I. INTRODUCTION

THE period July through October, 1947 was one of intense activity for ICAO. It was highlighted in the technical field by the appearance in August of the ICAO North Atlantic Regional Manual, the first of a series which will probably run to ten, one for each of the air navigation regions into which ICAO has divided the world. ICAO's new Legal Committee got off to an auspicious start when, at its first meeting, held in Brussels from September 10-25, 1947, it was successful in drafting a convention on the International Recognition of Rights in Rem in Aircraft. In the economic field a special conference convened in Geneva on November 3, 1947 in an attempt to draft another multilateral convention, this one relating to commercial rights in international civil air transport.

World attention was momentarily focussed upon an ICAO activity on October 14 and 15, 1947 when the U. S. Coast Guard cutter "Bibb," while on duty in the North Atlantic as part of ICAO's ocean weather ship system, rescued 62 passengers and 7 crew members of the "Bermuda Sky Queen," a Boeing flying boat operated by an American non-scheduled international airline. The plane ran into heavy head winds which decreased its fuel supply and required it to land at sea near ICAO weather station "C," which was manned at the time by the "Bibb." These stations, in addition to their primary function of weather reporting, have an important corollary search and rescue function. The U. S. Government, through the Coast Guard, currently maintains only two stations, "A" and "C" of the thirteen-station system, although under the London Ocean Weather Stations Agreement of 1946 it is morally obligated to operate seven and one-half. Additional Congressional appropriations to the Coast Guard will be required if the U. S. is to fulfill this important international obligation. The Congress has been furnished, by the "Bibb" incident, with a striking illustration of the tangible benefits of the Ocean Weather Station System to U. S. international airlines.

Five countries took steps, during the period under review, to become members of ICAO, although none had completed the process. Colombia and Haiti ratified and Pakistan adhered to the Chicago Convention. The applications of Austria and Italy for ICAO membership were approved by the United Nations General Assembly. When all five have formally joined, ICAO's membership will stand at 48.

During the summer, the sixth and seventh of ICAO's regional air navigation meetings were held, in Lima and Rio, and dealt respectively with the South American and South Atlantic regions. The Caribbean Communications Committee met in August in Mexico City, and a special meeting dealing with aeronautical maps was held in Paris the same month.

The second session of the ICAO Council opened on September 2, 1947,
to run until the end of November or early December.\(^1\) The Council's Air Transport, Convention, Air Navigation and Joint Support Committees also met during the session, the Air Navigation Committee with the greatest frequency. In addition, one air navigation divisional meeting was held during the session, and two special technical meetings, which will be reported on below.

II. GENERAL DEVELOPMENTS

A. Council and Committee Officers Elected

It will be recalled that Dr. Edward P. Warner was elected President of the Council at its first session (in which post he functions as an international civil servant), and that Dr. Albert Roper was chosen as Secretary General of ICAO. Both had held the corresponding positions under the interim organization.

During the second session, the Council elected Sir Frederick Tymms of the United Kingdom First Vice-President, Dr. T. F. Reis of Brazil Second Vice-President, and Ali Fuad Bey of Iraq Third Vice-President. Mr. Stuart Graham of Canada was elected Chairman of the Air Navigation Committee, Mr. Henri Bouche of France Chairman of the Air Transport Committee, Dr. Paul T. David of the United States Chairman of the Convention Committee, and Vice-Commodore Juan F. Fabri of Argentina Chairman of the Joint Support Committee.

B. Organizational Structure Approved

On October 14, 1947, climaxing almost a month's study of the problem, the Council approved with certain revisions the Secretary General's proposals for the structure of the President's office and of the ICAO Secretariat. The Secretariat will be divided into four main parts, to be known respectively as the Air Navigation, Economic, Legal, and Administrative Bureaus. Joint support activities will be dealt with by a section of the Economic Bureau at this stage of development.

The Council also established the position of Deputy Secretary General, and Arthur R. McComb of Australia was selected to fill it. Mr. McComb represented Australia on the Interim Council of PICA O and served as Chairman of the Air Navigation Committee throughout PICA O's existence. After the First Assembly of ICAO he returned to Australia to serve in that country's civil aviation department.

The chief organizational problem not yet resolved is the status of the new Legal Committee. In general, the legal experts of each member country tend to favor the consideration of the Committee as a creature of the Assembly, created by and responsible to it. The non-lawyers would prefer to regard it as a Committee of the Council, on the same level as the Air Navigation, Air Transport and other Council Committees.

C. Trainee Program Inaugurated

Implementing a program originally conceived by the Interim Council of PICA O, special short-term appointments with ICAO were offered by ICAO to six young men, including two from Argentina, and one each from

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\(^1\) The first session of the permanent Council, which lasted from May 28 to July 1, 1947, was briefly reviewed in the Summer 1947 issue of the JOURNAL. In addition to the accomplishments already outlined, the Council established terms of reference for its Air Navigation, Air Transport, Convention, and Joint Support Committees. It decided to establish no standing administrative committees, except a Finance Committee, but rather to form working groups where necessary to study specific problems. The Council also decided to confirm July 1, 1947 as the date for the implementation of the "Q" code (for communications), although several states had explained the difficulties they would encounter in meeting that deadline. The Council also recommended that, pending the formal adoption of Standards and Recommended Practices under the terms of the Convention, Contracting States should continue to apply in their national civil aviation practices the PICA O Recommendations for Standards and Practices.
Bolivia, France, Greece and the Netherlands. In his announcement of the program, the Secretary General explained that this was the beginning of a training plan to introduce into the ICAO Secretariat personnel nominated by Member States for a limited period of apprenticeship. The purpose of the appointments is to familiarize trainees with the activities of ICAO. When they return to their home governments or airlines it is expected that the trainees will be able to utilize this experience in maintaining liaison between their own organizations and ICAO. The first group was appointed for a six-month period.

D. Drive for New Members Begun

One of the problems the Council faced during its Second session was to increase ICAO's membership. In this connection, a resolution was passed directing the President (1) to point out to Non-Contracting States the desirability of securing universal membership in ICAO “in order that the Organization may fully achieve its aims and objectives, which are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport...” and (2) to express the Council's hope that such States will ratify or adhere to the Chicago Convention at an early date.

Letters were accordingly dispatched to some sixteen countries. An important factor which has apparently operated to keep certain of these countries out of ICAO and to keep other member countries from paying their quota has been the fact that even the lowest quota assigned (one unit, or $8,935) bulks large for smaller countries with limited interest in international civil aviation and with extensive commitments to the United Nations and other international organizations. One possible way out of this difficulty is provided by Resolution A1-62 of the First ICAO Assembly. This provides, in part, that “in respect of States assigned one unit during the fiscal year 1947-48 the Council shall be empowered to redetermine their capacity to pay and to fix an adjusted rate of contribution, if that seems justified...”

E. 1948 Assembly Agenda Studied

The Council began its consideration of the agenda for the Second Assembly, which will convene in late May or early June in Western Europe. One proposal which appeared to have some support was that the number of Commissions, which stood at six at the First Assembly, should be reduced. One way this might be done would be to handle in one commission the Constitutional and General Policy questions usually dealt with by Commission 1 and the Administrative and Financial Matters, formerly dealt with by Commission 5. At the First Assembly, these two commissions overlapped to a considerable extent.

III. LEGAL ACTIVITIES

A. First Meeting of ICAO Legal Committee Held

The new Legal Committee of ICAO held its first session in Brussels from September 10 to 25, 1947, attended by representatives of 24 ICAO Member States, 5 Non-Member States and 7 international organizations. The Committee drafted a proposed convention on the International Recognition of Rights in Rem in Aircraft, laid down its rules of procedure and approved a work program for its next session and subsequent meetings.

B. Convention Drafted on International Recognition of Rights in Rem in Aircraft

The Committee succeeded, where the First Assembly had failed, in reaching agreement on the principles to govern the drafting of a convention on

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2 For complete text of draft convention, see post, pages 500-505.
this subject. After this, the convention was drafted in relatively short order.

This draft convention will be presented for approval to the Second Assembly of ICAO. If it is approved and adopted by Member States, their international airline operators will find it easier to finance the purchase of new aircraft. The convention also will settle certain controversial aspects of aircraft financing which have concerned legal experts for two decades. By the proposed international agreement, each signatory state will recognize rights of ownership, of mortgage, of hire-purchase and of conditional sale, and of lease for all foreign aircraft which fly into its territories when such rights have been constituted and recorded in conformity to the law of the country of registration of the aircraft.

The Convention when signed and ratified will, in the words of the Legal Committee, fulfill the following objectives:

The Committee prepared a commentary on the draft convention, which will facilitate its consideration by the Second Assembly and later by individual Member States.

C. Rules of Procedure Established for the Legal Committee

The Committee established its detailed rules of procedure. It should be noted that in the case of the first officers to serve on the Committee—Mr. Andre Garnault of France (Chairman), Mr. Justice E. Alten of Norway and Brigadier C. S. Booth of Canada (Vice Chairmen)—an exception was made to the rule prohibiting officers from succeeding themselves. This was done because their first terms would otherwise have run only about seven months. It was agreed that they would remain in office until the Third Assembly of ICAO.

D. Work Program Approved for the Legal Committee

The Committee adopted the following provisional agenda for its next session, which it was decided (subject to the Council's approval) would be held in the same place as and approximately two days before the Second ICAO Assembly:

1. Revision of the Warsaw Convention.
2. Report of a Subcommittee entrusted with studying
   —revision of the Rome Convention on damage to third parties on the surface,
   —revision of the Brussels Protocol additional to the said Convention,
   —existing draft convention concerning aerial collision,
   —limitation of liability of the operator.
3. Draft convention relating to the legal status of the aircraft commander.
5. Reports submitted by the Secretariat on questions referred to it by the Committee.
6. Examination of the working program; revision of the order of priority.

The Committee also decided that the following questions should be considered at subsequent sessions:

a) Negotiability of documents in connection with carriage of cargo by air.
b) Draft convention concerning assistance to aircraft and by aircraft on land.
c) Revision of the convention on assistance and salvage of aircraft by aircraft at sea.

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3 For text of Report and Commentary of the Legal Committee, see post, pages 505-511.
4 Text of Rules of Procedure, will appear in the next issue of the JOURNAL.
d) Authority of judgments by competent tribunals under conventions in force on air matters.

e) Distribution and allocation of awards.

f) Hire and charter.

g) General average.

h) Remuneration for assistance and postal contribution to such expenses.

i) Jettison.

j) Revision of convention on precautionary attachment of aircraft.

k) Insurance.

IV. AIR TRANSPORT DEVELOPMENTS

A. Commission Convened on the Multilateral Agreement on Commercial Rights in International Civil Air Transport

The Chicago Conference of 1944, the First Interim Assembly of PICAo in 1946, and the First Assembly of ICAO in 1947, all made unsuccessful attempts to agree upon the principles to govern the drafting of a generally acceptable multilateral agreement on the exchange of commercial rights in international civil air transport.

Discussions of the problem at the First Assembly of ICAO led to the conclusion that a special conference devoted exclusively to this problem was in order. It was decided to convene a commission, open to all Member States, not later than October, 1947 at Rio de Janeiro. For administrative reasons, the Brazilian Government was forced to withdraw as host, and the commission began its deliberations in Geneva on November 3, 1947, with about 29 states in attendance.

Three of the leading issues which the commission was expected to face were: (1) whether an automatic exchange of routes should be included in the proposed multilateral agreement; (2) whether, in the absence of such an automatic exchange, the agreement should contain some guarantee that separate bilateral route negotiations would be successfully concluded; and (3) whether the "Bermuda" language was sufficiently widely acceptable to be the basis of the agreement's capacity clause relating to fifth freedom traffic.

Even were agreement to be reached and a multilateral agreement drafted, it was not clear, as the commission opened its meetings, whether such an agreement would be immediately opened for signature by Member States, or submitted to the Second Assembly for final approval and signature.

B. Air Transport Committee Work Program Reviewed

At its first meeting of the second session, the Air Transport Committee reviewed its work program for the future. This program, which gives a good picture of ICAO's scope of economic interest, includes:

1) Study of pros and cons of international ownership and operation of international air services and air navigation facilities on trunk air routes

2) Airport charges

3) Distinction between scheduled and non-scheduled services

4) International air mail

5) Facilitation of international air transport

6) Insurance

7) Double taxation

8) Statistics

9) Filing of contracts and agreements

10) Possible amendment of Article 54(d) of Chicago Convention

C. Studies of International Air Mail Continued

ICAO was represented by an observer at the Congress of the Universal Postal Union during May and June in Paris. He presented a statement on
international air mail which had been adopted by the Air Transport Committee, as well as a study on air mail prepared by the Air Transport Bureau for the information of the UPU Congress. The Congress subsequently recommended:

"...that ICAO continue to collect all statistical and other data on the problem of the economics of international air mail in order to supplement and finalize the important work reported by its observer at the 12th Congress of the Universal Postal Union and, in due course, to prepare a study containing the collective views of Member states of ICAO, for consideration by the postal administrations, prior to the eventual adoption of the provisions of Recommendation 798" (regarding the rates of transportation charges for air mail).

The ICAO Council authorized the President to send a letter to the UPU indicating the air mail studies contemplated by ICAO and of the procedural problems which may arise in fulfilling the UPU's request. These problems stem from a difference of views among certain ICAO Member States concerning the proper function of ICAO in the air mail field.

V. AIR NAVIGATION ACTIVITIES

A. South American and South Atlantic Regional Air Navigation Meetings Held.

ICAO's South American Regional meeting was held in Lima from June 17 to July 7, 1947, and its South Atlantic Regional meeting in Rio de Janeiro from July 15 to 31, 1947. Both of these technical meetings considered air navigation problems peculiar to their respective areas and drew up facilities inventories. The meetings were exceptionally well attended by Latin American aviation technicians, many of whom had not previously participated in ICAO deliberations.

Lima was subsequently chosen by the Council as the ICAO South American Field Office.

B. Five Other Technical Meetings Convened

A special regional Aeronautical Map meeting was held in Paris in early August to discuss a series of international air charts on a 1:500,000 scale for the European area.

Later in the same month, the Communications Committee for the Caribbean area had a particularly successful meeting in Mexico City where it developed detailed plans for implementing the agreements reached at the Caribbean Regional Air Navigation Meeting of September 1946.

A special two-day session of the Meteorological Division was held in Montreal on September 17-18, following the meetings of the technical commissions of the International Meteorological Organization (IMO). The recommendations of the IMO commissions regarding meteorological codes were adopted by the ICAO division, and ICAO's pertinent Standards and Recommended Practices will probably be amended to conform with these recommendations.

A meeting of the Airworthiness-Operating Practices Subcommittee in Paris from September 23 to October 4, 1947 was held to discuss the question of whether the effect of atmospheric temperature should be taken into account in various phases of aircraft operation, and if so, to resolve basically different concepts as to how this should be done. It was not possible at the meeting to solve the latter problem, although some progress was made in clarifying the opposing schools of thought on the matter.

The third session of the Aerodromes, Air Routes and Ground Aids Division met in Montreal from September 23 to October 28, 1947. Its objective was the improvement of facilities and services provided on the ground for international air transport. One of the items discussed was the development

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6 Melbourne was later designated as the interim Far Eastern Field Office.
of a standard method for testing runway strengths. The experts also studied, among other problems, the spacing of wheels on large aircraft to provide a satisfactory distribution of load.

C. ICAO North Atlantic Regional Manual Published

ICAO's regional manuals, of which the North Atlantic volume published in August is the first, are the "end products" of its series of regional air navigation meetings. The present volume, setting a general pattern for the series, is designed to serve the interests of flight and ground personnel, civil aviation authorities and others requiring in compact form the information relative to the North Atlantic. It is made in loose-leaf sectionalized form so that the user may extract portions for particular purposes. The loose-leaf form provides for the insertion of amendment sheets or additional loose leaves when issued by the Organization. The Manual is divided into five parts, with further subdivisions, thumb-indexed:

Part I contains general procedures (including those for distress), together with North Atlantic supplementary procedures for air traffic control, communications, meteorology, and search and rescue. These are reprints, presenting in convenient form material already published by the Organization. The other parts, consisting of material newly compiled, are as follows:

Part II, Radio Facilities—This contains the normal frequencies used by the States of the Region, alphabetical indexes to radio facilities, to radio call signs and identifications, and to radio facility charts of the United States, Canada, North Atlantic Islands and Europe.

Part III, Directory of International Aerodromes—This includes an index to designated international aerodromes arranged by country, together with alphabetical indexes, index charts and directories of land and water aerodromes.

Part IV, Instrument Approach and Landing Charts—This provides an index to published charts and contains sample instrument approach and landing charts as well as a list of agents authorized by States to sell charts.

Part V, General Information—This section is flexible, subject to later additions. Contained at present are: airline operations (a chart of scheduled airlines), a list of customs aerodromes available to civil aviation, and conversion tables for units of length, volume, temperature and weight, together with a radio bearing correction table.

VI. JOINT SUPPORT PROGRAM

A. ICAO Technical Mission Sent to Iceland

The Council authorized a special technical mission to proceed to Iceland to continue the study of that country's request for overall joint support for telecommunications and meteorological services. The "Vik" loran facility in Iceland is already being jointly supported financially by a number of ICAO Member States whose airlines use it in trans-Atlantic flying.

VII. AMENDMENT OF THE CONVENTION

A. Convention Committee Proposes Amendments to Article 94

The Convention Committee's Second Report to the Council, approved by the latter, proposed that Article 94, the amending article of the Chicago Convention be revised extensively. The suggested revisions would, among other things, make it possible to adopt, by a two-thirds vote of the Assembly, amendments which do not create new substantive obligations on the part of Contracting States. Eliminating the requirement for ratification by Contracting States for such amendments would bring ICAO's amending article into line with those of certain other international organizations whose charters were drawn up later than ICAO's.

The problem will next be studied by the Legal Committee or a special subcommittee thereof. It is not clear whether the Council will actually recommend to the 1948 Assembly that Article 94 be amended as suggested,
or whether this amendment will await a general overhaul of the Convention which may be undertaken at the 1950 Assembly. One obstacle to amendment at the next Assembly is the confusion that would arise if the revised Article 94 were not ratified by all Member States by the time of the 1950 overhaul.

VIII. RELATIONS WITH OTHER INTERNATIONAL ORGANIZATIONS

A. United Nations (UN)

ICAO, as a specialized agency of the United Nations, took an increasing part in the administrative activities of that organization during the summer and fall months. Representatives of ICAO attended meetings of the UN Consultative Committee on Budgetary and Financial Arrangements, the Committee on Privileges and Immunities, the Consultative Committee on Public Information, the Film Board, the Working Committee of the Coordination Committee, and the Statistical Commission.

As a result of an Air Transport Committee recommendation approved by the Council ICAO will undertake the filing of aviation agreements with the United Nations, making it unnecessary for ICAO Member States to make a duplicate filing in order to comply with the UN Charter. ICAO will also take over the collection of the air transport statistics now being collected by UN and will furnish the UN with summary figures for its statistical publications.

B. Universal Postal Union (UPU)

ICAO's collaboration with the Universal Postal Union has been described above under "Air Transport Activities." Closer and more efficient relations will be facilitated by the newly-created governing body within the UPU, which will be known as the "Executive and Liaison Commission." The UPU is expected to become, like ICAO, a specialized agency of the United Nations.

C. Other International Organizations

In addition to maintaining day-to-day liaison with the International Air Transport Association (IATA), whose headquarters are also located in Montreal, ICAO representatives attended meetings of the following other international organizations: (a) Interim Commission of the World Health Organization, (b) World Statistical Congress, (c) ILO Conference of Labor Statisticians, (d) International Chamber of Commerce, (e) International Standards Organization, (f) International Meteorological Organization, (g) World Peace Foundation.

R. K. W.

INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA)

I. INTRODUCTION

IATA's Third Annual General Meeting was held at the Hotel Quitandinha, Petropolis, Brazil from October 14 to 18, 1947. Sixty-nine airline members from forty-two countries attended. Just prior to this, a highly successful joint session of the three IATA Traffic Conferences had convened in nearby Rio de Janeiro.

During the summer, the IATA Executive-Administrative Subcommittee had met in Stockholm (July 16), the Consultative Committee on Public Relations in Prague (July 22), the Tariffs and Schedules Subcommittee in Paris (August 11), and the Financial Committee in Brussels (September 3).

The Annual Technical Conference was held in Nice, France from September 1 to 12, followed by a meeting of the Technical Committee which
opened September 16 at the same site. The Technical Conference covered the whole range of air transport engineering, including navigation and landing aids, communications, ground facilities, operations and maintenance practices, and made a number of technical recommendations to IATA member airlines and to ICAO.

II. THIRD ANNUAL GENERAL MEETING

The five-day IATA congress reviewed the activities of the international airlines in the traffic, legal, technical and financial fields. Six new airline companies were admitted to IATA membership, members of the Executive and other standing committees were elected, a $645,000 IATA budget approved for 1948 and a new method devised for assessing membership dues.

The meeting approved arbitration procedures for settling disputes between member airlines without recourse to lawsuits. It is interesting to observe how IATA proposes to handle this problem. Three-member panels will be created for the arbitration of individual disputes. Each party to the disagreement names one member and the two together pick a third as chairman. The Director General of IATA is given the power to fill out the tribunal's membership if one airline refuses to designate its member, or if the first two parties cannot agree on the third. Arbitration awards can be arrived at by a majority vote, and will be final and conclusively binding on both parties. ICAO, which has the equally difficult problem of providing a workable machinery for settling disputes arising among its member governments, can now be expected to watch IATA's experience closely.

Measures were also provided to enforce the decisions of commissions investigating alleged breaches of IATA Traffic Conference obligations. Penalties include: (a) notification to all members of the commission's findings, (b) fines, (c) suspension for stipulated periods of the privilege of receiving bookings from other airlines through accredited IATA agents, and, finally, (d) expulsion from IATA.

The governments of IATA's member airlines were urged to adopt the new draft Convention on International Recognition of Rights in Rem in Aircraft* recently drawn up at Brussels by the Legal Committee of ICAO. The airlines assert that this convention is needed to define ownership rights in aircraft used in international services.

The meeting deferred action for at least one year on a proposal to permit non-scheduled and contract operators to join IATA. The proposal had previously been approved by the Executive Committee but failed to obtain support at the Quitandinha session.

Brussels was designated as the site of the 1948 General Meeting, which will be held sometime in the late summer.

III. JOINT MEETING OF IATA TRAFFIC CONFERENCES

The three IATA Traffic Conferences (No. 1—North and South America, No. 2—Europe, Africa and Middel East, and No. 3—Asia, East Indies and Australasia) met in joint session in Rio de Janeiro prior to the General Meeting. The very broad area of agreement developed at this joint session will result in the world's airlines putting into effect uniform traffic practices and rate policies on some 500,000 miles of air routes throughout the world. Airlines of forty-two countries participated in this important meeting.

Briefly summarized, the results of the joint session were:

(a) Rates — Recommended, subject to governmental approval, a trans-Atlantic fare increase from $325 to $350 for March 1 to September 1, 1948. Other international rates remain virtually unchanged.

(b) Ticketing — Agreed upon a uniform passenger ticket, baggage check and excess baggage ticket, to replace the more than 100 current

* For text of draft convention, see post, page 500.
and varying forms. Normal validity of tickets was set at one year, except on short haul services where tickets will remain good for six months.

(c) Reservations — Standardization of airline reservation procedures to eliminate delays in booking space.

d) Discounts — 10% for round trips, 90% for infants under two years of age, and 50% for children between two and twelve. Round trip excursion fares (at airlines' discretion) of 1¼ times the one-way fare and round trip discounts on air portions of trips involving both air and surface transport. Same discounts for circle and irregular route tickets as for round trips.

(e) Stop-Overs — World-wide approval in principle to practice of allowing stop-overs on through-trip tickets.

(f) Definitions — Universally accepted definitions of many terms used in airline practices.

g) Free Baggage Allowances — Standardized at 30 kilos (66 lbs.) on international services, except for 20 kilos (44 lbs.) on European short hauls and 40 kilos (88 lbs.) on certain round-the-world flights.

(h) Excess Baggage Charges — Uniformly one per cent on one-way passenger fare per kilo (2.2 lbs.), with one minor exception.

(i) Universal Air Travel Credit Plan — Plan accepted, combining features of U.S. credit plan and pre-war European plan.

(j) Air Cargo — New air waybill and consignment note, to simplify world wide cargo movement. Merger of existing classifications of air freight and air express into a single category of international air cargo. Reductions of 25% on all shipments over 100 pounds permitted, anywhere in the world.

(k) Agents — Uniform agency resolution and standard form of agreement between individual lines and their own agents. Agencies screened and certified by IATA conferences. World wide agency commission rate set at 7½%, with a few minor exceptions.

(l) Interline Agreements — Uniform interline agreement covering transactions between airlines.

(m) Designation of International Routes — Standard system for numbering and designation of international airline routes, to eliminate confusion. Each airline assigned a two-letter designation and in turn gives each of its routes a three-number label. South and west flights assigned odd numbers and north and east flights even numbers.

R. K. W.

DRAFT CONVENTION ON THE INTERNATIONAL RECOGNITION OF RIGHTS IN AIRCRAFT*

Article 1

(1) Each Contracting State undertakes to recognize:

a) rights of property in aircraft,

b) rights to acquire aircraft by purchase coupled with possession of the aircraft,

c) rights to possession of aircraft under leases of six months or more,

d) mortgages, hypotheques, and similar rights in aircraft which are contractually created as security for the payment of an indebtedness,

provided that such rights have been constituted and are recorded in a public record, in conformity with the law of the Contracting State whose nationality the aircraft possesses.

(2) Except as otherwise provided in this Convention, the effects of the recording of such rights with regard to third parties shall be determined according to the law of the Contracting State where they are recorded.

Article II

(1) All recordings relating to a given aircraft must appear in the record of the State whose nationality the aircraft possesses.

(2) The address of the authority responsible for maintaining the record must be shown on the certificate of registration as to nationality.

(3) Any person shall be entitled to receive from the authority maintaining the record duly certified copies or extracts of the particulars recorded. Such copies or extracts shall constitute prima facie evidence of the content of the record.

(4) The national law may provide that the filing of any document for recording shall have the same effect as a recording. In that case adequate provision shall be made to ensure that such documents are open to the public.

(5) Reasonable charges may be made for services performed by the authority maintaining the record.

Article III

(1) The claims set forth below give rise to charges which without recording, follow the aircraft and take priority over all other claims:
   a) compensation due for salvage of the aircraft,
   b) extraordinary expenses indispensable for the preservation of the aircraft.

(2) The claims enumerated in paragraph (1) above shall be satisfied in the inverse order of the dates of the incidents in connection with which they are incurred.

(3) The priority accorded to these claims by paragraph (1) above shall be extinguished unless judicial action thereon is commenced within three months from the date of their arising. The law of the forum shall determine the contingencies upon which this period may be interrupted or suspended.

(4) If a charge arising from any such claim has been recorded, it shall, on the extinction of the priority accorded by paragraph (1) take priority as a right mentioned in Article I.

(5) Any of the claims mentioned in this Article may be entered at any time on the record so as to give notice thereof to all concerned.

(6) In the case of any incident occurring within the territory of a Contracting State to an aircraft there registered the question whether any of the claims mentioned in paragraph 1 is entitled to the priority or charge there mentioned shall be determinated by the national law.

(7) Except as provided in this Article, no charge taking priority over the rights mentioned in Article I shall be admitted or recognized by Contracting States.

Article IV

The priority of a right mentioned in Article I, paragraph (1)d, extends to the sums thereby secured. However, the amount of interest included shall not exceed that accrued during three years prior to the execution proceedings together with that accrued during the execution proceedings.
Article V

(1) The proceedings of a sale in execution shall be determined by the law of the Contracting State where the sale takes place.

(2) The following provisions shall, however, be observed:
   a) the date and place of the sale shall be fixed at least six weeks in advance,
   b) the executing creditor shall supply a duly certified extract of the recordings concerning the aircraft, shall give public notice of the sale at the place where the aircraft is registered at least one month before the day fixed, and shall concurrently notify, by registered letter, the recorded owner and the holders of rights in the aircraft recorded or entered on the record whose addresses are known.

(3) The consequences of failure to observe the requirements of paragraph (2) shall be as provided by the law of the Contracting State where the sale takes place.

(4) No sale can be effected unless all charges having priority over the claim of the executing creditor in accordance with this Convention, which are established before the competent authority, are covered by the proceeds of the sale or assumed by the purchaser.

(5) The national law of a Contracting State may provide that the rights referred to in Article I, if held as security for an indebtedness, shall not be set up, to an extent greater than 80% of the sale price of the aircraft taken in execution, as against persons who have sustained injury or damage on the surface caused by such aircraft, or by any other aircraft encumbered with similar rights held by the same persons, except in the case where the injury or damage in question is adequately and effectively insured by a State or with an insurance undertaking in any State. In the absence of other limit established by the law of the Contracting State where the execution sale takes place, insurance equivalent to the amount of the purchase price when new of the aircraft sold on execution shall be considered adequate for the damages caused.

(6) Costs legally chargeable under the law of the Contracting State where the sale takes place which are incurred in the common interest of creditors in the course of execution proceedings leading to sale, shall be paid out of the proceeds of sale, before any claims, including those given preference by Article III.

Article VI

Sale in execution of an aircraft in conformity with the provisions of Article V shall effect the transfer of the property in such aircraft free from all charges which are not assumed by the purchaser.

Article VII

No transfer of an aircraft from the nationality register or the record of a Contracting State to that of another State shall be made, unless all holders of recorded rights have been satisfied or consent to the transfer.

Article VIII

(1) If, in conformity with the law of a Contracting State where an aircraft is registered, a recorded right of the nature specified in Article I, and held as security for the payment of an indebtedness, extends to spare parts stored in a specified place or places, such right shall be recognized by all Contracting States, as long as the spare parts remain in the place or places specified, provided that an appropriate public notice, specifying the description of the right, the name and address of the holder of this right
and the record in which such right is recorded, is exhibited at such place where such spare parts are located, so as to give due notification to third parties that such spare parts are encumbered.

(2) A statement indicating the character and the approximate number of such spare parts shall be annexed or included to the recorded document. Such parts may be replaced by similar parts without affecting the right of the creditor.

(3) The provisions of Article V(1) and (4) and of Article VI shall apply to a judicial sale of spare parts. However, in fixing the minimum bid at which the sale can take place, account shall be taken of charges having priority over the claim of the executing creditor only to the extent of two thirds of the value of the spare parts as determined by experts appointed by the authority responsible for the sale. Further, in the distribution of the proceeds of sale, the competent authority may, in order to provide for the claim of the executing creditor, limit the amount payable to holders of such priority charges to two thirds of the amount of such proceeds of sale after payment of costs referred to in Article V(6).

(4) For the purpose of this Article the term “spare parts” means parts of aircraft, engines, propellers, radio apparatus, instruments, appliances, furnishings, parts of any of the foregoing, and generally any other articles of whatever description maintained for installation in aircraft in substitution for parts or articles removed.

Article IX

This Convention applies to aircraft registered as to nationality in a Contracting State, provided that a Contracting State shall not be obliged to apply this Convention (except Articles III and VII) within its own territory to aircraft there registered.

Article X

Nothing in this Convention shall prejudice the right of any Contracting State to enforce against an aircraft its national laws relating to immigration, smuggling or air navigation.

Article XI

This Convention shall not apply to aircraft used in military, customs or police services.

Article XII

For the purpose of this Convention the competent judicial and administrative authorities of the Contracting States may correspond directly with each other.

Article XIII

Contracting States whose national laws may not be sufficient to ensure the fulfillment of the provisions of this Convention, shall take such measures as are necessary for this purpose. Upon these measures becoming effective, such States undertake to notify them to the Secretary General of the International Civil Aviation Organization.

Article XIV

For the purpose of this Convention the term “aircraft” shall include the air frame, engines, propellers, radio apparatus, and all other articles intended for use in the aircraft whether installed therein or temporarily separated therefrom.

Article XV

This Convention shall remain open for signature until it comes into force in accordance with the provisions of Article XVII.

Article XVI

This Convention shall be subject to ratification by the signatory States. The instruments of ratification shall be deposited in the archives of the
International Civil Aviation Organization, which shall give notice of the date of deposit to each of the signatory and adhering States.

Article XVII

(1) As soon as two of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the second instrument of ratification. It shall come into force, for each State which deposits its instrument of ratification after that date, on the ninetieth day after the deposit of its instrument of ratification.

(2) The International Civil Aviation Organization shall give notice to each signatory State of the date on which this Convention comes into force.

(3) This Convention, as soon as it comes into force, shall be registered with the United Nations by the Secretary General of the International Civil Aviation Organization.

Article XVIII

(1) This Convention shall, after it has come into force, be open for adherence by non-signatory States.

(2) Adherence shall be effected by the deposit of an instrument of adherence in the archives of the International Civil Aviation Organization, which shall give notice of the date of the deposit to each signatory and adhering State.

(3) Adherence shall take effect as from the ninetieth day after the date of the deposit of the instrument of adherence in the archives of the International Civil Aviation Organization.

Article XIX

(1) Any Contracting State may denounce this Convention by notification of denunciation to the International Civil Aviation Organization, which shall give notice of the date of receipt of such notification to each signatory and adhering State.

(2) Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

Article XX

(1) Any State may, at the time of signature or of the deposit of its instrument of ratification or adherence, declare that the acceptance which it gives to this Convention does not apply to all or any of its overseas territories. The "overseas territories" of a State shall mean its colonies, protectorates, territories in respect of which it exercises a mandate or trusteeship, territories under its suzerainty, and other non-metropolitan territories subject to its sovereignty or authority.

(2) The International Civil Aviation Organization shall give notice of any such declaration to each signatory and adhering State.

(3) Any State may subsequently adhere, in accordance with the provisions of Article XVIII, on behalf of all or any of its overseas territories, regarding which it has made a declaration as aforesaid.

(4) Any State may denounce this Convention, in accordance with the provisions of article XIX for all or any of its overseas territories.

Article XXI

(1) Upon deposit of its instrument of ratification or adherence, or by notification to the International Civil Aviation Organization at any time thereafter, any State may declare that any overseas territory is to be regarded as a separate Contracting State for the purposes of this Convention.
(2) The International Civil Aviation Organization shall give notice of any declaration made as aforesaid and of the date of receipt thereof to each signatory and adhering State and such declaration shall take effect as from the ninetieth day after its receipt by the International Civil Aviation Organization.

(3) Any declaration made in pursuance of paragraph (1) of this Article may be rescinded by a notification of rescission to the International Civil Aviation Organization, which shall give notice of the date of receipt of such notification to each signatory and adhering State. Rescission shall take effect as from the ninetieth day after the notification thereof to the International Civil Aviation Organization.

IN WITNESS whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this present Convention. DONE this day of at in the English, French and Spanish languages, each text being of equal authenticity.

This Convention shall remain deposited in the archives of the International Civil Aviation Organization and one certified copy thereof shall be transmitted by the Secretary General of the International Civil Aviation Organization to the Government of each State which has signed, ratified or adhered thereto.

REPORT AND COMMENTARY OF THE LEGAL COMMITTEE OF ICAO ON THE DRAFT CONVENTION CONCERNING THE INTERNATIONAL RECOGNITION OF RIGHTS IN AIRCRAFT*

I. HISTORICAL

The Civil Aviation Conference, held at Chicago in November and December 1944, recommended that consideration should be given to the early calling of an international conference on private international air law for the purpose of adopting a convention dealing with the transfer of title to aircraft, and that such conference should include in the bases of discussion the existing draft convention relating to mortgages, other real securities and aerial privileges, and the existing draft convention on the ownership of aircraft and the aeronautic register, both of which were adopted by the CITEJA in 1931.

In January 1946, the CITEJA, at its first meeting after the war, took note of the above recommendation of the Chicago Conference and sent to the PICAO copies of the texts of the two draft conventions adopted in 1931.

At the Assembly of PICAO held in May and June 1946, the Fourth Commission considered the matter. A Committee of that Commission prepared a draft convention which combined the principles comprised in the two CITEJA drafts; and it was decided that the matter should be further considered by the Committee with a view to a finalized draft of a new convention, and a report thereon, being circulated to all States and international organizations concerned, so that full consideration of the proposals could be given to the matter by the next Assembly of PICAO (or ICAO).

It was arranged that the Committee concerned should meet in Paris in February 1947. A complete new draft convention was prepared, with short report thereon, and these were circulated to all States and international organizations concerned early in 1947, with a request that observations thereon should be sent to the ICAO before the meeting of the First Assembly of the ICAO which was due to meet on May 6th. In response to this request certain observations were received.

*As approved by the Legal Committee at its meeting of September 25th, 1947, Doc. 4634, LC/70, 9/10/47.
The matter was again considered by the Fourth Commission of the First Assembly of ICAO in May 1947 and a Committee of the Fourth Commission prepared a new skeleton draft comprising the main principles and features contained in the previous drafts. It was decided by the First Assembly that this draft, together with a questionnaire containing questions on nine matters of principle, should be circulated to all States and international organizations concerned, with a request that answers thereto should be sent to ICAO, in order that the matter might be further considered, and if possible finalized, at the first meeting of the newly-constituted Legal Committee of the ICAO proposed to be held in September 1947, so that a finalized draft of the proposed convention could be circulated before the end of 1947.

Answers to the above mentioned questionnaire were received from the following States: Argentina, Australia, China, Denmark, Guatemala, India, Norway, Sweden, Switzerland, Union of South Africa, United Kingdom and the United States of America.

It was hoped that (subject to any further revision which might be found necessary or desirable consequent upon observations upon the new draft to be prepared by the Legal Committee) it would be possible to agree and sign a Convention at the Second Meeting of the Assembly of the ICAO to be held in 1948.

The Legal Committee of the ICAO duly held its first meeting on September 10th, 1947, in Brussels, and, having settled its Rules of Procedure, devoted twelve days to further consideration of the draft convention. The discussions were based upon the skeleton draft prepared in May 1947, taking into consideration the answers to the questionnaire which had been received and also the provisions of the Paris draft of February 1947 which were not included in the draft of May 1947. A complete new draft was formulated (Doc. 4627, LC/63).*

II. COMMENTARY UPON THE DRAFT CONVENTION

Article I caused more difficulty than any other because it constitutes the foundation of the whole convention. Should each State be entitled to stipulate the rights required to be recognized in other States? Should each State be entitled to limit the rights it is prepared to recognize? Should the Convention lay down the rights to be recognized by all Contracting States? Should the Convention include mandatory provisions concerning the means of recording rights in the State of Registry of the aircraft, or in other States? Should the record of such rights form part of the system of registration as to nationality or not? Should reservations be permitted as regards rights arising from obligations to transfer property? Should rights recordable be limited strictly to rights “in rem” or should other rights be recordable? Should “fleet mortgages” be recordable as such?

As will be seen from the draft convention annexed to this Report, it was eventually decided that the best course was to provide that each Contracting State should recognize four categories of rights. The first deals with rights of property or ownership. The second consists of rights to acquire aircraft by purchase coupled with possession, such as “hire-purchase” or “conditional sale.” The third comprises leases of aircraft for six months or more, which includes one of the features of an “equipment trust.” The fourth deals with mortgages and similar rights, and (in conjunction with the third

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1 In the Commentary, the draft convention prepared by the ad hoc Committee in Paris in February 1947 is referred to as the “Paris Draft,” (Doc. 4005, A1-LE/7, 18/3/47, or Doc. 2878, LG [Paris] 2); and the skeleton draft convention prepared by the Subcommittee of the Fourth Commission in Montreal in May 1947 is referred to as the “Montreal Draft” (Doc. 4382, A1-LE/65, 24/5/47). The latter formed the basis of discussions of the Legal Committee in Sept. 1947.

* For text of draft convention, see supra, pp. 500-505.
category) would include “equipment trust” and “conditional sale” which though novelties in the Eastern hemisphere, constitute normal procedure in the United States of America in connection with financing the purchase by operators of a series of aircraft from constructors. The Committee considered that these four categories include all the transactions which are necessary to achieve the objectives required, both in connection with property rights and rights less than ownership.

It will be noted that, in order to obtain recognition, the rights concerned must be [constituted and*] recorded in a public record in conformity with the law of the State in which the aircraft is registered as to nationality; and it is left to each State to decide whether the record should or should not be combined with the registry as to nationality. Also, unlike the Paris draft, no procedural regulations concerning the maintenance and conduct of the record are laid down. Such matters are left entirely for regulation by each State. Similarly, no provision is made for aircraft under construction, since it is a domestic matter for each State until the aircraft can undertake international flights with a certificate of airworthiness. It should also be noted that no obligation is cast upon any State to do more than recognize the rights concerned. That is to say, no State is obliged to keep a record of rights recorded against foreign aircraft.

No mention is made of debts due to the Public Treasury. This question and attachments and preclosure proceedings are dealt with hereafter. Under paragraph 2 of Article 1, the position of third parties in relation to holders of recorded rights is regulated by law of the recording state.

Article II provides that all recordings must appear in the record of the State in which the aircraft is registered as to nationality; and it is left to each State to decide whether a single record should be kept or a separate record for registration as to nationality. This article also contains the minimum of procedural rules considered to be necessary concerning the records in order to ensure uniformity. By this method it is possible to eliminate many technical provisions concerning recording and conduct of the register which appeared in the Paris draft.

Paragraph 4 reproduces Article 15 of the Paris draft. It is not mandatory but suggests a principle concerning filing of documents (as distinct from recording) which may be found useful and convenient in some States.

Article III lays down that the only charges which can take precedence over recorded charges are those arising from salvage and extraordinary expenses indispensable for the preservation of the aircraft. The Committee considered this principle to be essential because, unless the aircraft is salvaged or preserved, its value as a security for the recorded rights disappears. It also considered that no other charges (e.g. airport fees) should be included as preferential.

Paragraph 2 of this Article is in conformity with the Maritime rule that the preferred charges rank in the inverse order of the dates of the incidents giving rise to the charges.

Paragraph 3 prescribes that the preferential character of the charges concerned is lost if judicial action thereon is not taken within three months. This principle and period are considered to be perfectly fair. They have appeared, without adverse comment, in previous drafts.

Paragraph 4 enables charges, which were originally preferential but which have lost their preferential character consequent upon failure to take judicial action within three months, to be recorded and take their order of preference according to the date of recording, in just the same way as rights recordable under Article 1.

Paragraph 5 makes it clear that any claims under this Article may be recorded any time.

* Added to Commentary by Editor.
Paragraph 6 is new. It gives power to a State of the aircraft to which salvage or extraordinary expenses arising from an incident in the State concerned apply, to decide whether or not the claims envisaged by the Article shall be entitled to the priority or charge thereby given or shall be governed by national law.\footnote{That is, incidents occurring within the territory of the state wherein the aircraft is registered are entitled to priority in accord with the national law and not Paragraph 1 of Article III.-Ed.}

Paragraph 7 reverses the principle incorporated in Article 4 paragraph 2 of the Montreal draft.\footnote{Montreal Draft, Article IV (2). The national law of the aircraft may grant a lien in respect of claims other than those referred to in Article III so, however, as not to modify the priority of recorded mortgages, hypothecques, and other similar rights or of the liens taking precedence thereof.} The Committee considered that the efficacy of, and security afforded by, the Convention would be seriously jeopardized and might be destroyed, unless States were precluded from creating, or permitting the creation of, charges which took precedence over rights recorded under the provisions of Article I. Partly for this reason, the Committee decided to eliminate paragraph 3 of Article 4 in the Montreal draft.\footnote{Montreal Draft, Article IV (3). The national law of the aircraft may admit the recording of claims against aircraft of the public Treasury of another Contracting State, but without granting to them a higher rank than provided under paragraph (2) of this article for the liens there mentioned.} Another reason for this elimination was that it was considered undesirable that any State should be placed in the position of a debt-collecting agency for another State. Under these circumstances it was decided that Article 4 paragraph 2 of the Montreal draft (which was the only part of this Article retained) would appear more appropriate as paragraph 7 of the new Article III.\footnote{This paragraph was originally part of Article IV of the Brussels Draft. By moving it to Article III the paragraph may have inadvertently been included in the exception to Article IX.—Ed.}

Article IV reproduces the principles of Article 5 in the Montreal draft, but the wording has been amended to make it clear that the priority rights under Art. I extend to the sums thereby secured, which would include (in addition to interest) costs and expenses covered by mortgages, charges, etc.

The Montreal draft (Article 6) provided that no objection could be raised against a party who had acquired an aircraft or a right therein, in good faith, from the owner on the ground of lack of title of the party from whom the property or right was acquired; and that no valid right could be acquired through a forged document, recording or entry, or through a document issues under duress. After much discussion, it was decided that this Article should be eliminated altogether, the first part because this would cast upon the officials in charge of the record, and the State of recording, responsibility for the validity of titles; and the second part because forgery and duress are matters which should be governed by the domestic laws of States concerned.

The Montreal draft (Article 7)\footnote{Montreal Draft, Article VII. (1) An application for the recording of an attachment or act of execution may be delivered to any consular officer of an appropriate Contracting State which maintains a record for transmission by telegram on payment of the costs thereof. The telegram shall specify the name and address of the owner as appearing on the certificate of registration. (2) On receipt of such application the Bureau shall: (a) make an appropriate entry on the record. (b) notify the recording to the owner according to the information in its possession and to holders of recorded rights. (3) After the recording of the attachment or act of execution no transfer of property and no constitution by the owner of a right in the aircraft recorded simultaneously or subsequently, shall be valid as against the attaching creditor.} gave rise to much discussion. Though it was felt by several of the delegations that paragraphs 1 and 2 of this...
Article might be useful in conjunction with paragraph 3, the majority considered that the matter was impractical and might be dangerous in the case of unscrupulous claims. It was therefore decided eventually that paragraph 3 should be suppressed. In consequence it was suggested that paragraphs 1 and 2 would be practically useless, since there would be no reason why an attaching or executing creditor should make an application for the recording of an attachment or act of execution since he had possession or effective control of the aircraft. Therefore it was decided that the wisest course would be to suppress the whole Article, since this would not prejudice the position either of the attaching or executing creditor or of holders of recorded rights.

Article V. The first two paragraphs, which deal with procedural matters in connection with judicial sales, reproduce the principles of the corresponding paragraphs in Article 8 of the Montreal draft.

Paragraph 37 reproduces the first sentence only of the corresponding paragraph in the previous draft. The Committee considered that no limitations or directions should be imposed upon the laws of the State in which a judicial sale occurs.

Paragraph 48 gave rise to discussions concerning the principles of "purge" and "surerenchères," and also concerning judicial sale of an aircraft comprised in a "fleet mortgage." Finally, this paragraph was redrafted to provide simply that no judicial sale can be effected unless all charges having priority over the executing creditor, as provided by the convention, are covered by the proceeds of sale or are taken over by the purchaser. The Committee considered that this was the wisest and simplest solution.

Paragraph 5 is new. It makes provision for the protection of innocent third parties on the surface who are, or whose property is, damaged by an aircraft, so that, unless the aircraft concerned is adequately and effectively insured against risk of third party damage, 20% at least of the value of the aircraft may be available to satisfy third party claims. Normally all aircraft are properly insured against the risk of such claims. The Committee considered that, as a matter of public policy, innocent third parties should be safeguarded in the manner suggested in the event of such insurance not having been effected. This is particularly important in the case of a "fleet mortgage" because in that case each aircraft is charged with the whole of the sum secured by the mortgage on the whole fleet.

Paragraph 6 provides for the payment of costs incurred in execution proceedings and reproduces paragraph 5 of Article 8 of the Montreal draft.

Article VI, which should be read in conjunction with the new paragraph 4 of Article V, provides that a sale by judicial authority shall effect transfer free from all charges on the interest sold. This new Article resulted from consideration of replies to the questionnaire on the subject, and long discussions of the relative merits of the various alternatives which were possible. The Committee considered that this Article, taken in conjunction with paragraph 4 of Article V, provides the best solution.

7 Montreal Draft, Article VIII. (3) The consequences of failure to observe the requirements of paragraph (2) shall be as provided by the law of the place of execution. Such law shall provide either that the sale shall be void, or that it shall be invalid as against third parties concerned, or that compensation by the State shall be provided for the damage caused by the negligence of its agents.

8 Montreal Draft, Article VIII. (4) No sale can be effected unless all charges which are mentioned in the Articles 1, 3, and 4 have priority over the right of the executing creditor are covered by the proceeds of the sale or taken over by the purchaser. Charges encumbering several aircraft are, however, taken into account only for a part proportionate to the weight of the aircraft as compared with the total weight of all aircraft included.

9 Montreal Draft, Article IX. Alternative "A." Sale of an aircraft by judicial authority shall effect the transfer of property therein and the extinguishment of all charges not covered or taken over by the purchaser.
Article VII, dealing with transfer of an aircraft from the nationality register or record of one State to another, reproduces in a simplified form the principles comprised in Article 10 of the Montreal draft. Such principles were considered to be necessary.

Article VIII deals with the question of spare parts. Ever since May 1946, when this matter was first discussed by the Fourth Commission of the PICAO, the United States delegation has made it clear that, unless spare parts can be included in the securities sought to be protected by the convention, the value of the latter for the purpose required would be greatly diminished. This is because when aircraft are purchased for operating international airlines, it is necessary to provide also large quantities of spare parts of great value. These are distributed at strategic points along the airlines in many foreign countries so that they may be quickly available as replacements when components fail or require repair. Otherwise serious delays are likely to occur. They range from major items, such as complete engines, propellers, radio equipment, etc., to items of trifling value. It may be that these spare parts represent in value 25%, or even more, of the whole fleet of aircraft. Consequently, unless they can be included in the assets subject to the convention, the amount which operators can raise by way of mortgage will be greatly reduced, and the financing of purchases of aircraft for international operation will be prejudiced.

The idea of recognizing, in a State, rights over moveable property in that State in favor of a foreigner, under a system intended for aircraft which only move through the State in passage, is entirely novel, especially since, in this case, the spare parts would be constantly changing as they are installed in aircraft and replaced by others. At first, the difficulties in the way of adopting such a system appeared to be insuperable to the representatives of many States. It constitutes a tribute to the earnest desire of States generally to assist international air transport and achieve uniformity that it has now been possible to formulate proposals on the subject which the Committee considered could be regarded as acceptable, though they will undoubtedly involve the necessity of material legislative changes in most, if not all Contracting States.

Article VIII reproduces the main principles of Article 11 of the Montreal draft and provides for the recognition of rights in spare parts in Contracting States subject to compliance with a very simple procedure; and paragraph 3 makes applicable to a judicial sale of spare parts the provisions of Article V, paragraphs 1 and 4, and Article VI. It will be noted that if the encumbered spare parts are sold at a judicial sale at the request of an unsecured creditor, holders of prior secured claims may be limited to 2/3rds of the sale price in order to provide for the claim of the executing creditor.

Paragraph 4 defines "spare parts" in the same way as in the Montreal draft with the omission of the word "accessories," which creates a difficulty and is unnecessary. The expression covers everything required to be maintained for installation in the aircraft to which they relate.

Article IX deals with the difficult problem of applicability of the convention. Two alternative proposals on this subject appeared in the Montreal draft.\(^1\) and they were dealt with in the questionnaire circulated

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1. Alternative "B." Sale of an aircraft by judicial authority shall effect the transfer of the property therein subject to all rights recorded prior to the right of the creditor on whose behalf the sale is effected.

10. Montreal Draft, Article XII. Alternative "A." With the exception of the provisions of Article 3 [relating to priority claims] and the paragraphs (2) and (3) of Article IV [see notes 3 and 4 supra] this Convention applies only when the aircraft is registered in another Contracting State.

Alternative "B." In the territory of the State in which an aircraft is registered as to nationality, the provisions of this Convention shall not in any way affect the legal status of, or proceedings relating to right in rem in, such aircraft.
The Committee considered that neither of the two previous alternatives was satisfactory. The new Article limits the applicability of the convention so far as concerns aircraft when in their State of registration, without prejudice to the preferred claims referred to in Article III. The Committee considered that the new Article constitutes a reasonable and proper solution of the problem of applicability.

Article X is new. In order that there may be no doubt on the subject, it makes clear that nothing in the convention shall affect the right of Contracting States to enforce national laws relating to immigration, smuggling and air navigation.

Article XI provides that the convention is not applicable to military, customs or police aircraft.

Article XII reproduces Article 19 of the Paris draft and provides that the judicial and administrative authorities concerned with the convention may enter into direct correspondence with each other, instead of through diplomatic channels. This is obviously practical.

Article XIII reproduces the principles of Article 20 of the Paris draft and requires Contracting States to take such measures in their national laws as may be necessary to ensure fulfilment of the provisions of the convention (an obvious necessity) and to notify the Secretary General of the ICAO of such measures, so that he may be in a position to give information on the subject to any State requiring this.

Article XIV reproduces the principles of paragraph 1 of Article 22 of the Paris draft, giving a definition of the term “aircraft.” No question appears to have arisen concerning this and the definition is considered to be necessary and adequate. The word “accessories” has again been omitted.

Articles XV to XXI are formal. They are based upon similar articles in draft conventions prepared by ICAO but modernized in order to include recent new conceptions such as “trusteeship.”

The Paris draft contained a final Article (29) providing that disputes between Contracting States concerning the convention should be settled as provided by Chapter VIII of the Chicago Convention. The Committee did not consider that such procedure was appropriate or desirable for a convention on private international law of this character.

III. CONCLUSION

In preparing the draft convention, the Legal Committee has had as its objective the formulation of a convention which:
(a) affords international air operators the largest possible measure of assistance in order to enable them to arrange finance for purchase of aircraft;
(b) provides for those financing the purchase of aircraft and spare parts, and others having rights therein, the best security which can be achieved whether the assets concerned are inside or outside the State of registry of the aircraft; (c) secures the rights of third parties in all States concerned;
(d) involves a minimum of interference with national laws and a minimum of trouble and expense for Contracting States; (e) is as short, simple and free from technicalities and procedural matters as is possible, considering the complexity and novelty of the principles involved.

The Legal Committee believes that at its first meeting it has succeeded in achieving these objectives. They could not have achieved them without the assistance afforded by the valuable work undertaken in the past by the CITEJA and subsequently by the Fourth Commission of the Assembly of the Organization, and the Committees thereof referred to at the beginning of this Report.