Editor’s Note—The preparation of the United States positions on aviation liability conventions prepared by the ICAO Legal Committee has been a major function of the Legal Division of the Air Coordinating Committee. In its work on the revision of the Rome Convention the ACC has been aware of the wide range of interests which would be affected by any international convention which established a rule governing the liability of aircraft operators to injured parties on the surface and which tended to limit the amount of such liability. Airlines, private pilots and aircraft owners, insurance and banking interests, and airport operators are the public interests most directly concerned. In addition, the public at large which has a very great stake both in the development of air transportation and in the possible consequences of crashes on the surface must be recognized as having a more general, but nevertheless a vital, interest in such a convention.

The position of the United States Government with respect to the Taormina Revision of the Rome Convention had not been finally determined when this issue went to press. In this connection the member agencies comprising the Air Coordinating Committee have been anxious to consult with all segments of the public prior to reaching a final decision. The Secretariat of ACC expresses the hope that the coverage by the JOURNAL of this important matter may help to stimulate interest in and public discussion of the desirability of United States acceptance of a Convention of this scope.

CHAPTER I—PRINCIPLES OF LIABILITY

Article 1

(1) Any person who suffers damage on the surface shall be entitled to compensation as provided in this Convention upon proof only that the damage was caused, through contact, fire or explosion, by an aircraft in flight or by any person or thing falling therefrom.

(2) For the purpose of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of actual take-off until the moment when the landing roll ends.

Article 2

(1) The liability for compensation imposed by Article 1 of this Convention shall attach to the operator of the aircraft.

(2) For the purposes of this Convention the term operator shall mean the person who either personally or through his servants is in lawful possession of the aircraft, uses it for his own account and navigates it in flight.

(3) In case of dispute, the registered owner shall be deemed to be the operator and shall be liable as such unless, in the proceedings for the determination of liability, he proves that some other person, joined in the proceedings, is the operator.

Article 3

(1) The provisions of Article 2 relating to the liability of the operator shall not apply if the damage has been caused by an act committed intentionally by a person on board the aircraft who is not a member of the crew, when the act has no connection with the operation

* Aviation Planning Staff, Department of State.
of the aircraft and could not, with proper care, have been prevented by the operator or his servants.

(2) If the operator is deprived of the use of the aircraft by act of public authority or as a consequence of armed conflict or civil disturbance, neither he nor the owner shall be liable for damage caused by the aircraft or by any person or thing falling therefrom.

Article 4
The operator may be relieved wholly or partly from the liability imposed by this Convention, if he proves that the negligence or other wrongful act of the person who has suffered damage has caused the damage or has contributed thereto.

Article 5
When damage has been caused in the manner referred to in Article 1 by two or more aircraft in flight, the operators of the aircraft shall be jointly and severally liable, each of them being bound in accordance with the conditions of this Convention.

Article 6
(1) Anyone who makes use of an aircraft without the consent of the operator shall be liable for damage caused in all cases in which liability for such damage would have attached to the operator in accordance with the provisions of this Convention.

(2) If the operator proves that he has taken proper measures to prevent such use or that it was impossible for him to do so, he shall not be liable for damage to which this Convention applies; otherwise he shall be liable jointly and severally with the user, each of them being bound in accordance with the conditions of this Convention.

Article 7
Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with this Convention has a right of recourse against any other person.

CHAPTER II—EXTENT OF LIABILITY

Article 8
(1) The liability of the operator for damage caused in the manner referred to in Article 1 arising from any one incident shall not exceed
(a) for gliders and free balloons: 250,000 francs;
(b) For other aircraft:
   (i) 250,000 francs, if the weight is less than 2,000 kilograms;
   (ii) 600,000 francs, if the weight is from 2,000 to 6,000 kilograms;
   (iii) 600,000 francs plus 100 francs per kilogramme over 6,000 kilograms up to a maximum of 6,000,000 francs.

(2) “Weight” means, in the case of aircraft other than dirigible, the maximum weight of the aircraft authorized by the airworthiness certificate for take-off and, in the case of dirigibles, the maximum weight of the dirigible excluding the lifting gas.

(3) The sums given in francs in this Article refer to a currency unit consisting of 65 ½ milligrammes of gold of millesimal fineness 900. The sums may be converted into national currencies in round figures.
Article 9

Notwithstanding the provisions of Article 8,

(1) if the person suffering the damage, proves that the damages were caused through negligence or any wrongful act of an operator or his servants, other than an act to which paragraph (2) of this Article applies, the operator shall be liable up to three times the amount provided in Article 8, unless he proves, if the damage was caused by an act or omission of his servants, that he has taken proper measures to prevent it or that it was impossible for him to do so. There shall be no presumption of negligence against the operator or his servants from the mere fact that an incident has occurred which caused the damage;

(2) if the person who suffers the damage proves that it was caused by a deliberate act or omission of the operator or his servants, done with intent to cause damage, the liability of the operator shall be unlimited, unless, in case of an act or omission of his servants, the operator proves that he has taken proper measures to prevent the damage or it was impossible for him to do so;

(3) if a person uses an aircraft as contemplated by Article 6, his liability shall be unlimited unless he proves that he has acted in good faith, in which case the extent of his liability shall be determined in accordance with Article 8 and paragraphs (1) and (2) of this Article.

Article 10

If the total amount of the claims established exceeds the limit of liability applicable under the preceding Articles, an allocation shall be made according to the following rules:

(1) If the claims are exclusively in respect of loss of life or personal injury or exclusively in respect of damage to property, such claims shall be reduced in proportion to their respective amounts.

(2) If the claims are both in respect of loss of life or personal injury and in respect of damage to property, one half of the sum distributable shall be appropriated preferentially to meet claims in respect of loss of life or personal injury and, if insufficient, shall be distributed proportionally between the claims concerned. The remainder of the total distributable sum shall be distributed proportionally among the claims in respect of damage to property and the portion not already covered of the claims in respect of loss of life or personal injury.

CHAPTER III—SECURITY FOR OPERATOR'S LIABILITY

Article 11

(1) Each Contracting State may require, as a condition of any aircraft registered in the territory of another Contracting State entering its territory, that liability of the operator for damage caused to third parties on the surface be guaranteed by insurance up to the limit applicable according to the provisions of paragraph (1) of Article 9.

(2) The insurance shall be accepted by the State to be entered if it conforms to the provisions of this Convention and it has been effected by an insurer who is authorized under the laws of the State where the aircraft is registered to effect such insurance.

(3) Instead of insurance any other security in like amount permitted by the State of registry of the aircraft shall be accepted as satisfactory by the State to be entered, if the security conforms to Article 13 of this Convention.
(4) The State to be entered may also require that the aircraft shall carry documentation issued by an official authority of the State where the aircraft is registered certifying that the insurance or other security has been furnished, unless such documentation has been filed with an authority to be designated by the State to be entered.

(5) Any requirements imposed in accordance with this Article shall be notified to the Secretary General of the International Civil Aviation Organization who shall inform each Contracting State thereof.

**Article 12**

(1) If security is furnished in the form of insurance, the insurer may only set up the following defences to claims made under this Convention by persons suffering damage:

(a) the defences available to the operator;

(b) that the damage occurred after insurance ceased to be effective. However, if the insurance expires during a trip, it shall be continued until the next landing supervised by public authority but not longer than twenty-four hours; and if the insurance ceases to be effective for any reason other than the expiration of its term, the liability of the insurer shall be continued until effective withdrawal of the certificate of insurance by the appropriate authorities but not beyond fifteen days after notification by the insurer to the appropriate authorities of the State where the certificate was issued that the insurance has ceased to be effective;

(c) that the damage occurred outside the territorial limits provided for by the insurance contract, unless flight outside of such limits was caused by force majeure, assistance justified by the circumstances, or an error in piloting, operation or navigation;

(d) that the damage is the direct consequence of armed conflict or civil disturbance.

(2) The provisions of this Article shall not prejudice the question whether the insurer has a right of recourse against any other person, or whether the person suffering damage has a direct right of action against the insurer.

**Article 13**

(1) If security in a form other than insurance is furnished it shall be specifically and preferentially assigned to payment of claims based upon the provisions of this Convention. As soon as a claim covered by the security has been established, additional security in the amount of the claim shall be furnished until the claim has been paid.

(2) In the case of an operator of several aircraft, such security shall be deemed sufficient if it is for an amount not less than the aggregate of the limits of liability applicable to the two aircraft subject to the highest limits.

**CHAPTER IV—RULES OF PROCEDURE AND LIMITATION OF ACTIONS**

**Article 14**

If a claim for compensation is made against the operator after six months from the date of the incident which caused the damage, the claimant shall only be entitled to compensation out of the amount for which the operator remains liable after all claims made within the period have been met in full.
Article 15

(1) Actions based upon the provisions of this Convention may be brought against the operator, or those representing his estate, and also against the insurer if a direct action may be brought against the insurer in accordance with the law which should govern the contract of insurance.

Any such action must be brought before the Court of the place where the damage was caused. The operator is deemed to have submitted himself to the jurisdiction of the Court by the mere fact of the aircraft having flown into the airspace over its territorial jurisdiction.

(2) Each contracting State shall take all necessary measures to ensure that notification of the proceedings is given to the operator, and, if appropriate, to those representing his estate, the insurer and other persons interested.

(3) Each Contracting State shall so far as possible ensure that all claims arising from a single incident and brought in accordance with paragraph 1 of this Article are disposed of by the same Court.

(4) Where any final judgment is pronounced by a competent Court in conformity with this Convention, whether in the presence of the parties or in default of appearance, on which execution can be issued according to the law applied by the Court, execution shall be issued in each of the other Contracting States upon presentation of a copy of the judgment authenticated in accordance with the law of the State where the judgment was pronounced. The merits of the case may not be reopened.

(5) This Article applies to any action against a person liable under the provisions of Article 6.

Article 16

(1) A right of action for compensation under this Convention shall be subject to a period of limitation of one year from the date of the incident which caused the damage. If, however, the claimant proves that he could not at that date have known of the damage or of the identity of the person liable, the period shall begin from the day when he might have had such knowledge; but, in any event, there shall be no right of action after two years from the date of the incident.

(2) Subject to the provisions of paragraph (1) of this Article, the method of calculating the period of limitation as well as the grounds for the suspension or interruption of that period shall be determined by the law of the place where the action is brought.

Chapter V—Application of the Convention

Article 17

This Convention applies to the liability of the operator, or user as contemplated in Article 6, of an aircraft registered in one Contracting State when damage has been caused to third parties on the surface in the territory of another Contracting State by such aircraft or by any person or thing falling therefrom.

Article 18

This Convention shall not apply to damage caused to an aircraft in flight or to goods or persons on board such an aircraft.

Article 19

This Convention shall not apply when the person suffering damage has
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a right to compensation as a result of a contract of carriage or of employment with the operator.

Article 20
This Convention shall not apply to military, customs or police aircraft.

CHAPTER VI—GENERAL PROVISIONS

Article 21
The Contracting States shall take such measures as are necessary to give effect to this Convention and shall forthwith inform the Secretary General of the International Civil Aviation Organization of these measures.

DRAFT OF ARTICLE 15 PREPARED BY THE BRITISH DELEGATION TO FIFTH SESSION OF ICAO LEGAL COMMITTEE, JANUARY, 1950*

(1) Claims for compensation based upon the provisions of this Convention may, subject to the provision of paragraphs (3) and (4) of this Article, only be made in the Court of the place where the damage was caused.

(2) The operator may, within 3 months from the date of the accident, make an application to the Court of the place where the damage was caused to assess his total liability to pay compensation under the provisions of this Convention and to determine whether his liability can be limited under Articles 8 or 9 and if so to what amount. On any such application the Court shall, in preliminary proceedings which shall take place as soon as possible, fix the amount of the security to be given by the operator for the satisfaction of his liability. The amount of such security shall not exceed the amount for which the operator might be liable under the provisions of Article 9, and may be furnished in the form of a guarantee or other security which conforms with the requirements of Articles 11 and 13 of this Convention.

The Court may provide for a stay of the proceedings in the event of the security not being given within the time fixed by the Court. The Court shall in addition give all the necessary directions for the joining of parties interested as parties to the proceedings and shall proceed to make the assessment and determination referred to in this paragraph.

(3) If the operator shall not within the period of three months make the application referred to in paragraph (2), or if, in consequence of his failure to provide the security, proceedings upon his application shall be stayed, persons suffering damage may proceed with their claims before:

(a) a Court of the place where the damage was caused;
(b) a Court in the territory of the Contracting State where the operator has his ordinary residence or principal office;
(c) a Court of the insurer's residence or principal office if a direct right of action against an insurer can be exercised.

(4) Claims against a user of an aircraft based upon Article 6 of this Convention may be brought, either before a Court of the place where the damage was caused, or before a Court in the territory of a Contracting State where the user has his ordinary residence or principal office.

* Annex "C" to ICAO Doc. 6028, LC/125, 31/1/50.
RESPONDING to the invitation to consider the Rome-Taormina draft text, my approach is in two steps:

1. How to present the matter convincingly to the President and to the Senate, and eventually to the general public;—in other words, to construct the Argument.

2. To examine the proposed text and see how well it measures up to the Argument, and how its shortcomings, if any, can be corrected at this stage.

If the text cannot be made to measure up to the Argument, or if we are convinced that the other nations are definitely disinclined to meet our views as to what the President, the Senate, and the American public can be expected to accept, then there is little object in pursuing the matter further.

The Taormina re-draft of the Rome Convention is an important and serious document. The votes at Taormina indicate that it commands a great preponderance of support. On the three questions which produced splits, the votes were 17-2, 17-2, 16-3. Therefore we may expect strong ICAO support for the Taormina text. While still urging the U.S. minority views firmly, we should also look carefully to see whether the rules which we oppose can be successfully rationalized into our systems of law and business.

Background—This Convention is designed for adoption and workability. The “Rome” Convention—originally drawn in 1933 and now revised—in some 80 or 90 sovereign states now existing. Some have very rudimentary civil laws. Many have Roman law, the Code Napoleon, the Spanish Codes, the German Code. We have the common law and the Field Code. Each statement must be susceptible of being translated, understood and worked against any of these backgrounds.

ARGUMENT FOR THE ROME-TAORMINA CONVENTION

would regulate the law between foreign people in the air and local people on the ground—chiefly “crash” damage. This is a contentious subject; the laws at present differ widely. Some want to blame aviation for everything that happens; others want aviation to be freed from much if not all the responsibility for a crash. The Rome-Taormina Convention seeks a middle course. It approaches flying as a normal human activity, like automobiling; it is neither wicked to be burdened with excessive liabilities, nor sacrosanct to be relieved from ordinary duties and cares of human activities. But it requires a somewhat special treatment, because local people on the ground cannot escape from things falling from the sky.

The problem of stating a single rule of law on air crash cases for general, world-wide acceptance is formidable. There are today over 80 nations, divided into more than 200 states which legislate their own rules of law about liability and damages when one person damages the property or injures the body of another person. These numerous states and nations have some 15 to 20 varieties of law applicable to a damage by an airman to persons and prop-

* Partner, Lloyd, Williams, Decker and Knauth, New York City; Lecturer on Aviation Law, New York University. Many of the ideas in this paper were contributed or developed by the students in the Seminar on Problems in Aviation and Admiralty Law.
It is a striking fact that numerous laws on this subject were enacted between 1919 and 1929. All were based on theories, on what legal experts expected would be the future facts. In those days there were not many known facts to go on. Now for 20 years there have been almost no changes in those laws; everyone has been waiting to see how the rival theoretical systems, when tested by experience, would work out in practice. In that time, three U.S. States out of 24 have abandoned the "absolute" liability rule and returned to forms of common law liability. Italy made a new law in 1942, adopting the "Rome" formula of 1933. Otherwise there have been no changes in the laws of the 200 or so federated and national states which control this subject. Today, with over 20 years of large-scale aviation experience to draw on, some conclusions can be drawn. The Rome-Taormina Convention draws definite conclusions for international flight and crashes of foreigners.

The first problem is how to sue a flier who comes from outside of the country. This is the familiar problem of how to sue an out-of-state automobilist. For the motor-car, the general—and the American—solution has been to create a rule or presumption—by statute—that an out-of-state motorist who drives on the local highways automatically appoints a certain local official as his agent to receive service of legal papers—a summons, a complaint—commencing a local lawsuit for alleged damage caused by the operation of that automobile. The method usually is that the local official sends the complaint by registered mail to the out-of-state address of the offending motorist, and when the postal "return-receipt" is received, the plaintiff obtains jurisdiction to proceed with his local lawsuit. Some similar system must be created for the aviator (and the employer of the aviator) who flies through the airspace of a foreign state or country, does damage, and then cannot be found in that state for purposes of legal service of papers to start a lawsuit. The Rome-Taormina Convention would do this, internationally. Article 15. This aspect alone justifies the Convention.

The second problem is what rule of law to apply, for the measuring of liability, and for the measure of damages. With so many varieties of law on this subject in the world today, and with persons and airplanes constantly passing from one country to another, the international legal situation is extremely complicated and is especially very uncertain. Very small changes in the state of facts—a difference in the nationality of the parties or in their status, a small change in the airplane's course, a slight drift in the wind—may make a very large difference in the rights and remedies of the persons in lawsuits about crash damages. Now no nation should be asked to give up its particular local variety of law in favor of the law of any other nation. Therefore the best method is to create, by international agreement, an average good "international" rule of law and apply it by agreement without favor to all international situations of foreign fliers causing local damage to persons and property on the ground beneath. The Rome-Taormina Convention does this. If adopted, every airplane crash case causing damage on the ground will be easily classified into one of two kinds, from the legal point of view. If the aviator is a local party, the case will be judged by the local law of the country. If the aviator is a foreign party, it will be judged by the Rome-Taormina Convention. The many present varieties of law will become just two for any one spot: local or "Rome."

The Rome-Taormina system is this:
(a) The party damaged always gets a judgment for his actual damage up to a certain sum, without proving fault or negligence (like a workman injured while employed). The certain maximum sum payable regardless of fault in today's dollars for small airplanes is $16,500. The amount will go up and down with the current value of money, by reference to the standard French franc of 1928:

(b) If the party damaged proves negligence, the maximum limit is tripled; that is, a small airplane will have to pay damages up to $49,500.

(c) If the party damaged proves intention to do the damage, the liability is unlimited.

For middle-sized airplanes, the limit is larger in today's dollars, $39,500 normal and $118,500 for negligence.

For very large airplanes, the limit is still larger: in today's dollars, namely $39,500 plus $6.50 per kilo over 6,000 kilos ($3.25 per lb. over 13,200 lbs.), but not to exceed $400,000 and up to $1,200,000 for negligence.

These limits mean that the general run of ordinary damages will be paid in full, and that the rare large catastrophe hazard will be limited.

The third problem is how to obtain payment of a judgment when the defendant—the foreign aviator or his employer—has no assets in the country wherein he caused the damage. In ordinary lawsuits that is often arranged by agreements for the enforcing of foreign judgments; where such agreements are lacking, it is well known that there are great legal difficulties. The Rome-Taormina Convention would arrange internationally for the special enforcement of air-crash judgments. Article 15.

The fourth problem is how to obtain payment from a liability insurance company in which the aviator may have been insured. In many countries, the local law now provides that a liability (or casualty) insurance company may be sued directly by the damaged person if the defendant-assured fails to pay a judgment. The Rome-Taormina Convention arranges, internationally, for the similar remedy against the foreign insurance company or underwriter of the liability risk. Article 12(2). It regulates the defenses permitted to an insurer. Article 12.

The fifth problem is how to compel or regulate insurance or security coverage if a nation decides to require it. Article 11 covers this.

The Convention should be good for the general public because (a) it makes it possible to bring the foreigner into court at the scene of the crash, where the plaintiff has his witnesses; and is usually at or near his home; (b) it reduces the conflicts of possible laws at any one spot to two—the local rule for local parties, the international rule for internationally-different or diverse parties; (c) it makes the judgment collectible abroad where the defendant is at home or has his assets; and (d) it makes it possible to recover from the foreign aviator's foreign liability insurance company.

The Convention should also be good for the aviators, because it will standardize, in one international rule, their present exposure to the endlessly shifting series of rules of law as they pass from one country to the next. It will also be convenient to recognize the aviator's insurance policy arranged at home, wherever he goes across the world; for few things can be more hampering than to require a chain of different insurance policies to be arranged in advance whenever a flight is made across boundaries.

EXAMINATION OF THE ROME-TAORMINA TEXT IN THE LIGHT OF THE ARGUMENT

First: How to sue the out-of-state airman. Article 15 attempts this, but so vaguely or politely that there is no assurance that the 80-odd nations which are expected to ratify can actually put into effect an understandable, workable system. Mr. Wilberforce's alternate Article 15 (Ex. C) comes much nearer being a workable system, but it too is not exact enough. The
steps and details have to be spelled out in words of one syllable that will, when translated into twenty languages, mean substantially the same thing and result in procedure which will conform to a recognizable standard.

Second: The standardized rule of law for the case of the local plaintiff against the foreign airman. Chap. I, Articles 1 to 7, and Chapter II, Articles 8 to 10, spell this out pretty well. In my opinion it is adroit and sound public policy to offer three steps of liability: 1. absolute (regardless of fault) limited to a relatively small sum, which will take care of the great mass of cases; 2. proved negligence (fault alleged and proved) limited to triple the "absolute" figures; and 3. intentional harm—shooting, bombing, poison-dusting, etc.,—unlimited in amount. Subject to detail comment, these points are well done.

Third: How to get a foreign "crash-damage" judgment paid. Article 15(1) and (2) and (4) attempt this. It seems to me that they fall far short of a clear and understandable statement on which litigants and judges and sheriffs can rely in handling actual cases.

Fourth: How to reach a foreign liability underwriter or security furnished in a foreign place. Article 15(1) and (2) touch on this, but only in a generalized, vague sort of way which raises numerous practical questions, left unanswered.

Fifth: How to handle required insurance or security coverage. Articles 11 and 12 were regarded as satisfactory at the Brussels Conference in 1938, and appear to be equally so today.

The Convention in General

In fact today in most of the places in the world where the "catastrophe hazard" exists, the local law is that liability is (by one route or another) absolute, the measure of damages is unlimited, and there is no sure means for suing the foreign defendant except by pursuing him into his homeland which may be distant, causing prohibitive costs and expenses for the production of testimony. The large group of damaged persons must today expect to be forced to migrate to the place where the single defendant is at home.

The Rome-Taormina text does not much change the absolute liability situation. Its great changes are in limiting liability and in making the defendant get-at-able at the place of the accident. The real "quid pro quo" of this Convention is that the defendant (usually a single party) will appear at the scene of the crash, and face the plaintiffs (who may be a very large group) and in exchange will get the benefit of limited liability.

The draftsmen have devoted great care to the absolute liability chapter and to the limited liability chapters. But they have not yet devoted the same care to the chapters about the suability of the defendant, the enforcement of the judgment against him, and the responsibility of his insurance or security scheme.

Consequently the quid pro quo is not in balance, and the Convention as a whole is not yet in satisfactory form. It cannot in its present form be defended as a fair deal all around. The idea is a fair deal, but its expression in detail is not; it does not in plain words and workable detail develop the necessary mechanism for the lawsuit, the enforceable judgment, and the insurance or security response.

The Laws Now Existing

The owner and/or operator is today substantially "absolutely" liable without any limit in the domestic USA jurisdictions and in most of the world that is "foreign" to us where large cities and dense populations present "disaster hazards."
USA—Federal. There is no federal statute about surface damage by aircraft.

USA—State. We have 53 state, territory and district law situations. 23 States have the 1922 Uniform Act, sec. 5 which declares absolute liability (unless there is contributory negligence).

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* Repealed.
† Modified, 1949.

In the other 30 states and territories, there is absolute liability for trespass: Canney v. Rochester (1911), 76 N. Hamp. 603, 79 Atl. 517, 1928 USAvR 105; Rochester Gas v. Dunlop, 148 Misc. 849, 266 NYS 469, 1933 USAvR 511. And when there is no trespass, there is tort liability which is extremely difficult to escape: Soldak v. State (N. Y. Ct. Cl. 1927), 1927 USAvR 42. U.S., Canadian and British cases are collected in the USAvR Digests, 1944, 1948, 1949, under the title “Land Damage.” British law is discussed by Beaumont & Shawcross, sec. 384-396. French law and various other laws are discussed by Lemoine, Droit Arien, sec. 876-924.

The possible scope of the “disaster hazard” has lately been demonstrated by the Texas City fire and explosions, the Long Island Railroad collision, the loss of the Morro Castle, the Senior-Henderson convoy collision ($23,000,000), the Port Chicago explosion (300 lives), the Brest ship explosion, etc.

The value of a treaty as stating a clear rule is well put by a recent writer:

“Why is it that the judicial mind gives priority to certain sources of law in preference to others? For obvious psychological reasons, the judge will give preference to the sources of law which is easiest to prove. Treaties are, as a rule, more specific than custom; again, custom rules are more specific than most of the general principles of law.” (Internat. Law Q., vol. 1, p. 256 (1947)).

**DETAILED EXAMINATION OF THE ROME-TAORMINA TEXT**

Examination is aided by equipping each provision with a caption. I have suggested a caption for each provision. Assembling these, it is easier to see where the actual texts adequately express the desired idea, and where the texts are weak.

**The Title.** This says too much. It conveys the thought that the authors intend to reform domestic law as well as to state a text for private international law. Needless questions will be avoided by phrasing the title more accurately: Convention on Damage Caused by Foreign Aircraft in Flight to Persons and Property on the Surface.

Exclusions are already stated in Articles 18, 19, 20. All exclusions should be assembled in one place:—passengers, cargo, employees, government servants, etc. “Third parties” is legal-insurance jargon and the phrase should be avoided.

**Article 1(1). Absolute Liability (limited by Articles 8 and 9).**

It is noticeable that “damage” is not classified. It could be classified as “on-airport” and “off-airport.” Do we really mean that a burned hangar on an airport shall rank equally with a burned home, factory, store, off an airport? Do we mean that the gasoline truck driver on the airport ranks equally with the mother and child in their home? Many will criticize this.
Examples: The Love Field accident.—An incoming plane descending too soon hit buildings, first off the airport, then on it. Numerous take-off accidents.—After a faulty take-off, doing some damage on the airport, the plane comes down a mile or two away among ordinary houses.

A general opinion is that landowners and tenants who place buildings and equipment on airports—and underwriters who insure them—consciously elect a risk greater, and different in kind from those whose property is located in an ordinary community. Such risk classifications by underwriters are not unusual.

Another common opinion is that persons who go on airport properties or take employment there voluntarily expose themselves to crash hazards which for persons in other places are involuntary. Examples: Birckhead v. Sammon, 171 Md. 178, 189 Atl. 265, 1937 USAvR 11, an incoming plane hit a person on the airport. The accident in Seattle where an accelerating plane ran off the runway into an airport building, and passed beyond into a dwelling house in the town. As the Rome-Taormina text stands, the hangar owner and people in the hangar or on the airport share equally with the dwelling house owner and the people asleep in their beds there or walking in the street. Is this persuasive? Birckhead v. Sammon takes the other view.

“Damage caused” opens a wide prospect of variation. Are any limits on causation intended? Or do we let each judge work out causation for himself? The text should furnish a definition of “damage caused.” The text should cut off causation at some point—indirect damage—consequential, loss of profits damage, serial damages, damages different in time—there are numerous reasonable stopping places in the chain of causation. Examples: If an airplane falls on a warehouse or store this does not guarantee that the lost goods would all have been sold at a profit. After a release of crop dusting material, the dust plus a dry spell or some other fact or human act or failure to act may cause animals to die, crops to fail, etc., long afterwards.

Article 1 (2). Definition of Flight.

This accords with insurance policy language and is I believe proper.

Article 2 (1). Party Liable.

This merely states the name: the operator.

Article 2 (2). Operator Defined.

Here is great confusion. The worse is confusing the single human being who personally pilots his own or rented plane with the corporation, association, or other human or business group which, through agents, servants, employees plays some part in the ultimate fact that the plane is in flight. The solo human being is an easy case. For the other, the Taormina triple test is too complicated. A single test is enough, namely:—who employs the navigating personnel?—Who hires, pays and fires them? This is an easy and universal test. It is the accepted test for ship operations. It was clearly laid down again very recently for us by the U.S. Supreme Court in Fink v. Shepard, 337 U.S. 810, 1949 AMC 1045; Cosmopolitan v. McAllister, 337 U.S. 783, 1949 AMC 1031; Weade v. Dichman, 337 U.S.—, 1949 AMC 1050.

A suitable test would be:

“The term operator shall mean:
(a) any individual who personally
   i. uses it for his own purposes (account),
   ii. and navigates it in flight,
(b) any individual who or association, corporation, society or other group of individuals which hires and pays the navigating personnel.”

Such a test excludes the hired pilot engaged on his employer’s business.
Article 2(3). Registered Owner as Operator—Implieder.

The words “joined in the proceedings” imply the existence of a procedural right to implead. We all know states where joint-tortfeasors cannot be impleaded today. Connecticut, for instance. The treaty text should guarantee the registered owner the right to implead the alleged operator, the alleged unlawful user, the alleged requisitioning authority. The Taormina text leaves this to chance. It should be definite. Chance is unjust.


Sentences (1) and (2) are expressed in different grammar. There is no reason for this; both should be cast in the same grammatical form. Otherwise astute counsel will try to find differences. Example of uncontrollable act: U.S. v. Cordova, — F. Supp. —, 1950 USAvR 1 (E. D. N. Y.). Two passengers with a bottle of rum got to fighting; the other 45 passengers fled to the tail section, putting the plane off trim. Their flight and shift in center of gravity clearly did have a “connection with the operation of the aircraft,” which shows that this is not the right phrase.

“Intentionally” is a very limiting word. Examples: Cordova and his fellow fighter did not intend to put the plane off trim; but they did cause that result. In Allen v. Chanute, 1949 USAvR 29, two passengers negligently started a fire with their cigarettes; they did not “intend” that result.

“On board” is a very limiting phrase. Example: In Quebec a non-passenger has just been convicted for placing a bomb in a plane. He was not on board; but his wife was, and he killed her by this method. Do the Taormina draftsmen mean that the plane owner must pay for ground damage caused by that crash? Pot-shots at planes are not uncommon; if one causes a crash, is it intended that the plane operator is absolutely liable? If anyone has defended the absolute liability rule in cases like these, I have not yet read it.

Article 3(2). Requisition—War—Civil Disturbance—Relieving Operator from Liability.

There are several ideas here; they should be sorted out and stated separately.

Requisition may be civil or military, orderly or disorderly. An ancient well-known phrase of similar meaning is “restraint of princes and governments.” Civil disturbance is an entirely different concept from requisition.


Less orderly requisitions: Acts of the Spanish Republican government in defending Barcelona in 1937, which resulted in a body of insurance litigation in several countries, mostly in London; present actions in Red and Nationalist China; some airplanes seem to have been “requisitioned” while in flight by armed passengers or crewmen. Civil disturbances: Shots at planes in the Greek border wars.

Article 4. Contributory Negligence or Act of the Plaintiff.

The defense should be extended to negligence, etc., “of the person or agents, servants or employees of the person who has suffered damage.” This would cover corporations, and groups of persons acting in concert. Examples: An employee gives a wrong signal and the pilot puts the plane down in the wrong place or manner, damaging the employer’s property. A plane drops a can of dusting powder. An employee opens it and the employer’s bees are killed; his cattle sicken, etc. Query: Suppose the negligence of one man on the ground contributes to a crash in which the innocent persons are damaged?
Article 5. Air Collision Causing Surface Damage.

I am content to let the rest of collision liability wait for another time, and do not object to this much being stated here.

Article 6(1). Unauthorized Use.

"Damage to which this convention applies" seems an argumentative phrase. Why not say directly: "damage to persons and property on the surface to which this Convention applies"?

There is a powerful argument for requiring airplanes to be more closely watched and locked up than automobiles or motorboats. A silly drunk in a plane is much more terrifying than one in a car or a boat, although the latter are bad enough.

It has been suggested to me that Article 6(1) and Article 2(2) and Article 6(2) do not fit and leave a gap through which the unauthorized user may escape.

Article 6(1) provides that the unauthorized user shall be liable in all cases in which liability would have attached to the operator.

But Article 2(2) provides that an operator is a person in lawful possession. When the unauthorized user takes the plane, the operator loses lawful possession and so gets off the hook; so the unauthorized user gets off the hook with him.

Also Article 6(2) lets the operator off the hook if he took proper measures or could not take them; so the unauthorized user is let off the hook whenever he snitches the plane despite the operator's proper measures.

The draftsman's thought was to be kind to the innocent unauthorized user—the man who innocently uses the wrong plane in the park of planes. This thought might be worked out in another way, as: a flat declaration that unauthorized users are always liable without limit and always subject to suit at the place of damage according to the mechanism of Article 15, provided that they may attempt to prove that the unauthorized used was innocent and if successful may enjoy the triple-limit of liability.

Article 6(2). Unauthorized Use—Owner/Operator's Duty to Prevent.

The law for airplanes should not favor the owner-operator more than it favors the owner of a motor truck or bus. Example: The New York Vehicle and Traffic provides:

§59 Every owner of a motor vehicle or motor cycle operated upon a public highway shall be liable and responsible for death or injuries to person or property resulting from negligence in the operation of such motor vehicle or motor cycle, in the business of such owner or otherwise, by any person legally using or operating the same with the permission, express or implied, of such owner. All bonds executed by or policies of insurance issued to the owner of a motor vehicle or motor cycle shall contain a provision for indemnity or security against the liability and responsibility provided in this section; but this provision shall not be construed as requiring that such a policy include insurance against any liability of the insured, being an individual, for death of or injuries to his or her spouse or for injuries to property of his or her spouse. If a motor vehicle or motor cycle be sold under a contract of conditional sale whereby the title to such motor vehicle or motor cycle remains in the vendor such vendor or his assignee shall not be deemed an owner within the provisions of this section, but the vendee, or his assignee shall be deemed such owner notwithstanding the terms of such contract, until the vendor or his assignee shall retake possession of such motor vehicle or motor cycle. A chattel mortgagee, conditional vendor, or an entruster as defined by section fifty-one of the personal property law, of motor vehicle or motor cycle out of possession shall not be deemed an owner within the provisions of this section."
See Elfeld v. Burkham Auto Renting Co., 299 N. Y. 336 (1949). Elfeld was killed in a skidding accident; the tires were worn smooth and the steering wheel had 12 inches of play. Burkham Renting Co. was the registered owner. Cherry Bakeries rented it from Burkham, and allegedly "operated and controlled" it. Pechter Baking Co. was actually using the truck, and employed Elfeld as a salesman. Burkham impleaded Pechter as a third party defendant, claiming that Pechter "maintained, operated and controlled" the truck, and that Pechter's active negligence caused the accident. The New York Court of Appeals said (299 N. Y. 346):

"the negligent act having been committed by Pechter, a legal user of the truck, its registered owner Burkham can be held liable under section 50 of the Vehicle & Traffic Law."

Consequently Burkham could implead Pechter—196 Misc. 446.

The court held that the registered owner of a bakery truck cannot deny prima facie proof of ownership and is liable for the negligent upkeep and negligent operation of the truck by a bakery to which it was leased and which was "legally using" it.

We cannot expect the American public to be kinder to the registered owner of an airplane than to a motor car owner in the same situation.

In this connection, we may consider that South Dakota in 1949 amended its (1922) Uniform State Act, section 5 to read as follows:

"2.0305 DAMAGE ON LAND. The owner and the pilot, or either of them, of every aircraft which is operated over lands or water of this state shall be liable for injuries or damage to persons or property on land or water beneath, caused by the ascent, descent, or flight of the aircraft, or the dropping or falling of any object therefrom in accordance with the rules of law applicable to torts in this state.

As used in this section, OWNER shall include a person having full title to aircraft and operating it through servants, and shall also include a bona fide LESSEE or BAILEE of such aircraft, whether gratuitously or for hire; but 'owner,' as used in this section, SHALL NOT INCLUDE a bona fide BAILOR or LESSOR of such aircraft, whether gratuitously or for hire, or a MORTGAGEE, CONDITIONAL SELLER, TRUSTEE FOR CREDITORS of such aircraft or OTHER PERSON HAVING A SECURITY TITLE ONLY, nor shall the owner of such aircraft be liable when the pilot thereof is in possession thereof as a result of THEFT or FELONIOUS CONVERSION.

The person in whose name an aircraft is registered with the United States Department of Commerce or the Aeronautics Commission of this state shall be PRIMA FACIE the owner of such aircraft within the meaning of this section."

The decision in King v. U.S., 178 F. 2d 320, 1950 USAvR 50, must be considered. We may suppose that it represents official U.S. Government thought at this time. The Attorney-General argued that an airplane owner is not liable for a burned house when his drunken pilot takes the plane up on a frolic of his own. The District Court and the 5th Circuit Court of Appeals have agreed. To achieve this result, the U.S. Attorneys had to persuade the courts that the Colonel's affidavit that neither he, nor his officer on duty, nor his M.P.'s knew that the cadet was going to the hangar and taking the plane out at midnight was sufficient to dismiss the complaints of the owners of the burned houses. So they never reached the questions of whether the officers and the M.P.'s were attentive to their duty. It was enough that they did not know. The court did not ask why they did not know. If such laxity is believable and excusable at an Army Post, no stricter rule could be set up for civilians.
**Article 7.** Recourse—Remedy Over.

Many texts on this topic include the safeguarding phrase that no damage should be recompensed more than once, and that no party should be held to pay the same damage more than once.

**Article 8.** Normal or Single Limit of Liability.

The maxima for the three classes of aircraft, namely: $16,000, $40,000, and $400,000, seem adequate for payment of all ordinary run-of-the-mill cases in full.

**Article 9(1).** Triple Limit of Liability When Negligence Proved.

This seems a sound arrangement. Of course any escape-clause from the normal single limit means that there will be arguments and lawsuits whenever the damage exceeds the single limit. Looking at some recent examples, such litigation does not seem to threaten too much difficulty. *Examples:* The Northwest Minneapolis accident. Assuming that the damages exceeded $400,000 (which is most unlikely), was it negligent to be aloft in that gale and snow storm? Was it negligent to miss landing somehow the first time, so as to require a circle for a second try? Love Field accident. Was it negligent to come in so low on 3 motors that the failure of one more motor caused the plane to drop too quickly? Seattle-Yale accident. Was it negligent to attempt the take-off?

**Article 9.** No Limit When Deliberate Intent Proved.

This is sound. *Examples:* Crop dusting is always deliberate. Dropping leaflets on the Capitol is deliberate. Bombing, shooting, strafing are deliberate. Hunting from aircraft is deliberate. Flying too close to another plane may be deliberate; it may be merely negligent, or accidental. It may be a statutory fault. Query: Suppose a man in Plane A deliberately causes the crash of Plane B, and Plane B causes the surface damage. There is the recent case of the gay sport who dived on a training plane, frightening the woman student into a freeze on the controls. A's intent was deliberate enough. Does this text reach him?

**Article 9(3).** No Limit for Unauthorized Person Who Cannot Prove That He Took the Plane in Good Faith.

This seems proper. But the *male fide* unauthorized person is usually a pauper, and frequently dies in the crash, so it does not mean much. *Examples:* The cadet who burned up the King and other houses, had he lived, probably could not have shown good faith.

**Article 10.** Allocation of the Limited Recovery.

(1) Life only or property only—Pro Rata among Claimants.

This seems obvious.

(2) Both Life and Property Claims—Life Preferred as to Half the Fund,—Both share the other Half Pro Rata.

This is as fair a method of division as any. Property claims on the whole are insured, and subrogation recoveries, while a genuine source of income for insurers, are somewhat in the nature of windfalls. I would not argue about this.

**Article 11.** Insurance of Crash Risk of Foreign Aircraft.

(1) Any State may require foreign aircraft to be insured.

(2) Insurance in the Registry State will be accepted abroad.

(3) Optional security may be furnished.

(4) Method of proof of insurance or security.

(5) Insurance requirements reported to ICAO.
These are Brussels Protocol provisions, and are as suitable here as they were there.

**Article 12(1). Defenses Available to Insurers.**

These are Brussels Protocol provisions, and are suitable, in this text as they were in that. Query: In view of the world events since 1938, are the underwriters still satisfied with the phrases “armed conflict or civil disturbances”? The many decisions since 1938 might usefully be reviewed.

**Article 12(2). Subrogation. Third Party Suits Against Insurers.**

Two separate ideas are mixed together here. They should be separately stated. They have nothing in common.

**Article 13. Security.**

(1) As Substitute for Insurance.

(2) Fleet Security.

No comment.

**Article 14. Preference of Claims Presented Within 6 Months.**

This seems unfair. Article 16 allows a year for suit—sometimes two years. Why then prefer the race horses? The quick claimants will be the living, and perhaps those who are insured, and so organized for action. The slow ones will be the dead and the uninsured. This preference can be a device to enable quick operators to run off with the major part of the limitation funds.

Delay in making claims is inevitable, especially in death cases. It takes time to prove a Will, to collect consents and waivers, to give statutory notices, to get an Executor qualified or an Administrator appointed. Heirs do not sit in handy circles around the offices of the Surrogate.

The mere fact that airplanes go faster does not speed up the subsequent normal apparatus for recovering from the shock of an accident and starting the business going of assembling claims, getting authority to present claims. After a major accident it is perfectly common to have victims in a coma or swathed in bandages for weeks and months, unable to think or to sign their names or to do any reasonable act.

**Article 15. Actions.**

This is the real heart of the Convention, and at this point the text falls down and is a mere index of ideas.

(1) Sentence 1. Who may be sued. Operator, Estate, Insurer.

The insurer part should be sorted out, and separately stated. The insurer’s consent to appear could be a condition of the acceptability of the insurance.

(2) Sentence 2. Jurisdiction at Place of Damage. Personal Jurisdiction over the Operator, how deemed obtained.

This is too sketchy for discussion. It is just a pair of captions. A system must be described in words of one syllable that can be translated into all languages and understood by all judicial officers.

(2) Notice to the operator, Estate, Insurer and Others.

This is also merely a caption. It does not prescribe a routine which any judge, clerk, sheriff, plaintiff or defendant can follow. It is just some arrows thrown into the air of differing legal systems. The phrase “and other per-
sons interested” is a mystery. Who can these be? The text does not mention “other persons” anywhere else; they are not defined or even hinted at.

(3) Bringing all Claims into One Court.

This is merely an incomplete idea. It does not require anything to be done. It does not outline or prescribe a routine which litigants can invoke and which judicial officers can follow.

(4) Full Faith and Credit Given to Judgments.

This is a sound principle, but it is not acceptable until the basis of jurisdiction, notice, defendant’s access to the court, concourse of claims are clearly set forth in language that carries conviction of sound and due process to judicial officers.

(5) Suits Against Unauthorized Operators of Aircraft.

The same comments apply as for authorized operators.

Article 16. Time for Suit.

The drafting seems needlessly involved. A great many international conventions allow two years—the Salvage Convention, the Collision Liability Convention, the Warsaw Convention. One year is very short; two years are more just.

Article 17. Inclusions—Foreign Aircraft.

This article justifies the revised Title which I advocate.

Article 18. Exclusions—Other Aircraft and Their Contents.

No comment. This topic awaits a Collision Liability Convention.

Article 19. Exclusions—Passengers, Cargo, Employees.

Query: Are these excluded only when inside airplanes? Or are they excluded wherever they are—on an airport, in a waiting room, in a bus or truck, in a hotel or warehouse?

Article 20. Exclusion—Military, Customs, Police.

These are remnants of sovereign immunity. If a Customs airplane penetrates a foreign country and damages persons and property on the ground, I can imagine no reason why immunity should be claimed. The same applies to military and police. They belong properly inside their national airspaces. If they fly abroad, it is an exceptional privilege, and should not give a sovereign immunity as to hurting people and damaging property.

Article 21(1). Undertaking to Make Necessary Rules, Enact Statutes, etc.

This hints that the Convention may not be self-enforcing, and that signatures and ratifications and adherences will be meaningless until legislation is also enacted.

Article 21(2). Notice of Rules, Statutes, etc., to ICAO.

This is routine.
RECOGNITION OF FOREIGN JUDGMENTS UNDER ARTICLE 15 OF PROPOSED REVISION OF ROME CONVENTION

COMMENT BY JOHN C. COOPER *

ARTICLE 15 of the proposed revision of the Rome third party liability convention approved by the ICAO Legal Committee at its Fifth Session in January 1 presents basic international political and legal difficulties. This article provides in substance that actions under the convention must be brought against the operator before the court of the place where the surface damage was caused; that the operator is deemed to have submitted himself to the jurisdiction of this court by the mere fact of the aircraft having flown into the airspace of the court's territorial jurisdiction; that each contracting State should take all necessary measures to ensure that notification of the proceedings is given to the operator; and that where final judgment is pronounced by a competent court in accordance with the convention, in the presence of the parties or in default of appearance, "on which execution can be issued according to the law applied by the court," execution shall be issued in each of the other contracting States upon presentation of a copy of the judgment. 1

Articles 8 and 9 of the revision provide for limitation of the operator's liability. Article 10 provides for the proportionate settling of claims when they exceed in the aggregate these limits. It is obvious that limitation of liability will be actually ineffective unless protected by adequate legal machinery in the convention so that the aggregate judgments obtained against the operator, resulting from a single accident, do not exceed such limits.

Article 15 was drafted with the apparent object of accomplishing this purpose. The primary consideration is the requirement of a single forum. If suits can be brought in more than one jurisdiction, limitation of liability might become ineffective since no adequate means would exist for proper distribution of the amounts covered by the limitation. The forum where the damage occurred was selected in the draft on the apparent ground that witnesses would be more readily available there. But as the principal assets of the operator would probably be elsewhere, it was thought necessary to insert provisions to include what was hoped would be a uniform and readily usable procedure so that persons obtaining a judgment in the State where the damage was caused could enforce collection of that judgment in whatever contracting State the operator might have assets.

The first difficulty caused by Article 15 arises from the serious questions of international public policy inherent in any attempt to agree on a multilateral convention providing for general recognition and enforcement of foreign judgments. Such a convention would, in effect, mean that any ratifying State thereby gives full faith and credit to the judicial processes of every other State then in being, or thereafter created, which might become a party to the convention. Historically no precedent exists for such a convention. 2

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1 For Text of Proposed Convention see page..., supra.

Some of the political difficulties have been thus stated by Wolff:

"It is hardly necessary to stress the advantages to international relations resulting from the recognition of foreign judgments; if all judgments could be recognized everywhere this would give stability to individual relationships all over the world. . . . The dangers to which so sweeping a simplification would lead are as manifest as its advantages. A judge would produce international effects such as no legislator could ever contemplate. Furthermore, it is not advisable to trust every court in the world to administer justice irreproachably. . . . even where there is no danger of any kind of corruption of courts, differences between two countries in their fundamental attitude to questions of morality or public policy must often make the recognition of some individual judgments seem undesirable. Finally, general recognition might result in grave injustice where the same relationship was regarded differently by the courts of two countries."

The language as to recognition of foreign judgments contained in paragraph 4 of Article 15 of the proposed revision is very evidently copied almost verbatim from Article 55 of the Convention on the Transport of Goods by Rail signed at Berne, October 23, 1924. The same language appears in the corresponding section of the Convention on the Transport of Passengers and Luggage by Rail, also signed at Berne, October 23, 1924. But these conventions are not precedents which can properly be used as the basis for a world-wide multilateral convention on recognition of foreign judgments. Their subject matter, dealing with the interchange of goods and passengers by rail, necessarily limited their application to adjacent continental European States in which judicial systems and procedures were at least reasonably similar. Also, each convention contained in Article 59 careful provisions under which States not signatory to the convention and desiring to accede thereto must apply to the Swiss Government. The objection of two signatory States was sufficient to postpone consideration of the accession of a new State. When revision of these conventions was considered at a conference in 1933, the limitations on the admission of non-signatory States remained unchanged. In other words, the Berne conventions are not, in practical effect, multilateral conventions open to signature and adherence world-wide, and the provisions which they contain for recognition of foreign judgments do not demonstrate that the international political questions have been solved.

The legal questions are as difficult as the political problems. Experts in international law have for years attempted, without success, to agree on a simple legal basis for a multilateral recognition of foreign judgments. The problem was considered in 1878 at the first session of the Institute of International Law; in 1883 by the Association for the Reform and Codification of International Law; in 1921 by the International Law Association; in 1945, Sec. 231, p. 253. 27 League of Nations Treaty Series, p. 530; 2 Hudson, p. 1393. 28 League of Nations Treaty Series, p. 17; 2 Hudson, p. 1468. 6 Hudson, p. 527, p. 568. 7 Annuaire, p. 96. 10 Journal du droit international privé, p. 564. 30 Report, 1922, Vol. 1, p. 354.
1923 again by the Institute of International Law,\textsuperscript{10} and also in 1924.\textsuperscript{11} The discussions in these learned organizations, and the resolutions which they adopted, illustrate some of the serious difficulties, including those involved in determining what factors affect the competence of the court rendering the judgment, the extent to which the procedure and other conditions of the authenticity of the judgment may be examined by the court from which execution is sought, and other similar problems. All of these discussions, for example, emphasized the inherent difficulties involved in recognizing in one State a judgment rendered by default in another State, particularly where the default follows service of process or citation other than in person on the defendant.

In 1925 these problems were considered on an inter-governmental level at the Fifth Session of the Conference on International Private Law held at The Hague. Prior to the conference a questionnaire was submitted covering most of the basic problems, many of which are still unsettled. The first question asked the opinion of governments as to whether a multilateral convention should be concluded, or whether it was preferable to draft a model convention to be used as the basis for bilateral agreements between the several States.\textsuperscript{12} An examination of the replies indicates that the majority of governments to which the questionnaire was addressed preferred the adoption of a model convention to be used as a basis for subsequent bilateral agreements. The French reply\textsuperscript{13} stated very firmly the views of that government as to the impracticability of a multilateral convention. It said, among other things, that the French Government "does not believe it possible to conclude collective treaties on these matters;" that "the system of bilateral agreements seems the only practical one because numerous points in the legislation of the States are too different;" and that "treaties of this nature may be concluded only between States having analogous legislation." No more accurate and succinct statement of the basic difficulties involved has been drafted.

At the conclusion of the Fifth Session of The Hague conference, a report and draft convention was prepared.\textsuperscript{14} The report makes very clear that the draft convention was submitted only as a basis for subsequent bilateral agreements because of the almost insuperable difficulties of preparing a satisfactory multilateral convention, and notes particularly\textsuperscript{15} that in any bilateral agreement common ground must be reached on the fundamental question of what kind of citation to the defendant in the original litigation will be accepted as a basis for a valid judgment under which execution may be requested in the other State. Nothing in the proceedings at The Hague conference in 1925 indicates that the Berne conventions, signed the previous year by many of the same States, could be considered as precedents settling any of these international questions.

The next effort on an intergovernmental level was the submission and partial acceptance of the "Bustamante Code" contained in the Convention on Private International Law submitted to the Pan American Conference in Havana in 1928.\textsuperscript{16} This Code cover almost every phase of private inter-

\textsuperscript{10} 30 Annuaire, p. 173.
\textsuperscript{11} 31 Annuaire, p. 127.
\textsuperscript{12} Conférence de La Haye de droit international privé, Documents relatifs à la cinquième session ..., Hague, Nijhoff, 1926, p. 14.
\textsuperscript{13} Ibid. p. 193.
\textsuperscript{14} Actes de la cinquième session, Hague, Nijhoff, 1926, pp. 182-193.
\textsuperscript{15} Ibid. p. 190.
\textsuperscript{16} Hudson, p. 2279.
national law, including articles on the competence of courts and the recognition of foreign judgments. Articles 423-31 set out in detail principles and procedures as to such recognition. Among the carefully drafted conditions required for the recognition of a foreign judgment are the following: that the court rendering the judgment is competent; that the parties have been summoned for the trial "either personally or through their legal representative;" and that the judgment does not conflict with the public policy or public laws of the country in which its execution is sought. The Bustamante Code is now in effect between certain Latin American countries whose legislative systems and judicial procedures are fairly closely related.17

The limited application of the Berne conventions and of the Bustamante Code emphasizes the lack of international agreement on the basic legal questions involved in the recognition of foreign judgments. Any cursory examination of the standard works on private international law will illustrate the wide areas of disagreement.18

Each State must, therefore, determine for itself how the very general and somewhat vague provisions of Article 15 of the proposed revision of the Rome Convention would affect its own laws, practices, and procedures.

As to procedure, the provisions of paragraph 4 of Article 15 are most uncertain. It would appear that some summary procedure resembling "exequatur" is contemplated under which the requested execution will be issued on presentation in one State of an authenticated copy of the judgment entered in another State. But no indication is given as to whether or how the defendant may be heard before his assets are seized under the execution. This certainly modifies the practice even in those States where the procedure of "exequatur" is customarily used. All such States, in the absence of special treaty or other agreement, seem to give the defendant some chance to be heard, and France, and some others, permit the court, before enforcing the execution, to review even the merits of the proceedings in the foreign State, as well as to test the competence and jurisdiction of the judgment court.19

In those States, such as the United Kingdom, the United States, and some others, where the "exequatur" procedure has not been recognized, the procedure contemplated by Article 15 will be revolutionary. In these States foreign judgments are ordinarily enforced only through a new proceeding commenced by the claimant against the defendant in which proceeding the foreign judgment is put in evidence as the basis of the claim. Article 15 is entirely silent as to how such States must implement the provisions of

17 Bolivia, Brazil, Costa Rica, Cuba, Chile, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru, Dominican Republic, and Venezuela. 19, 1940 at the Second South American Congress on Private International Law [8 Hudson, p. 472] (and apparently not yet in effect) covers in Articles 5-9 some of the subject matter also covered by the Bustamante Code.


The most comprehensive general list of authorities will be found in the list of treatises and articles cited by Read, Recognition and Enforcement of Foreign Judgments, (Harvard, 1938) pp. 354-356.

19 De Cock, supra, note 18 at 449-472.
Article 15 to make it effective. In the United States this presents an extremely difficult problem due to the right of each of the States of the Union to regulate its own court procedure. A similar problem is presented under the federal structure of the Canadian Constitution where questions of private law are left entirely to the provinces. Also, those Latin American States which have accepted the Bustamante Code must examine with great care the provisions of Article 15 to determine its effect on their existing treaty obligations and accepted procedures.

The effect of Article 15 on the force to be given to foreign judgments is even more important than its effect on various court procedures. The ordinary rule generally seems to be that jurisdiction of the foreign court may be tested by the legal concepts applicable in the court where execution is sought and that it is not sufficient that the judgment State had assumed jurisdiction through its own court. In the United Kingdom the common law has usually been construed to mean that a foreign judgment is conclusive on the merits, but that the court to which application for execution is made has a right to hear and examine such defenses as whether the judgment is tinged with fraud, or whether the defendant had actual and fair notice of the proceedings and a genuine opportunity to defend himself in the State where the judgment was rendered. In the United Kingdom a foreign judgment is generally treated as an enforceable obligation.

In 1933 the United Kingdom (seeking to simplify its procedure) adopted the Foreign Judgments (Reciprocal Enforcement) Act. This Act applies to judgments of superior courts in foreign States provided that substantial reciprocity of treatment is assured. It may be put into effect as to particular foreign countries only by Order in Council. Under the Act foreign judgments may be registered in Great Britain, but before the judgment is enforced, the judgment debtor may apply to have the registration set aside for such reasons, among others, as lack of jurisdiction of the original court, or that the judgment was obtained by fraud, or that enforcement of the judgment would be contrary to the public policy of the execution State—thus giving the judgment debtor an opportunity to be heard in the execution State. The Act has been put into effect by two noteworthy treaties—one between the United Kingdom and France and one between the United Kingdom and Belgium. These treaties indicate the great care which the States concerned have exercised in agreeing on even so comparatively simple a matter as a bilateral convention where no unknown methods of procedure must be guarded against. In the French treaty, for example, it is provided by Article 3, §1, (b) that execution will not issue if the original judgment was given by default and the judgment debtor satisfies the court applied to that the defendant in the proceedings before the original court did not

20 Nussbaum, Jurisdiction and Foreign Judgments, 41 Col. L. Rev. 221, 223 (1941) (authorities cited note 7).
21 See, for example, the leading case of Buchanan v. Rucker, 9 East 192, 103 Eng. Rep. 546 (K.B. 1808), in which Lord Ellenborough refused to recognize in England a judgment obtained in the Island of Tobago against the defendant not on the island nor represented there, service having been made according to the law of Tobago by posting of summons at the entrance of the court house.
actually acquire knowledge of the proceedings in sufficient time to act upon it, "whether or not such notice was served in accordance with the law of the country of the original court." In other words, the court in which execution is sought has a right to test the fairness of the service of process in the court where judgment was rendered, even though such process followed literally the standard set by the law of the judgment court. On this important and perhaps decisive point, Article 15 (4) of the proposed revision of the Rome Convention is extremely uncertain and vague. Also, in many other ways it lacks the precision and clarity of the British treaties and statute, and doubt certainly exists as to how it would fit into present British procedure.

The problem in the United States is even more difficult. While the United States was represented at the Havana conference in 1928, it did not accept the Bustamante Code. As the United States Delegation then stated, it was unable to do so "in view of the Constitution of the United States of America, the relations of the States members of the Union and the powers and functions of the Federal Government." These difficulties are as present today as they were in 1928.

The courts of the United States are governed by the common law rules applicable in the absence of statute or treaty on the subject. In the leading case of Hilton v. Guyot, the U.S. Supreme Court, speaking through Mr. Justice Gray, said:

"In view of all the authorities upon the subject, and of the trend of judicial opinion in this country and in England, following the lead of Kent and Story, who are satisfied that, where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact." But even under these conditions, recognition was originally allowable only when reciprocal treatment is granted by the foreign judgment State to judgments rendered in United States courts. On this point Mr. Justice Gray said:

"The reasonable, if not the necessary, conclusion appears to us to be that judgments rendered in France, or in any other foreign country, by the laws of which our own judgments are reviewable upon the merits, are not entitled to full credit and conclusive effect when sued upon in this country, but are prima facie evidence only of the justice of the plaintiff's claim." Whether reciprocity is still as fundamental a part of the United States rule as suggested in Hilton v. Guyot may now be open to question. But it cannot be denied that courts in the United States have reserved to them-

26 4 Hudson, p. 2347.
27 159 U.S. 113 (1895).
28 Ibid. p. 202
29 Ibid. p. 227.
selves the right to determine whether judgment of the foreign court meets the conditions stated in the first quotation above from Mr. Justice Gray's opinion. Particularly the right has been exercised to test the jurisdiction of the foreign judgment court over the defendant. Issuance of execution in the United States has been refused if the jurisdiction of the foreign court, when tested by United States standards of procedure, is found unacceptable.\footnote{31} In the case of \textit{Kerr v. Tagliavia},\footnote{32} a New York court refused to enforce a judgment obtained in England against the defendant, acceptor of a bill of exchange payable in England. Service in the English court was effected upon the defendant personally in New York pursuant to English procedure authorizing such service (the court having jurisdiction of the subject matter) even though defendant was a non-resident of England. While the New York court apparently admitted the validity of the judgment in England, it denied enforcement of the judgment in the United States, holding that the defendant had not consented expressly or impliedly to the process in question, that he was not subject thereto by reason of citizenship or residence in England, and that the general rule therefore remained applicable; namely, "that this state will not recognize a personal liability arising from a foreign judgment obtained upon service of process beyond the territorial jurisdiction of the foreign state."\footnote{33} This case was affirmed upon appeal and certiorari was denied by the Supreme Court of the United States.

The effect of Article 15 of the proposed revision of the Rome Convention on presently accepted United States practice, therefore, requires most careful study. It seeks to give the foreign court jurisdiction by stating in paragraph 1 that the operator is deemed to have submitted himself to the jurisdiction of the court by the mere fact of the aircraft having flown into the airspace over the court's territorial jurisdiction. It further states in paragraph 2 that each contracting State must take all the necessary measures to ensure that notification of the proceedings is given to the operator. No standard is set up to assure the effectiveness of the notice. No statement is made as to the effect of fraud in the procurement of the judgment. No provision is made by which the judgment debtor may have any hearing in the court where execution is sought before such execution is levied on the debtor's property.

More than mere procedural rules are involved in acceptance by the United States of the proposed Article 15. Grave constitutional problems are present. Can the United States, by treaty, subject property of United States aircraft operators to seizure in the United States by an execution based on a foreign judgment, when, but for the treaty, such judgment would not have been enforceable as lacking due process? Does Article 16, as now drafted, meet United States constitutional requirements?

The article seeks to require every aircraft operator to consent to the jurisdiction of the court of the foreign State flown into. It does not dis-

tinctly state whether such consent includes consent to the legal process used by such foreign State. But if such consent is implied, the question remains as to whether paragraph 2 of Article 15 is sufficiently definite to be accepted by courts in the United States as establishing a rule which will necessarily provide the defendant with opportunity to be heard and defend in the foreign jurisdiction, thereby complying with United States constitutional rules of due process.

In Hess v. Pawloski, the Supreme Court of the United States sustained a Massachusetts statute, which provided that the acceptance by a non-resident of the privilege of operating his motor vehicle in Massachusetts should be deemed equivalent to an appointment by the non-resident of a certain Massachusetts official as the attorney of the automobile operator upon whom legal process might be served in cases growing out of accidents arising from such vehicle operation in Massachusetts. While the statute provided that service of process should be made by leaving a copy of the process with the Massachusetts official, this became sufficient service upon the non-resident only when "notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff to the defendant and the defendant's return receipt and the plaintiff's affidavit of compliance herewith are appended to the writ and entered with the declaration." The U.S. Supreme Court thus sustained the general rule that notice sent outside of a state to a non-resident does not ordinarily give jurisdiction in actions against him personally for money recovery. But it upheld the Massachusetts statute on the ground of the implied appointment by the automobile operator of the state official as his lawful agent on whom service could be made when coupled with provision of actual notice of the proceeding to be given to the non-resident defendant by registered mail.

In the later case of Wuchter v. Pizzutti, the Supreme Court held, however, that a New Jersey statute did not comply with the due process clause of the Constitution, and that service of process under the New Jersey statute on non-residents of the state in suits for injury by negligent operation of automobiles on New Jersey highways was invalid. While the New Jersey statute did attempt to make the Secretary of State of New Jersey the agent of the non-resident automobile operator for the acceptance of process in civil suits arising in New Jersey growing out of operation of the automobile, nevertheless the New Jersey statute was held insufficient under the due process clause of the Constitution because it did not make provision for communication to the proposed defendant "so as to make it reasonably probable that he would receive actual notice."

It would appear that the implied consent of the operator of a vehicle to submit to jurisdiction of courts where the vehicle is being operated will be sustained by the Supreme Court of the United States if the State authorizes service to be made on one of its own officials, provided, as held by Chief Justice Taft, in the Pizzutti case, "it also requires that notice of that service shall be communicated to the person sued." As stated by the Court, such a statute must provide that the plaintiff bringing the suit shall show "in the summons to be served the post office address or residence of the defendant being sued, and should impose either on the plaintiff himself or upon the

34 274 U.S. 352 (1927).
36 276 U.S. 13 (1928).
37 Ibid. p. 19.
38 Ibid. p. 20.
Article 15 of the Rome Convention revision does not, on the other hand, state the manner in which the defendant will be served. It leaves to each State the determination of the character and the manner of service of process in its own State, and requires other States to accept such procedures no matter what they may be.

The possible acceptance of Article 15 of the proposed revision of the Rome Convention, therefore, forces the United States to determine: (1) whether by treaty it can require the several states to enforce foreign judgments under the procedures and conditions set up abroad, even though contrary to the laws of the several states; (2) whether it can accept a treaty which gives a most uncertain opportunity for the judgment debtor to be heard in the United States prior to local issuance of the execution based on a foreign judgment, even when there is lack of jurisdiction or fraud affecting the original procurement of the judgment in the foreign State; and, in general, whether the provisions of the proposed Article 15 would, if included in a statute, be unconstitutional as failing to comply with the requirements of “due process.” These questions seem even more difficult than those which other governments must face if they desire to accept Article 15.

INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

I. PREPARATIONS FOR THE FOURTH SESSION OF THE ASSEMBLY

The attention of the ninth session of the ICAO Council, which convened on January 29, 1950, and its subordinate bodies was focused on preparations for the fourth annual session of the Assembly. The Council decided that the structure of the forthcoming session of the Assembly should be identical with that of the second session—administrative, technical, economic and legal commissions and an executive committee—and that there should be no general policy commission as there was at the first session. The majority of the Council States' representatives felt that any work of a general nature could be assigned either to the Executive Committee or the Administrative Commission.

Final action was taken February 17, 1950 by the Council on the provisional agenda for the Assembly. In accordance with a proposal of the United Kingdom, it was decided to expand the agenda item on general review of the work of the Organization in the technical field to include:

(a) International Standards and Recommended Practices: Review of progress, principles and procedure in the implementation of Chapter VI and related Articles of the Convention;

(b) Technical Divisions: Review of work and organization;

(c) Regional Air Navigation Meetings: Review of work and organization.

The United States was responsible for the addition of two new items to the Technical Commission's work:

39 Id.
1 The fourth annual session of the Assembly will be held at ICAO headquarters in Montreal commencing May 30, 1950.
2 ICAO Doc. A4-WP/1, P/1, 17/2/50.
The recognition for the purpose of export and import of certificates of airworthiness conforming to ICAO Standards;

Examination of Article 26: Privileges and obligations of Contracting States other than the State of Registry or the State of Occurrence with respect to accident investigation.

The original proposal of the United States for an agenda item on accident investigation would have covered Article 26 of the Chicago Convention as a whole. However, the majority of the Council States favored limiting the scope of this item.

The fifth session of the Legal Committee, which adjourned in Rome on January 21, 1950, had prepared and approved a new draft Convention on Damage Caused by Aircraft to Third Parties on the Surface. The Council decided on February 7, 1950 that this new draft Convention should be considered at the fourth session of the Assembly. Contracting States have just short of the four months required under Assembly Resolution A1-48 for examination of the draft Convention before it comes up for discussion, the Council having decided to overlook this time-period requirement.

In view of the fact that the present ICAO Council has been working with an average of fifteen or sixteen out of twenty-one members represented, the Council engaged in considerable discussion before approving documentation for the Assembly on the agenda item dealing with the election of a new Council for the next three-year term and the obligations of Council member States. The Council agreed that the documentation should include a proposed resolution by the Assembly that States standing for election are understood to be prepared to furnish full-time representation at ICAO headquarters in Montreal.

The Council decided that the documentation for the Assembly's review of the structure of the Organization should include a recommendation that no change be made in Assembly Resolution A2-8, which provided for the establishment of the Air Navigation Commission. In as much as the Commission still has only nine instead of twelve members as called for in Article 56 of the Chicago Convention, the documentation will make it clear that non-Council member States may submit to the Council the names of candidates for the Commission.

Action by the Council in approving documentation for two of the major items on the agenda of the Assembly's Economic Commission indicates that the member States of ICAO still have not had enough experience in international air transport to reach conclusions on how to solve the more difficult economic problems in the field. The Council, by a vote of thirteen to three, approved a resolution which postpones until April 1, 1951 the date by which States are to submit their views on a multilateral agreement for the exchange of commercial rights in international air transport and until January 1, 1952 the date by which the Council is to make its recommendations on further action which might be taken toward possible conclusion of such an agreement. The Council will recommend that the fourth session of the Assembly endorse postponement of the two dates, which under Assembly Resolution A2-16 of the second session had originally been fixed as June 30, 1949 and December 31, 1949. The Assembly will be asked to leave to the Council to decide whether there is need for calling a special conference on the subject at some future date. The United States, which was one of the three States opposing the Council's resolution, would have preferred a simple indefinite postponement of the problem of the multilateral agreement.

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3 ICAO Doc. 6028 (Revised), LC/125, 31/1/50. Text printed in this issue.
The Council concluded that the documentation on commercial rights in international air transport under Articles 5 and 6 of the Chicago Convention should consist merely of a brief progress report on the subject and an outline of the proposed procedure for attacking the problem of the different rights to be accorded the different types of international air services. The Council proposes, as a first step, to arrive at a determination of the exact meaning of Article 5 on rights of non-scheduled flight. To this end, the Council on March 17, 1950 unanimously approved a resolution urging ICAO member States to make further replies to the request, originally made in September 1949, for their views on the Air Transport Committee's paper, "Analysis of the Rights Conferred by Article 5." The Council's resolution directs the Air Transport Committee, beginning not later than September 1950, to revise its analysis on the basis of the States' replies with a view to its adoption by the Council as a guide for ICAO member States in applying Article 5.

The Council, by a vote of twelve (United States, Canada, Ireland, Sweden, Netherlands, Portugal, Argentina, Brazil, Egypt, Iraq, India and China) to four (Belgium, France, United Kingdom and Mexico) with Australia abstaining, agreed to recommend to the Assembly that no further study be undertaken of joint planning and operation of international air services until some group of States makes some specific proposal on the subject. Replies from member States to Assembly Resolution A2-13 of June 1948 had indicated a general lack of interest in the problem. On the question of nationality and registration of aircraft of international operating agencies, the Air Transport Committee agreed that the documentation for the Assembly should consist merely of a report on the status of the study being made in accordance with the third resolving clause of Assembly Resolution A2-13. Discussions in the Committee had led to no definite conclusion as to the intent of the last sentence of Article 77 of the Chicago Convention, "The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies." A paper prepared by the Secretariat on the problem led to considerable discussion in the Committee as to whether the Council should confine itself to the narrow questions of nationality and registration, as dealt with in Chapter III of the Convention, or whether it should examine the problem from the point of view of other articles of the Convention which confer certain rights and obligations on the aircraft of contracting States. Even if the narrower view were adopted, it appears that there might be disagreement as to whether ICAO could establish an aircraft register for aircraft of international operating agencies or whether the principle of national registration should be strictly followed.

II. OTHER AIR TRANSPORT MATTERS

In February 1950 the Air Transport Committee examined the report of its working group on air mail and decided that it would not be possible to make final recommendations to the Universal Postal Union, in time for its May 1950 meeting, on principles of setting conveyance rates for international air mail and for categorizing air mail services. Work on this matter was not expected to be completed until the fall of 1950. Meanwhile, the UPU

4 ICAO Doc. 6894, AT/694, 26/8/49.
5 The third resolving clause of Resolution A2-13 reads: "That the Council, in accordance with its normal procedures, promptly formulate and circulate to Contracting States its views on the legal, economic and administrative problems involved in determining the manner in which the provisions of the Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies."
would be furnished with the cost statistics that it had requested, together with an indication of their limitation as a basis for rate making.

During the ninth session of the Council, Statistical Summaries 6 and 7 were distributed to ICAO member States.\(^6\) Statistical Summary No. 6 contains financial data for 1947 on airlines of thirteen different States, representing about one-third of international air transport operations. Statistical Summary No. 7 contains data for 1947 on fleet and personnel of airlines in sixteen States. The data in both summaries are the first of their type issued by ICAO and are quite incomplete and not strictly comparable. The main value of the summaries will probably be the improvements in the ICAO Air Transport Reporting Forms which they suggest.

III. OTHER AIR NAVIGATION MATTERS

The Air Navigation Commission during its third session, which convened on January 31, 1950, completed its final review of the draft annex on aerodromes, air routes and ground aids prior to circulation to ICAO member States for comment. The Commission approved inclusion in the draft annex of the material recommended by the fourth session of the Aerodromes, Air Routes and Ground Aids (AGA) Division,\(^7\) with the exception of certain material requiring detailed review or further coordination. The Commission began a review of the comments which States had submitted on the draft annex on search and rescue and considered amendments to the annex on personnel licensing.

The Commission approved a report to the Council on the reduction of interference in aeronautical radio communications and the need for frequency experts in the ICAO regional offices. Agreement was reached on a plan for the handling of questions relating to categorization of aircraft, which had been the subject of divergent views in the Airworthiness and Operations Divisions, even between delegations of the same State. The Commission authorized circulation to ICAO member States for comment of a draft ICAO Training Manual for commercial pilots. The purpose of the Manual, which will be expanded later to cover all licenses and ratings, is to promote the universal application of ICAO standards for personnel licensing.

ICAO technical conferences held and scheduled during the opening months of 1950 were as follows:

<table>
<thead>
<tr>
<th>Conference</th>
<th>Place</th>
<th>Date</th>
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<tr>
<td>Third session, Meteorology Division</td>
<td>Paris</td>
<td>February 14</td>
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<tr>
<td>African Indian Ocean and Middle East Mtg.</td>
<td>Paris</td>
<td>March 21</td>
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<tr>
<td>African Indian Ocean and Middle East Frequency Mtgs.</td>
<td>Paris</td>
<td>March 21</td>
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<tr>
<td>Second Caribbean Regional Air Navigation Mtg.</td>
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<tr>
<td>Caribbean, South American and South Atlantic Frequency Meetings</td>
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<td>Informal mtg. on altimeter settings in the European-Mediterranean Region</td>
<td>Paris</td>
<td>April 24</td>
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\(^6\) ICAO Doc. 6915-AT/697, October 1949 and ICAO Doc. 6936-AT/698, December 1949.

\(^7\) The fourth session of the AGA Division was held in Montreal November 1—December 2, 1949.
FULL preparations for an unprecedentedly heavy movement of tourists, particularly from America to Europe for the observance of Holy Year in Rome, are being made by the operators of both long-haul and regional IATA member airlines for the 1950 Summer Season.

Special off-season transatlantic excursion rates, recommended by the Mexico City Traffic Conferences, contributed to heavier late Winter loads across the Atlantic. A schedules meeting of IATA operators in Europe found that capacity in that region would be expanded 20 per cent during the remainder of 1950 to handle the expected influx.

Plans for the 1950 season also included extension of special excursion fares and early morning and late evening services at reduced rates. Many night and day all-cargo aircraft were scheduled to go into operation as the result of a more than 100 per cent increase in the amount of European air cargo traffic during 1949. Another significant feature of the 1950 European timetable will be many new scheduled services to and within Germany.

IATA CLEARING HOUSE

Final reports on the 1949 operations of the IATA Clearing House at London show an increase of one-third in turnover of international air traffic transactions in comparison with 1948, despite the upsetting effect of widespread currency devaluation late in the year.

At pre-devaluation rates of exchange, the interline transactions put through IATA by the 36 member airlines of the Clearing totaled $167,000,000 during 1949, as against $124,000,000 for 1948 and $52,000,000 for 1947, the first year of clearing operations.

The 1949 figures are regarded as particularly impressive in view of the fact that the devaluation of the pound sterling on September 18, 1949 temporarily cracked the international rate structure apart and plunged the industry into a brief, but grave period of financial uncertainty.

Clearance of accounts through IATA enabled member airlines to eliminate cash transactions, foreign exchange premiums and risks on all but $13,366,000 of their 1949 input. Cash settlements during 1948 totalled $13,823,000. Interclearance between IATA and the U.S. Airlines Clearing House at Chicago, which links the clearing systems of U.S. domestic airlines and of international operators, totalled $3,762,000 in 1949, as against $1,545,000 in 1948. In both years, the London and Chicago credits and debits almost completely balanced one another.