WHEN the ICAO Council reconvened after its summer recess, it reelected Walter Binaghi, of Argentina, as chairman of the Air Navigation Commission and elected Sir Frederick Tymms, of the United Kingdom, as chairman of the Air Transport Committee. The Council also elected the following additional representatives of member States to assist in the conduct of the Organization's business throughout the ensuing year:

- Brigadier C. S. Booth, of Canada, First Vice-President
- Mr. W. G. Algar, of Ireland, Second Vice-President
- Mr. M. G. Pradhan, of India, Third Vice-President
- Lt. Col. Jean Verhaegen, of Belgium, Chairman of the Committee on Joint Support of Air Navigation Services
- Mr. L. E. Lang, of South Africa, Chairman of the Finance Committee.

Later in the session the Council appointed E. C. R. Ljungberg, Director General of the Royal Board of Civil Aviation in Sweden, to succeed Dr. Albert Roper, of France, as ICAO Secretary General for a five-year term. In appointing Mr. Ljungberg as Secretary General, the Council was acting on a recommendation of a committee of the whole, which had been considering the matter since March 1951.

International Standards, Recommended Practices and Procedures

Both the Council and the Air Navigation Commission devoted considerable time during the fall of 1951 to revising and bringing up to date ICAO Standards and Recommended Practices (annexes to the Chicago Convention on International Civil Aviation) and ICAO Procedures for Air Navigation Services. The Air Navigation Commission approved and the Council unanimously adopted amendments 64 through 83 to Annex 8 (Airworthiness of Aircraft); amendments 128 through 132 to Annex 6 (Operations); amendment 1 to Annex 2 (Rules of the Air); and amendments 1 through 6 to Annex 11 (Air Traffic Services). The amendment to Annex 2 constitutes a complete revision of the annex. ICAO member States are to notify the Organization by April 1, 1952 if they disapprove of any changes in the annex and by June 1, 1952 of any differences that will exist between their own national regulations and the amended annex when it is implemented on September 1, 1952. In accordance with Article 12 of the Chicago Convention, the revised ICAO annex on rules of the air will apply without exception over the high seas. Amendments 1 through 6 proposed by the Commission on Annex 5 (Dimensional Units to be used in Air-Ground Communications) were also unanimously adopted by the Council, but amendment 7 failed to receive the necessary two-thirds majority.

The Air Navigation Commission and the Council approved revised Procedures for Air Navigation Services (PANS) for Rules of the Air and Air Traffic Control, to be implemented on September 1, 1952 to coincide with the date for amendments to Annexes 2 and 11. Revised PANS—Instrument Approach to Land were approved by the Council for application as soon as possible in accordance with the recommendation of the Air Navigation

* Aviation Policy Staff, Department of State.
Commission. The Council approved the altimeter setting procedures recommended by the Fourth Session of the ICAO Operations Division for application in the African-Indian Ocean and South-East Asia Regions as of December 1, 1951. The Council, in an endeavor to reduce the dangers of air traffic in the European-Mediterranean Region resulting from use of different systems of altimeter settings, urged that all States involved which had not yet introduced the altimeter setting procedures (QNH) agreed upon at the Second European-Mediterranean Regional Air Navigation Meeting do so and that the standard procedures recommended by the Operations Division be implemented after a specific date has been proposed by the Third European-Mediterranean Regional Air Navigation Meeting.

The Air Navigation Commission began examination of the material pertaining to Standards and Recommended Practices in the reports of the Third Session of the Search and Rescue Division and the Fifth Session of the Aeronautical Charts Division within less than a month after these two international conferences adjourned. In addition, the Commission also reviewed the final reports of the first meeting of its Standing Committee on Performance and the ICAO South American/South Atlantic Regional Air Navigation Meeting.

Program for Providing and Manning Indispensable Air Navigation Facilities and Services

Now that a first review of critical deficiencies in air navigation facilities and services in all ten ICAO regions has been completed, the Air Navigation Commission and Council have decided to place the program for providing and Manning indispensable air navigation facilities and services on a continuing basis. The ICAO Secretariat is to be responsible for the continuous study of the status of implementation of regional plans and for reporting serious deficiencies to the Air Navigation Commission and the Council. The Secretariat is to utilize all available and proper sources of information, including: the International Air Transport Association; national representatives at ICAO Headquarters in Montreal; ICAO field offices at Paris, Cairo, Lima and Melbourne, and the North American Office; field trips by members of the Secretariat; material submitted directly by States; and finally, recommendations made by regional air navigation meetings. The following factors are to receive special attention in the assessing of deficiencies: frequency of air transport operations; types and capacity of aircraft used; existing need for air transportation, in the light of availability of other forms of transportation in the area, and the air commerce potentials of the location or area.

ICAO member States in whose territory the priority deficiencies are found will be solicited to undertake their responsibility under the Chicago Convention and correct them wherever practicable. Failing that, ICAO may remedy the situation through its technical assistance or joint support programs.

Special Meeting on Coordination of Air Traffic in Western Europe

On the basis of information submitted by the ICAO member States directly concerned—Belgium, Denmark, France, Italy, Luxembourg, Netherlands, Switzerland, the United Kingdom and the United States, the Presi-

1 Held in Paris, May 1948.
2 Held in Montreal, September 4-24, 1951.
3 Held in Montreal, October 9-29, 1951.
4 Held in Montreal, November 6-16, 1951.
5 Held in Buenos Aires, October 30—November 19, 1951.
dent of the ICAO Council decided to convene a special meeting at the ICAO regional office in Paris on October 8, 1951 to deal with policy aspects of the problem of coordinating civil and military air traffic in Western Europe. This problem had become urgent as a result of the increasing number of military jet aircraft operations and military airspace reservations. The meeting, which was attended by civil and military representatives of the nine States and the Allied High Commission for Germany, recognized that military and civil aviation have equal rights to the airspace in time of peace. It recommended that coordination between military and civil traffic be maintained so as to avoid, outside of cases of exceptional requirements, exclusive allocation of airspace to military or civil aviation. Unanimous agreement was reached on the need for controlling the airspace of Western Europe. In most cases, the controlled airspace would take the form of a network of airways, designed to cover the main air-routes with the minimum deviation from the most direct routes. The details of the plan were to be worked out by the States concerned and finalized at the Third European-Mediterranean Regional Air Navigation Meeting. The meeting recommended that the States establish as soon as possible combined air traffic control systems for their civil and military air traffic and maintain close liaison between military and civil air traffic control units at adjacent airports. On November 6, 1951, the ICAO Council adopted a resolution which noted with satisfaction the agreements reached at the meeting; urged all States concerned to give high priority to the coordination of their national requirements for use of the airspace and directed the Air Navigation Commission and the Secretary General to take all associated preparatory steps for the European-Mediterranean meeting.

Technical Assistance Program.

By the end of 1951, ICAO had sent technical assistance missions to eleven different countries which are underdeveloped in aviation. Twenty-eight ICAO fellows from twelve different countries had started their training courses abroad and nine had completed them. The total cost of the program for 1951 was approximately $300,000. In submitting this year-end report, the President of the ICAO Council cited as an example of the accomplishments of the program the fact that ten new meteorological observation stations in Ethiopia are being staffed mainly by personnel who had had no previous training in meteorology before ICAO began to provide it earlier in the year.

The Technical Assistance Committee of the United Nations Economic and Social Council, meeting in the summer of 1951, decided not to change for 1952 the percentages assigned to the different participating organizations for allocation of funds from the United Nations Special Account for Technical Assistance. However, in the case of ICAO, whose automatic allocation had proven inadequate for 1951, the Technical Assistance Board was asked to make available from the unallocated portion of 1951 funds, money sufficient to cover definite commitments by ICAO for technical assistance in 1952, namely, $617,000.

Air Transport Matters

The Economic and Social Council, after examining the proposed ICAO resolution calling on member States to exempt on a reciprocal basis international air transport enterprises of other States from taxes on income and flight equipment, had brought no inconsistency with its own tax policy to ICAO's attention. Therefore, the ICAO Council adopted the resolution and set March 1, 1952 as the date by which all ICAO States are to notify it of the extent to which they are prepared to accept this resolution and the two
other resolutions and one recommendation on avoidance of multiple taxation adopted by the Council early in 1951.

The Air Transport Committee gave priority on its work program to examining the economic aspects of the Mexico City Draft Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, i.e., the limits of liability (Article II) and the insurance provisions (Chapter III). The Committee's report to the Council on these matters presented the combined views of the Committee and a balanced appraisal of the main points of difference within the Committee. The report contained two alternative proposals regarding the limits of liability: (1) to retain, with minor modifications, the limits in the Mexico City draft, (2) to double generally the limits of liability. The section of the Committee's report on Chapter III (Security for Operator's Liability) called the attention of States to the possibility that if strong objections to this chapter still prevailed at the final conference on the Convention, consideration might be given to the possibility of eliminating this chapter entirely or to incorporating its present provisions in a protocol.

The Council unanimously adopted, with minor amendments, the report prepared by the Air Transport Committee. The Council representatives were pleased not only with the report itself but also with the fact that it was a successful first instance of coordination of the work of the ICAO Legal Committee with that of the Air Transport Committee. By a small majority, the Council decided to convene a special conference for finalization and opening for signature of the draft convention rather than to place it on the agenda of the Sixth Session of the Assembly.

The Council had asked the Air Transport Committee to clarify the scope of the resolution on burdensome insurance requirements which the Council had adopted on December 6, 1950 and to determine whether its requirements were in any way in conflict with the insurance provisions of the Mexico City draft convention. The Committee decided that the resolution on burdensome insurance requirements

(a) was intended to establish maximum procedural limits beyond which a Contracting State should not go in order to satisfy itself that its insurance requirements had been fulfilled. It was understood that nothing in the resolution should prevent a Contracting State from accepting evidence (concerning insurance carried) of a less onerous nature from any or all categories of operators.

(b) was also intended to cover all forms of international air navigation. Any insurance requirements should be so applied as not to constitute a requirement for advance permission to make flights which would otherwise be exempt from the necessity for such permission under the terms of Article 5 of the Chicago Convention.

The Committee appointed a working group, composed of the representatives of Brazil, India, the United Kingdom and the United States, to prepare a final paper on the Committee's work on the definition of a scheduled international air service and analysis of Article 5 of the Chicago Convention on rights of non-scheduled air services. When the Committee examined the working group's paper, it decided to adopt the following definition of a scheduled international air service, which had been presented as one of two alternative proposals:

"A scheduled international air service is a series of flights that:

(a) passes through the air space over the territory of more than one State; and

(b) is performed by aircraft for the transport of passengers, mail or cargo for remuneration, in such a manner that each flight is open to use by members of the public; and
(c) is operated
   (i) according to a published time-table, or
   (ii) with flights so regular or frequent that they constitute
        a recognizably systematic series serving traffic between
        the same two or more points."

At the same time the Committee agreed that its report should emphasize
the significance of the element of operation irrespective of payload as a
factor in deciding borderline cases. The report was to recognize that al-
though the definition was developed with special reference to Articles 5 and
6 of the Chicago Convention, its possible application to other articles of the
Convention had been taken into consideration and no conflict found; also
that the definition would require periodic review.

The Air Transport Committee has authorized transmission to ICAO
member States of a draft agenda for the Second Session of the ICAO Sta-
tistics Division. Meanwhile the ICAO Secretariat has compiled and pub-
lished the following Digests of Statistics:

   No. 15, Scheduled Airline Operations—General Revenue Traffic Statistics
        Received up to March 31, 1951;
   No. 16, Traffic Flow—March 1947;
   No. 17, Traffic Flow—September 1947;
   No. 18, Financial Data—Financial Year 1949;
   No. 19, Fleet—Personnel 1949;
   No. 20, Taxes—Subsidies 1949;
   Nos. 21-22, Origin and Destination of Passengers, March and September
        1949;
   No. 23, Traffic Flow—March 1948;
   No. 24, Traffic Flow—September 1948;
   No. 25, Scheduled Airline Operations—General Revenue Traffic Statistics
        Received Up to 30 September 1951.

JOAN H. STACY

EXCERPTS FROM REPORT OF UNITED STATES DELEGATION TO
EIGHTH SESSION OF THE LEGAL COMMITTEE OF ICAO,
HELD AT MADRID, SPAIN, SEPTEMBER, 1951

The meeting of the Legal Committee of the International Civil Aviation
Organization at Madrid, Spain, was the Eighth Session of that Commit-
tee since its formation and was held in Madrid at the invitation of the
Spanish Government.

The provisional agenda included the revision of the rules of procedure
and working methods of the Committee, the revision of the Warsaw Con-
vention, and a progress report on the project relating to the legal status of
aircraft. The agenda also included the election of officers, and the date,
place and provisional agenda of the Committee's Ninth Session. The Coun-
cil of the Organization did not refer any question to the Committee for its
consideration during its Eighth Session.

The following states and organizations were represented at the session:
Argentina, Australia, Austria, Belgium, Brazil, Canada, Cuba, Dominican
Republic, France, Indonesia, Italy, Netherlands, Philippines, Portugal, Spain,
Sweden, Switzerland, United Kingdom, United States, Venezuela.

International Organizations: Federation Internationale des Transports
Aeriens Prives, International Air Transport Association, International Insti-
tute for the Unification of Private Law, International Union of Aviation
Insurers.

The United States Delegation was composed of Mr. Emory T. Nunneley,
Jr., General Counsel of the Civil Aeronautics Board, Chairman, Mr. G.
Nathan Calkins, Jr., Chief of the International Rules Division, Office of
General Counsel, Civil Aeronautics Board, and Miss H. Alberta Colclaser, Legal Advisor, Aviation Policy Staff, Department of State.

At the opening of the session, Mr. Louis Clerc (Switzerland) was elected Chairman of the Committee, replacing Mr. Nunneley whose term had ended. General Salvador Merino (Spain) and Major K. M. Beaumont (United Kingdom) were elected Vice-Chairmen. Mr. Clerc, as Chairman, presided over all of the meetings of the Committee during the session.

**PROCEDURE FOR CONSIDERING REVISION OF THE WARSAW CONVENTION**

The major item on the agenda of the Committee for the Eighth Session was the revision of the Warsaw Convention. At the outset of consideration of this item in the Committee, there was a discussion initiated by the U.S. Delegation as to the approach to be taken. The United States urged that the first matter of importance was a determination as to whether there was a demonstrated need for revision of the Convention. To this end, the United States urged that the Committee first examine the problem of revision from an over-all standpoint to determine the respects, if any, in which each state thought revision of the existing convention was necessary and the manner in which it should be revised to meet the problems thus identified. In this manner, it was hoped that it could be determined whether there was any general agreement as to specific areas of needed revision, and whether there was sufficient agreement as to action to be taken in relation to such areas to hold out the prospect of widespread acceptance of a revised convention. In the light thereof it could also be determined whether any revision should be in the nature of a complete substitute for the existing convention or could be accomplished by a protocol. Finally, it was felt that if it were determined that the Committee should proceed with the work of revision, such discussion would provide the Committee with a guide as to the major objectives to be attained thereby. It was pointed out that if the Committee undertook to go through the reporter's proposed draft convention article by article, the discussion would not disclose whether there was felt to be a need for revision sufficient to warrant undertaking the burden of work involved in achieving an agreed revision and in the necessary ratification process, with the accompanying problems as to the status of the existing convention in the interim and the possible effect upon widespread adherence.

This suggested approach to the problem of revision of the Warsaw Convention was vigorously opposed by the advocates of revision of the Convention. It was argued that a discussion in such general terms would be too vague and indefinite to produce any useful results.

By a close majority it was determined to proceed in the Committee's discussions to examine the most recent draft of the reporter article by article, with the further provision that where the reporter had left out any matter covered in the existing convention, discussion would be predicated upon the text of the existing convention. It was also agreed that the discussion should be concerned with matters of principle, and not of drafting.

The major determinations of substance made by the Committee in the course of its discussion are indicated below. Despite the effort to deal only with principles, as would be expected, the article by article discussion proceeded very slowly with much time being devoted to rather minor issues raised by variations in the reporter's draft from the existing convention. In many instances, after substantial debate of the changes proposed in the reporter's draft, the Committee came back to the substance of the like provisions of the existing convention.

**PRINCIPLES OF PROPOSED REVISION OF WARSAW CONVENTION**

The following portion of this report undertakes to set forth most of the areas of discussion in which a decision was taken by the Committee with
respect to revision of the Warsaw Convention, and to set forth the position taken at the Session by the United States Delegation with respect to such matters. (For purposes of convenience in such discussion, the most recent draft convention prepared by the reporter, Major Beaumont, which was used as the basis of most of the discussion at the Session at Madrid will be referred to as the "1951 draft." The Warsaw Convention as it exists today will sometimes be referred to as the "existing Convention." The draft of a revised convention to replace the Warsaw Convention will be referred to as the "proposed convention").

a. Scope of Proposed Convention

The Committee devoted substantial attention to questions relating to the scope of the proposed convention.

(1) Definition of international carriage. (References: Article 2(1), 1951 draft; Article 1(2), Warsaw Convention.) A major problem with respect to the scope of the proposed convention was whether, as proposed in the 1951 draft and as urged by a number of delegations, it should be extended so as to be applicable to all carriage by air otherwise subject to the proposed convention, which originated in one state and was destined to another state, if only one of such states was a contracting state and the other was not.

The United States Delegation agreed that the proposed convention should have the widest possible applicability consistent with ability to make its provisions uniformly effective, and thus to achieve actual progress towards uniformity. The United States Delegation pointed out, however, the many difficulties inherent in a proposal to make the provisions of the proposed convention uniformly effective where the travel was between two states, one of which was not a contracting state.

The Delegation argued, in accordance with instructions, that the proposed extension would be in large part illusory and that, far from promoting a uniform rule of liability internationally, its result in many instances would be the reverse. In this connection it was pointed out that the applicability provision of the existing Convention, which covers carriage only between contracting states, is cleverly designed to take full advantage of generally recognized doctrines of conflicts of law, so that it may be expected that such Convention as a whole will be enforced by non-contracting states, should suits be started in the courts thereof. The Delegation recognized that in the area covered by the proposed extension liability is presently governed by local law, which probably would not be the same as the rule established by the proposed convention, however, since under the existing Convention contracting states are free to apply their general rules of conflicts of law in cases not coming within such Convention, the principles of liability to be applied to such cases would probably be the same whether suits were started in a contracting state or a non-contracting one. The result is that while the basis for liability is not uniform internationally, it is now fairly predictable.

The Delegation argued that confusion would necessarily result from the fact that the proposed extended scope is not moulded to conform to generally accepted doctrines of conflicts of law, but is contrary thereto. Therefore, non-contracting states will apply their own rules of conflicts to suits arising within their jurisdiction, whereas contracting states will be forced to apply the Convention. This in effect will give plaintiffs a choice of remedies, one under the Convention and one apart from it, depending upon the State in which suit is brought.

The Committee decided, however, by a substantial majority to embody in the proposed convention the principle that the international carriage covered thereby should include all carriage by air, otherwise subject thereto, between any two states whenever either of the states was a party to the Con-
vention. As a subsidiary matter, the Committee further agreed that the applicability of the proposed convention should not be dependent in any way upon the nationality of the carrier performing the carriage, and that the provision of the existing Convention which made it applicable where the places of departure and of destination were in the same contracting state, if there was an agreed stopping place outside that state, should be retained.

Although the views advanced regarding provisions to extend the scope appear to be legally sound, further exploration of the practical consequences of the scope agreed to by the Committee would seem warranted. Also, among other matters, it believed that the relationship of the scope of the proposed convention to the provisions with respect to documentation and the legal consequences of failure to abide by the requirements of the proposed convention relating thereto were not adequately explored.

(2) The contract of carriage. (References: Article 2(1), 1951 draft; Article 1(2), Warsaw Convention.) A second important problem related to the question of whether there had to be a contract of carriage defining the points of origin and destination of the traffic in order to have the proposed convention applicable, or whether it was to be determined by the points between which the traffic actually moved. In the course of this discussion it became apparent that there was a possible significant difference between the official French text of the existing Convention, and the translations thereof used by the United Kingdom and the United States. The French text used the phrase “les stipulations des parties,” whereas the English translations used the words “the contract made by the parties.” It was argued that a more proper interpretation into English of the French “les stipulations” was “arrangements.” The Committee agreed in principle that the existence of international carriage within the scope of the proposed convention should be determined by reference to the arrangement or understanding between the parties as to the transportation to be provided, even though there was not a legally valid and binding contract with respect thereto. It was particularly intended to cover a situation, for example, in which a definite arrangement or understanding had been reached with a party who did not have capacity to contract legally. Furthermore, if a person arranged a trip which constituted international carriage within the meaning of the convention and erroneously got on the wrong flight, both his and the carrier’s rights would nevertheless be governed by the proposed convention, even though, for example, the flight were in fact wholly within a single state.

(3) Gratuitous carriage. (References: Article 2(1), 1951 draft; Article 1(1), Warsaw Convention.) The applicability of the proposed convention to the carriage of persons or property gratuitously was given considerable attention. There was much sentiment in the Committee in favor of limiting the application of the Convention to those cases where the carriage was for remuneration only, leaving gratuitous carriage wholly outside its scope. This would mean that under the national laws of many states carriers by agreement with the person being carried could exculpate themselves entirely from liability, even for their own negligence. Other delegations urged the Committee to make the proposed convention applicable to all carriage, whether it be for remuneration or not, thus encompassing all international carriage by private persons as well as public carriers. Accompanying this was a proposal, however, that the private carriers be relieved of the burden of presumed liability imposed on the public carriers. The United States Delegation pointed out that it was probable that in many states in the United States any effort by the carrier to contract itself out of liability for its own negligence, even in the case of gratuitious carriage, would be contrary to public policy. Hence, if not governed by the Convention, gratuitous carriage might make the carrier liable without limit if negligence were proved.

The Committee agreed to make the proposed convention applicable to all
carriage for remuneration and, in addition, to gratuitous carriage when provided by an air transport undertaking. Gratuitous carriage by private carriers was left to the respective national legislation.

(4) Transportation by states or other political entities. (References: Article 2(4), 1951 draft; Article 2(1), Warsaw Convention.) There was considerable discussion as to the exact applicability intended with respect to international carriage performed by states or governmental bodies or agencies. The Committee readily agreed that in general the provisions of the proposed convention should be applicable to all international carriage otherwise subject thereto, by whatever person performed, including a state or its instrumentalities. However, it was further agreed that there should be exceptions to this general rule of applicability, which exceptions should include performance of operations specifically for military or similar purposes. For example, it was agreed that the carriage of troops under charter should not come within the terms of the proposed convention. Although it was agreed that appropriate exceptions should be provided, the precise nature thereof was not settled by the Committee. In considering carriage by the state, it must be kept in mind that only carriage which is for remuneration or, if gratuitous, which is by an air transport undertaking, is included in the coverage of the proposed convention.

b. Provision for traffic documents and the contents

As would be expected, the Committee devoted a very substantial amount of time to the question of whether the proposed convention should deal with traffic documents; if so, what requirements should be provided; and finally what sanctions should be provided to assure compliance with such requirements. The 1951 draft wholly omitted any provisions relating to traffic documents.

(1) Inclusion of provisions for traffic documents. After consideration of the question whether to include provisions relating to traffic documents in the proposed convention, a substantial majority of the Committee voted to include appropriate provisions with respect to the traffic documents in the proposed convention. The United States Delegation supported this position.

(2) Documentation for carriage of passengers. In considering the nature of the provisions to be included, the Committee, over opposition of the United States, which urged that the provisions of the existing Convention be used as the basis for discussion, decided to utilize the pertinent articles of the draft convention prepared in 1948 by the reporter (referred to hereinafter as the “1948 draft”) as a basis of discussion. It is believed that this had the effect of considerably complicating and prolonging the discussion necessary to dispose of this matter.

(a) Particulars to be required in passenger tickets. (References: Article 3(2), 1948 draft; Article 3, Warsaw Convention.) With respect to the question of the particulars to be included in passenger tickets, account had to be taken of the enlarged scope of the proposed convention as agreed upon in principle by the Committee. In general, the particulars to be included in the passenger ticket as agreed upon by the Committee did not differ materially from those included in the existing Convention. Two aspects worthy of some further mention are discussed briefly below.

The major point which arose in connection with the particulars to be included in the passenger ticket was whether the ticket should contain a statement that the convention with its limits of liability was applicable to the transportation being performed under the ticket, or whether the ticket should simply contain a notice that there existed a convention providing a system of limitation of liability which was applicable if the transportation came within the terms of such convention. The United States Delegation
urged the former position on the ground that only thus was the passenger actually put on notice, and that it would be feasible, in view of the enlarged scope of the proposed convention, for the issuing carrier and its employees to ascertain and state whether the Convention was in fact applicable. The enlarged scope of the Convention, it was suggested, eliminated the majority of situations in which there was likely to be doubt as to the applicability of the Convention. There was very vigorous opposition to this position, and the Committee ultimately decided to include a provision only that there should be notice that the Warsaw Convention might be applicable, i.e., that the Convention was applicable to international carriage as defined therein, without stating whether the specific transportation to be provided under the ticket is within the terms of the Convention. Further reflection has raised a question as to whether the practical difficulties, even under the enlarged scope of the proposed convention, may not be greater than thought to be the case at the time of the above discussion. This is believed, therefore, to be a matter warranting careful review prior to the next plenary session of the Legal Committee.

In relation to the foregoing discussion, attention was called to the problem presented by the difficulty of requiring that a ticket issued in a non-contracting state for carriage to a contracting state, and hence within the enlarged scope of the Convention, contain the required particulars, or of trying to enforce such requirement by sanctions in the proposed convention. This certainly merits further consideration.

One further modification is worthy of brief mention. The Committee agreed that the proposed convention should not require the name and address of carriers subsequent to the issuing carrier to be included in the ticket unless the issuing carrier was requested to furnish such information by the passenger, in which case it was obligated to provide the names and addresses of other carriers participating in the carriage. The reason for this was to permit the issuance of an open ticket where the passenger desired to have such a ticket.

(b) Sanctions for failure to deliver ticket or irregularity therein. (References: Article 3(4), 1948 draft; Article 3(2), Warsaw Convention.) The subject of the sanctions or penalties to be imposed on a carrier for failure to deliver a ticket, or for omission therefrom of any of the required particulars was the subject of extended consideration by the Committee. There seemed to be widespread agreement that a provision which denied a carrier the benefit of the limits of liability for personal injury or death was too severe a sanction for the failure to deliver the ticket or the omission from a ticket of any of the required particulars, where such failure or omission did not result in the passenger lacking notice of the possible applicability of the convention with the consequent limitations of liability. Accordingly, the Committee agreed in principle that in the event of failure to deliver a ticket, or of omission from a ticket of any of the required particulars, the carrier should be liable only for such damage as was proved to have resulted from such failure or omission; it being understood that the unlimited liability thus created did not extend to the enlargement of the limits of liability recoverable for death or personal injury, that being a separate cause of action still governed by the proposed convention.

With regard to failure to give notice with respect to the possible applicability of the convention, however, either through omission of that particular from the ticket, or failure to deliver a ticket, it was agreed that the carrier should be liable for death or personal injury without limit; provided, however, that the carrier could defeat such unlimited liability by proof that the passenger had actual notice regarding the convention despite the carrier's failure to deliver a ticket containing such notice. The United States Delegation strongly urged the provision as adopted on the ground that justi-
fication for limiting liability lay in part in the ability of the passenger to insure himself. If he did not do so because he was not aware of the limited liability of the carrier under the convention, he would have great difficulty in proving that he would have taken out insurance in any given amount if he had had notice, and hence the extent of his damages flowing from the omission of such particular.

(3) Documentation for carriage of registered baggage. (References: Article 4, 1948 draft; Article 4, Warsaw Convention.) With the exception discussed below, agreement was quickly reached on the particulars to be included in the baggage check. It was also readily agreed that the passenger ticket and baggage check could be combined into a single document, and that even where a separate baggage check was issued, it was not necessary to repeat in the latter any of the particulars which had in fact been included in the passenger ticket.

There was a difference of view, however, with regard to requiring inclusion in the baggage check of notice regarding the Convention and the limitations of liability thereunder. Provision for such notice and for removal of the limits of liability for failure to deliver a baggage check containing it is contained in the existing Convention. After considerable discussion, the Committee decided to delete the requirement for such notice in the baggage check. The necessary consequence of this action was that the failure of the carrier to give notice by means of the baggage check or otherwise regarding the conventional limitations of liability for loss of or damage to baggage could have no effect upon the applicability of such limits under the proposed convention and could not even serve as a basis for damages flowing directly from such failure.

It was agreed that failure to deliver the baggage check or omission therefrom of any of the particulars which were required should make the carrier liable for such damage as could be shown to have flowed from that failure or omission. Damages for loss of or damage to the baggage would, however, continue to be governed by the limits of the proposed convention. The United States Delegation agreed that, even if the requirement as to notice regarding the convention had been retained, this penalty provision was adequate, pointing out that in the case of baggage and cargo, the existence of limits of liability was such a commonplace matter that failure to give special notice thereof in relation to international air transportation did not constitute sufficient grounds for imposing a penalty of unlimited liability.

(4) Documentation for the carriage of cargo. (References: Article 5 to 11, 1948 draft; Articles 5 to 11, Warsaw Convention.) In connection with the provisions relating to the documentation for the carriage of cargo, important issues regarding the negotiability of airway bills were presented. Essentially there were advanced to the Committee three proposals for solution of this basic problem. The first proposal was that advanced by the United States Delegation, which was that the provisions of the existing Convention should be reviewed with care and modified where necessary in order to see that none of the requirements contained in the provisions of the proposed convention prevented the creation of a negotiable instrument, but that the Convention itself should not undertake to create such negotiability or to provide the rules relating thereto. The second proposal was that advanced by the United Kingdom which was to the effect that, if the contract for carriage of cargo were embodied in a document labelled on its face so as to clearly identify it, such document should possess the same attributes with regard to transferability and conferring title to the cargo as would be possessed by a ship's bill of lading made in the same place and for carriage between the same points. The third proposal was that advanced
by Sweden, which was to have the proposed convention provide for a uniform set of rules governing the negotiability of airway bills.

After discussion of these proposals, it was decided to refer to a Subcommittee for consideration and report the question as to changes which should be made in the provisions of the existing Convention to eliminate or modify any which prevented negotiability of airway bills issued thereunder, and consideration of the possible adoption of the United Kingdom's proposal. It was agreed that the Swedish proposal presented too complex and difficult a problem to be dealt with at this session of the Legal Committee.

The Subcommittee had only a relatively short time in which to consider the matters referred to it, but submitted its report with its recommendations to the full Committee. In view of the relatively incomplete nature of the Subcommittee's work due to the time limits imposed upon it, it is not believed that it is important to discuss the substance of the Subcommittee's report here. The Legal Committee in light of all the circumstances referred the question of provisions regarding airway bills to the Subcommittee on the Warsaw Convention for further action, and itself took no decision in relation to the subject at the session. It is believed that the report of the Subcommittee on "Airway Bill" will be very helpful in formulating the provisions of the proposed convention with respect to documentation for the carriage of cargo.

c. Right of carrier to dispose of cargo or baggage for unpaid charges.

(References: Article 4, 1951 draft; Article 13(1), Warsaw Convention.) There was extensive discussion in the Committee with respect to a proposal that the proposed convention give the carrier the right to sell or otherwise dispose of cargo and baggage in order to realize amounts due for the carriage thereof. The United States Delegation vigorously supported the view that the carrier should be given a clear right to retain cargo or baggage for the payment of charges arising out of the carriage thereof (a right impliedly granted by the existing Convention), and without any liability for delay resulting from the proper exercise of such right of retention, but that it would require too complex and controversial a set of provisions to create in the proposed convention a right of sale by the carrier, with the corresponding questions as to the nature of the lien thus created, the priority to be accorded such lien, and the like. The difficulties which were experienced in relation to such matters in connection with the Convention on Recognition in Rights of Aircraft were recalled. The United States Delegation urged therefore that provision for the right of sale be left to the national legislations, particularly since the creation of such a right was not essential to the proposed convention. The Committee ultimately adopted resolutions consistent with the foregoing views, and refused to embody in the convention any provisions establishing a conventional right of sale in the carrier, or requiring the several states to create such a right by legislation.

d. Joint and several liability of operators and charterers.

(Reference: Article 5, 1951 draft.) The Committee considered the question of joint and several liability of operators and charterers when the latter acted as carriers, but no decision with respect to the principles to be embodied in the proposed convention in relation to this matter was taken at the session in Madrid, and a recommended disposition will have to be advanced by the Subcommittee on the Warsaw Convention. It will be noted that the existing Convention is silent with respect to this issue.

Basically, the problem is that of what provision should be made in the proposed convention regarding liability for damage occurring when the injured passenger or damaged goods were being carried by an aircraft
operated by a person other than the one who concluded the contract of carriage with the passenger or shipper. As pointed out below, this problem is not limited to situations where there is a charter of an aircraft. Consequently, it is believed that the discussion of this matter was made considerably more difficult by the effort of the reporter and others to deal with it in terms of “operator” and “charterer,” particularly at a time when such terms had not been defined by the Committee.

There seemed to be widespread agreement on the point that the proposed convention should provide for joint and several liability in the situation where two or more persons participated in the carriage of the passenger or goods, although the exact demarcation of the extent of such joint and several liability was not formulated. However, the United States Delegation and others pointed out the complexity of the problem, reminding the Committee of the difficulty it had experienced in attempting to define “operator” in the Convention on Damage Caused by Foreign Aircraft to Third Persons on the Surface. The question of who, in addition to the contracting carrier, that is, the person making the contract of carriage with the passenger or shipper, should be liable under the Convention has many ramifications. For example, what defenses are the respective parties to be entitled to assert? Are the operator and the contracting carrier to be liable for each other’s negligence? Is the operator of the aircraft to be liable for the failure of the contracting carrier to issue tickets containing the required particulars, and is he to be liable without limit if notice regarding the convention has not been given?

It was also pointed out that this matter could not be dealt with in concepts of operator and charterer, because the borderline between charter and ordinary carriage was very obscure. In addition, attention was called to the fact that a freight forwarder might be the contracting carrier in relation to the shipper, yet although the forwarder would not actually operate the aircraft on which cargo was carried, no charter would be involved. It was further pointed out that as to any person who was not made liable under the proposed convention, care should be taken to make it clear that the proposed convention was not intended to preclude liability on the part of such person, but that the provisions of the respective national legislations would govern the existence and nature of any liability which any such person might be under to the passengers or shippers of cargo carried in planes operated by him.

After discussion of the substantive problems involved had proceeded a ways, it was proposed in the Committee that further discussion of this subject matter be deferred until the definition of the terms “charterer,” “operator,” and “carrier” had been settled. The United States Delegation joined in opposition to this proposal on the ground that such definitions would not settle the problem, since the question was the more basic one of which participants in the act of providing international air carriage should be covered by the proposed convention with corresponding duties and limits of liability. However, the Committee voted to defer further discussion until after it had defined “charterer,” a point never reached during the Session. Hence, the matter necessarily is now referred over to the Subcommittee on the Warsaw Convention.

It would appear that the formulation of a recommended disposition of this problem will be one of the difficult and important tasks of the Subcommittee. Obviously, the treatment of joint and several liability in the proposed convention will be one of the significant issues to be settled at the next session of the Legal Committee. Consequently, it is a subject matter which warrants the most careful consideration in preparing for those meetings to determine, with a full realization of the legal and practical consequences thereof, the extent to which liability should be imposed upon
operators of aircraft who participate in the carriage of persons or cargo, in situations in which there is no contractual relation between such operator and the person being carried or the shipper of the cargo.

e. Liability of carrier for death or personal injury.

The consideration of the matter of the nature of the carrier's liability under the proposed convention for damages resulting from death or personal injury of a passenger involved the following basic areas of consideration. (For convenience, the scheme of liability created by Articles 17 and 20(1) of the Warsaw Convention, and Articles 6(1) and 7(1) of the 1951 draft will be referred to herein as "presumed negligence.")

(1) Nature of event for which carrier liable. (References: Article 6(1), 1951 draft; Article 17, Warsaw Convention.) One change of substance from the existing Convention was effected by adoption by the Committee of the principle of making the carrier liable for death or injury resulting from an "occurrence" rather than from an "accident." The proponents of this change urged that liability should not be limited to instances where there had been an accident, but also should exist in other situations which resulted in injury or death. Those opposing the substitution of "occurrence" for "accident," which included the United States, pointed out that thereby there would be included many situations in which there was no reason for imposing on the carrier the burden of being held liable unless it proved that it had taken all proper measures to avoid the accident, since they would relate to matters not necessarily within the carrier's control. The example of one passenger attacking another with resulting bodily injury was pointed out. However, the vote by which the Committee approved "occurrence" was so small, due to many abstentions, and the division of those voting so nearly equal, that it seems clear that the vote was not representative, and this matter will have to be the subject of further consideration in the Committee. It is believed that further study should be directed to determining in some detail the extent to which the use of "occurrence" will in fact expand the situations in which a carrier will be presumed negligent.

There was also a discussion with respect to the type of personal injury which should be covered by the proposed convention. The Committee determined that it should not make specific provision for mental injury in the sense of emotional upset or disturbance unassociated with bodily injury. The Committee also voted to adopt the principles of the official French text of Article 17 of the existing Convention with, however, the substitution of the words "affection corporelle" for the words "lesions corporelle" where the latter appeared in that text. It was not clear from the discussion in the Committee what the accurate translation of this language in English might be, or even that the English "bodily injury" did not already cover the same ground. The discussion did make it apparent, however, that its purpose was to make certain that physical injury which was not necessarily associated with a "rupture of bodily tissues," such as, for example, lung congestion or muscular paralysis resulting from the discharge of CO₂ into the cabin of the aircraft, was covered in the proposed convention, whereas it was felt there might be some doubt under the French "lesions."

(2) Period of carriage covered by proposed convention. (References: Article 6(1); 1951 draft; Article 17, Warsaw Convention.) The period which should be covered by the proposed convention in the case of passengers was also the subject of consideration. As proposed by the reporter, the 1951 draft covered death or injury resulting from an occurrence which took place during the time when the passenger was actually on board the airplane, with a further provision for liability where the occurrence causing the death or injury was the result of an accidental or forced landing. This omitted the period covered in the existing Convention by the phrase "in the course
of any of the operations of embarking or disembarking.” It was agreed to accept the principles of the reporter's draft, with the addition thereto, however, of provisions covering the period from the time the passenger left the surface in the course of embarking until he reached the surface on disembarking. It was felt that this latter period at least should be covered, and that it gave greater certainty than the phrase in the existing Convention. It is quite possible that some extension of this period might have been accepted if the beginning or end of such extended period could be defined with reasonable certainty.

f. Liability of carrier for cargo and registered baggage.

(References: Article 6(3) 1951 draft; Article 18, Warsaw Convention.)

There was an extended discussion, and a nearly equal division of views, with respect to the period of applicability of the proposed convention with regard to baggage and cargo. It was urged by many delegations that the conventional liability should be applicable from the moment when the carrier took charge of the cargo or registered baggage until the moment when it was delivered to the consignee or passenger (or his representative) at the place of destination. It was urged that this would greatly simplify the problems of documentation and insurance, because it would make a single uniform rule of liability applicable during the entire time when the carrier had custody of the property. On the other hand, many delegations urged that the more restricted provision of the existing Convention, with perhaps some clarification to provide greater certainty, should be retained. In general, this would mean that the proposed convention would be applicable only after the cargo or baggage arrived at the airport of origin until it left the airport at destination. These delegations pointed out that this would avoid interfering with the local laws governing surface transportation in an area where there was no demonstrated necessity for such interference. It was argued that there was no reason why an air carrier or its agent while engaged in surface transport operations incidental to carriage by air, should be subject to different rules of liability than any other person engaged in surface transport over the same highways and by the same means. On the other hand, they had to concede the difficulties of achieving certainty under such an approach as to when the cargo or baggage was and when it was not under the convention.

Eventually, the Committee determined to retain in principle the provisions of Article 18 of the existing Convention with respect to the period during which the carrier is liable for cargo and baggage under the proposed convention, but to strive to achieve greater clarity and certainty with respect to the beginning and end of the period. However, there were considerations of such merit advanced on both sides of this issue, and the vote was so close (the first vote was a tie) as to make it seem inevitable that this problem will have to be re-examined by the Committee at its next session. Both because of the foregoing factors, and the importance of the issue, it would appear that this is another area in which careful review of the United States' position would be desirable.

g. Liability of carrier for delay.

(References: Article 6(2), 1951 draft; Article 19, Warsaw Convention.)

Much attention was directed at various stages of the Committee's deliberations to the question of liability of the carrier for damages due to delay in the transportation of passengers, baggage or cargo. It first arose in connection with the discussion of the particulars to be included in the passenger ticket, some delegations urging that the ticket specify the schedule (by reference to a time table) as a basis for holding the carrier liable for delay. Others urged that there be an express provision that the carrier
INTERNATIONAL

could state that he was not bound by his time tables, it even being argued that in some countries in the absence of such a provision in a convention the carrier would be held liable without limit for failure to perform in accordance with his time tables. However, the Committee decided not to require any particular relating to the schedule or status of time tables in the passenger ticket.

The same problem arose again under Article 6(2) of the 1951 draft which proposed that the carrier be liable for damage for delay occurring at any time from the moment when the carriage should have started according to the contract of the carriage. However, in Article 7(3) the 1951 draft provided that delay caused for the purpose of saving life, for reasons of safety or meteorological conditions, or "other reasonable delay," should not constitute a breach of the contract of carriage, and the carrier should not be liable merely by reason of any such delay.

Several delegations supported the principle of imposing upon the carrier liability for failure to provide transport in accordance with the times indicated in its published time tables, including failure to start the transportation as scheduled. Most of such delegations, however, desired to permit the carrier to provide in its time tables that it did not guarantee the schedules shown there. In the course of this discussion, considerable emphasis was placed upon the safety considerations involved in not encouraging a carrier or its employees to make flights under marginal safety conditions because failure to do so might subject the carrier to substantial liability for delay. The United States Delegation took the position that the proposed convention ought not to deal with the question of liability for delay, but agreed that it would interpose no objection to a provision which merely made the carrier liable for the delay where it had expressly contracted to provide the carriage within certain times or on a given schedule. This was no more than ordinary liability for a breach of contract. Ultimately the Committee agreed that the proposed convention should provide that the carrier would be liable for delay in the event that it failed to start or to arrive on schedule only where it had specifically agreed to perform within certain stated times. (See also the following section for a discussion of the action taken regarding provisions concerning conditions under which the carrier is relieved of liability for delay.)

h. Conditions under which carrier relieved of liability.

(References: Article 7, 1951 draft; Article 20, Warsaw Convention.) Article 7(1) of the 1951 draft proposed that the carrier be relieved of liability if it showed that it and its employees had taken "all proper measures to avoid the damage, or that it was impossible for him and them to take such measures." Considerable time was devoted to a proposal that this provision be further amended by substituting the words "reasonably impracticable" for the word "impossible." The discussion turned largely upon the consequence of introducing the word "reasonably" into the formula, and whether this had the effect of reducing the burden which the carrier had to meet to escape liability. The United States Delegation opposed the inclusion of the word "reasonably" on the ground that it might well import the doctrine of reasonable care instead of that of the highest degree of care, which should be the standard applied to public carriers. When the discussion failed to indicate clearly whether this change was really considered to be one of substance or only of drafting, the United States Delegation inquired whether it was intended to change the principles of the existing Convention, particularly with respect to the carrier's liability for damage caused by an unexplained accident or occurrence, and the Committee agreed that no change in principle was intended. In concluding the discussion, therefore, the Committee agreed to incorporate in the proposed convention the prin-
ciples of Article 20(1) of the existing Convention. Care will have to be exercised in the drafting to see that the effort to more clearly state the existing principles does not inadvertently result in a change in substance.

As to personal effects and objects carried on the plane by a passenger, the Committee agreed to make the carrier liable only if the passenger proved negligence on the part of the carrier or its employees, but with the further provision that if the occurrence which injured such effects also injured the passenger, the doctrine of presumed negligence should be applied as to the effects as well as to the passenger.

Finally, it was agreed that the carrier should not be liable for delay or deviation for the purpose of saving life, for reasons of safety or because of meteorological conditions, or other reasonable deviation. There seems to be sound public policy in providing that despite the provisions of the contract of carriage, the carrier shall not be liable for breach of his contract for delays or deviation due to the specified causes. This is to make certain that the carrier is not, even by virtue of his own action, in a position in which the prospect of possible liability might induce it to follow a course of action which is contrary to the public interest in safety or in saving life. More doubt may be expressed as to the exception for reasonable deviation where, as here, the question is one of the terms of the contract of carriage and a breach thereof. There would seem to be little reason why the proposed convention should relieve a carrier of a contractual obligation voluntarily assumed by it unless some public interest militates against permitting the carrier to assume such obligation. The Committee decided to omit other reasonable delay as reason for excusing the carrier from liability, but reasonable deviation was retained as such a reason.

1. Limits of liability.

(References: Article 8, 1951 draft; Article 22, Warsaw Convention.)

There was a general, but inclusive, discussion of the limits of liability, primarily those relating to death or injury of a passenger. The French Delegation proposed as a basis for discussion that the limits in the existing Convention be increased by 30 per cent. The Italian Delegation urged an increase of 50 per cent. The Canadian Delegation proposed an increase of 100 per cent. A substantial number of other delegations spoke on the subject. All of them took the position that they were not prepared to urge an increase in the limits of liability, and were not satisfied that it had been demonstrated to be necessary, but that if the other states concluded that such an increase of moderate proportions (around 25 or 30 per cent) was needed, such an increase would not prevent them from ratifying a revised convention. No delegation stated that an increase of moderate proportions would prevent ratification of a revised convention.

The United States Delegation advanced the view that the Committee was not in a position to make a decision with respect to the limits of liability during the Madrid session. It pointed out that the Committee did not have before it the economic data which would serve as a sound foundation for such a decision. For example, it was noted that the material regarding the effects of increases in prices and devaluation in currencies which had been submitted by the secretariat during the course of the session, was of a nature which required analysis and evaluation by expert economists and statisticians, and that the United States Delegation and others were not equipped to deal with this material at Madrid. Furthermore, it was suggested that it would be wiser to determine the system of liability to be included in the proposed convention first, and then to consider the limits of liability to be prescribed in relation to that system of liability. The United States Delegation proposed therefore that no decision on limits of liability be taken at this session of the Legal Committee, and that pend-
ing further consideration of other aspects of the proposed convention, the Council be requested to give the Legal Committee all such advice, assistance, and information as it could with respect to the economic aspects of the limits of liability to be included in the proposed convention. This was the position adopted by the Committee, and the Council has been requested to provide the Committee with such data and information on the point as it is able to furnish.

j. Conditions under which carrier is subject to unlimited liability.

(References: Article 8(7), 1951 draft; Article 25, Warsaw Convention.)

No definitive decision was taken with respect to this matter, which was deferred for future consideration, with the hope that such consideration would occur after the provision dealing with the same subject in the draft Convention on Damage by Foreign Aircraft to Third Persons on the Surface had been dealt with by a diplomatic conference finalizing such convention. In the discussion the United States Delegation urged that Article 8(7) of the 1951 draft be replaced by an alternative text which provided that the limits of liability should not apply "if it is proved that the damage resulted from a deliberate act or omission of the carrier or an employee of his, done either with intent to cause damage or recklessly not caring whether damage was likely to result," supplemented by the further provision that if the act was that of an employee, such employee must have been acting within the scope of his employment as in Article 25(2), Warsaw Convention. It was argued that the reporter's proposal that the carrier's liability should be limited unless the act of the employee was done with express authority rendered the provision almost meaningless because of the difficulty of proof.

This is a subject which will doubtless require the careful attention of the Subcommittee on the Warsaw Convention. However, as previously indicated, it is likely that it will have been explored in relation to another convention in a diplomatic conference and the principles settled in relation to an analogous situation prior to the next plenary session of the Legal Committee.

There was likewise referred to the Subcommittee for consideration in connection with the foregoing, a proposal set forth in Article 8(8), 1951 draft, which provided that even where the limits of liability were removed under the circumstances prescribed for deliberate acts, the carrier should not be liable in excess of a further prescribed maximum (the 1951 draft suggested $75 a pound) for loss of or injury to especially valuable baggage or other personal effects, unless the value thereof had been declared and agreed as the maximum limit of liability.

k. Contributory negligence.

(References: Article 9, 1951 draft; Article 21, Warsaw Convention.)

It was agreed without extended discussion that the proposed convention should contain the same provision with regard to contributory negligence and apportionment of damages as had been included in the draft of Convention on Damage by Foreign Aircraft to Third Persons on the Surface. In principle, it was agreed, therefore, that the proposed convention should require that where contributory negligence was proved, the damages should be apportioned. Discussion ensued as to whether this meant that the carrier's liability as limited by the convention should be reduced by the amount of contributory damages, or whether the amount of damages found attributable to the contributory negligence should be offset against the total damages suffered by the passenger or shipper, subject to the provision that in no event should the carrier have to pay compensation in excess of the con-

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1See, 18 Jour. Air L. & Com. 98 (1951).
1. Miscellaneous unfinished matters.

The United States Delegation repeatedly urged the Committee to make a determined effort to discuss and reach a decision on certain additional matters which it deemed to be of particular importance in relation to the proposed revision of the Warsaw Convention. Despite the insistence of the United States Delegation that this was essential to the work of the Committee, however, in addition to the matters already noted concerning which the Committee took no decision of principle, it failed to reach even for discussion any matters arising under any article of the 1951 draft following Article 9, and likewise there was no consideration of Article 1, 1951 draft. Among the important matters of principle included in these articles were problems of the time within which notice of death or injury must be given (Article 10(3)), jurisdictions in which suit under the proposed convention could be brought (Article 13(1)), persons entitled to bring actions (Article 14(2)), and the definitions (Article 1). All of these will have to be dealt with in the first instance by the Subcommittee on the Warsaw Convention.

PROCEDURE FOR CONTINUING WORK ON REVISION OF WARSAW CONVENTION

In connection with consideration of the agenda for its next session, the Committee decided that at such session it should continue with and undertake to complete a proposed convention to revise and replace the Warsaw Convention. In order to expedite and facilitate its work at such session, the Committee further determined to appoint a subcommittee, to be known at the Subcommittee on the Warsaw Convention, charged with responsibility for preparation of a draft of the proposed convention, which draft would serve as the basis for all further discussion of this matter. The Subcommittee consisted of the following members: Mr. Cavalcanti (Brazil), Mr. Booth (Canada), Mr. Garnault (France), Mr. Drion (Netherlands), Mr. Arreglado (Philippines), Mr. Uriarte (Spain), Mr. Sidenbladh (Sweden), Mr. Beaumont (United Kingdom), Mr. Nunneley (United States).

The Subcommittee was directed to prepare such draft fully in accordance with all decisions of principle taken by the Committee at its Madrid session. The Subcommittee was further directed, however, to consider any matters as to which the Committee had not taken a decision, and in relation thereto to formulate a draft convention on the basis of a recommended disposition of such matters. The Subcommittee is scheduled to meet at the Regional Office of ICAO in Paris, France, on January 7, 1952.

LEGAL STATUS OF AIRCRAFT

Because of the time and attention devoted to other items on the agenda of the Committee, and in view of the absence of Dr. Loaeza (Mexico), the reported on the progress report on the subject, very little time could usefully be devoted to the subject of the legal status of aircraft. However, despite a request from Dr. Loaeza that the matter not be taken up in his absence, the United States Delegation pursuant to instructions insisted that consideration be given to this matter and strongly urged that the Committee should request the reporter on the subject of the legal status of aircraft of such character as would appropriately serve as a basis for consideration and determination by the Committee as to whether such subject should be made the basis of an undertaking to prepare a draft convention, and should be given priority on the agenda of the Legal Committee upon
completion of its work on the revision of the Warsaw Convention. The Committee adopted a resolution making such a request of Dr. Loaeza as the reporter. It is believed that this is a subject matter warranting further careful consideration and evaluation in order to determine the United States position in relation thereto, and if the United States should favor the Committee's going forward with such a project, thought should be given to possible submission by the United States of material supplementing the reporter's work.

PROVISIONAL AGENDA OF THE NINTH SESSION

At the conclusion of its session, the Committee decided, subject to the approval of the Council, that the provisional.

1. Revision of the Warsaw Convention.
2. Legal status of aircraft.
3. Legal status of aircraft commander (if the Council has made its views on this subject known to the Legal Committee in time).

With respect of items 2 and 3 above, consideration thereof will be directed to progress reports upon the status of such matters and a determination in the light thereof as to whether further work should be undertaken by the Committee in relation thereto. With respect to item 1, the revision of the Warsaw Convention, it is presumably contemplated that the Legal Committee will finish its work upon a proposed revision and produce a final draft convention at that session.

The Committee adopted a resolution that, subject to the approval of the Council, its Ninth Session be held in September 1952 in Montreal, Canada, if there was not held during 1952 the meeting planned for the finalization of a Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, but if such a meeting were held in 1952, the Ninth Session be held in January 1953 in Montreal, Canada, with the further provision, however, that the place of such session be subject to further consideration by the Council of any invitation which might subsequently be received to hold the session elsewhere.

Chairman, United States Delegation
EMORY T. NUNNELEY, JR.

DRAFT REVISION OF WARSAW CONVENTION RELATING TO UNIFICATION OF RULES OF LIABILITY OF CARRIERS IN INTERNATIONAL CARRIAGE BY AIR, PREPARED BY ICAO LEGAL SUB-COMMITTEE IN PARIS, JANUARY 1952.*

CHAPTER I—DEFINITIONS¹

Article 1

For the purpose of this Convention:

(a) "Contracting State" means a State which has ratified or adhered to this Convention and whose denunciation thereof has not become effective.

(b) "Carrier" means the person who operates an aircraft by means of which carriage is performed; before any carriage by aircraft is per-
formed, it means the person who as principal has entered into an agreement to carry. 2

(c) "Passenger" means any person carried pursuant to an agreement to carry or whom a carrier has agreed to carry by aircraft.

(d) "Registered baggage" means all baggage and other articles placed in the custody of the carrier for carriage by aircraft prior to embarcation of the passenger on the aircraft.

(e) "Hand baggage" means all articles, including clothing and personal effects, worn or taken by a passenger on board the aircraft.

(f) "Cargo" means anything accepted for carriage by aircraft, except baggage. 3

(g) "Place of departure" means the place of commencement of the carriage by aircraft according to the agreement to carry.

(h) "Place of destination" means the place of termination of the carriage by aircraft according to the agreement to carry.

CHAPTER II—SCOPE OF CONVENTION

Article 2

(1) This Convention applies to all carriage by aircraft of passengers, cargo or baggage for remuneration when, according to an agreement to carry, the places of departure and of destination are situated either in the territories of different States of which one at least is a Contracting State, or in the territory of the same Contracting State when an intermediate landing in the territory of another State, even if the latter is a non-Contracting State, has been agreed. This Convention also applies to all carriage by aircraft performed gratuitously by an air transport undertaking under the circumstances referred to above. 4

2 The Sub-Committee tried to avoid the inclusion of a definition of "Carrier," but eventually decided by a majority that this was necessary for the proper interpretation of the Convention in order to cover cases where the agreement to carry was entered into but no carriage was actually performed.

3 The Sub-Committee considered whether it was necessary to make special reference to live animals, especially since these are expressly excluded from the definition "merchandises" by the Bills of Lading Convention. However by employing the word "cargo" any such reference appeared to be unnecessary.

4 The majority decided that, for the purpose of determining the applicability of the Convention, the places of departure and destination and, when these were in the same State, a landing place in another State, as agreed between the passenger or shipper and the carrier, should govern. On many grounds this seemed to be the most practical solution because it depends always on the actual intention of the parties as evidenced by the agreement to carry.

A minority preferred to take away entirely the concept of an agreement to carry from the paragraph determining the applicability of the Convention and requested that its views be recorded. The first sentence of this paragraph would then read: "This Convention applies to all carriage by aircraft of passengers, cargo or baggage for remuneration, when the places where the carriage begins and ends are situated either in the territories of different States of which one at least is a Contracting State, or in the territory of the same Contracting State when an intermediate landing in the territory of another State, even if the latter is a non-Contracting State, has been made"; and an additional paragraph would be added reading: "Whenever the place where the carriage actually begins or ends or at which an intermediate landing is made differs from those agreed upon, whether or not such agreement would be valid and enforceable, only the latter of these places shall be taken into account in determining the applicability of this Convention."

This idea had been tentatively accepted during initial discussions but was later rejected by a large majority when its full implications and impracticability were recognized during the discussion of later provisions.

The arguments of the minority in favor of the rejected proposal were: that it provided a solution to the problem of the stowaway; that it gave a better
(2) This Convention applies to carriage by aircraft under the circumstances referred to in Paragraph (1), even if the agreement referred to therein does not constitute a valid or enforceable agreement.

(3) For the purpose of this Convention, the territory of a Contracting State is deemed to comprise the metropolitan territory of that State and all territories for the foreign relations of which that State is responsible, subject to the provisions of Article 31 (e) (1).

(4) For the purpose of this Convention, carriage performed under the circumstances referred to in Paragraph (1) by several carriers successively shall be deemed to be one carriage if it was agreed in advance by the parties as a single journey, whether it was the subject of a single agreement or of a series of agreements and whether or not provision was made for the performance of one or more parts of the carriage within the territory of a single State.5

(5) The following categories of carriage are not subject to the provisions of this Convention:

(a) carriage by military aircraft and carriage of passengers, cargo and baggage for the military authorities by aircraft the whole capacity of which has been reserved by military authorities;
(b) carriage performed by customs or police aircraft;
(c) carriage of mail and postal packages on behalf of Postal Authorities;
(d) carriage of employees of the carrier travelling on duty whether or not as members of the crew of the aircraft;
(e) carriage of any person who is in the aircraft without the knowledge or consent of the carrier, provided that any such person shall not have rights better than those of a passenger under this Convention.6

(6) For the purpose of Paragraph (1), the expression "air transport undertaking" means any person who engages in carriage by aircraft for remuneration within the scope of his business activities.

answer to problems arising when baggage or cargo was loaded by error on the wrong aircraft and also in cases of gratuitous carriage under Article 3 (1) (c).

The majority rejected this proposed solution for the reasons stated above and because it arrived at the same conclusion by a circuitous method, the only advantage of which was to take care of the very special case of stowaways, for which single exception there was no jurisdiction to undertake the additional complications which would be involved.

5 It should be noted that under the language used in this paragraph a carrier could prevent a journey from being a single one under this Convention by refusing to agree that it is such, even though the facts indicate that the carrier and the passenger or consignor made arrangements for through transportation by connections. A minority of the Sub-Committee believed that the application of the Convention should be made to depend upon the factual situation and not upon the agreement of the carrier.

6 The question whether unauthorized persons including stowaways should be dealt with under the Convention, and if so, in what manner, was the subject of considerable attention in the Sub-Committee. The majority favored a provision such as the above in order to avoid the possibility that such a person might under a number of jurisdictions have a right to recover unlimited amounts of damages and thus be in a better position than passengers travelling in the same aircraft. A minority of the Sub-Committee urged that the proviso be omitted, thus placing such unauthorized persons wholly outside the Convention. In support of this, the minority claimed that the proviso resulted in imposing certain rules upon claims which did not arise under and were not otherwise governed by the Convention, that the proviso was ambiguous in that it did not clearly identify those rules of the Convention which would be applicable to such claims, and that no provision was made for determining when such unauthorized person was in carriage by air and hence within this rule of the sub-paragraph, since obviously there is no agreement between the carrier and such person by which the places of departure and destination can be determined.
CHAPTER III—TRAFFIC DOCUMENTS

Article 3. Passenger Ticket

(1) A ticket shall be issued for each passenger carried, provided that:
(a) a separate ticket need not be issued for a child for whom no separate seat is allocated. It shall suffice in that case if the presence of the child is mentioned in the ticket of the passenger who accompanies it;
(b) members of a family travelling together in the same aircraft may be included in one ticket; for this purpose, the expression "members of a family" shall mean husband and wife and a child or children travelling with a parent or parents;7
(c) instead of a ticket, a carrier may issue to a passenger carried gratuitously a pass of flight authorization card containing the name of the issuing carrier, the route or routes for which it may be used, the period of its validity, and the statement referred to in paragraph (2)(e) of this Article.

(2) The passenger ticket shall contain the following particulars:
(a) the place and date of issue;
(b) the places of departure and of destination;
(c) the names of the carrier or carriers and the address of the carrier issuing the ticket. Such carrier, at the request of the passenger, shall furnish the address of other carriers participating in the carriage;8
(d) the agreed landing place or places in another State when the place of departure and the place of destination of the carriage are both situated in the territory of the same Contracting State, provided that a reference to the carrier's timetables shall suffice for this purpose if they indicate the agreed landing places;
(e) a statement that the carrier's liability may be subject to the limitations established by this Convention.

(3) The absence, irregularity or loss of the ticket shall not affect the existence or validity of the agreement to carry, which shall nevertheless be subject to the provisions of this Convention. If a passenger is carried without a ticket having been issued containing all the particulars specified in sub-paragraphs (a), (b), (c) and (d) of paragraph (2), the carrier shall be liable to the passenger for any damage which the latter proves he has sustained by reason of the omission of any one or more of such particulars. This liability is distinct from that referred to in Article 12. If a passenger is carried without a ticket having been issued or without the ticket containing the statement specified in sub-paragraph (e) of paragraph (2), the carrier shall not be entitled to avail himself of those provisions of this Convention which limit his liability, unless he proves that the passenger had knowledge that the liability of the carrier might be subject to limitation of liability established by the Convention.

7 Upon consideration of this sub-paragraph, the Sub-Committee determined to recommend to the full Committee that an appropriate provision be inserted in lieu of this provision which would permit the issuance of a single ticket in the case of persons travelling together in the same airplane as a group, subject to appropriate limitations as to the character of the group. Attention is also directed to the fact that inclusion of such a group provision will require that it be made clear under paragraph (4) that issuance of a ticket to the representative of the group will be sufficient to meet the requirements of the Convention.

8 The Committee in Madrid adopted the above text. In order to take account of the "open ticket" (not containing the name of the carrier), the Sub-Committee recommends that a text in the following form should be substituted for the above: "The name and address of the carrier issuing the ticket. The name of any other carrier thereafter participating in the carriage shall be inserted in the ticket prior to such participation."
(4) The passenger ticket shall constitute *prima facie* evidence of the places of departure and destination and agreed landing places.

**Article 4. Baggage Check**

(1) For the carriage of registered baggage, a baggage check shall be issued, which may be combined with or incorporated in the passenger ticket.

(2) The baggage check shall contain the following particulars:
   (a) the places of departure and of destination;
   (b) the names of the carrier or carriers;
   (c) the number of packages covered;
   (d) the weight of the baggage covered;
   (e) a statement that delivery of the baggage concerned will be made to the bearer of the baggage check.

(3) When the baggage check includes the number of the passenger ticket issued in pursuance of Article 3, it is not necessary that any of the particulars enumerated in Paragraph (2) which are included in the passenger ticket should appear in the baggage check.

(4) The absence, irregularity or loss of the baggage check shall not affect the existence or validity of the agreement to carry which shall nevertheless be subject to the provisions of this Convention. If the carrier accepts registered baggage without there having been issued a baggage check complying with the provisions of Paragraphs (2) and (3), he shall be liable to the passenger for any damage the latter proves he has sustained by reason of the failure to issue a baggage check or the omission therefrom of any of the particulars referred to in Paragraphs (2) and (3). This liability is distinct from that referred to in Article 12.

**Article 5—Air Waybill**

(1) Upon acceptance of cargo for carriage by air, the carrier shall issue a document of carriage entitled an air waybill.

(2) When a consignment comprises more than one package, the consignor and the carrier shall each be entitled to require that a separate air waybill be issued for each package.

(3) The air waybill shall be issued in three parts with as many additional copies thereof as may be desired. One part shall be marked "for the carrier"; it shall be signed by the consignor. Another part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the goods. Another part shall be signed by the carrier and delivered to the consignor.

(4) Each air waybill shall contain the following particulars:
   (a) to be supplied by the consignor:
      (i) the places of departure and of destination;
      (ii) the name of the consignor;
      (iii) the name and address of the consignee, unless the air waybill is negotiable;

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9 A minority of the Sub-Committee expressed the view that, with the exception of Article 6(3), the provisions of Articles 6, 7, 8 and 9 of the Draft could be omitted from the Convention since they dealt with questions which, in their opinion, could properly be left to the parties to be included in the contract. These views were not shared by the rest of the Sub-Committee, who were of the opinion that there was no reason to take away from the Convention provisions which have served a useful purpose.

Article 5 comprises the subject matter governed by Articles 5 through 11 of the Warsaw Convention.

10 The text of this paragraph changes materially the present Warsaw provisions by omitting a number of the particulars enumerated in the present Convention or by taking them together in the more general requirement of "sufficient information to identify the cargo."
sufficient information to identify the cargo, and, if the carrier so requires, particulars of the nature thereof; provided that no carrier shall be required to state in an air waybill any such information which he has reasonable grounds for believing does not accurately describe the cargo actually received or which he has had no reasonable means of checking.11

(b) to be supplied by the carriers:
(i) the place and date of issue;
(ii) the name and address of the first carrier, and, if requested by the consignor, the names and addresses of other carriers who are to participate in the carriage, if any;
(iii) the agreed landing place or places in another State when the place of departure and the place of destination are both situated in the territory of the same Contracting State, provided that a reference to the carrier's timetables shall suffice for this purpose if they indicate the agreed landing places;
(iv) a statement that the carrier's liability may be subject to the limitations established by this Convention.

(5) The absence, irregularity or loss of the air waybill shall not affect the existence or validity of the agreement to carry which shall nevertheless be subject to the provisions of this Convention. If the carrier accepts cargo without an air waybill having been issued containing all the particulars specified in paragraph (4)(b) he shall be liable to the consignor for any damage the latter has sustained by reason of the failure to issue an air waybill or the omission therefrom of any of the particulars referred to in paragraph (4)(b). This liability is distinct from that referred to in Article 12.

(6) The consignor is responsible for the correctness of the information supplied by him for inclusion in the air waybill, and shall be liable for all damage suffered by the carrier or by anyone else in consequence of the irregularity, incorrectness or incompleteness of such information.

(7) The air waybill shall constitute prima facie evidence of the places of departure and destination and agreed landing places.

(8) An air waybill signed by the carrier is prima facie evidence of the conclusion of an agreement to carry, of the receipt of the cargo by the carrier, of the conditions of carriage inserted or referred to therein, and of any particulars relating to the number of packages, weight, dimensions, packing and apparent condition of the cargo; any particulars relating to quantity, volume and actual condition of the cargo shall constitute evidence against a carrier only if they are stated in the air waybill to have been checked by him.

Article 6—Consignor's Rights

(1) Subject to his liability to carry out all his obligations under the agreement to carry, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or of destination, or by stopping it in the course of the journey on a landing, or by calling for it to be delivered at the place of destination or in the course of the journey on a landing to a person other than the consignee named in the air waybill, or by requiring it to be returned to the airport of departure. He shall not be entitled to exercise this right of disposition in such a way as to prejudice the carrier

11 Some members thought it desirable to give a detailed list of the particulars required for identifying the cargo, in view of the uncertainty which might otherwise result. The majority felt, however, that the proposed text is entirely adequate for all practical purposes, because it would be impossible to specify all particulars required to deal with all kinds of cargo. The proviso follows closely the wording of the proviso in Article III (3) of the Brussels Convention of 1924 "For the Unification of Certain Rules Relating to Bills of Lading."
or any other consignor and he shall repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill delivered to the latter, he shall be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.

(4) The right of the consignor under paragraph (1) shall cease at the moment when the consignee asserts his right to delivery of the cargo, pursuant to Article 7. Nevertheless, if the consignee declines to accept delivery, the consignor’s rights under paragraph (1) shall be revived.

(5) The consignor may transfer his rights under this Article by endorsement and delivery of his part of the air waybill.

Article 7—Consignee’s rights

(1) Unless the consignor has exercised his right under Article 6(1) to dispose of the cargo, the consignee shall be entitled on arrival of the cargo at the place of destination to delivery of the consignee’s part of the air waybill and the cargo to him, on payment of the charges due and on complying with the conditions of carriage contained in the air waybill.

(2) Unless it is otherwise agreed by the consignor and the carrier, it shall be the duty of the carrier to give notice to the consignee as soon as the cargo arrives at the place of destination.

Article 8—Actions for damage by consignor and consignee

In case of the loss of, damage to or delay in the carriage of cargo, the consignor and consignee shall, subject to the provisions of this Convention, each be entitled to claim damages suffered by him or anyone on whose behalf he is acting.

Article 9—Changes in rights under Articles 6 and 7

No change in the rights of the parties under Articles 6 and 7 may be invoked against any third party who has acted in reliance upon the air waybill unless such change is expressly stated in the air waybill.

Article 10—Negotiability of Air Waybill

(1) Subject to the provisions of this Convention, all questions as to the negotiability of an air waybill described on its face as “negotiable” shall be

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12 The moment at which the consignor’s right of disposition ceases has been more clearly defined than it is in Article 12(4) of the present Convention, which merely refers to Article 13.

13 The present Convention does not provide for the transferability of the consignor’s right of disposition. The present text does so. As in many cases of air transportation full negotiability will be impracticable, it has also seemed desirable, besides providing for a negotiable air waybill, to revise the non-negotiable air waybill to facilitate credit transactions.

Some members felt that the way in which the right of disposition should be transferred should be left to the national laws, provided that the consignor’s part of the air waybill would in every case have to be delivered. The majority felt, however, that without a positive rule as to how transfer of the right of disposition can be effected, the situation existing under the present Convention would be very little improved.

14 The provisions of the present Convention as to the respective rights of the consignor and consignee in case of loss, damage or delay are not very clear except in cases where the consignor has not exercised his right of disposition. The present text does so. As in many cases of air transportation full negotiability will be impracticable, it has also seemed desirable, besides providing for a negotiable air waybill, to revise the non-negotiable air waybill to facilitate credit transactions.

Some members felt that the way in which the right of disposition should be transferred should be left to the national laws, provided that the consignor’s part of the air waybill would in every case have to be delivered. The majority felt, however, that without a positive rule as to how transfer of the right of disposition can be effected, the situation existing under the present Convention would be very little improved.

15 In Madrid the Legal Committee appointed a Sub-Committee to study, inter alia, the desirability and practicability of providing for a negotiable air waybill. The provisional conclusions of that Sub-Committee were that the com-
governed by the law of the place where such air waybill has been issued, except when the consignor and the carrier have agreed that a different law shall be applicable and shall have included such agreement in the air waybill; provided that the carrier shall not be entitled to dispute such agreement as against the holder who acquired the air waybill in good faith.16

(2) In case the law applicable provides, under paragraph (1), for the matters set forth below in this paragraph with respect to air waybills specifically, or to documents of carriage generally, such provisions shall apply; in the absence of such provisions the rules of the law applicable relating to shipping bills of lading shall be applied to the following matters:
   (a) the legal effects of transfer, loss or destruction of negotiable copies of the air waybill;
   (b) the conditions under and the extent to which the document confers title to the cargo;
   (c) the possibility of issuing more than one negotiable copy of the air waybill and the rights and liabilities of the holders and carriers in case various negotiable copies have come into different hands. 17

(3) Either the consignor or the carrier may require that an address be mentioned in a negotiable air waybill at which the carrier can give to the holder any notice required under this Convention or under the agreement to carry.

16 A majority of the Sub-Committee felt it desirable to adopt a conflict of laws rule to determine which national law should apply to all questions of negotiability, in order to avoid the uncertainty and lack of uniformity which would arise from the lack of such uniform choice of law. Some members were of the opinion that any choice of national law in this very complicated field would meet serious opposition and would thereby endanger the acceptance of these provisions concerning negotiability. They pointed out that a uniform conflict of laws rule did not exist with respect to shipping bills of lading, and that the absence thereof had not caused serious difficulties for those interested in negotiability. As to the law to be applied, the Sub-Committee favored the law of the place where the air waybill was issued, subject to the right of the consignor and carrier to agree upon a different law. No limitation of the law which might be thus chosen by the parties was thought necessary in this field.

The proviso offers protection to the holder in good faith to the extent that the carrier would not be allowed to dispute the agreement as to choice of law expressed in the Air Waybill. Some members suggested that this protection should only be offered to persons who have acquired both in good faith and for value. It was pointed out, however, that there was here no question of determining the rights under the air waybill, but only of fixing the law to be applied, and that, therefore, the additional requirement of acquisition for value was unnecessary and undesirable, as it would be contrary to some national legal systems which might be applicable to the substantive matters of negotiability.

17 In view of the fact that a certain number of national legislations already provide for negotiability of air waybills specifically or documents of carriage generally, and that the number doing so will probably increase, it was felt logical and desirable that the national law should apply. Only in the absence of applicable national law would it be necessary to resort to the national laws relating to shipping bills of lading. Specific provision has been made for certain limited aspects of negotiability, in view of the vagueness of the term “negotiability” which might otherwise be construed to include formal matters and questions of liability. The Sub-Committee decided that the carrier should not be obliged to issue a negotiable air waybill at the request of the consignor because it would be undesirable to apply in this case the law which is applied to shipping bills of lading. The greater speed of air transport and the lack of sufficient storerooms at a number of smaller airports would in many cases impose a heavy burden on the carriers if they had to issue negotiable air waybills under all circumstances, as is generally laws. The carrier’s obligations in this respect should be left to the national laws without specific reference to the rules relating to shipping bills of lading.
(4) Any rights conferred by this Convention on either the consignor or the consignee shall be vested in the holder of a negotiable air waybill subject to the provisions of paragraphs (1) and (2).

(5) When a negotiable air waybill has been issued, the provisions of paragraph (3) of Article 5 and Articles 6, 7, 8 and 9 shall not apply thereto. The provisions of paragraphs (7) and (8) of Article 5 shall only apply as between the consignor and the carrier.

(6) A negotiable air waybill shall be signed by the carrier.

Article 11—Right of retention and sale

The carrier shall not be obliged to surrender cargo or registered baggage until all sums owing in connection with its carriage have been paid. The right of sale or disposal of any such property shall be governed by the law of the place where the property is situated.

CHAPTER IV.—EXTENT AND LIMITS OF LIABILITY

Article 12—Extent of carrier’s liability

(1) The carrier shall be liable for damage sustained in the event of the death, wounding or bodily injury of a passenger, if the occurrence which caused the damage so sustained took place at any time from the moment when the passenger leaves the surface to embark in the aircraft until the moment when he reaches the surface upon leaving the aircraft at any place, or if the damage was sustained as a result of a forced or accidental landing.

(3) For the purpose of the preceding paragraph the word “surface” shall include not only the surface of the ground but also anything permanently affixed to the ground, and any vessel on the water, except a vessel carried on the aircraft for the purpose of saving life, which shall be deemed to be part of the aircraft.

(3) The carrier shall be liable for damage sustained in the event of the delay of a passenger if the latter does not arrive at his place of destination by the time, if any, which has been specifically agreed.

(4) The carrier shall be liable for damage sustained through the loss of, damage to or delay of hand baggage caused by an occurrence which took place during the period specified in paragraph (1) only upon proof that the damage was due to the negligence or breach of duty of the carrier or his servants and agents, provided that in the case of loss of or damage to hand baggage caused in an accident to the passenger for which the carrier is liable under paragraph (1), or an accident to the aircraft, or to hand baggage of which the carrier has accepted custody, the carrier shall be liable unless relieved of liability in accordance with Articles 16 and 17. In default of proof to the contrary, all damage shall be presumed to have been the result of an occurrence which took place during the period specified in paragraph (1).

(5) The carrier is liable for damage sustained in the event of the loss of or damage to or delay of registered baggage or cargo if the occurrence which caused the damage so sustained took place while the registered baggage or cargo was in the custody of the carrier, and located either in an airport or on board an aircraft or, in the case of a landing outside an airport, in any place whatsoever. All damage shall be presumed, subject to proof to the contrary, to have been the result of an occurrence which took place during such period.\(^{18}\)

\(^{18}\) The Sub-Committee has provisionally included liability for delay of registered baggage and cargo within the provisions dealing with the period of liability for registered baggage and cargo, but did not have time to consider fully all aspects of the problem.

In his draft of March 1951 the Reporter proposed that the provisions of the
Article 13—Liability of other persons

Subject to the provisions of Article 14,

(a) when carriage is performed by an aircraft operated by a person other than the one in whose name the agreement to carry was concluded, each of such persons shall be liable as a carrier in accordance with the provisions of this Convention;

(b) in so far as servants and agents of the carrier are personally liable for damage arising under any of the circumstances provided for by this Convention, they shall be entitled to the same limits of liability as those applicable to the carriers;¹⁹

(c) the aggregate amount of the liability of all persons referred to in this article shall not exceed the limits of liability applicable under the provisions of Article 15, except to the extent that unlimited liability may be imposed upon anyone under the circumstances referred to in Article 15(7).

Article 14—Successive Carriers

In the case of carriage performed by several carriers successively, as mentioned in Article 2(4),

(a) each carrier who accepts any passenger, cargo or baggage for carriage shall be subject to the liability, and entitled to the defences and limits of liability of a carrier under the provision of this Convention in relation to that part of the carriage which is performed by him;

(b) subject to the provisions of Article 13(1), actions for the death, wounding, bodily injury or delay of a passenger or the loss of, damage to or delay of hand baggage may be brought only against the carrier who was performing the carriage during which the occurrence giving rise to the

Convention should extend from the moment cargo or registered baggage entered the custody of the carrier at the place of departure until the moment when it was delivered to the consignee or passenger at the place of destination. Although this principle was eventually rejected at the Eighth Session of the Legal Committee, after a tie vote, it might be desirable to give further consideration to this question. While it would have the effect of imposing the Convention rules upon certain surface carriage prior to departure by air and perhaps after arrival at the airport of destination, it would have the advantages of increasing international uniformity, providing greater certainty as compared with uncertainty as to where loss or damage occurred and eliminating present difficulties due to multiplicity of insurance. Under the above paragraph three separate periods have to be dealt with by different systems of law and different insurances, namely

(a) the period from the time of collection by the carrier until the cargo and baggage reach the airport, which is governed by the law of the place of departure;

(b) the carriage from airport to airport, which is governed by the law of the Convention so far as Contracting States are concerned;

(c) the period from the time when the cargo and baggage leave the airport of destination until they are delivered to the consignee or passenger at some point remote from the airport, after having been cleared through Customs. The carriers and their insurers desire the Convention rules to extend over the whole period during which the cargo and baggage are in the custody of the carrier because of the practical and legal difficulties involved by the other system.

¹⁹A majority of the Sub-Committee was of the opinion that, despite the fact that the Convention did not otherwise purport to establish or govern the personal liability of servants or agents as distinct from that of the carrier, provision should be made whereby the servant or agent would not be subjected to a risk of greater limits of liability than that to which the carrier would be subject for the same damage. The Sub-Committee also took into account the possibility that if the servant or agent were personally liable in such circumstances without limit, even in the absence of deliberate breach of duty, in practice the carrier might likewise be subjected to unlimited liability by reason of being required by law or agreement to indemnify the servant or agent. A minority was opposed to this sub-paragraph on the ground that since the conditions and circumstances under which servants or agents were personally liable were governed by national law and might differ substantially from the rules of liability of the carrier established by the Convention, the entire matter of the personal liability of servants or agents should be left to the respective national laws.
damage happened, unless by express agreement with the passenger another
carrier assumed liability for such carriage;
(c) a passenger or consignor, as the case may be, shall have a right of
action for the loss of, damage to or delay of registered baggage and cargo
against the carrier who performed the first stage of the carriage, and the
passenger or consignee, as the case may be, shall have a right of action
against the last carrier who should have performed the carriage under the
agreement to carry. Furthermore each may take action against the carrier
who was performing the carriage during which the occurrence giving rise
to the damage happened. The carriers concerned shall be jointly and sev-
eral liable to the passenger or to the consignor or consignee, as the case
may be.

Article 15—Limits of liability

(1) For all claims arising from the death, wounding or bodily injury
of a passenger the liability of the carrier shall be limited to a maximum
sum of [125,000] francs.
(2) For all claims arising from the delay of a passenger the liability
of the carrier shall be limited to a maximum sum representing [double]
the fare paid for the whole journey mentioned in the agreement to carry
concerned or the sum of [. . . .] francs, whichever is the greater.
(3) For all claims arising from the loss of, damage to or delay of hand
baggage, the liability of the carrier shall be limited to a maximum of
[5,000] francs for each passenger.
(4) For all claims arising from the loss of, damage to or delay of reg-
istered baggage or cargo, the liability of the carrier shall be limited to a
maximum sum representing [250] francs per kilogram of the gross weight
of such piece or pieces of the registered baggage or cargo as are actually
lost, damaged or delayed; provided that, where the loss or damage of one
piece of registered baggage or cargo affects the value of other pieces in-
cluded in the same baggage check or air waybill, the gross weight of such
pieces shall also be taken into account for determining the limits of liability.
(5) In any of the above cases a higher limit of liability may be fixed
by special agreement between the carrier and the passenger or consignor of
cargo, as the case may be.
(6) The sums mentioned in francs in this Article refer to a currency
unit consisting of 65 1/2 milligrams of gold of milesimal fineness 900. These
sums shall be converted into national currencies at the rate of exchange
effective on the date of judgment, or the date when the settlement of the
claim is agreed.
(7) The limits referred to in this Article shall not apply if it is proved
that the damage resulted from a breach of duty committed by the carrier,
or by a servant or agent of his, acting within the scope of his employment,
which breach of duty involves a deliberate act or omission committed either
with intent to cause damage or recklessly not caring whether or not damage
was likely to result.21

20 The sums shown in brackets in this Article are those of the existing
Convention, except the references in paragraph (2). The Sub-Committee has
taken no decision on these amounts in view of the fact that the Committee has
referred this aspect of the matter to the Council.
21 The majority of the members of the Sub-Committee considered that, in
order to constitute conduct which would involve unlimited liability, there must
be three elements, namely: the act or omission must be intentional or deliberate;
it must be a breach of duty; and it must have been done either with intent to
cause damage or recklessly not caring whether damage was likely to result. The
majority, therefore, considered that the phrase "breach of duty," the idea of
which is comprehensible in all three languages and therefore correctly tran-
lateable, should be included in the formula of this important paragraph, because
otherwise both of the first two elements above referred to might not be ade-
Article 16—Defences of carrier

Notwithstanding the provisions of Article 12,

(a) the carrier shall not be liable for damage if he proves that he and his servants or agents took all proper measures to avoid the damage, or that it was not practical for him and them to take such measures;*

(b) and delay in the carriage concerned, or deviation from the agreed or normal route thereof, for the purpose of saving life, or for reasons of safety or on account of meteorological conditions, or other reasonable deviation on technical grounds, shall not constitute a breach of the agreement to carry, and the carrier shall not incur any liability merely by reason of such delay or deviation.

(c) A carrier shall not be liable under this Convention for damage if he proves that the damage was caused solely by the person who suffers the damage. When the damage is contributed to by the person who suffers the damage, the amount thereof shall be reduced to the extent the damage was contributed to by the negligence or other breach of duty of the person who suffers the damage.

(4) The expression "person who suffers the damage," for the purpose of paragraph (3), shall include the servants and agents of such person when acting within the scope of their employment, and the person whose death or injury is asserted to give rise to the damage.

Article 17—Nullity of provisions which conflict with those of this Convention

(1) Any provision of an agreement entered into before the damage occurred which tends to relieve the carrier of liability or to fix a lower limit than that which is prescribed by this Convention or by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless in respect of the carriage of cargo, arbitration clauses are allowed, subject to the provisions of this Convention, if the arbitration is to take place within one of the jurisdictions referred to in paragraph (1) of Article 22.

(2) The nullity of any provision of an agreement pursuant to paragraph (1) shall not involve the nullity of the whole agreement, which shall otherwise remain subject to any applicable provisions of this Convention.

(3) Nothing in this Convention shall prevent the carrier from refusing to enter into an agreement to carry or from imposing conditions or regulations which do not conflict with or infringe the provisions of this Convention.

*For a critical comment on this language, see 16 J. AIR L. & COM. 14.
CHAPTER V—CLAIMS, ACTIONS, JURISDICTIONS, PRESCRIPTION AND EXTINGUISHMENT

Article 18—Claims

(1) Receipt without complaint by the person entitled to delivery of cargo or baggage is *prima facie* evidence that the same was delivered in good condition and in accordance with the document of carriage.

(2) In the case of damage to or partial loss of baggage or cargo, notice of claim must be given within [five] days from the date of receipt by the person entitled to delivery in the case of baggage and within [seven] days from the date of receipt in the case of cargo. In the case of delay, notice of claim must be given within fourteen days, and in the case of total loss, within thirty days from the date when, according to the agreement to carry, the baggage or the cargo should have been placed at the disposal of the person entitled to delivery, or from the date when the person entitled to claim first had knowledge of the loss or delay, whichever is the later.22

(3) In the case of the death, wounding or bodily injury of a passenger, the notice of claim must be given within one year from the date of the occurrence giving rise to the claim.

(4) In the case of delay of a passenger, notice of claim must be given within fourteen days of the occurrence giving rise to the delay, or of the termination of the journey during which the delay is alleged to have occurred, whichever is the later.

(5) Notices of claims under this Article must be given by or on behalf of the person or persons entitled to claim, in writing, dispatched to the carrier concerned, within the appropriate period, unless the carrier admits in writing that he had knowledge of the claim within such period.

(6) Failing notice of claim within the appropriate time as aforesaid, no action shall lie against the carrier unless failure to dispatch the notice is due to fraud of the carrier, his servants or agents.

(7) The expression “days” for the purpose of paragraphs (2) and (4) mean consecutive calendar days.

Article 19—Death of the person liable

In the case of the death of the person liable, as provided by this Convention, an action for damage will lie, in accordance with the provision of this Convention, against his estate.

Article 20—Actions under this Convention

(1) In all cases of liability provided for under Article 12 of this Convention, an action for damages, however founded, may be brought only subject to the conditions and limits prescribed by this Convention.

(2) The provision of the preceding paragraph, in so far as concerns claims under Article 12(1), are applicable without prejudice to questions as to which persons have the right to take action and what are their respective rights.

Article 21—Limitation of compensation

No Contracting State shall impose on any carrier any obligation to pay as compensation, by way of insurance or otherwise, an amount greater than as provided in this Convention.

22 It will be observed that the periods for making claims in respect of damage to or partial loss of baggage and cargo have been extended to five and seven days respectively. The Sub-Committee considered that even seven days might not be sufficient in the case of a claim by a consignor in respect of cargo delivered to a far distant country, and recommends that the Legal Committee should give further consideration to this matter. It is desirable that the periods concerned should be limited as much as possible in the interests of carriers who have to make inquiries, but that they should not be so short as to impose hardship on passengers and consignors. In the meantime the Sub-Committee desires that the periods suggested should be regarded as tentative only.
Article 22—Jurisdiction

(1) Unless the carrier otherwise agrees, an action for damages may be brought only before a court in the territory of a Contracting State in which either:

(a) the defendant has his ordinary residence, his principle place of business or a branch establishment through which the contract of carriage was made; or

(b) the place of destination is situated.

(2) If there is no court in a Contracting State available under the provisions of paragraph (1), then action may be taken in a court of the State in which the place of departure is situated.

(3) If there is no court available under the above provisions, the restrictions of paragraphs (1) and (2) shall not apply.

(4) If more than one court is available to the plaintiff under the provisions of paragraph (1), he shall be entitled to choose between them, but shall not be entitled to take action in more than one court at the same time in respect of the same cause of action.

(5) In any case in which actions are brought both by a consignor and consignee of cargo, the carrier shall be entitled to have the actions consolidated in the court in which the first action was commenced.23

Article 23—Prescription and extinguishment

(1) Subject to the provisions of paragraph (2), all rights to compensation shall be extinguished if an action is not commenced within two years from the date of the occurrence giving rise to the claim.

(2) The period referred to in paragraph (1) may be suspended or interrupted on grounds determined by the law of the Court trying the action; but in any case all rights of action shall be extinguished on the expiration of three years from the date of the occurrence giving rise to the claim.

Chapter V—Formal Provisions

Article 24

As between Contracting States which are also High Contracting Parties to the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12th October 1929, the present Convention supersedes the said Convention.

Article 25—Uniform interpretation

Contracting States shall co-operate to secure, as far as possible, a uniform interpretation of this Convention.24

Chapter VI—Final Provisions25

23 The Sub-Committee contemplated adding a further paragraph to this Article reading:

(6) “Any of the Courts mentioned in this Article shall be competent to try actions under this Convention.”

Eventually it was considered that the additional paragraph might be misconstrued, and that it was not necessary because it appeared certain that Contracting States would arrange for their courts to be available and to exercise jurisdiction for the trial of actions in respect of claims arising under the Convention.

24 The Sub-Committee considered the desirability of inserting another paragraph in this Article to provide for the submission of questions of interpretation of this Convention to the International Court of Justice, through the Council of I.C.A.O., since some members of the Sub-Committee thought that such a system might facilitate uniform interpretation of the Convention. The majority, however, considered that such a provision would have little, if any, value because it is unlikely that cases arising under this Convention would become the subject of disputes between States.

25 Articles 26 to 32 have been added to complete the draft. They are taken from the Reporter’s Draft of March 1951 and follow the form of the draft of the revised Rome Convention settled in January 1951. They have therefore not been re-examined by the Sub-Committee.
ATA Technical Conference. All factors affecting “the last three minutes of flight” during the approach and landing of aircraft will be considered as a major item on the agenda of the International Air Transport Association (IATA) Technical Conference at Copenhagen, Denmark, from May 5 through 16. Experts in the various technical fields will combine in an exhaustive analysis of all problems associated with approach and landing, which is considered to be the crucial phase of airline safety effort.

The Technical Conference will bring together the ranking communications, operations, engineering, maintenance and meteorological experts of the airlines for an annual review of all phases of technical policy. After screening by the IATA Technical Committee, Conference recommendations will be implemented by the airlines themselves or will go forward as recommendations to ICAO and other international agencies and to national governments. A special feature of the Copenhagen Conference will be a three-day symposium on airborne radio equipment, in which representatives of governments, manufacturers and communications agencies are expected to participate.

Short Distance Navigational Aids. In preparation for ICAO Regional Air Navigation sessions covering the Europe-Mediterranean region at Paris during March, the IATA Technical Committee approved at a January meeting in Madrid a revised statement of policy on short distance navigational aids and meteorological communications. Both subjects have important bearing on overall proposals for improved air traffic control in Europe by the use of “controlled air routes” already put forward by IATA. The Committee recommendations include the following:

VOR (VHF Omnirange): VOR should be installed as soon as practicable at regular and alternate international airports and along international routes wherever the operational requirements dictate the use of a short distance navigational aid featuring selective tracking and static-free reception, or where VOR alone or in conjunction with other systems, can most adequately meet agreed operational requirements in the area concerned. However, VOR is not considered essential where prevalent favorable weather, low traffic density and low noise level do not justify this kind of aid. VOR installations, where desirable, shall be completed as soon as possible and should be kept in operation until 1960.

MF/DF (medium frequency direction finding): IATA should offer no objection to the withdrawal of MF/DF from localities where improved radio aids to final approach and landing and en route navigation are installed and found to be satisfactory.

VHF/DF: Use of this aid should be decided upon regionally and on the basis of local conditions. Unless other operational applications demand otherwise, VHF/DF equipment should be so located that it could also serve as a let-down aid.

VHF/DF Fixer Networks: As far as local conditions permit, these networks should be tied in with appropriate units of air traffic control services so that the information they provide can be fully utilized.

GEE: IATA should support continued operation of GEE chains until they are functionally replaced by an ICAO-approved aid over the area of existing chains in the EUM region. However, IATA should not recommend any additional GEE installations.

Ground Surveillance Radar: IATA should strongly support the installation of ground radar in conjunction with navigational aids provided in terminal areas where traffic density is high or the multiplicity of converging routes creates a difficult traffic control problem. Such installations should be encouraged without regard to the ultimate development of secondary radar.

VAR (visual aural range): This simple two-course version of VOR should be supported by IATA for use where it can meet less stringent operational requirements in a particular location.

DECCA: IATA should not oppose use of existing Decca chains for air navigation on a regional basis, provided that its use is not made manda-
tory on international operators and that no navigational or air traffic control procedures are introduced which would discriminate against aircraft which are not Decca-equipped. At the same time, on the basis of a further Flight Technical Group report that it is still impossible to make a thorough operational evaluation of Decca, the Committee took the attitude that IATA should not support the installation of new Decca chains.

In the field of meteorological telecommunications, the Committee approved a final report by communications experts on the number and distribution of land-line and teletype circuits necessary for the transmittal of adequate weather information in the European region. This was in turn based on studies by meteorological and operations working groups of the actual operating requirements for weather data and the volume of communications traffic which this would generate. While the latter studies were conducted on a world-wide basis, the recommendations approved by the Committee represent the first complete evaluation for any specific region of the world.

Helicopter Operations. In the first formal discussion of helicopters by the world airline organization, the IATA Technical Committee indicated a belief that rotary wing aircraft, now being used in scheduled operation by at least two member airlines, deserved study as a regular medium of commercial transportation for distances up to 300 miles as soon as the development of larger, multi-passenger types makes their use economically feasible. The discussion revealed the need to initiate action for the solution of problems currently facing operators and suitable steps were taken. Future planning, the Committee felt, should try to insure that airline helicopters would operate directly into city centers, that they could be run at rates competitive with the costs of operation of fixed-wing aircraft, and that their ground organization will be less costly.

Changes of Communications Frequencies. IATA member airlines were urged to check with their governments as soon as possible on practical plans to move air-ground communications (aeronautical mobile service) from their present frequency to new parts of the spectrum assigned by the International Telecommunications Union (ITU). Carefully-coordinated planning is necessary, the Committee said, because the recent ITU Conference at Geneva had decided that the transfer of frequencies would have to be made by bilateral or regional government agreements, and could not be done by a simultaneous and comprehensive changeover. At the same time, the IATA Communications Sub-Committee was directed to study the implications of the transfer as they will affect operational planning and radio equipment conversion for the airlines.