigational Facilities, including Airports

On December 3rd, 1954, the Council approved a recommendation of the Air Transport Committee that an international meeting on Airport Charges should be planned for the year 1956, to be held as soon as practicable after 21st March of that year, and it was decided that the objectives of the meeting should be those as contained in the Council Resolution of February 8th, 1954, i.e., to endeavor to reach agreement on a uniform policy with respect to air charges in particular to:

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* Compiled by J. G. Gazdik in co-operation with Dr. G. F. FitzGerald and Mr. A. M. Lester (ICAO) and S. F. Macbrayne (IATA).
(i) Review and endeavor to reach agreement on methods of charging and principles underlying them;

(ii) Review the global economic position of airports in relation to that of the users and endeavor to reach agreement as to what modifications if any, of their relative economic position are desirable and as to the measures to be adopted to regulate any modification.

In conformity with the Air Transport Committee's proposals and comments (contained in Paper AT-WP/393), the Secretariat have been working on the type of international meeting and its agenda best suited to discuss this question and it is expected that the Council will take a final decision on the matter during its 26th Session.

The second draft of the study of Route Air Navigation Facilities and Services will also be due for final approval by the Air Transport Committee. The Secretariat is, at present, seeking additional statistics and material on the operation of agencies providing air navigation facilities and services.

Economic Aspects of the Liability Limits in the Proposed Convention on Aerial Collisions. On 30th November, 1954, the Council referred to the Air Transport Committee for study and report the Legal Committee's request for advice on the Liability Limit to be included in the proposed convention on Aerial Collisions. The Secretariat accordingly issued, in March 1955, a preliminary review of the issues raised. This paper, together with supplementary material, which will be prepared by the Secretariat during the summer of 1955, will serve as a basis for the Committee's study of the subject.

International Air Mail. In response to the request made by the UPU in May 1953, and in accordance with Council's decision of 16th March, 1954, certain statistical information has been presented to the May 1955 Session of the UPU Executive and Liaison Commission. The ICAO observer at this meeting will present his report for the Air Transport Committee's information. The committee may then wish to consider further work in this field and particularly whether ICAO should lay before the Universal Postal Congress to be held in 1957 a "Covering Statement," similar to that furnished to the Congress in 1952.

Statistical Activities of the Organization Non-scheduled Air Transport Statistics. The ICAO Secretariat has been working on the possibility of including statistics on non-scheduled operations in the ICAO assessment calculations. This question was referred to the Air Transport Committee by the President of the Council for study and report and was accordingly placed on the work program of the Committee. The Committee is therefore due to give final consideration of the report prepared by the Secretariat.

Facilitation of International Air Transport. It is possible that the Air Transport Committee may also wish to discuss the proposals contained in the Final Report as approved by the FAL Division at its Fourth Session (4th Nov. 1955).

II.

INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA)

TRAFFIC MATTERS

In July 1955, scheduled airlines operating over the North Atlantic reached unanimous agreement at Palmas, Majorca, Spain, on new schedules of cargo rates over this important trade route which are expected to offer substantial reductions for many commodities and result in an increased volume of cargo traffic.

Under the agreement, existing rates remained in effect until August 15,
at which time the new rating system went into effect for cargo moving by air between Europe and the United States. Existing cargo rates between Canada and Europe, however, will not be changed. The agreement is effective until December 31, 1955.

The principal feature of the new rating system is the cutting down of the present several hundreds of specific commodity rates to 48 broad classifications, within which the new reductions are afforded.

The agreements, reached in the IATA Traffic Conferences, will apply a new and simplified system of commodity rating to air cargo moving between New York and Boston on the one hand and virtually all points in Europe and, for a limited number of commodities, as far east as Teheran. In addition to actual reductions in charges for a substantial number of commodities, the new system represents a very considerable simplification of cargo rating as it affects the shipper, as well as the airline. New rates were created to develop traffic in new commodities.

It should be noted that the new agreements do not change the existing rates for general merchandise shipments, but do affect their application; and that they do not cover cargo moving over the North Atlantic to and from Montreal and Mexico City, to which the present general and specific commodity rates will continue to apply. Also, rates for North Atlantic cargo moving to and from other points in the United States will be constructed by adding the applicable local cargo rates beyond the New York gateway.

**General Merchandise Rates.** The existing basic rate for general merchandise remains unchanged at its present level of $2.42 (U.S.) per kilogram ($1.10 per lb.) for the basic sector, New York-London.

The present 25 per cent discount for general shipments over 45 kg. (100 lb.) will also be continued. The existing additional 200 kg. (440 lb.) breakpoint will, however, be dropped: instead, attractive rate reductions to encourage volume cargo have been built into the new commodity rates themselves.

**New Commodity Rate “Descriptions.”** With very few exceptions, all of the new commodity rates will be “and between” rates, which will apply equally eastbound and westbound. Under the present system, many commodity rates are applied in one direction only, or at different rates eastbound than westbound.

Existing variations of charges for the same commodities based on the value of shipments will also be discontinued—all commodities of the same description will move at the same rate, regardless of valuation.

The further complications of special breakpoints at 100, 250, 500 and 1,000 kg. which have been inserted in some, but not in all of the existing specific commodity rates will also be eliminated.

Under the new, simplified system, special commodity rates will begin at the 45 kg. breakpoint. From there on, all shipments of any description, regardless of size, moving between the same individual destinations, will pay the same rate. A shipment of 1,006 kg. of a given description will therefore move at the same charge as one of 46 kg. between the same points. But the single rate itself has been calculated to offer equal or greater attractions for bulk traffic than the present complicated and cumbersome arrangement.

**Rate Levels—and Reductions.** Each of the 48 new descriptions and the assignment of specific items between them has been reviewed on its own merits and with particular regard to the state of the market and the potential new traffic which it may develop. Generalized statements about the rates themselves which would be applicable in all cases are therefore difficult.

However, the new commodity rates do work out to levels very substantially below the general merchandise rate for shipments over 45 kg. As
between New York and London, this rate is and will remain $1.82 per kg. (83 cents per lb.)—the highest of the new commodity rates for shipments between these two points is $1.32 per kg. (60 cents per lb.) and the range goes as low as 88 cents per kg. (40 cents per lb.).

The new rating basis also hampers exact comparisons between new and existing commodity rates. Nevertheless, it is estimated—probably on the conservative side—that rates for 25 to 35 per cent of commodities presently listed will be reduced by amounts up to 20 per cent. At the same time, other commodities which must presently move at general merchandise rates will be covered by the new descriptions and will therefore benefit from substantially lower charges. Further actual reductions will result from the extension of existing commodity rates to destinations not now covered.

The following are some examples of the new commodity rates per kg., given for the most part in ranges depending upon the specific destination in Europe. In a few cases, rates to some Scandinavian points will be slightly higher.

- Household goods and personal effects—88 cents to $1.10
- Crabs, crawfish and lobster—99 cents
- Foodstuffs—$1.10 to $1.26
- Furs, hides; also leather goods; also drawnwork—$1.10 to $1.27
- Scientific and precision instruments—$1.21 to $1.27
- Optical goods, photographic and projection equipment—$1.10 to 1.27
- Metals, ingot and semi-manufactured—99 cents
- Newspapers, magazines, books, printed matter—$1.10 to $1.20
- Toys—$1.10 to 1.21
- Business and office machinery and supplies, machinery, tools and surface vehicles—$1.10 to 1.27
- Clothing and wearing apparel; also yarns and textiles—$1.10 to $1.18

Further Changes. The new commodity rating structure will be kept flexible by the IATA Commodity Rates Boards for the North Atlantic which will continue to operate as they have before. The present list of descriptions, rates and applicable destinations is what carriers believe will cover the present demand and develop new markets, but additions and changes can be made by the Board on the motion of the carriers themselves or by application from any interested shipper through individual airlines.

The effectiveness of the new agreement extends until December 31. There will be a general review and evaluation of the new system by the airlines when the Traffic Conferences meet to consider 1956-57 fares and rates.

TECHNICAL MATTERS

A series of more than 100 recommendations for future developments in air navigation arrangements throughout the Pacific Ocean area have been submitted by the international airlines for the consideration of governments at a regional meeting of the International Civil Aviation Organization (ICAO) at Manila beginning next October 27.

Drafted by the new Pacific Technical Panel of the International Air Transport Association (IATA), the recommendations are designed to meet current operating problems, to provide for future operations of jet and turbo-prop aircraft, and to accommodate expected increases in traffic on current routes as well as on new Polar routes between Europe and Japan.

The IATA recommendations range from a revised scheme of oceanic control areas to proposals that an instrument landing system and a flight information center be installed at Cold Bay Airport in the Aleutian Islands. ICAO will circulate these recommendations, together with other data, to all interested governments for consideration in advance of its Pacific Regional Air Navigation Meeting at Manila.

One of the recommendations designed to meet anticipated traffic increases
and assist operation of new and faster aircraft is a comprehensive plan put forward by IATA for the installation of short range navigational aids in all major terminal areas. Also recommended is a revised scheme of oceanic control areas, stretching from terminal to terminal across the Pacific, within which aircraft would have a choice within reasonable limits of selective tracks. This would allow a flight—for example between Tokyo and Honolulu—to have sufficient freedom of movement to seek favorable winds and thus reduce flight time, while remaining subject at all times to the positive control required to eliminate collision risks.

Recommendations have also been made for more accurate prediction of wind velocity aloft for tomorrow’s longer range and higher altitude aircraft. IATA has proposed an appropriate increase in upper air observational reports as part of an overall plan to improve the reliability of forecasts for both terminal and enroute weather by expanding the network of observing stations and by providing adequate means for the rapid exchange of their weather reports. Observations from oceanic areas would be increased by utilizing remote islands for the siting of automatic weather stations and increasing the number and frequency of reports from merchant vessels.

**FACILITATION**

The 4th Session of ICAO’s Facilitation Division will be held at Manila in October of this year. The fact that most of the business of the Division will be related to amendments to Annex 9 can be taken as a healthy sign. It indicates that ICAO and the non-governmental organizations with whom ICAO works are not complacent about past progress. It is appreciated that advances in Facilitation, though substantial, tend to throw into relief the problems which have yet to be tackled. Again, if an objective appears unattainable by current methods, new means must be devised to achieve the desired end.

IATA is the most interested party among the other international bodies. As such the association has welcomed the opportunity of putting its views to the 4th FAI Division. Those views will be put formally as papers. As with ICAO most of IATA’s submissions are concerned with making advances by securing the approval of the contracting states to amendments to the standards and recommended practices contained in the Annex. IATA’s main submissions to the Division are summarized below.

**Elimination of the Passenger Manifest:** Experience has shown that the Passenger Manifest is an unnecessary document. As a check on passengers it duplicates the record that the E/D Cards provide. If a check on the number of passengers is required it is suggested that the total number of passengers could be recorded on the General Declaration. The practicability of the proposal is evident in that many European countries have already dispensed with the Manifest.

**Simplification of the Embarkation/Disembarkation Card:** The importance of maintaining a standard type form is recognized in this proposal. The present E/D Card as recommended by Annex 9 provided for 20 items, but few States require more than 8 or 10. In Europe the complete elimination is advocated. While IATA warmly supports this objective, it is believed that international support will be more readily gained by “making haste slowly.” Therefore a reduction in the number of items on the Annex 9 card is recommended.

**Journey Log Book:** Although the Journey Log Book is not prescribed in Annex 9 as an aircraft clearance document some States are insisting on it being produced for clearance purposes. Authority quoted by those States is Article 29 of the Chicago Convention which lists the Log Book among the “Documents to be carried in aircraft.” ICAO has suggested that the
General Declaration should be regarded as fulfilling the requirements formerly met by the Log Book. IATA seeks to have this suggestion incorporated into Annex 9 as a standard.

**Format of Crew Member Licenses and Certificates:** The forms of crew member licenses and certificates prescribed by Annex 9 give rise to difficulties in connection with the use of such documents by interchange crews. Sub-paragraph (j) of paragraph 3.9 of the Annex requires that the license should certify that its holder may at all times re-enter the state of registry of the aircraft. In the case of interchange this can give rise to problems, inasmuch as the nationality of the crew members and the State of registry of the aircraft may be different. By proposing certain amendments to the relevant sections of the Annex IATA hopes to solve those problems.

**Use of Crew Member Licenses and Certificates in Lieu of Crew Manifests and Crew List:** At present countries require that details of crew members either be entered on the General Declaration or a current list of crew members must be submitted to the authorities. The differing requirements of States can demand extensive information and a further problem is the inevitable variation in the composition of a crew. IATA recommends that crew member licenses and certificates should be the only requisites for the entry and departure of crew, that carriers should not have to render a current list or complete the crew manifest portion of the General Declaration.

**Documentary Requirements for Passengers in Transit:** Annex 9 recommends that the Embarkation/Disembarkation Card should be the only document required of transit passengers. IATA feels that it may be desirable to have E/D Cards for certain types of transit passengers e.g., transferring to another airport, or another terminal at the same airport. However, in the case of direct transit on the same aircraft it seems illogical to ask a passenger who has no desire to disembark to complete a card. Aircraft stops are incidental to such passengers and IATA seeks to obtain an amendment to Annex 9 covering such situations.

**Custody of Cargo:** The airline operators feel that it is inequitable that they should be held responsible for loss of goods while they are in the custody of Customs authorities. Cases of this nature have arisen and IATA feels that the present ambiguous phraseology in the relevant paragraph of Annex 9 should be revised to obviate such cases in the future.

**Procedures Relating to Passengers' Income Tax Evasion:** Another imposition on carriers is the responsibility to ensure their passengers' fulfilled Income Tax liability. In some cases carriers are even expected to pay defaulted taxes if they transport a passenger lacking an income tax clearance or exemption. Understandably, there is no provision in Annex 9 for such a contingency. IATA hopes to secure protection for its members by the introduction of new paragraphs in the Annex.

Other subjects to be raised by IATA at Manila include the simplification of procedures for examining outgoing passengers' baggage and the recommendation than an oral declaration of inward baggage be acceptable. Failing this it is recommended that a standard form—the International Passenger Baggage Declaration be used.

The importance of using standard forms cannot be over-emphasized. In Annex 9 specimens of all the necessary clearance forms are reproduced. It will be readily appreciated that familiarity with the layout of a form means that it can be easily filled up irrespective of the language in which it is printed.

The development of air freight presents problems to FAL people. In accordance with their policy of form-standardization ICAO and IATA had recommended the use of the International Cargo Invoice. IATA feels that this form is not gaining general acceptance and accordingly has made a
study to determine how best its policy on cargo clearance can be revised in the light of the current situation.

The GATT Standard Practices for Documentary Requirements for the Importation of Goods has been studied and a survey made of cargo procedures in various countries. It is felt that a system of clearance procedures incorporating the best features of current practice and the GATT recommendations should be acceptable to both States and merchants. Accordingly, IATA is proposing several amendments to Chapter 4 of Annex 9.

Many advances have been made in Facilitation and many more will be made. However, these advances in streamlining procedures and eliminating forms will be of no avail if the channels through which traffic must pass are not conducive to an easy flow. IATA is proposing that when Governments are contemplating new or re-designed terminal facilities they should consult local FAL Committees.

Undoubtedly States are more FAL-conscious than ever before. The hindrances to travel are now recognized as a barrier to trade and a deterrent to social intercourse on an international scale. The United Nations Economic and Social Council recently recognized the importance of international travel in promoting international understanding and cultural relationships, in fostering international trade, in furthering economic development and in contributing towards the improvement of balances of payments. The Council also invited Member States of the United Nations “to simplify wherever practicable the entry and exit procedures and formalities applicable to tourists, and to cooperate in the development of international travel arrangements designed to facilitate tourism.”

If Member States intend to contribute more than lip service to these ideals the 4th Session of ICAO’s Facilitation Division should yield the most striking advances to date.

C. VALLANCE

INTERNATIONAL CHAMBER OF COMMERCE

The Fifteenth Congress of the I.C.C. was held in Tokyo, Japan, between 15th and 21st May, 1955. The following resolutions, embracing air transport problems, were passed: Transport and Packing of Perishable Foodstuffs; Double Taxation of Shipping and Air Transport; Revision of the Warsaw Convention; Negotiability of the Air Waybill; and Passenger Service Charges.

Transport and Packing of Perishable Foodstuffs

The quality and rapidity of transport are of primary importance in ensuring that perishable foodstuffs reach the consumer in a sound state and at a reasonable price.

The International Chamber of Commerce therefore pays tribute to the Economic Commission for Europe (ECE) for the work that has been done towards facilitating trade and improving the quality of perishable foodstuffs in Europe.

At the same time, the ICC expresses its gratitude to the ECE for the warm welcome given its delegates and for the consideration given to its views, during the course of the work that has just culminated in the establishment of Annex C. 1 to the Road “Cahier des Charges,” of the draft general conditions, still under study, as well as of the protocols relating to the standardization of produce and their packing.

The ICC nevertheless wishes to warn the authors of these documents against the risk of stifling progress in this field, which is in full process of development, by adopting strict regulations, based on theoretical considerations too remote from practical realities.
A striking example of the many possibilities of progress is the development of air freight, the liberalization of which was recently recommended by the European Conference on Civil Aviation. It is important that, when its prices have made it more widely accessible, this service, which has already proved its value in the service of perishable foodstuffs, should not be excluded by strict regulations.

The same remark applies to the standardization of packing, which air transport makes it possible to simplify.

While recommendations may therefore be valuable in that they will enable practice to be directed little by little in the desirable direction, this field also is in process of development, since it is not possible to dissociate this problem of packing from the problem of the characteristics of handling and transport units.

As the International Container Bureau has already pointed out, the dimensions laid down in the protocol are unsuitable for the use of pallets and box pallets, for some types of which the International Standardization Organization (ISO) has recommended standards, and which should themselves be adaptable to the various vehicles.

It was also important to recall the large amount of shipments throughout the world sent in frustrum-shaped packing, to which European frontiers could not suddenly be closed.

The ICC therefore urges that, at the present stage, only recommendations as flexible as possible should be adopted, as regards both the standardization of packing and general transport conditions, since they can further the improvement desired, much more than strict regulations could.

The ICC also wishes to point out that the greater the number of formalities and technical improvements that are imposed on this transport, the greater will be the cost of the transport and, consequently, the price paid for these foodstuffs by the consumer.

These various conclusions are derived from a study by the ICC's General Transport Commission of a report drawn up by the ICC's Committee on Transport of Perishable Foodstuffs, which gives details of the comments to be made on the texts drawn up by the ECE relating to the conditions for the transport of perishable foodstuffs, and which the ICC brings to the attention of governments.

Double Taxation of Shipping & Air Transport

At the request of the International Chamber of Shipping and the International Air Transport Association, the International Chamber of Commerce has made a special study of the problem of the double taxation of profits of shipping and air transport enterprises.

The ICC is of the opinion that the only fair and practicable way of eliminating the double taxation of such enterprises is to apply the principles laid down in the League of Nations Model Bilateral Convention for the Prevention of Double Taxation of Income and Property (London Draft) which are observed in all bilateral treaties now in force on this subject.

These principles, which the ICC fully endorses, are as follows:

a) Profits derived from the operation of ships or aircraft engaged in international transport should be taxable only in the State in which the enterprise has its fiscal domicile, in other words in the State in which its real centre of management is situated (Art. V of the Model Convention and Art. II of the Protocol).

b) Profits derived from services other than actual maritime or air transport, for instance the provision of port facilities and terminal services, should be taxable according to the principles applicable to business income in general (Art. IV of the Model Convention and
A proper application of the principles laid down for the allocation of income to a permanent establishment (Para. I of Art. VI of the Protocol) would in fact allocate to the country of the port of call any profits of this kind which the permanent establishment in that country might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions.

The ICC requests the Economic and Social Council of the United Nations to issue a recommendation urging all governments to relieve shipping and air transport of double taxation through bilateral treaties and unilateral legislation based on the principles outlined above.

In cooperation with the International Chamber of Shipping and the International Air Transport Association, the ICC will continue to study other aspects of the double taxation of shipping and air transport arising out of the taxation of property and turnover, receipts, transactions, supplies and equipment, as well as any other taxation problems of special importance to shipping and air transport.

Revision of the Warsaw Convention

Confirming its resolution 15 B, adopted at its Fourteenth Congress in Vienna (May 1953) the International Chamber of Commerce emphasizes again that a revision of the Convention would be unwise at the present time.

The revision seems particularly inexpedient since the discussions concerning the revision of the Convention, in particular of Article 25, have shown that no unanimity can be reached.

If, however, there were to be general agreement among the Signatory States on the need for certain amendments, the ICC, confirming its Vienna resolution, considers that such amendments should be confined to a few essential points, such as those mentioned below, on which general agreement may be reasonably expected and which should be incorporated into an additional protocol to the existing Convention.

In this sense, the ICC appreciates the position adopted at Rio de Janeiro by the Legal Committee of the International Civil Aviation Organization (ICAO), which abandoned the idea of drawing up a new Convention and confined itself to including a few amendments in the Draft Protocol.

However, as regards this text, the ICC wishes to repeat its recommendation that such a Protocol should not become effective until ratified by three quarters of the Signatory States to the existing Convention.

As regards the traffic documents, the ICC welcomes the simplification of these documents proposed by the Legal Committee of the ICAO in the Rio Protocol, but feels that the possibility of further simplification should be more explored.

Details of the particulars to be included in the passenger ticket and baggage check should not be laid down in the Convention. Some form of ticket and baggage check is necessary but its description in the Convention, if any, should be kept as simple as possible.

All details concerning air waybills should be omitted from the Convention and the precise form of the documents should be left to air carriers and users to evolve in the light of commercial experience.

With regard to the liability of the air carrier, the ICC is of the opinion that, as it has recommended in the opening paragraph of this resolution, the limits referred to in Article 22 and the wording of Article 25 should remain unchanged.

If, however, the Diplomatic Conference decides to revise Article 25 along the lines proposed in the Rio Protocol, the ICC believes that it would then be necessary to compensate for this by making an appropriate increase in
the limits of liability, the size of this increase being left to the appreciation of the governments.

**Negotiability of the Air Waybill**

The International Chamber of Commerce is of the opinion that, with the rapid growth of cargo transportation by air, any legal obstacles which may exist against the issuance of negotiable air waybills should, in the interest of the users of air transportation, be removed, so as to make it possible to issue air waybills having the same characteristics as the shipping bills of lading whenever the use of such documents is desirable and warranted by the circumstances. For that reason, the ICC recommends that in the event of any modification of the Warsaw Convention, the opportunity for amendment be used for facilitating the issuance of negotiable air waybills.

**Passenger Service Charges**

In October 1952, the Commission on Air Transport of the International Chamber of Commerce showed concern at the tendency of governments to introduce service charges payable by air passengers, taking the view that the new charges thus created would be likely to jeopardize the development of air transport.

On that occasion the Commission suggested that a sound economic solution of the problem underlying the introduction of such charges could only be found on the international plane within the framework of the International Civil Aviation Organization (ICAO).

A resolution on the same subject was adopted by the Vienna Congress (Resolution 15 C), where the opinion was voiced that charges of this kind, payable by passengers travelling by air and sea transport, complicate administration and add yet another barrier to freedom of travel.

A measure of this type recently taken in another country, before a complete study has been undertaken for the various means of transport, shows the urgency of such a study. The ICC strongly recommends governments not to take any further decisions in this field until the appropriate bodies have convened a world conference to study the international aspects of the problem of levying charges on passengers, and to make all necessary recommendations on this subject to governments.

**III. OBSERVATIONS AND COMMENTS ON FOREIGN CASES**

*Scandinavian Airways System vs. Wucherpfennig.* Landgericht Hamburg, April 6, 1955. Facts: Wucherpfennig rented a Volkswagen to a group of students for a trip to Italy. Near Florence, the car had a breakdown caused by a defective brake drum. Wucherpfennig bought a new drum and had it, under the usual air waybill and IATA Conditions of Carriage, sent by SAS to Rome, where it would be customs cleared and forwarded by LAI to Florence. SAS told Wucherpfennig that the drum would arrive at Florence before noon the following day. However, on arrival in Rome, the parcel was handed over to the customs authorities according to regulations and was there delayed for several days. In the meantime, Wucherpfennig sent a second drum which arrived according to schedule. After some time, the first parcel was sent back, and SAS claimed the corresponding amount of DM 26.54 from Wucherpfennig, who, however, refused to pay anything, pleading that the claim was set off by damages occasioned by delay for which SAS was liable.

*The Court:* Air transportation contracts are governed by the lex fori, unless the parties did refer to another law. The case at bar is therefore
subject to German law, and German law comprises the Warsaw Convention, apart altogether from the fact that the parties referred to the Convention in the air waybill. There was no delay within the meaning of Article 19 of the Convention, because the parties did not fix a time for the completion of the transportation; the transportation as such was performed according to schedule, and the delay occurred only after delivery of the parcel to the customs authorities in the State of destination. By the same facts, it is proved that the carrier and his agents have taken all necessary measures within the meaning of Article 20 of the Convention to avoid the damage, the carrier not being obliged to point out the urgency of the shipment to other persons, because the more expensive way of air transportation is only chosen in urgent cases.

Remarks: With respect, it is submitted that this again is one of the cases in which a correct result was arrived at by a most curious reasoning (cf. Munier vs. Divry, 21 Jrl. of Air Law & Com. 369; 1954). The primary question which arises is passed in silence, i.e., whether Italy and Western Germany can be regarded as High Contracting Parties within the meaning of Article 1 of the Convention (cf. Achtnich, 1952 Zeitschrift fur Luftrecht 324). Instead of that, and having declared the Conditions of Carriage to bind the parties, the Court goes in quest of the applicable national law. Now, the correctness of taking the lex fori as the proper law of the contract seems rather doubtful (even if recommended by Visscher and Reise for Warsaw cases; with regard to Swiss law cf. the Airtraffic case, 21 Jrl. of Air Law & Com. 109; 1954), and declaring the Warsaw Convention as a part of German internal law is a mistake, to put it mildly. Besides these problems of private international law, the construction given to Articles 19 and 20 of the Convention is correct; had the Convention been inapplicable, the same result would have been arrived at by applying the Conditions of Carriage. The case is exhaustively discussed by Professor Meyer in 1955 Zeitschrift fur Luftrecht 232.

DR. WERNER GULDMANN (Zurich)


The claims of the plaintiff arose from the case where a passenger in a K.L.M. plane from Amsterdam to New York became ill from Gander to New York and died in New York about a month later. The plaintiff claimed that the death was due to failure (on the carrier's part) to use the pressurization agreed upon. The plaintiff administratrix alleged five causes of action which were all dismissed as defective; thereafter the complaint was amended. The first and second causes of action of the amended complaint were held sufficient under the provisions of the Warsaw Convention, "giving rise to a cause of recovery in the event of death resulting from injury sustained in international transportation."

The defendant moved to dismiss the third cause of action for insufficiency. The plaintiff stated that the third cause of action was in contract, requiring the carrier to make continuous use of pressurization equipment which by his failure to use, resulted in the death of the passenger whose administratrix sought reimbursement of damages for hospital and ancillary expenses, pain and suffering and death.

The defendant stated that the carrier's obligation for safe passage was imposed by law and that the plaintiff succeeded to no contract right upon which she might assert a claim for injuries or death.

Concerning the motion addressed to the first two amended complaints, Hecht, J., stated that the application of Articles 32 and 33 of the Warsaw Convention gave a right to the carrier by special agreement to assume
liabilities “greater than or additional to those provided for in the Convention.” The third and fourth causes rested upon the local law, i.e., the Laws of New York State; they were dismissed, however, the aim of the above mentioned Articles of the Convention being to regulate, in a uniform manner, the conditions of international transportation by air in respect of . . . liability of the carrier, and this aim would be defeated if local law was allowed to supersede the international Convention.

The fifth cause of action was to be held conditionally sufficient excuse in the related provisions of the Convention as there was no conflict between the provisions and the carrier's assumed additional liability. The plaintiff cited the Greco case (Greco vs. Kresge Co., 277 N.Y. 26) as support for her claim concerning the fifth cause of action where it was held “though the action may be brought solely for the breach of the implied warranty the breach is a wrongful act, a default, and in its essential nature, a tort.”

Whether a contractual breach is also a wrongful act, neglect or default is not always clear (Busch vs. Interborough, 187 N.Y. 338). The plaintiff, by insisting that this claim of action was one in contract, stated Hecht, J., was insufficient, because such a cause of action does not survive anyhow under the Decedent Estate Law Section 130, supra. Both parties appealed from the order entered on the opinion of Hecht, J., who stated furthermore, “Order unanimously affirmed as to the first, second, third, fourth and fifth causes of action, with leave to serve an amended complaint, as to the fifth cause of action within ten days after service of a copy of the order, with notice of entry thereof. We do not pass upon whether the fifth cause of action, even if in contract, abates by reason of Section 130 of the Decedent Estate Law.”

When the essential wrong complained of is tortious in nature, the application of a shorter statute of limitation may not be avoided by making use of a form of action ex contractu, but resulting injury may enable the injured person to make use of an action ex contractu where the breach is independent of negligence (Blessington vs. McCrory Stores Corporation, 305 N.Y. 140).

Thus the failure to supply a pressurized cabin, or to use this equipment, is a breach of contract but not necessarily a violation of common law duty, or a default, or in any other respect a wrongful act.

“The Convention establishes an ‘International Code of Law,’ stated Hecht, J., which ‘overrides, and supplants any contrary local law (Ross vs. Pan American Airways (1949), U.S. Av. R. 168) . . . its provisions supersede the usual doctrine that the right and measure of recovery are governed by the lex loci and not by the lex fori (Garcia vs. Pan American Airways (1945) U.S. Av. R. 39, and (1946) U.S. Av. R. 496).

However, it appeared to the Court that the cause would survive under local laws under any event because it is permitted by the Warsaw Convention and “thus is quite apart from our laws.”

The third cause of action, which is similar to the fifth, or material point of view, should be dismissed, but only because damage is stated as a conclusion without any allegation which connects it with a breach of any duty or obligation subjecting defendant to liability. The motion was granted and leave to plaintiff to replead the third cause of action within twenty days from service of a copy of this order with notice of entry.

The amended complaints of first and second causes of action were held sufficient. 1951 U.S. Av. Reports 378; the third, fourth and fifth causes were dismissed.
IV.

STATUS OF INTERNATIONAL CONVENTIONS

Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (signed at Rome, Italy, 7th October 1952).

India became the twenty-seventh state to sign the Rome Convention of 1952 in a ceremony at the International Civil Aviation Organization headquarters.

Countries now signatory to the convention are Argentina, Australia, Belgium, Brazil, Canada, Ceylon, Denmark, Dominican Republic, Egypt, France, Greece, India, Israel, Italy, Liberia, Luxembourg, Mexico, Netherlands, Norway, Philippines, Portugal, Spain, Sweden, Switzerland, Thailand and the United Kingdom.


Egypt, Venezuela and Colombia have recently ratified the Convention which was under consideration during the month of September, 1955, by a diplomatic conference at The Hague, with a view to revision.

V.

PLESMAN MEMORIAL LECTURES

The Technological University of Delft has announced the first in a series of annual lectures sponsored as a memorial to the late Dr. Albert Plesman by the International Air Transport Association.

J. D. Pearson, Managing Director of the Aero Engine Division of Rolls Royce Ltd., Derby, England, was the first Plesman Memorial Lecturer, speaking at Delft on September 12 on the subject of "The Development and Future of the Turbine Engine for Civil Aircraft."

The Plesman Lectures have been endowed by IATA as a tribute to Dr. Plesman, the founder and long-time President of KLM Royal Dutch Airlines, who was also a founder and former President of the world air line organization.

BULGARIAN DESTRUCTION OF EL AL AIRLINER

On July 27, 1955, a Constellation airliner, operated by El Al between London, points in Germany, Vienna and Israel, was attacked by gunfire while flying close to the point where the boundaries of Bulgaria, Yugoslavia and Greece meet. The legal course of the plane was through the airspace of Yugoslavia and Greece. Yugoslavia signed the Final Act of the Chicago Agreements Conference on Dec. 7, 1944. It consented to flight through its airspace. Greece ratified the Chicago Convention in 1947 and accepted the Transit (Two Freedoms) Agreement in 1945. Flight through the Bulgarian air space was not permitted; Bulgaria did not attend the Chicago Conference nor adhere to the Chicago Convention; nor sign the Transit Agreement or grant any transit rights to El Al.

The transport plane was seen by Greek witnesses to fall in flames, and the crash occurred inside the boundaries of Bulgaria. None of the 7 crew members or 51 passengers survived. The 58 bodies were so badly burned that none could be identified when delivered by the Bulgarian authorities at the Turkish frontier several days later. All were taken to Israel and buried in a common grave.

Bulgaria expressed regrets and attributed the event to antiaircraft fire
aimed at an aircraft over Bulgarian soil. After several days' delay, an Israel investigation team was admitted to the scene, and bullet holes were found in pieces of wreckage. Thereafter Bulgaria admitted that the air transport had been shot down by two fighter planes, which had shot off the tail assembly. Bulgaria offered full reparation.

The victims were of many nationalities. According to press reports, 32 were Israelis, 13 Americans, 8 Britons, 5 emigrants from Russia.

The United States sent the following Note to Bulgaria, through the Swiss diplomatic agents:

"The United States Government protests emphatically against the brutal action of Bulgarian military personnel on July 27, 1955 in firing upon a commercial aircraft of the El Al Israel Airlines which was lawfully engaged as an international carrier. This attack, which resulted in the destruction of the aircraft and the death of all personnel aboard, including several United States citizens, constitutes a grave violation of accepted principles of international law. The Bulgarian Government has acknowledged responsibility for this action.

"The United States Government demands that the Bulgarian Government (1) take all appropriate measures to prevent a recurrence of incidents of this nature and inform the United States Government concerning these measures; (2) punish all persons responsible for this incident; and (3) provide prompt and adequate compensation to the United States Government for the families of the United States citizens killed in this attack."

The facts seem to justify a preliminary analysis of the legal situation.

First: Between Bulgaria and the U.S.A. and other protesting governments:

Bulgaria appears to be a sovereign State which has not consented to be sued in any local or international tribunal because of the acts of its military aviators or ground anti-aircraft forces. It is not a member of the U.N. and is not bound to submit to the jurisdiction of the Court of International Justice established by the U.N. Charter. It would seem that the Bulgarian offer of reparations would have to be worked out by some ad hoc Claims Conference. A precedent might be found in the Anglo-Chinese negotiations of 1954 concerning the Chinese attack on a British airliner flying over the South China Sea. Reports indicate that China made an offer of a round sum which Britain accepted.

The dependents, beneficiaries and legal heirs of the victims would seem to be relegated to making their claims known to their various governments, which in turn would endeavor to obtain satisfaction in the diplomatic negotiations.

Second: As between the airline and the passengers:

Each airport at which the airliner was scheduled to call was in a country which has ratified the Warsaw Convention except Vienna, in Austria. The Vienna passengers were thus apparently carried under IATA terms, and the other passengers under Warsaw terms.*

Under either system, there are three possibilities:

I. The airline and its pilots were innocent of all fault and are responsible for nothing.

II. The airline cannot show that it was innocent of all fault, but its conduct did not amount to wilful misconduct (dol); therefore it is liable in each case for the provable damage, not exceeding the Warsaw limits which, in current dollar terms, are $8,300 for each death, and $16.58 for each kilo of checked baggage, and $335 for loss of other property.

* The text of the Warsaw Convention may be found in Volume 14, Journal of Air Law and Commerce at page 87; also at 1934 U.S. Aviation Reports 245 and 49 U.S. Statutes at Large 3000.
III. The passengers can show that the operation of the airliner amounted to "wilful misconduct" (dol); whereupon the airline's liability is not limited by the Warsaw limits, but is judged by the law of the place of the event. The event occurred, it seems, in Bulgaria; hence the law of liability for negligent death and property loss is the law of Bulgaria. If it should be demonstrated that the attack took place in Greek or Yugoslav airspace, the law of those countries would seem to govern.

Considering (I), the complete absence of fault on the part of the navigators and pilots of the airliner remains to be evaluated. Even if the airplane did stray across the invisible boundary line of Bulgaria, it may well be demonstrable that this would not be readily detectable in the present state of the air navigation aids of the region, and in the conditions of wind and cloud prevailing.

Considering (II), there may be the usual Warsaw situation that proof is inconclusive, whereupon the Warsaw limits apply.

Considering (III), the issue would be whether the navigation of the airliner was for wilfully insouciant—so misconducted—as to merit the heavy penalty of unlimited liability. The terms of the Bulgarian Note, shouldering the responsibility, would seem to indicate that the navigation of the airliner was not of such grossly negligent and wilfully careless a nature. It seems that the airliner was given no warning whatever, and was shot down from the rear.

Comparison may be made with the Palm Springs accident, when an Army pilot deliberately flew close to a United transcontinental airliner, with which he collided. There was testimony that he had told the United co-pilot of his intention to fly close; and the co-pilot failed to take steps to prevent this. A jury returned a substantial verdict against United because of this supposed fault of its deceased employee.

Who May Recover Damages? As is not uncommon, a number of the passengers in any airplane are unmarried and have no legal responsibilities towards dependent persons. When a family group perishes in the disaster, there may be no survivor entitled to claim damages. The rights of dependents and beneficiaries may depend on the laws of different places of domicile and of residence. They may depend in part on the law of the place of the accident, which—as above indicated—would seem to be Bulgaria, but might be Yugoslavia or Greece. In view of the admissions of the Bulgarian Note, the diplomatic claims may properly urge the law of the passenger's nationality, to the exclusion of the law of Bulgaria.

Third: As between the Airline and the Crew. The seven crew members died in the course of their employment, and were presumably covered by a workmens' compensation or social benefits insurance scheme. The benefits of such coverage would appear to take care of their dependent beneficiaries. If there are no dependents, such schemes frequently provide a payment into a fund for special cases; thus the U.S. Longshoremen's Act exacts $1,000 for its benefits fund when a worker dies without legal beneficiaries.

Fourth: Some of the persons in the airplane probably carried personal accident and life insurance policies. Whether the military attack on the airliner, in time of peace, called for a payment of the policy benefits might under some forms of words present a problem of interpretation. Over the years, insurance companies have used various forms of words in attempting to exclude various military and aviation risks; and the result has been a long record of litigation.

The progress and results of the claims arising from this wanton disaster will be observed by many with interest.

Arnold W. Knauth
REPORT OF THE COMMITTEE ON AERONAUTICS OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK ON THE RIO PROPOSALS TO AMEND THE WARSAW CONVENTION AS THEY AFFECT PASSENGERS' PERSONAL INJURIES AND DEATH CLAIMS

In September of 1953 the Legal Committee of the International Civil Aviation Organization proposed certain changes in the Warsaw Convention. Apparently the purpose of these changes is to eliminate any possibility of a passenger or his family receiving more than the specified maximum sum. However, it proposes to increase the maximum by about 60% or from approximately $8,300 to $13,000.

The present provisions of the Convention and the changes proposed at Rio in so far as they affect liability to passengers for deaths or personal injury are as follows:

ARTICLE 22—(1) In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs. ** Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

[“(a) In paragraph 1 the figure ‘125,000’ shall be replaced by ‘200,000.’”]

ARTICLE 25—(1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful misconduct.

Editor's Note: The preliminary draft of this report was prepared by a subcommittee of the Committee on Aeronautics consisting of John S. Chapman, Jr., Chairman, Huyler C. Held, Robert Nelson Leavell and Theodore E. Wolcott.

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier acting within the scope of his employment.

[“Paragraphs 1 and 2 shall be deleted and replaced by:

'The limits of liability specified in Article 22 of the Convention shall not apply if it is proved that the damage resulted from a deliberate act or omission of the carrier, his servants or agents, done with intent to cause damage; provided that, in the case of a deliberate act or omission of a servant or agent, it is also proved that he was acting in the course of his employment.'

"After Article 25, the following new Article shall be inserted:—

Article 25A

'If under applicable law, a servant or agent of the carrier is liable for any damage contemplated in the Convention, he shall be entitled, in an action brought against him before a court in the territory of a High Contracting Party, to avail himself of all defences and limits of liability which are available to the carrier under the provisions of the Convention. The total amount recoverable from the carrier, his servants and agents together, shall not exceed the amount which could be recovered from the carrier under the provisions of the Convention. The provisions of this Article cannot be invoked by a servant or agent who has acted with intent to cause damage.'"]
The purpose of the proposals is thus twofold—on the one hand to mollify, to a degree, the public dissatisfaction, especially in the United States, with, the low damage maximum and on the other hand to block the tendency of juries and occasionally judges in this country to find wilful misconduct.

Because these proposals seek to end any possibility of recovery of provable damages no matter what the degree of negligence or even wilful misconduct, short of actual homicide, they raise questions which are basic.

Air transport’s tremendous growth to a major means of international carriage requires us to take another look and see whether American passengers and their families are fairly protected against the consequences of an air crash due to negligence. The rights and benefits surrendered or gained under the Warsaw Convention by the carrier and the passenger, respectively, should be re-evaluated in view of modern conditions.

The Convention was concluded in 1929—a time when commercial air transport was relatively primitive, and international commercial aviation even more so. Under the circumstances, a treaty that would enable an international air carrier to limit its risks was then considered necessary and beneficial to the encouragement of this new means of international communication. In exchange for a so-called presumptive liability up to a very limited amount, the passenger and his family were deprived, among other things, of two very substantial rights—the right to recover the full amount of their damages and the right to sue the wrongdoer anywhere he can be served with process.

It is claimed that the passengers derive great benefit from the “uniformity” of rules of liability under the Convention. These benefits are to a great extent illusory. In most countries, the right of action exists for recovery of damages for personal injuries or death, and in many countries (as well as in the greater majority of the States in our country) there is no limitation of the amount of damages recoverable. In most European countries, the laws governing liability of public carriers under the Civil Code are quite enlightened—indeed, in some respects, more liberal than our own. It would thus appear that, for most practical purposes, the Warsaw Convention was not necessary to grant a passenger or his family the right to recover damages for injury or death. In fact it is fortunate that this right of recovery already exists under the laws of most countries, since the Warsaw Convention is silent as to the creation of a right. Accordingly, in any airplane accident, reference always must be made to the local national laws, to determine the rights of the passenger or his family. Thus, substantially the only uniformity achieved by the Convention is an economic ceiling which reflects more the foreign than American standards of compensation.

It has also been argued that the passenger has been assured of almost certain recovery of some award even if small, and correspondingly of a cash settlement. It is the opinion of a number of attorneys experienced in this field of litigation that where the damages are at all serious settlements in the low areas of the maximum limit of $8,300 or even of the proposed $13,000 can be obtained without the Convention. This is based upon non-Warsaw claims.

Rights Gained by the Carrier and Surrendered by the Passenger Under the Existing Convention.

1. Certainty of ceiling except in cases of wilful misconduct.
2. Restriction on places where suit may be brought.

Ordinarily rights to recover damages for personal injury and death are considered transitory and actions may be brought in any place where the defendant may be found. Thus the carrier has gained a decided advantage
by depriving the plaintiff of the absolute right to bring the action in his domicile when the carrier is otherwise subject to process there.

This right, of which the passenger and his family have been deprived, is of the utmost practical importance. In the great majority of cases (absent the Warsaw Convention) an American can sue airlines, U. S. Flag or Foreign, in this country, since most foreign airlines of any consequence maintain an office here. Under the Warsaw Convention this right has been severely curtailed. For example, if an American passenger purchases a ticket in Paris on a European airline, to go from Paris to Rome, and the plane crashes en route, the action must be brought in Europe. Under the Warsaw Convention the Courts in this country can be deprived of jurisdiction over this action. This would mean that for most, if not nearly all, American families, legal action against the air carrier would be impossible in the face of the huge expenses involved and the extreme difficulty of conducting distant litigation in a foreign country. As a result, the foreign air carrier is in a position to dictate a cheap settlement, if any—a situation which requires no further comment. On the other hand, in the absence of the Warsaw Convention, given the same circumstances, the American passenger or his family could bring suit against the air carrier in this country and compel the carrier to defend itself before our Courts if the carrier were doing business here.

Rights Surrendered by the Carrier and Gained by the Passenger Under the Existing Convention.

The burden of proof as to negligence in an action for personal injury or death is shifted to the carrier by the Convention. Because of the low ceiling fixed by the Convention, the shifting of the burden of proof to the defendant is of questionable benefit to the passenger. In properly handled cases regardless of the burden of proof, given sufficient damages a settlement can usually be negotiated at a figure at least equal to or in excess of the Convention limit.

In nearly all civil law countries the carrier, in order to avoid liability, must prove force majeure or sole negligence of the passenger after the plaintiff has proved the carriage contract and a non-safe arrival. Accordingly in most civil law countries, the shifting of the burden of proof to the carrier results in no benefit to the passenger.

In some of the common law jurisdictions (New York, for example) the carrier is required to exercise a higher degree of care than is required of most other persons or businesses. However, the carrier of persons is liable only for the consequences of his negligence, as so defined, and this negligence, as a rule, must be proven by the passenger. Hence, in the common law countries, the Convention has shifted the burden of proof from the plaintiff to the defendant. Even here, the carrier in effect has surrendered nothing in those cases where the doctrine of res ipsa loquitur can be invoked successfully by the plaintiff.

The carrier has surrendered the possibility (under the laws of some countries) of taking advantage of a clause inserted in the contract of carriage exempting the carrier from liability for personal injury or death or setting a lower limit of liability therefor. However, in the United States it is the rule in most jurisdictions that a contract exempting a common carrier from liability for negligence to a passenger is void.

Other Rights Surrendered by the Passenger Under the Existing Convention.

The passenger has surrendered the right to recover damages without limit under general tort principles. This limitation of course is a disadvantage to the plaintiff whose recovery is governed by the law of a forum where
judgments might reasonably be expected to be recovered in an amount in excess of the Convention limit.

The requirement of "wilful misconduct" is a practical denial of all right to recover damages above the limit.

CONCLUSIONS AND RECOMMENDATIONS

It is recommended: (1) That the proposed increase of the monetary limits by 60% be approved; except that it is not to be implied from this recommendation that the Committee thereby recommends that such increase be the maximum. (2) That the proposed amendment to Article 25 of the Warsaw Convention be disapproved.

The carrier has gained positive advantages under the Convention. The advantages to the passenger domiciled in the United States are comparatively negligible. Perhaps this favoring of the carrier was necessary in 1929 to encourage an infant industry. There does not appear to be a present need for requiring an American passenger to surrender his normal rights for the privilege of air travel.

As a result of changed conditions since the adoption of the Convention, and, being mindful of the various elements to be considered, legal, political, economic and technical, and, without the expression of any further specific recommendation, we urge a complete reexamination of the Warsaw Convention including the question of adherence or non-adherence thereto by this country.

June 1, 1955

Respectfully submitted,

COMMITTEE ON AERONAUTICS


* Messrs. Brown and Held did not concur in this report and dissented from the recommendations.