International
EXCERPTS FROM REPORT OF U.S. DELEGATION TO THE FOURTH SESSION OF THE ICAO ASSEMBLY

The Fourth Session of the Assembly of the International Civil Aviation Organization was held in Montreal from May 30 through June 20, 1950. The 1949 or third session of the Assembly was limited almost entirely to budgetary and administrative problems, so the fourth session was the first full-scale session, covering all phases of the Organization's work since 1948. 42 out of a total of 58 member States of ICAO were represented at the Assembly. Two non-member States, Ecuador and Uruguay, as well as 11 international organizations, attended the Assembly as observers.¹

The work of the conference was divided among the plenary body, the Executive Committee, the Administrative Commission, the Technical Commission, the Economic Commission and the Legal Commission. The provisional agenda drawn up by the Council ² was adopted without change by the Assembly at its second plenary meeting on May 31, 1950.

A summary of the most important work undertaken by the Executive Committee follows:

**Agenda Item 17:** Suspension of voting power of Contracting States failing to discharge their financial obligations to the Organization

**Agenda Item 23:** Contributions in arrears

The Committee recommended and the Assembly agreed (Resolution A4-2³ that the voting power in the Assembly, the Council and its subsidiary bodies, excluding regional meetings, be suspended of six States which were in arrears of their contributions for periods prior to June 30, 1948—Bolivia, El Salvador, the Hashemite Kingdom of the Jordan, Nicaragua, Paraguay and Poland—until such time as they should pay these back dues in full or make other satisfactory arrangements with the Organization. The Assembly also authorized the Council to deprive the six financially delinquent States of the right to general services furnished by ICAO, provided such suspension would not interfere with the safety, regularity or efficiency of international air navigation. On a recommendation of the Executive Committee, the Council was authorized to discuss and conclude arrangements with any States in arrears of their contributions to the Organization, such arrangements to be subject to confirmation by the next session of the Assembly.

¹ Aviation Planning Staff, Department of State.
² ICAO Doc. A4-WP/1, 17/2/50; 17 J. AIR LAW & C. 220.
³ Resolutions and Recommendations, Fourth Session of the ICAO Assembly, ICAO Doc. 7017, A4-P/3, 20/6/50.
Agenda Item 12: Election of Contracting States to be represented on the Council and obligations of Council Member States

The Committee recommended and the Assembly adopted a resolution (A4-1) which commits Council member States to provide full-time representation at ICAO headquarters in Montreal. Since there were only 20 candidates for the 21 seats on the new ICAO Council and the 20 States together satisfied individually and collectively the requirements for membership under Article 50 of the Chicago Convention, the Assembly accepted the Executive Committee's recommendation that all candidates be voted on in a single secret ballot. The following States were elected to serve as ICAO Council members during the three-year period, which began immediately after this session of the Assembly adjourned:

Argentina
Australia
Belgium
Brazil
Canada
Denmark
Egypt
France
India
Iraq
Ireland
Italy
Mexico
Netherlands
Philippine Republic
Portugal
Union of South Africa
United Kingdom
United States of America
Venezuela

Venezuela, Italy, South Africa and the Philippines are the new members of the Council. States which did not stand for reelection to the Council were Peru, Chile, Czechoslovakia, Turkey and China, which notified the United States Government, as depositary for the Chicago Convention, on May 31, 1950 of its intention to denounce the Convention. All other members of the first ICAO Council were reelected. One seat on the new Council remains vacant. The Assembly is obligated under the terms of the Convention to fill this seat as soon as there is a candidate.

Agenda Item 14: Policy and programme with respect to amendment of the Convention

The Executive Committee approved and the Assembly adopted a resolution (A4-3) which specified (a) that amendments to the Convention may be appropriate when they are proven necessary by experience and/or are demonstrably desirable or useful; (b) that modification of the Convention should be by specific amendment rather than general revision; (c) that Article 94 (the amending article) of the Convention should be maintained in its present form; and (d) that no specific procedure to be incorporated in the protocols of amendment should be adopted by the fourth session of the Assembly.

Added to this resolution was a clause, proposed by the United Kingdom, directing the Council to consider any specific amendment (other than an amendment of Article 94) proposed either before or after this session of the Assembly; also clauses proposed by Canada stating that the Council itself should not initiate any proposal for amendment unless of an urgent nature and directing contracting States to submit to the Council any proposals for amendments six months in advance of the session of the Assembly at which they are to be considered. A draft resolution introduced by the Latin American States, to amend the Convention to permit the Assembly to move the headquarters of the organization away from Montreal was approved by the Executive Committee but failed to receive the necessary two-thirds majority at a plenary meeting of the Assembly.

Agenda Item 16: Review of the Structure of ICAO

The Executive Committee, after discussing at length a proposal submitted by Portugal suggesting the abolition of the Legal Committee, adopted a resolution later approved by the Assembly (A4-5), directing the Council to study the organization of ICAO's legal work and the relationship of the
Legal Committee to the Council and the Secretariat and submit proposals for any change found necessary to an early session of the Assembly. The Executive Committee approved and the plenary body of the Assembly adopted a resolution (A4-4) directing the Council to obtain from all contracting States nominations for the vacant seats on the Air Navigation Commission and not to discourage non-Council member States from making nominations.

**Agenda Item 15: Character and Scope of future sessions of the Assembly**

The Assembly decided to hold its next full-scale session in 1953. Limited sessions will be held in the two intervening years. Although the limited sessions will probably be devoted primarily to budgetary and administrative matters, items on any other subject may be added to the agenda.

**Administrative Commission**

**Agenda Item 20: Budget 1951**

The Administrative Commission and the Assembly adopted a resolution (A4-25), submitted by India, which authorizes a total gross expenditure by the Organization in calendar year 1951 of Canadian $3,000,000 plus any additional casual revenue derived from the application of the staff assessment plan. Allocation of the $3,000,000 among the various parts of the budget was authorized as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meetings</td>
<td>$100,000</td>
</tr>
<tr>
<td>The Secretariat</td>
<td>2,210,000</td>
</tr>
<tr>
<td>General Services</td>
<td>550,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>55,000</td>
</tr>
<tr>
<td>Other Budgetary Provisions</td>
<td>85,000</td>
</tr>
<tr>
<td><strong>Total Gross Expenditure</strong></td>
<td><strong>$3,000,000</strong></td>
</tr>
</tbody>
</table>

Funds are to be provided as follows:

(a) by ASSESSMENT TO CONTRACTING STATES...$2,600,000
(b) by appropriation from Working Capital Fund...132,000
(c) by appropriation from General Fund Reserve...80,000
(d) by income from Casual Revenue (estimated)...188,000

$3,000,000

The $3,000,000 budget approved by the Assembly represented a $250,000 cut from the amount recommended by the Council, which had itself pruned the Secretary General's original estimate by $190,000. While there was a general feeling in the Commission that the budget proposed by the Council was carefully related to the work program and was well-balanced as between its various parts, many States had come to the Assembly with instructions to vote for a reduction in the cost of operating the Organization. Desire for economy was attributed to the effect of the widespread devaluation of currencies on member States' contributions to the Organization; concern over the upward trend in the cost of operating ICAO; and the total impact of the cost of participation in the various UN organizations. Some States, including India, were apparently influenced by the fact that their rates of assessment had been increased for 1951 in consequence of the adoption of new principles of assessment. Apart from these financial reasons, there was also some desire to slow down the Organization's work in order to allow smaller States more time to implement ICAO's decisions.

**Agenda Item 21: Apportionment of contributions among Contracting States**

The Administrative Commission first proceeded to examine a set of principles for assessing contributions, which the third session of the Assembly had directed the Council to prepare. Capacity to pay (to be given a weight of 75%); interest and importance in civil aviation (to be given a weight
of 25\%) and benefits to be derived from the Organization (as a qualifying factor); a minimum contribution of approximately $4,000 and the use of a unit system were all approved in accordance with the recommendations of the Council. However, on the matter of the maximum contribution, the Commission changed the recommendation of the Council that the largest contribution should not exceed 25\% of the budget and added a directive to the Contributions Working Group that the maximum contribution to be paid by any one contracting State in 1951 should be 25\% of the budget.

On the basis of these principles and after hearing the various States present their cases, the Contributions Working Group proceeded to draw up suggested scales of assessments totaling 1500 units. Although Austria, Cuba, India, Israel, Peru, Switzerland, the Union of South Africa and the United States all requested reductions in their assessments as recommended by the working group, the Commission amended the assessment of Austria only, reducing its contribution from four to two units. In order that the U.S. contribution not be more than 25\% as a result of the reduction in Austria's assessment, the U.S. assessment was changed from 375 to 374 units (24.98\% of the total assessments), making the total number of units assessed to all member States 1497 instead of the original 1500. This scale of contributions for 1951 approved by the Administrative Commission was adopted by the Assembly as Resolution A4-26.

Agenda Item 22: Acceptance of contributions for the financial year 1951 in currencies other than dollars.

The Commission approved and the Assembly adopted a resolution (A4-29) along the lines of one adopted at its 1949 session authorizing the Secretary General, after consultation with the President of the Council, to accept a portion of the contributions of contracting States for future years in currencies other than dollars. The resolution differed from the one adopted in 1949 only in that it was not restricted to any particular financial period.

Agenda Item 24: Cost of Language Services

The Commission rejected a proposal by the Netherlands that the cost of providing interpretation and documentation in the three working languages of ICAO, additional to the expenditure that would be incurred if a single language were used, be separated from the main budget and allocated only among States whose national languages are included among these working languages. The Commission and the Assembly then approved a resolution (A4-30) that there be no separate allocation of language costs in ICAO.

TECHNICAL COMMISSION

The Commission considered all items on the agenda and for convenience in discussions expanded the general agenda items into a number of specific subjects.

Agenda Item 27: General review of the work of the Organization in the technical field

The Commission was in general satisfied with the accomplishments of the Organization.

Agenda Item 27 (a) (i), (ii) and (iii): International Standards and Recommended Practices (Annexes to the Chicago Convention)

The Commission recognized that a number of Annexes had come into force and emphasized the importance of careful drafting in the Annexes to make certain that they are free from errors or defects in language, both as to expression of intent and as to translation into the different working
languages of ICAO. It was agreed that amendments to the Annexes should be limited to those desirable in the interest of safety and regularity in air navigation and that changes in format or phraseology only for the purpose of improving the drafting should be discouraged.

The Commission studied the relationship between the Procedures for Air Navigation Services (PANS) and Supplementary Procedures (SUPPS) and the Annexes. It recommended a resolution (A4-7) urging Contracting States to apply the principles of Article 38 of the Convention by notifying the Organization of national differences from relevant PANS and SUPPS when such differences affect the safety or regularity of international air navigation. The resolution also directed the Council to ensure that PANS are incorporated in the appropriate Annexes when such procedures have become sufficiently stable. The Council was also directed (Resolution A4-8) to insure that the preparation of Standards involving the provision and operation of facilities and equipment, while insuring safety and regularity, take into account the importance of securing the correct balance between the economic aspects of, and the operational requirements for, such Standards. The object of such a directive was to insure that unnecessary economic burdens would not be placed on States through the implementation of Standards based solely on the requirements of areas of high traffic density. The Council was urged to complete its study of the application of Article 38 to domestic operations.

**Agenda Item 27 (a) (iv): Activities and program of ICAO in the field of aircraft accident investigation**

The Commission found that in the study of Agenda Item 29, covering the privileges and obligations of contracting States with respect to accident investigation other than the State of registry or the State of occurrence, it was also desirable to study the privileges and obligations of the State of registry. Consequently, Item 27 (a) (iv) was added to the agenda of the Technical Commission.

The U.S. proposed that the Commission interpret Article 26 of the Chicago Convention on investigation of accidents. This proposal was opposed by a number of States on the grounds that the draft annex on accident investigation had already been submitted to States for comments, and that further study by the Air Navigation Commission and Council was planned before the Annex was adopted; therefore an interpretation of Article 26 by the Assembly would be premature and might prejudice the studies of the Air Navigation Commission and the Council. There was a general exchange of opinions on the desirability of reaching agreement on the intent of Article 26, with most delegates opposed to such action by the Assembly. The Commission, after this discussion, approved a resolution (A4-9) directing the Council to undertake a study of the interpretation, application, and limitations of Article 26 of the Convention and to advise States of the results of the study. The Council was further directed to take action within the framework of the Convention to improve the efficacy of aircraft accident inquiry, or if no other action is possible to achieve this aim, to submit its recommendations concerning an amendment of the Convention to a future session of the Assembly.

**Agenda Item 27 (b) (i), (ii) and (iii): Technical Divisions: Review of work and organization**

The Commission studied a proposal by the U.K. for the amalgamation of the RAC and SAR Divisions. It considered that detailed examination of the Organization was not appropriate for the Commission but directed the Council (Resolution A4-10) to study the organization of the technical divisions with a view to increasing their efficiency by the elimination of possible
duplication of functions. The Commission agreed (Resolution A4-11) that wider use should be made of special meetings for the study of problems of substantial interest to more than one Division, and whose agenda would be limited to such special problems.

**Agenda Item 27 (c): Regional Air Navigation Meetings: Review of work and organization**

The Commission agreed that Regional Air Navigation (RAN) Meetings should be continued but that greater use should be made of small meetings dealing with specific problems relating to definite geographical areas. The Commission also considered that the consolidation of some existing regions might be desirable to enable more complete treatment of common problems. A French proposal to give more emphasis to the economic and joint support problems at Regional Air Navigation Meetings was not well received by the majority of States. The Commission, however, recognized that a RAN meeting is one of the steps in any joint support scheme and recommended (A4-Rec. 3) that at future RAN meetings the deficiencies in the implementation of regional plans which are vital to the proper functioning of the plan should be segregated and referred to Council for such special action as might be appropriate.

**Agenda Item 27 (d): Aims and scope of the Aviation Training Programme**

The Commission endorsed in principle (Resolution A4-12) the action which had been taken by Council to initiate an aviation training program of limited scope. The Council was directed to give consideration to the following principles in connection with the aviation training program: (a) that training is primarily the responsibility of contracting States; (b) that the role of ICAO is to facilitate cooperation among States, particularly in those matters where the lack of adequate training may adversely affect the safety or regularity of international air navigation; (c) that the ICAO training program should not duplicate activities of the States; (d) that a specific program should be approved only after careful examination of the requirements for, and the budgetary aspects of, such program; (e) that the ICAO program should be limited to encouragement, advice and coordination and should not involve the actual operation of training centers.

**Agenda Item 28: The recognition for the purpose of export and import of certificates of airworthiness conforming to ICAO Standards**

The action taken by the Commission and the Assembly (Resolution A4-13) was to direct the Council to initiate a study of the question of recognition for export and import purposes of airworthiness certificates issued in compliance with ICAO Standards, with a view to offering a resolution on this subject to contracting States. Priority is to be given in the study to the provision by the exporting State to the importing State of technical information that would be of value in concluding interim arrangements. The study is also to include the advantages which should accrue from such recognition of certificates of airworthiness, both to the exporting and importing States; also recommendations for methods of dealing with the interim period during which complete airworthiness Standards will not have been adopted.

**Agenda Item 29: 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 U.S. Delegation pointed out that not only might the State of occurrence and the State of registry be involved in an accident investigation, but also another State whose facilities and services were used by the aircraft prior to the accident. The third State might have information which
would contribute materially to the determination of the cause of the accident. In addition, information reflecting on the airworthiness of the aircraft or useful to effecting improvement in safety might result from the inquiry. This information would be of value to the State of manufacture of the aircraft in producing safer aircraft. The Commission recognized the value of obtaining information from a third State and agreed that the State of manufacture should be furnished with pertinent information.

The Commission approved a draft resolution:

“That it is of great importance for the general improvement of the safety of air navigation that, to the greatest practicable extent—

(1) a Contracting State other than the State of Registry or the State of Occurrence, whose facilities or services were used by an aircraft prior to an accident, submit to the State which is conducting the inquiry any pertinent evidence in its possession for consideration at the inquiry;

(2) the State conducting the inquiry accord any State providing evidence the opportunity of appointing observers who would be permitted to present evidence and be associated with the technical part of the inquiry to the extent that such evidence is involved;

(3) a Contracting State in which an accident has occurred involving aircraft other than of its manufacture communicate to the State of manufacture as soon as possible any pertinent information which results from the inquiry and which may reflect on the airworthiness of the aircraft type or its equipment, or which might be used to effect improvement in safety.”

However, at the final plenary meeting of the Assembly, the Delegate of India proposed deletion of that part of the second resolving clause dealing with the presentation of evidence and the association with the inquiry, the amended clause of the resolution (A4-14) to read as follows: "the State conducting the inquiry accord any State providing evidence the opportunity of appointing observers." The proposal of the Delegate of India was carried by a vote of 17 to 13 with 3 abstentions.

ECONOMIC COMMISSION

The plenary body of the Assembly adopted without change the final report of the Economic Commission, including all draft resolutions contained therein.

Agenda Item 32: Statistical Programme of the Organization

Delegates in the Commission were fully cognizant of the need for improvement by many contracting States in fulfilling their obligation under Article 67 of the Chicago Convention for filing air transport statistics with the Organization. The United Kingdom and other States advocated an early meeting of the Statistics Division as a means of solving the problem. The United States objected to such a meeting and suggested that more progress might be made in obtaining complete data through visits by members of the ICAO Secretariat to the various States in order to give statistical advice and assistance. The Commission decided that it was up to the Council and the Secretary General to determine specific courses of action to be taken. It agreed to recommend a resolution (A4-19) calling upon contracting States to provide promptly the statistics required by the Organization and directing the Council to give a higher priority to those portions of the statistical work program which are directly concerned with securing compliance with the reporting requirements.

Agenda Item 33: Obstacles encountered in the implementation of Annex 9—“Standards and Recommended Practices for the Facilitation of International Air Transport”

The resolution (A4-18) recommended by the Commission for adoption by the Assembly strongly endorsed ICAO’s program for the facilitation of inter-
national air transport and expressed satisfaction with the progress made. It urged contracting States to bring to the attention of the interested departments of their governments the importance of conforming with the provisions of Annex 9, which imposes certain maximum limitations on the amount of paper work and other red-tape restricting freedom of movement and requires certain minimum facilities to speed the flow of international air traffic. The resolution drew the attention of all member States to two means of bringing their national laws and regulations into conformity with Annex 9: (1) through the creation of facilitation committees and (2) by taking advantage of favorable circumstances prevailing within certain regions or along specific routes.

Agenda Item 32: Joint Ownership and Operation of International Air Services

The Commission heard a report by the Secretariat on the steps taken thus far in ICAO and the United Nations toward an expanded program for giving technical assistance to under-developed countries (Point IV Program). Several of the delegates raised questions on the administrative details of this program, which will be carried out by the United Nations and five specialized agencies. The Commission then agreed upon a resolution (A4-20) approving the action so far taken by the Council toward cooperation in the U.N. program and directing it to take whatever further steps might be necessary to ensure ICAO's effective participation. The cooperation of contracting States was solicited in assisting ICAO in obtaining competent experts, technicians and training facilities and, in the case of States requesting assistance, in providing the personnel and financial support necessary to ensure lasting benefits for their civil aviation from the technical assistance projects.

Agenda Item 32: Joint Ownership and Operation of International Air Services on Trunk Routes

Discussions in the Economic Commission on this item revealed that there were two schools of thought on the role ICAO should play in this matter in the immediate future. The United States, Australia, Egypt, India, Ireland and the Netherlands made it clear that they agreed with the Council's recommendation that no further study be undertaken of joint planning and operation of international air services until some group of States made some specific proposal on the subject. These States felt that there were more concrete problems in other fields to which the time and money of the Organization should be devoted. In the other camp were those States, led by France, which felt that the Organization should continue its study and that the Council, pursuant to Articles 55(a) and 78 of the Chicago Convention, should recommend that certain groups of States study and establish joint operating organizations in a particular region or on a particular route.

After it became evident that a majority favored discontinuance of the study by the Council of joint ownership and operation, the Commission reached unanimous agreement on adoption of a resolution (A4-17) merely inviting contracting States with experience in joint operation of international air services to submit full information to the Council on this experience, so that it might be made available to all contracting States. In addition, the resolution directed the Council to give assistance, when requested, to States who themselves or whose airlines take the initiative in developing cooperative arrangements.

Agenda Item 30: Commercial Rights in International Air Transport under Articles 5 and 6 of the Convention

The Council had recommended that the Assembly merely endorse its plan for future work on the problem of analyzing the different air transport rights conferred under Articles 5 and 6 of the Chicago Convention and the
problem of distinguishing between non-scheduled and scheduled international services. The Council had by no means completed the program of work outlined for it under Assembly Resolutions A2-17, A2-18 and A2-19 of June 1948. To this end, it had adopted in March 1950 a resolution (1) urgently requesting contracting States to submit further comments on the Air Transport Committee's paper "Analysis of the Rights Conferred by Article 5" 4 and (2) directing the Committee to begin not later than September 1950 to revise this analysis with a view to its adoption by the Council as a guide for contracting States in their application of the provisions of Article 5.

The Economic Commission was in general agreement with the procedure proposed by the Council for attacking the problems raised by Articles 5 and 6. A difference of opinion, however, arose over a proposal of the United Kingdom Delegation that priority should be given to the question of a definition of a "scheduled international air service." Some States agreed with the U.K. view that the meaning of Article 5 could not be analyzed without first deciding on the type of flights it was intended to cover. Other States followed the U.S. view that no useful definition could be drawn up until Article 5 and the rights conferred therein had been analyzed. The U.K. proposal was adopted, although by a very small majority. Consequently, the resolution adopted by the Assembly (A4-15) approves in principle the procedure proposed by the Council, provided that the Air Transport Committee gives priority to a definition of a "scheduled international air service," as requested in Resolution A2-18 for the guidance of contracting States in applying Articles 5 and 6 of the Convention.

Agenda Item 36: Other business arising out of the Report of the Council on the progress of work in the economic field

The Commission approved the sections of the report and supplementary report of the Council to the Assembly dealing with economic problems.

A resolution on international airmail, initiated by Canada in the Commission under this item, was adopted by the Assembly (A4-21). This resolution removes the restriction placed on the Council by Resolution A1-44 of May 1947 whereby the Council was directed to refer any expression of opinion or recommendation concerning policy matters in the field of international airmail to contracting States for comment prior to transmittal to the Universal Postal Union. Under the new Assembly resolution, the Council may make its own decision as to whether or not prior circulation to contracting States of a policy communication to the UPU would be desirable.

Those States that advocated adoption of this resolution felt that the restriction on the Council's action was now unnecessary in view of the stage to which ICAO's studies on international airmail had advanced; that this restriction prevented the Council from replying within a reasonable length of time to questions raised by the UPU; that such a restriction implied a lack of faith in the Council, which had been elected by all contracting States as a representative body, and that it might result in bare facts being transmitted to the UPU without sufficient explanatory material of the type included by the Council. The United States, along with the United Kingdom and others, opposed adoption of the resolution on the grounds that the restriction is still a wise one in the complex field of international airmail where the comprehensive knowledge of governments is of value. Furthermore, the Council had not complained about the restriction imposed by Resolution A1-44. ICAO should be especially sure of its ground in dealing with other international organizations, particularly in fields like international airmail where difficulties had occurred in the past and seemed likely to recur in the future.

---

4 ICAO Doc. 6894, AT/694, 26/8/49.
Agenda Item 31: Further Action to secure a Multilateral Agreement on Commercial Rights in International Air Transport

The Commission followed the recommendation of the Council and engaged in no discussion of the substantive problems connected with this item. The resolution which the Commission recommended to the Assembly for adoption (A4-16) merely endorsed the procedure whereby the Council advanced to April 1, 1951 the date by which contracting States are to submit their views on a multilateral agreement, in accordance with Resolution A2-16 of June 1948, and urged contracting States to comply. The resolution left to the Council to recommend any further action to be taken on this problem of a multilateral agreement on commercial rights in international air transport.

The major debate in connection with this item had centered around a proposal, made by the Netherlands and supported vigorously by France and Mexico, that the Assembly resolution include a specific suggestion that the Council call a meeting of a multilateral commission prior to the next major session of the Assembly. This proposal was defeated.

LEGAL COMMISSION

Agenda Item 37: Consideration of a draft Convention on Damage Caused by Aircraft to Third Parties on the Surface

This was the only item of major substantive importance on the agenda of the Legal Commission. The draft convention had been sent to the Assembly by the ICAO Legal Committee after a vote in which a substantial minority, including the United States, the United Kingdom and several other States, voted against such submission on the ground that the draft was not sufficiently perfected to form the basis of Assembly action. Early in the discussions of the Legal Commission, it became clear that the study of the draft convention by the States participating in the deliberations of the Commission had convinced the majority of them that the draft convention could not be accepted without substantial amendment.

It was also clear that a number of States had not had sufficient time to finalize their positions with respect to the draft, partially by reason of the fact that the four-month period for study by ICAO member States provided for in Resolution A1-48 had not been complied with completely. The Commission nevertheless considered the Convention from a substantive point of view and adopted a number of proposed revisions which contribute to the progress in obtaining a final draft.

As a result of its study, the Commission recommended and the Assembly adopted a resolution (A4-22) directing that the draft convention, with the amendments adopted by the Commission, be referred to the ICAO Legal Committee for consideration and finalization, if possible, at its next session. It was recommended that the draft convention, together with the report of the Legal Commission and its annexes, consisting of the reports of three working groups of the Commission, be circulated to the Contracting States and to non-Contracting States and international organizations invited to the Assembly, with a request for comments to be submitted not later than November 1, 1950. It was also recommended that any final draft prepared by the Legal Committee at its next session be placed on the agenda of the next session of the Assembly if the period of four months provided for in Resolution A1-48 can be respected, or on the agenda of a special conference convened by the Council at the earliest date possible after the opening and in the course of the next session of the Assembly.

Four problems of major importance which became evident during the Commission's consideration of the draft convention may be reviewed briefly as follows:
(1) The definition of the term "operator" as contained in the draft convention was believed by the United States and a number of other States to be deficient. A working group of the Commission was assigned the task of redefining the term "operator," and as a result, a new definition was accepted by the Commission on the basis of the report of the working group. The new definition is believed more adequate than the previous definition.

(2) The draft provided for absolute liability of the operator up to certain limits and for additional liability of three times the absolute limit in cases where the operator was proven to be negligent. Early in the discussions it became apparent that it would be impossible to obtain agreement at this session of the Commission on retention of this system of liability. The United States desired to have the limits of liability for negligence four times the limits of liability on absolute liability. A number of other States recommended that the liability for negligence should be only twice that for absolute liability. Still other States were unwilling to accept the system as drafted. In order to allow the States to reconsider their positions and to formulate more definite ideas on the subject, the Commission retained in the draft convention the provisions already there and recommended that the matter be given further study by the Legal Committee.

(3) Two proposals for the adjudication of claims arising under the Convention were contained in the draft convention. The Commission entrusted detailed study of these proposals to a working group. The working group was able in the time available to it to make a detailed study and propose a number of revisions with regard to the first proposal, namely, a proposal providing for adjudication of claims in the State where the damage occurred and execution of such judgments, where required, in other Contracting States. The second proposal provided for permitting the defendant to deposit funds in a designated court and for all claims to be settled out of the funds thus deposited. In as much as the decision on this point was not completed, the Legal Committee, meeting briefly after the Legal Commission adjourned, authorized the working group to continue the study of the problem and report to the next meeting of the Legal Committee in January 1951.

(4) The draft convention contained provisions relative to the requirement of insurance for aircraft operators, such insurance to be required at the option of the State flown into. In as much as the ICAO Air Transport Committee had been studying problems relating to insurance requirements, a working group of the Legal Commission was appointed to coordinate the positions on insurance in the draft convention with the positions of the Air Transport Committee. Since no final action had been taken on the subject of insurance by the Council, it was believed that coordination of the insurance problems in the draft convention with the work of the Air Transport Committee should be continued. Therefore, the insurance working group was kept in existence with instructions to take such further action as might be possible in the light of further study of the insurance questions and to report to the meeting of the Legal Committee in January 1951.
DRAFT CONVENTION ON DAMAGE CAUSED BY AIRCRAFT TO THIRD PARTIES ON THE SURFACE AS REVISED BY LEGAL COMMISSION OF FOURTH SESSION ICAO ASSEMBLY *

Editor's Note—The Legal Commission of the Fourth Session of the ICAO Assembly in June at Montreal provisionally revised the Taormina draft revision of the Rome Convention (printed in the Spring issue of the JOURNAL) and recommended that it be considered at the next session of the Legal Committee in January 1951. The revised articles of this most current revision are set forth below.

CHAPTER I—PRINCIPLES OF LIABILITY

Article 1
(1) Any person who suffers damage on the surface, other than damage due to noise or to passage of aircraft in normal flight, shall be entitled to compensation as provided by this Convention upon proof only that the damage was caused directly 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 run ends. In the case of an aircraft lighter than air, the expression "in flight" means the period from the moment when it is detached from the surface until it becomes attached thereto.

Article 2
(1) The liability for compensation imposed by Article 1 of this Convention shall attach to the operator of the aircraft.

(2) (a) For the purposes of this Convention the term "operator" shall mean the person who was making use of the aircraft at the time the damage was caused, provided that if control of the navigation of the aircraft was retained by the person from whom the right to make use of the aircraft was derived, that person shall be considered the operator.

(b) A person shall be considered to be making use of an aircraft where he is using it personally or where the aircraft is being used by his servants or agents, whether or not acting within the scope of their authority.

(3) The registered owner of the aircraft 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 is the operator and, if the law of the court having jurisdiction permits, procures the joinder of such other person in the proceedings.

(4) If the operator making use of the aircraft at the time the damage is caused had not the right to do so for a period of at least six months, the person from whom that right was derived shall be liable jointly and severally with the operator, each of them being bound in accordance with the provisions of this Convention. In any event, the person who suffers damage shall not be entitled to indemnity greater than the highest single indemnity recoverable under Articles 8 and 9 from any of the persons involved. The person who has granted such right shall be relieved of liability in all cases in which the operator is so relieved under the provisions of this Convention.

(5) Neither the operator, the owner, the person held liable under paragraph (4) of this Article, nor their respective servants or agents shall be liable in respect of damage occurring as provided in Article

INTERNATIONAL

1 otherwise than as expressly provided in this Convention, except in the case of such a person who is guilty of an act or omission done with intent to cause damage.

Article 3

If the operator is deprived of the use of the aircraft by act of public authority or if the damage is the direct consequence of armed conflict or civil disturbance, neither the operator nor the owner shall be liable for damage caused in the manner referred to in Article 1.

Article 4

(1) Neither the operator nor the owner shall be liable for damage caused in the manner referred to in Article 1 if he proves that the damage was caused solely through the negligence or other wrongful act or omission of the person who suffers the damage. When the damage is contributed to by the person who suffers the damage, the operator shall be relieved of liability to the extent to which he proves that the damage was contributed by the negligence or other wrongful act or omission of the party who suffers the damage.

(2) The expression “person who suffers the damage,” for the purpose of this Article, shall include the servants or agents of such person when acting within the scope of their authority.

Article 5

(1) When, following a collision between two or more aircraft in flight, damage is caused in the manner referred to in Article 1, the operators of the aircraft involved shall be jointly and severally liable (each of them being bound in accordance with the provisions of this Convention) except any operator who proves that his aircraft did not cause the damage in a manner referred to in Article 1.

(2) Where joint and several liability is involved under this article, the person who suffers the damage shall be entitled to be indemnified up to the aggregate of the limits applicable to each of the aircraft involved; but no operator shall be liable for a sum in excess of the limit applicable to his aircraft.

Article 6

(1) A person who, being a servant or agent of an operator, makes use of an aircraft outside the scope of his authority, shall be liable for damage caused in the manner referred to in Article 1 in all cases in which liability for such damage would have attached to the operator in accordance with the provisions of this Convention.

(2) Where a person has made use of an aircraft as mentioned in paragraph 1 of this article or where any other person has made use of an aircraft without the consent of the person entitled to use it, the operator or person entitled to use the aircraft shall not, if he can prove that he has taken proper measures to prevent such use or that it was impossible for him to do so, 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 provisions of this Convention, provided that the operator shall not be liable for a sum in excess of the limit applicable to his aircraft under Article 8. In any event, the person who suffers damage shall not be entitled to indemnity greater than the highest single indemnity recoverable under Articles 8 and 9 from any of the persons involved.

Article 7

No change from Taormina draft, see 17 J. AIR L. & C. 194.
CHAPTER II—EXTENT OF LIABILITY

Article 8
No change from Taormina draft, see 17 J. Air L. & C. 194.¹

Article 9
No substantive change from Taormina draft, see 17 J. Air L. & C. 196.²

Article 10
No change from Taormina draft, see 17 J. Air L. & C. 196.

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 in the manner referred to in Article 1 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, or group of insurers, who is authorized or permitted under the laws of the State where the aircraft is registered to effect such insurance.

(3) Instead of insurance any other security permitted by the State where the aircraft is registered 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 the appropriate 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 the appropriate 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
No change from Taormina draft except deletion in new text of paragraph (1) (d), see 17 J. Air L. & C. 197.

Article 13
No change from Taormina draft, see 17 J. Air L. & C. 197.

¹ Article 8 and Article 9, paras. (1) and (2) were not altered, owing to the fact that the Legal Commission of the Fourth Session of the Assembly, finding that the States required further opportunity to study the consequences of the system of liability created by such Articles, decided to postpone the consideration of these parts of the draft to a later occasion.

² See note 1. Paragraph (3) was expanded to read:
(3) if a person (a) uses an aircraft as contemplated by Article 6(1), or (b) uses an aircraft without the consent of the person entitled to use it, or (c) being a person entitled to use an aircraft, uses it contrary to the purposes for which his right to use the aircraft was conferred, 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.
CHAPTER IV—RULES OF PROCEDURE AND LIMITATION OF ACTIONS

**Article 14**

No change from Taormina draft, see 17 J. AIR L. & C. 197.

**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 governs the contract of insurance. Any such action shall be brought before the Courts of the place where the cause of damage in the manner referred to in Article 1 occurred. 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) The competent Court shall not proceed to hear the case against the defendant until he has been notified of the proceedings and has had an opportunity to make arrangements for the conduct of his defense. Each Contracting State shall take such measures as may be necessary to establish procedures whereby the defendant and other persons interested may be notified of any proceedings under this Convention and the appropriate documents served upon them.

(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 consolidated for disposal in a single proceeding before 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 procedural law of that Court, the judgment shall also be enforceable in the Contracting State where the judgment debtor is resident or, being a company or other body corporate, has its principal place of business or, if the assets available in that State and in the State where the judgment was pronounced are insufficient to satisfy the judgment, in any other Contracting State where the judgment debtor has assets, upon compliance with the formalities prescribed by the laws of the Contracting State where execution is applied for. The merits of the case may not be reopened.

(5) The provisions of paragraph (5) of this Article shall not be deemed to require the issue of execution if:

(a) the judgment was given by default and the Court applied to for execution is satisfied that the defendant did not acquire knowledge of the proceedings in sufficient time to act upon it;

(b) the judgment is one which, for reasons of public policy, cannot be recognized by the Court applied to;

(c) the judgment is in respect of a cause of action which had already, as between the same parties, formed the subject of another judgment which is recognized under the law of the Court applied to as final and conclusive;

(d) the judgment has, in the opinion of the Court applied to, been obtained by fraud of any of the parties;

(e) the right to enforce the judgment is not vested in the person by whom the application for execution is made.

(6) Notwithstanding paragraph (4) of this Article, the Court applied to may refuse execution until final judgment has been given on all claims filed within the six months period referred to in Article 14 if...
it is evident that judgments exceeding in aggregate the limits of liability prescribed in Articles 8 and 9 might be entered.

(7) Where a judgment is rendered enforceable under this Article, payment of costs recoverable under the judgment shall also be enforceable. Nevertheless the Court applied to for execution may, on the application of the judgment debtor limit the amount of the costs to a sum equal to ——— per cent of the amount for which the judgment is rendered enforceable.

(8) Interest not exceeding ——— per cent per annum may be allowed on the judgment debt.

(9) A judgment to which this Article applies shall only be enforceable within ——— years from the date on which it became final.

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

Article 16
No change from Taormina draft, see 17 J. AIR L. & C. 198.

CHAPTER V—APPLICATION OF THE CONVENTION

Article 17
(1) 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 on the surface to a third party in the territory of another Contracting State, as provided in Article 1.

(2) "territory of a State" means not only the metropolitan territory of such State but also all other territories for the foreign relations of which that State is responsible.

(3) For the purpose of this Convention a ship or aircraft on high seas shall be regarded as part of the territory of the State in which it is registered.

Article 18
This Convention does not apply to claims for damage caused to an aircraft in flight, or to persons or goods on board such an aircraft.

Article 19
This Convention shall not apply to damage caused on the surface, compensation for which is governed (a) by a contract of carriage; or (b) by a contract of employment between the person who suffers damage and the person upon whom liability would otherwise fall under the provisions of this Convention; or (c) by statutory provisions governing workmen's employment.

Article 20
This Convention shall not apply to damage caused by aircraft used in military, customs or police services.

CHAPTER VI—GENERAL PROVISIONS

Article 21
If legislative measures are necessary in any Contracting State to give effect to this Convention, the Secretary General of the International Civil Aviation Organization shall be informed forthwith of the measures so taken.