1930

Germany and the Aerial Navigation Convention at Paris, October 13, 1919

Alfred Wegerdt

Follow this and additional works at: https://scholar.smu.edu/jalc

Recommended Citation
Alfred Wegerdt, Germany and the Aerial Navigation Convention at Paris, October 13, 1919, 1 J. Air L. & Com. 1 (1930)
https://scholar.smu.edu/jalc/vol1/iss1/1

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit http://digitalrepository.smu.edu.
GERMANY AND THE AERIAL NAVIGATION CONVENTION AT PARIS, OCTOBER 13, 1919*

Dr. Alfred Wegerdt.†

I.

1. Even before the end of the war, the Allied and Associated Powers started deliberation for a Convention on civil aerial navigation, which was signed October 13, 1919, and under the title of “Convention concerning the regulation of the aerial navigation of the 30th of October, 1919,” which became effective July 11, 1922. The abbreviation CINA of the organ established to carry out its orders The International Commission on Aerial Navigation has been applied to the Convention itself so that one says in a general way that a state is member of the CINA or has adhered to it, which means not only that it is represented on the Commission but also that it has signed the Convention or has adhered to it. It is to the CINA that section 5, part XI, Aerial Navigation, of the Treaty of Versailles refers which provides that civil aircraft owned in the Allied and Associated countries shall have until the first of January, 1923, uncontrolled liberty to fly over and land on the territory and the territorial waters of Germany imposing, in article 319, on Germany the obligation of enforcing measures to insure that German aircraft flying over German territory shall conform to the same rules as those established in the Convention concluded between the Allies and Associated Powers relatively to aerial navigation; article 320 also says that the obligations imposed on Germany in part XI, shall remain effective until January 1, 1923, unless before then, Germany shall

*Reprinted with permission from Dr. Wegerdt, from 2 Zeitschrift für das Gesamte Luftrecht, 25-49, and translated at the AIR LAW INSTITUTE by William Bigler.

†Dr. Alfred Wegerdt is Ministerial Counselor at the Ministry of Communications of the Reich, Berlin.

[1]
have been admitted to membership in the League of Nations or shall have been authorized, with the consent of the Allies and Associated Powers, to adhere to the Convention concluded between the said Powers relatively to aerial navigation. Since Germany had not adhered January 1, 1923, either to the League of Nations, or to the CINA, this part XI, section V, of the Treaty of Versailles has remained effective until this date.

2. It is not surprising that the CINA, which has been deliberated on by the Allied and Associated Powers during the war and which was established in very close connection with the Treaty of Versailles should also have been dominated by the spirit of the Treaty of Versailles. This appears very clearly in the original wording of article 5 which prescribes that no contracting State should admit, except by special and temporary authorization, the flight above its territory of aircraft not possessing the nationality of one of the contracting States. Germany which naturally considered this regulation as being directed against it, was not to be considered on the footing of equality to cooperate in the development of international aerial navigation. However, if we examine this regulation objectively, we must admit that it was directed not only against Germany and its former Allies, but against every State, even against a State forming part of the Allied and Associated Powers, if it did not adhere to the CINA. It soon became evident that this paragraph 5 was a grave error for the CINA itself. As a matter of fact, not only Germany and the Powers which had been its allies during the war, but the former neutral States which had been obligated to maintain commercial relations with Germany, remained outside the CINA, so that almost the whole of central Europe (Germany, the Netherlands, Switzerland, Denmark, Sweden, Norway, Austria, Hungary) showed no disposition to join the CINA. And these States were precisely those that took a very keen interest in the development of civil aerial navigation and were developing it with great energy. It is therefore not surprising that the CINA at its second meeting, October 27, 1922 in London, that is to say only three months after its establishment, should have decided on a modification of article 5, according to which the contracting States could allow aircraft of a non-contracting State to fly over their territory if a particular convention had been concluded between the two States, that is to say a Convention such as Germany had concluded with most of the former neutral States and such as these had concluded among themselves. As the modification of this article could only become effective after having been accepted by
GERMANY AND CINA CONVENTION

all the contracting States and as the last of the contracting States only ratified it in December, 1926, it was on the 14th of December, 1926, that it became effective. It was not until this date that the States that were members of the CINA were enabled to create the basis of a reciprocal aerial navigation with Germany and the former neutral States by the conclusion of general conventions on aerial navigation. Since then Germany has signed general agreements with France, Belgium, Great Britain, Italy, and Czechoslovakia, all States that are members of the CINA.

3. The original text of article 34 of the CINA also breathed the spirit of the Treaty of Versailles by regulating the membership of the Commission, that is to say, of the organ established to direct the work of the CINA, so that the United States of America, Great Britain, France, Italy and Japan should have two votes and all the other States only one vote, the five States precited were, taken together, to have a minimum number of votes which, multiplied by five, would give at least one vote more than the total number of votes of all the other contracting States. This rule which scarcely harmonizes with the democratic spirit of which the former Allied and Associated Powers boast, was soon modified. At the fourth meeting of the CINA in London, June 30, 1923, when the Convention had been effective less than one year, this rule was modified so that henceforth each State would be entitled only to one vote (Great Britain with its Dominions and India counting as one State, although Great Britain with Ulster, Canada, Australia, South Africa, New Zealand, Indian and the Irish Free State are considered as individual contracting States among the twenty-five members of the CINA and have the right to be represented in it by one representative). The only trace of the original anti-democratic wording is found in the fact that the United States of America, France, Italy and Japan continue to have two representatives, while all the other States only have one representative. But we must remember, in this connection, that the United States of America has signed the CINA but has not ratified it and that, in all likelihood, it never will ratify it. The modification of article 34, only became effective December 14, 1926, because some of the contracting States were slow in ratifying it.

4. The text of articles 41 and 42, also shows us, in conformity with the spirit and the meaning of the Treaty of Versailles, Germany, should it desire to adhere to the CINA, would see principles applied to it quite different from those applied to the other States. As a matter of fact, while the former neutral States have only to
notify their adhesion by diplomatic means to the Government of the French Republic, which informs all the signatory or adhering States of the addition to their ranks, the article in question prescribes that the adhesion of Germany and of its former allies shall not depend on a simple notification, but on the consent of the States that are members of the CINA on the condition that it should be accepted by at least two-thirds of the States that have signed and ratified the CINA and of the States which have adhered to the CINA without signing the Convention, the vote taking place in conformity with the rules mentioned in the above named article 34.

It is not necessary to point out particularly that the article 320 precited of the Treaty of Versailles which foresaw the possibility of the adhesion of Germany to the CINA before January 1, 1923, did not facilitate the adhesion of Germany but confirmed the right of the Allied and Associated Powers to continue to fly over and land on German soil after January 1, 1923, just as they had granted that right until the date mentioned in section V, part XI.

With the exception of articles 5, 34, 41, 42 mentioned above, the CINA constitutes a carefully weighed, valuable and successful attempt to regulate internationally the public law of aerial navigation; this attempt deserves to be highly appreciated for it tries to govern the extensive domain of civil aerial navigation at a period when no one had any experience in the matter and when it was impossible to foresee its surprising development.

5. Since the signing and confirmation of the CINA the situation, from the German point of view, has been modified considerably. The conventions of Paris on aerial navigation of May 22, 1926, between Germany and the Powers represented at the Conference of Ambassadors have abolished in substance the restrictions on construction imposed on Germany by the London ultimatum of May 5, 1921; and besides articles 5 and 34 of the CINA have been modified. By the Treaty of Locarno and by its entry in the League of Nations, Germany proved to the whole world that, wherever peaceful international co-operation takes place and where this co-operation is considered essential, it desires, not to remain isolated, but to co-operate actively. And in what field would close international co-operation be more necessary than in the field of aerial navigation? Men may be of the opinion that efforts made to govern internationally all possible fields, go too far, but one cannot say that of aerial navigation, which can only exist if flying is not stopped by national frontiers. Germany must therefore ask itself the question if and under what conditions it can adhere to
the CINA or to a similar organization. Before answering this question, it is necessary to realize the nature and the aim of the CINA, as well as of other international regulations of public aerial law.

II.

1. The CINA has undertaken the task of regulating public aerial law on an international basis and of creating a single public aerial law for the whole world, so as to end the obstacles which might otherwise hinder aerial navigation at the moment of crossing national frontiers. With this in view, it has first established in its chapter I, general principles of which the most important is that of the notion of the sovereignty of a State over the atmospheric space above it, a principle recognized now as part of the law of nations, as well as the right of inoffensive flight in all the contracting States. The general principles also admit that each contracting State may establish forbidden zones and that aircraft flying above such a zone, must land at the nearest aerodrome.

2. In chapter II which deals with the nationality of aircraft, article 5 which, as we have shown (above I, 2), was directed particularly against Germany, has been modified in such a way that, from the German point of view, it had become satisfactory. Articles 6 to 10 prescribed that aircraft had the nationality of the State on the registers of which they were entered, that they can only be entered if they belong entirely to citizens or subjects of the State, that aircraft cannot be simultaneously entered in several States, that all contracting States shall exchange copies of the entries and of the cancellations of entries, and that every aircraft must carry a mark of nationality and a mark of entry.

3. Chapter III deals with certificates of airworthiness and with operating licenses and prescribes in articles 11 to 14 that every aircraft must have a certificate of airworthiness and that the crew must be provided with certificates of competency furnished or rendered valid by the State whose nationality the aircraft possesses, that each contracting State shall recognize as valid such certificates of airworthiness and certificates of competency, that no radio apparatus can be part of the equipment of an aircraft without a special license and that the aircraft of a certain tonnage must be provided with wireless telegraphy apparatus.

4. Chapter IV deals, in articles 15 to 18, with the permission to fly above a foreign territory. These articles specially regulate the right of transit (the following of a prescribed route, landing
at aerodromes when the State over which the flight takes place prescribes it, the establishment of international routes for aerial navigation); and aerial cabotage, that is to say the right for each State to promulgate, for the benefit of its own aircraft, reservations and restrictions concerning the commercial transportation of passengers and of merchandise, and it is stipulated that aircraft may be protected against seizure for violation of patents by the deposit of a sum of money.

5. Chapter V contains, in its articles 19 to 25, the rules which must be observed on taking off, when flying and on landing. In detail, it prescribes that all aircraft engaged in international flight must be provided with the certificate of registration, a certificate of airworthiness, with the certificate and licenses of the officers and crew, with the list of the passengers, the bills of lading and the manifest, the log-books and the license for the radio apparatus; the government officials will have the right to visit the aircraft and inspect the prescribed documents, on landing and on taking off; that the aircraft can benefit by the same assistance which is furnished to domestic aircraft; that the salvage of apparatus lost at sea shall be governed by the principles of maritime law; that all aerodromes serving public aerial navigation shall be available under like conditions to the aircraft of other contracting States; finally, that each contracting State must insure obedience to the rules established by the CINA concerning lights and signals, flight, ballast, flight above or in the vicinity of aerodromes by all aircraft flying above its territory and provide for the pursuit and the punishment of violators of the rules and regulations.

6. Chapter VI deals, in articles 26 to 29, with prohibited freight. According to these articles, aircraft of States which are members of the CINA must carry, when flying over foreign territory, neither explosives, nor arms, nor munitions of war. Foreign aircraft may not even transport such articles from one point to another in the interior of the contracting States. Rules governing the use of photographic apparatus are left to the discretion of each contracting State. A contracting State may also formulate rules to restrict the transportation of objects other than explosives, arms and munitions.

7. Chapter VII regulates in articles 30 to 33 State aircraft. Military aircraft and, among others, postal aircraft, customs aircraft and police aircraft are considered, naturally, State aircraft. All government aircraft, with the exception of military, customs or police aircraft, are subject to the rules of the CINA. An aircraft
commanded by a military man is considered a military aircraft. Military aircraft must not fly over the territory of another contracting State without special authorization. They enjoy, in principle, the privileges generally granted to foreign warships, unless they have made a forced landing or have been ordered to land.

8. Chapter VIII regulates in article 34 the membership and the powers of the International Commission on Aerial Navigation. This membership has already been explained (above I, 3). The most important features of article 34 are that the modification of the Convention itself is provided for, but only after having been accepted by all the States which are members of the CINA to become effective, (this rule was the reason why there was considerable delay before articles 5 and 34 in their new form could become effective) and the deliberation concerning the rules given in Annexes A to G, the amendments of which require a two-thirds majority and obligate all the States of the CINA without the need of any ratification.

9. Chapter IX contains, in its articles 35 to 43, final rules. By these rules the member States of the CINA agree to co-operate as much as possible in the following international measures:

(a) Collection and distribution of statistical current or special meteorological information in conformity with Annex G;

(b) Publication of unified air maps, as well as establishment of a uniform system of aeronautical landmarks in conformity with Annex F;

(c) Use of wireless telegraphy in aerial navigation, establishment of the necessary stations for radio telegraphy as well as obedience to the international regulations governing wireless telegraphy.

This chapter also provides that besides following the general regulations relating to customs, which formed the subject of a special agreement in Annex H, each contracting State may enter into special agreements with another State relating to customs, police, postal service or any other subject relating to aerial navigation. Finally these rules prescribe the method to follow for the settlement of any disagreement between two or more States concerning the interpretation of the Convention and of the Annexes. According to article 38, the regulations of the CINA have no bearing on the liberty of action in case of war of the contracting States, either as belligerents, or as neutrals.

According to articles 39, the Annexes A to H constitute a
supplement to the Convention and have the same value that the Convention has.

Now what are these Annexes?

(a) Annex A governs the marks to be carried by the aircraft, in eight sections which deal with the following subjects: generalities, location of the marks on the craft, supplementary location for the marks of nationality and their sizes, the marks of registration, their sizes and the type of letter, etc., the space between the mark of registration and the mark of nationality, its maintenance in good condition and the preparation of the lists of the marks.

(b) Annex B deals with the certificate of airworthiness, the minimum conditions of which shall be determined at a later date by a regulation of the CINA. These minimum requirements concerning airworthiness and the utilization groups have just been decided upon.

(c) Annex C deals with the log-books and specifies the data which must be found in the journey log, the aircraft log, the engine log and the signal log, as well as the form, the establishment and the method of keeping the log-books.

(d) Annex D contains the rules for lights and signals and detailed definitions of the general rules of aerial navigation, ballast, the special rules governing flight above or near aerodromes.

(e) Annex E specifies the minimum conditions required to obtain certificates and licenses for pilots or navigators and regulates in detail the licenses of pilots of land and sea planes, of pilots for free balloons, pilots of airships, of navigators and the international medical requirements as to fitness for aerial navigation.

(f) Annex F regulates the question of the preparation of international maps and aeronautical landmarks.

(g) Annex G deals with the distribution of meteorological information.

(h) Annex H deals with customs regulations.

The final regulation governed the ratification and adhesion to the Convention, articles 41 and 42 drawing a distinction, as we have already pointed out between the powers that have not taken part in the war and those that did take part in the war that are not signatories of this Convention.

10. The supplementary regulations regulate the service, prescribe the method of organization of the office of the permanent secretary, of the budget, of the publication of air maps, of the methods to follow in the settlement of any disagreement between States and the relations with the League of Nations.
At the 14 meetings of the CINA which have so far taken place, regulations have been formulated governing the form and the contents of the certificates of airworthiness, of the journey log, of the certificates and licenses, of the radio service on aircraft, on the institution of a central bureau for the general aeronautical map, on the aeronautical landmarks, on the uniform international use of aeronautical terms and expressions, on the definition of an international atmosphere-type, on first-aid medical kits on aircraft and, finally, on the specification of aircraft and the minimum conditions for their recognition as airworthy.

11. According to all this, the CINA is an international Convention which regulates civil aerial navigation from the point of view of the sovereignty of the State, between its members. With this aim in view, it has defined general principles which can only be modified by the consent of all the members. It has, besides, established in the said Commission an administrative organ to which numerous administrative tasks have been assigned (notably the centralization of all information of importance for aerial navigation and its distribution to all its members) and to which has been intrusted, as its most important task, the improvement of the regulations which are still in process of evolution (minimum conditions for airworthiness, instruction and fitness of pilots, flying rules, signals, flares, etc.) As the regulations formulated on these subjects positively obligate all the members, the CINA, that is to say the Commission, has now the attributes of an international legislative body and, ipso facto, powers such as any other international organization would hardly have. The rules concerning airworthiness and the instruction of pilots are minimum conditions, so that any national legislation is empowered to prescribe more stringent requirements.

The regulations of the CINA have also passed into the national legislation of member States, and it is not surprising that they have been partially adopted by almost all the other nations, since the CINA was established at a moment when it can be said that there was hardly any aerial legislation in any country.

The following nations are at present actual members of the CINA:

(a) In Europe: among the western nations, Belgium, France, Holland, Great Britain with Ulster, the Irish Free State, Italy, Portugal; then the Netherlands; among the Balkan states, Bulgaria, Greece, Jugoslavia, Rumania; among the Nordic states, Denmark, Sweden; finally Czechoslovakia, Poland and the Saar;
(b) In America: Canada, Chile, and Uruguay;
(c) In Africa: The South African Union;
(d) In Asia: Japan, Persia, Siam, India;
(e) In Australia: The Commonwealth of Australia, New Zealand.

The following countries are not members of the CINA: Spain, then the greater portion of Central Europe: Norway, Germany, Switzerland, Austria, Hungary, Luxemburg, Albania, then the greater part of Eastern Europe: Lithuania, Latvia, Estonia, Finland and Soviet Russia. In Asia, the most noteworthy missing country is China which, it is true is a signatory State, but has not ratified; besides, almost the whole of the American continent is missing, since the United States of America, Bolivia, Brazil, Cuba, Ecuador, Guatemala, Nicaragua and Panama has signed the Convention of the CINA but have not ratified it.

III

On the first of November, 1926, the Ibero-American Convention of Aerial Navigation which is called CIANA from the initials of the designation of the Convention (Convenio Ibero Americano de Navegación Aérea). The States taking part in this Convention are: Spain, the Argentine, Bolivia, Colombia, and Uruguay are also members of the CINA, but not the other States, especially Spain. Spain did not adhere to the CINA because the contracting States are not treated by it in the same manner. It is interesting to take note of the fact that the CIANA represents almost entirely a literal translation of the CINA and of its Annexes A to G, and only deviates from it where the text of the Convention had to be harmonized with the principle of the equality of all the contracting States. Thus it is that article 5 which, in the CINA, restricts even in its present form the right of the States that are members of the CINA to conclude agreements with foreign countries, proclaims that the States which are members of the CIANA enjoy complete liberty to authorize or to prohibit flying in the air above their territories by aircraft of States which are not contracting members.

Article 7 of CIANA which demands the registration of aircraft under the nationality of the owner or owners, contains two additions worthy of notice.

"If an Ibero-American State, signatory of the Convention, observes a discordance between the requirements fixed in the
present article, which are essential to decide the nationality of an aircraft and the provisions of its own national legislation it can formulate a reservation on the point at issue in a protocol to be added to the Convention.”

“The State which makes this reservation regulates independently the registration of its aircraft and the flying in the air over its territory and its territorial waters, but it must in no case grant to the other States that have signed or adhered the advantages provided in the present Convention, unless it be to aircraft which have conformed to all the conditions expressly stipulated in the first or the second paragraph of the article which precedes.”

In conformity with the fundamental idea of the CIANA, article 34 ordains, naturally, that each contracting State shall send only one representative to it and have only one vote.

Article 36 does not refer as the CINA does, to a special Annex H for the regulation of customs matters, but merely proposes to make them the object of a special agreement. Until then, the laws and regulations in force in each country may be applied.

According to article 37, in case of disagreement, it shall not be referred for decision to the World Court at the Hague, but to a Board of Arbitration.

Articles 41 and 42 naturally do not mention the war. Article 41 definitely proclaims the principle that non-Ibero-American States may also adhere to the Convention.

Article 43 provides that the fact that a State belongs to the CIANA does not necessarily compel it to renounce previous conventions regulating the same subject (here consideration was given to the CINA on account of Chile, Portugal and Uruguay).

In other respects the CIANA conforms word for word with CINA.

Until the present time, the CIANA has only been ratified by a small number of the signatory States.

Although political motives may have incited Spain to conclude this Convention and although this State, after having left the League of Nations, may have started the new project somewhat hurriedly so that the adoption of important modifications is not yet quite satisfactory, it is significant that the States which are members of the CIANA must have the conviction that they could not propose anything better than what had been developed by the CINA.
In the month of May, 1927, the Pan-American Commission for Aerial Navigation met in Washington; it launched a plan for a Pan-American Convention on Aerial Navigation. At this Conference there were representatives of the governments of the Argentine, Bolivia, Chile, Colombia, Costa Rica, Cuba, San Domingo, Guatemala, Mexico, Panama, Peru, Salvador, the United States of America, Uruguay and Venezuela. These were mainly the same States which had concluded six months before the CIANA. Among the signatory States of the CIANA, the only ones missing in the Pan-American Convention are Brazil, Ecuador, Nicaragua and Paraguay, leaving out of the question Spain and Portugal. On the other hand only Salvador and the United States of America joined the States that were members of the CIANA. The Pan-America Commission for commercial aerial navigation did not have as easy a task as the Ibero-American Conference. It also took the CINA as a basis but it undertook numerous modifications which are not without importance. It does not follow the order in which the regulations of the CINA have been published and deviates from it notably on the following points.

1. The colonies are not mentioned as being territories the air above which is under the complete and exclusive sovereignty of each State.

2. It is expressly stipulated that the Convention applies only to private aircraft.

3. The equal rights granted domestic and foreign aircraft to which flying over prohibited zones is forbidden, only relate to aircraft used in international commercial aerial navigation.

4. Each contracting State may prescribe the aerial itinerary which the aircraft of other contracting States must follow in the vicinity of prohibited zones or in the vicinity of certain specially designated aerodromes. The prescribed route must be precisely defined and all concerned must be informed of it.

5. The certificate of registration must indicate the name of the aerodrome which the aircraft generally uses.

6. Aircraft are to be registered in conformity with the laws and special prescriptions of each contracting State.

(The Convention thus avoids, in an action quite different from that of the CINA, meddling with the internal legislation of the contracting States in this matter and prescribes that an aircraft
GERMANY AND CINA CONVENTION

shall only be registered if it belongs entirely to citizens of the interested State.)

7. Certificates of airworthiness may only be issued by the State whose nationality the aircraft possesses. This certificate of airworthiness must attest to the States in which the aircraft is to fly, that, in the opinion of the authorities issuing the certificate, this aircraft satisfies the conditions, relative to airworthiness, of all the States mentioned in the certificate.

(We doubt the possibility of the conscientious issuance of such a certificate.)

8. Each contracting State reserves the right to inspect the aircraft of other contracting States to determine whether they possess the airworthiness prescribed by the laws and ordinances of public safety in the State interested. If the authorities consider that these aircraft are not airworthy, they can forbid the aircraft to fly over the territory of the State.

9. The certificate of competency of the pilots must not only certify that they meet all the requirements in their own countries but that they have also successfully passed an examination on the regulations concerning aerial navigation of each foreign country above the territory of which they are to fly.

10. Reciprocal certificates of competency shall be fully honored if they have issued in conformity with the law and regulations of the other contracting States.

11. The customs regulations have been partly incorporated in the Convention; they are therefore not dealt with, as in the CINA, in a special Annex.

12. It is fundamental that aircraft, their crews, their passengers and their freight should be subject to the regulations of the countries over which they fly relative to entrance, departure, to customs, police, and public safety.

13. The installation and the exploitation of the aerodromes are to be in conformity with the regulations of each State, equal privileges to be accorded to all.

14. Until the promulgating of special laws, the pilot of an aircraft will have the rights and obligations appertaining to the captain of a merchant vessel according to the special laws of each State.

(This clause, if it is to govern the responsibility of the pilot, should be incorporated not in international public aerial law but in national civil legislation.)
15. Damages to be paid for injuries to people or to things in a State over which aircraft fly shall be fixed in conformity with the laws of each State.

16. The contracting States agree to make every effort to secure the concordance of the laws and the regulations relating to aerial navigation.

17. Any disagreement between two contracting States relative to the interpretation or the execution of the Convention shall be regulated by an arbitral board. The States interested in the settlement of a disagreement may designate the governments of other contracting States as arbitrators.

Among the numerous resolutions which have adopted for this Convention, the most important is the following one due to a suggestion made by the American representative:

"Each of the contracting States agrees that its citizens and commercial societies and corporations of other contracting States shall enjoy the same rights as those of every foreigner according to the laws of the State interested, that they can cause to be registered and placed in active service aircraft on condition that the societies or corporations shall submit, at the time of their foundation and during their exploitation to the requirements of the interested States by international legislation."

This somewhat obscure text (so far no official documents have been published giving the debates of the Pan-American Commission for commercial aerial navigation) seems to say that the different contracting States cannot cause the registration of aircraft to depend on the nationality or owners according to their internal legislation. This proposal of the United States of America therefore to be hostile to the principle enunciated in article 7 of the CINA relating to the nationality of aircraft.

The Pan-American Convention provides no organ corresponding to the Commission of the CINA and of the CIANA to which might be confided the very extensive powers of the Commission relating to the modification at any time of the flying rules, the conditions applicable to airworthiness and aptitude for pilots, uniform signals, etc. The contracting States only agree to cooperate as far as possible in the Pan-American measures concerning the collection and distribution of statistical, current or special meteorological information and in the publication of uniform air maps, the establishment of a uniform system of signals, and finally, the use of wireless telegraphy.
GERMANY AND CINA CONVENTION

The Pan-American Congress at Havana, February, 1928 took up anew the Pan-American Convention on Aerial Navigation and put the finishing touches to a plan which takes into account previous arrangements, agreed upon, substantially, in May, 1927, at Washington, on the basis of the agreements reached by the CINA.

V.

1. We must therefore admit that even now there is a danger that public aerial law will evolve in a different way in the interior of three groups of States, quite apart from the fact that the States which are not members of either of these Conventions, such as Germany, Switzerland, Austria, Hungary, Norway, Finland, Lithuania, Estonia, Latvia, the United Soviet Republics, Turkey, etc., may direct the progress of public aerial law in a direction which leads away from unification. That it will not be possible for the world to deprive itself of a universal public aerial law, if the hopes for an increase in the power of aircraft and of the security of aerial navigation are fulfilled and if trans-oceanic flights become a reality. The CINA would have been destined to become the sole organization for the creation of a universal public law if it had known, at the hour of its birth, how to impregnate itself with its real nature as an international legislative organ placed above all contingencies, knowing among its members neither conquerers nor conquered, neither former allies nor adversaries, neither great powers, nor smaller powers. Under such circumstances, Germany and the other Powers which have kept out of it could have adhered purely and simply and it is probable that it would not have been necessary to start the CIANA and the Pan-American Convention for Aerial Navigation. However, it does not seem that it is now too late to banish the dangers which threaten the uniform evolution of public aerial law. It appears to be still possible for the CINA, which constitutes the basis of the public aerial law created so far in each country, to become the only universal organization. As a matter of fact, the CIANA has only been ratified so far by a few States, while the Pan-American Convention has been ratified by none. We may therefore still hope that the States which are members of the CIANA—Spain inasmuch as it is the preponderating Power of the Ibero-American group, first among them—may adhere to the CINA, if some of its rules, of which there are only a few, are re-written. We refer to those in which the CIANA differs from the CINA. And if the States which form this CIANA should decide to join the or-
ganization of the CINA, could not the States which form the Pan-American Convention and which, with the single exception of the United States of America, are almost the same as those of the CIANA do so also? To tell the truth mere invitation to adhere in the interests of the unification of public aerial law would not suffice. If it desires to play the part of the only organization, the CINA must be amended; the modification which would only have been of minor importance until the foundation of the CIANA, are now much more important, since the conclusion of the Pan-American Convention. In fact, the thoughts which have found their realization in these last Conventions, will also be discussed in the other States which, until now, belong to neither of these organizations, and perhaps also by the States belonging to the CIANA and the CINA; these problems will sooner or later have to be solved.

2. The considerations which have been discussed above have undoubtedly prompted the Secretary of State of the section of public law in the Italian ministry of foreign affairs, M. Giannini, to declare to the juristic Commission of the Fourth International Congress on Aerial Navigation at Rome, in October, 1927, that in his opinion the time had come to call for diplomatic conference to revise CINA thoroughly. The object of this proposal is to give to the CINA a form which will make it possible for all States to adhere to it is welcomed with pleasure from the German point of view. As a matter of fact, Germany, whose aircraft aid pilots daily fly over numerous countries in a regular air traffic, has a very important interest in the unification of the public law on aerial navigation. Germany is willing to cooperate with all its strength, because it considers a uniform public aerial law to be a necessity for the entire world. If the proposal of M. Giannini is realized, we may hope that, all the States interested in aerial navigation, jointly with those that are already members of the CINA, will meet to try to give to the CINA—while retaining the regulations which have proved valuable—the wording which will correspond to results of experience based on the development which aerial navigation has undergone in recent years and will probably continue to enjoy in the future, just as about 50 States accepted, in 1925, the invitation of the French Government to attend the Conference on private aerial law in Paris. There might perhaps be a simpler and therefore more practical and more speedy way, and that would be not to wait for the convocation of a diplomatic conference, but to let the CINA call together a Conference to which it would invite, not only its own member States, but all the States which are not members of its organization.
3. In the course of the deliberations concerning an energetic revision of the CINA, Germany would not have to propose, for the elaboration of the Convention itself substantial modifications. It would only have to demand clarifications and supplementary rules where the promotion of liberty and facilitation of traffic demand it, paying due attention to national interests; on the other hand it would be necessary to propose suppressions and modifications which seem to be out of harmony with the character of the CINA as an international legislative organ. The following would be the questions to the discussion of which it would attach great importance:

(a) From the German point of view, nothing could be gained by reopening the discussion of the article of the CINA which regulates the question of the sovereignty of the air, the question whether the principle of complete liberty of aerial navigation (the air is free) or that of complete and exclusive sovereignty on the atmospheric space shall be adopted. The principle, established by the CINA, of exclusive sovereignty has been admitted into general public law and has until now given proof of its value in such a way that few States would be disposed to abandon the principle of the complete and exclusive sovereignty in favor of the idea of unrestricted liberty. Should the evolution of aerial navigation in the future be imperiled by the notion of complete and exclusive sovereignty, there would be time to study the question closely. In any case, it would seem that this moment has not arrived.

On the other hand, it would be essential to clarify ideas relating to the colonies in Article 1, paragraph 2.

In this respect, there will be another question which will need clarifying particularly as, as far as I know, it has so far been discussed nowhere. Article 1 of the CINA has established a principle, which has become a principle of public law, to the effect that each State possesses complete and exclusive sovereignty on the air space above its territory, its colonies and its territorial waters and it has been moreover recognized that no State has sovereignty over the air space above the open seas and above territories belonging to no State, but no regulation has been formulated in the matter of flight above straits. This question is of special importance for transoceanic flight which is being developed and it might be regulated in the sense of freedom of the air space above the straits more or less as it was done at the Lausanne pact of the 24th of July, 1923, and in the "Convention concerning the control of straits," adopted at that time.
(b) It might be useful to provide, as was done in the suggestions offered by the Pan-American Convention (see above IV, 2), that the Convention only deals with private aircraft. On the other hand, as the "Regulation of maritime routes" prescribes for vessels of war the observation of the same rules of navigation and the same lights and signals which are used by merchant vessels, government aircraft, whether military, postal aircraft or customs aircraft, will have to obey the rules of flight and of landing to which private aircraft are subject as well as all other rules established in the interest of safety of aerial flight. In this connection, it is remarkable that the common principles stipulated by the maritime States at the Congress of Washington in 1889, to avoid collisions at sea, principles based on the "Regulations for preventing collisions at sea," promulgated by England in 1862 and which were introduced in Germany by an Ordinance to prevent collisions of vessels on the sea, dated May 9, 1897, and are in force since the first of May, 1906, as "Ordinance on maritime routes" (signed on the fifth of February, 1906), have been introduced into a number of States not by international treaty but as matters of national common law. The Pan-American Convention on Aerial Navigation seems also to prefer this method of action as far as concerns the system of the CINA.

(c) It would also be necessary to examine with care the eventuality of completing Article 3, which deals with the right of establishing prohibited zones, in the sense that government aircraft to which it applies, may be permitted to fly over such zones for special purposes, in the service of various departments of the governments. This ruling appears for the first time in the German-Spanish agreement; it seems to be well justified and necessary in the interest of the State. In this relation, it might be discussed whether the clause of the Pan-American Convention relating to the equality of domestic aircraft and foreign aircraft in the matter of the interdiction of flight over prohibited zones, which only applies to aircraft used in international commercial aerial navigation does not seek to deal with the same thought (see above IV, 3).

(d) Among the general principles of the CINA there is one missing, which should give the contracting States the right, in case of extraordinary circumstances, to restrict or to limit temporarily, with immediate effect, flight above its territory in whole or in part. A rule of this kind seems necessary, since otherwise it would be impossible to forbid the aerial traffic of foreign aircraft at a time of interior disorder.

(e) If it is not desired to adopt the theory that Article 5 (see
above I, 2) is intended to tempt nations to adhere to the CINA, for which reason it would be impossible to deny a certain justification for the article, Germany could demand the suppression of this article, since a contracting State must have full liberty of regulating its relations with non-contracting States in the way it considers necessary. As a matter of fact, the text of article 5 even after modification contains an obligation which is not at all usual in international treaties.

(f) With regard to Article 6, according to which aircraft has the nationality of the State in the registers of which they have been entered, it would be well to examine if one speak of the nationality of aircraft when, as a rule, the expression "nationality" applies only to persons.

(g) Article 7 of the CINA gives rise to the most serious objections. The wording follows:

"No aircraft shall be entered on the register of one of the contracting States unless it belongs wholly to nationals of such State."

"No incorporated company can be registered as the owner of an aircraft unless it possesses the nationality of the State in which the aircraft is registered, unless the President or Chairman of the company and at least two-thirds of the directors possess such nationality, and unless the company fulfills all other conditions which may be prescribed by the laws of the said State."

As far as paragraph 1 is concerned, it seems that this principle has been adopted in the national legislation of almost all the States; we also find it in the German law on aerial navigation of August 1, 1922. A principle has apparently been transferred into the domain of aerial navigation which is in force with regard to the flags of merchant vessels, without consideration of the fact that rules which are justifiable in the case of a big ship cannot be applied with equal reasons in the case of a little sport plane, so that this rule may cause great injury to aerial navigation. It has therefore already been proposed to register the holder of the aircraft instead of the proprietor. The registration of the holder instead of proprietor could not be accepted by Germany, since the concept of a holder is not sufficiently clear to justify inscription in a public register. The difficulties which present themselves if the registration of aircraft is made to depend on the nationality of the owner could be more easily avoided by the decision that the proprietor of aircraft must have his domicil in the country in which the aircraft should be registered. In the present condition of the law, it is impossible for a foreigner to secure, in the country in which he resides, the registration of aircraft under
his ownership, since he is not a citizen or subject of the country. Consequently, if he desires to fly in his own aircraft, he can only fly in one which has been registered in the country of his birth. This means that in case of damage to important parts of his aircraft, affecting the airworthiness of the craft, it is necessary for him to obtain a new license from the government of his country. These difficulties would be avoided if it were only necessary for the owner of the craft to have his legal residence in the country in which the craft is registered. A foreigner living in Germany could thus acquire, without any trouble, a German or a foreign aircraft and then have its airworthiness and the authorization to fly as well as the registration attended to in conformity with the German laws and regulations. All the difficulties which now delay new and necessary verifications of the aircraft would disappear immediately.

There are just as serious objections to Article 7, paragraph 2. The contracting States, inasmuch as they are bound together from the standpoint of public law by the Convention, must introduce this principle in their national law. For Germany, this would entail the most serious objections, because the rule would oppose the German law on societies. In conformity with the general interpretation of German law, the German law on aerial navigation of August 1, 1922, foresees that collective societies and companies owned by shareholders are assimilated to German citizens, if those members or shareholders are German citizens; collective societies, registered corporations and juristic persons, if they have their main office in Germany; societies owned by shareholders, only if the shareholders who are personally responsible are all German citizens. The German law is therefore based on this principle, enforced in German law, that anonymous societies, companies with limited responsibility and registered corporations may be entered in the German registry of aerial navigation as owners of aircraft, if they have their headquarters in Germany. A foreigner who desires to register aircraft in Germany cannot, as the law now stands, do so as a physical personality, but can do so if he starts a limited liability company for the purpose which must be immediately registered as owner of the aircraft if the said company has its legal office in Germany.

According to the German interpretation, the whole of Article 7 would have to be replaced by a rule prescribing only that aircraft may only be registered in a contracting State if the craft owner resides in the State, without having to determine whether the owner is a physical person or a juristic person. This point of view will probably prevail sooner or later, as is shown by Article 8 of the Pan-
American Convention which prescribes that the immatriculation of aircraft can only take place in conformity with the laws and special regulations of each contracting State (see above IV, 6). This Convention at least grants to each contracting State the right of prescribing under what conditions the registration may take place. However, to prevent the principle borrowed from the CINA and legally enforced in most countries from continuing to produce its effects in virtue of national legislation, it would be necessary to prescribe in Article 7 that the registration must not depend on the nationality of the proprietor.

(h) As for Article 9 it will be necessary to discuss whether the monthly exchange, which is prescribed in it, copies of entries and cancellations of entries in the register during the preceding month is really necessary, because this formality means considerable administrative work.

(i) According to Article 13, certificates of airworthiness must be recognized as valid by other States. This prescription apparently only relates to reciprocal traffic, so that the certificate of airworthiness which an aircraft carries during a flight in another contracting State cannot be objected to in that State. In this connection it will be necessary to examine carefully whether it would not be good policy to accept the suggestions presented by the Pan-American Convention (see above IV, 7, 8). In practice, the member States of the CINA seem to have given a broader interpretation to Article 13, by recognizing the validity of a certificate of airworthiness furnished by another State even when the aircraft is not flying with the marks of nationality of that contracting State, but has been sold to a citizen or to a subject of another country and therefore must be registered in that country. The progress of aerial navigation will be promoted when it is decided that certificates of airworthiness must be recognized as valid not only when they apply to craft flying with the marks of a foreign nationality on them but also at the time when such craft are imported if national legislation does not impose for airworthiness more drastic rules than the minimum conditions fixed by CINA.

(k) Article 15, paragraph 3, according to which the establishment of international aerial navigation routes is subject to the consent of the States over which flights are proposed, needs clarification. Even in the member States of the CINA, we find great confusion in the interpretation of this rule. This was demonstrated in the negotiations between Poland and Czechoslovakia for the creation of a Polish aerial navigation line from Warsaw to Vienna, in
the attitude of Persia towards Imperial Airways, Ltd., as well as in the debates of the International Juristic Committee on Aviation at Madrid in the month of May in the current year. Germany would like this rule to be adopted here because it is found in all its agreements as to aerial navigation, as it has proved useful and has also been accepted by the International Juristic Committee on Aviation, during its last meeting at Madrid, for the Air Code, namely, that the installation and exploitation of regular lines of aerial navigation from the territory of one contracting State to the territory of another contracting State or in the air above it, with or without landing en route, must be made the subject of a special agreement between the contracting States interested in the matter.

(1) According to Article 18 aircraft of a contracting State passing through the atmosphere above another contracting State, including the necessary landings and stops, can avoid seizure for violation of a patent, a design or a model on the deposit of a security. Inasmuch as regular aerial navigation has meanwhile developed far beyond expectation and has become incorporated in regular general public traffic, it seems that it would be desirable to study the possibility of extending to aerial navigation, to avoid all traffic interruption, the principle, only, partially in national legislation, of the illegality of seizure of the rolling stock of railroads (see, for example, the German law of May 3, 1886, Reichsgesetzblatt, page 131) and to assure this principle as one of public law in completing article 18 of the CINA in an appropriate manner.

(m) It might be desirable to attempt to regulate in a clause after Article 18, the legal conflicts the settlement of which has been attempted in the German agreements on aerial navigation by means of the general clause according to which aircraft, their crews, their passengers and their freight, while on the territory of another contracting State, shall be subject to the obligations which result from legislation in vigor in that State, notably in the matter of customs regulations and other taxes, import and export interdictions, transportation of passengers and of merchandise, and public order and security. The Pan-American Commission for commercial aerial navigation, in the plan of the Pan-American Convention, established in May, 1927, had attempted to regulate as extensively as possible the conflicting points, but the Convention concluded at Havana in the month of February of the present year limited itself to the prescription that rules relating to arrival and departure, to customs, to police and public health must be observed as well as to the settlement of points at issue as to damages inflicted on persons or on
things in the State over which a flight had taken place (see above IV, 12, 15).

(n) In Article 19, the expression “bill of lading,” which is a
document of maritime law, cannot be transferred purely and simply
into the domain of contracts for aerial transportation, it should
therefore be supplanted by “letter of aerial transportation.”

(o) Article 23 will have to be discussed, which prescribes that
salvage of aircraft lost at sea, shall be regulated save when other-
wise specified, by principles of maritime law, to determine whether
it is desirable to continue the regulation of salvage of aircraft lost
at sea according to the principles of maritime law. This rule is dis-
liked by aerial navigation concerns because they have to pay a very
large salvage indemnity. For navigation companies it is not suf-
ficient because the maximum amount of the indemnity, that is to
say the value of the aircraft salvaged, does not cover the salvaging
expenses.

(p) In Article 31, according to which any aircraft commanded
by a military man commissioned to this effect, is considered a mili-
tary aircraft, the expression “commissioné” can be misunderstood.

(q) As for Article 32 which foresees that no military aircraft
may fly over the territory of another contracting State unless spe-
cially authorized so to do, it will be necessary to examine the ques-
tion whether military aircraft, in case of flight over another country,
shall enjoy, in principle, the privileges usually granted to foreign
vessels of war, as this article provides. In this case also we may be
permitted to doubt whether it is desirable to transfer in such a
simple way the rules and practices of maritime law to the domain
of aerial navigation.

(r) Article 34 regulates the membership and the competency
of the International Commission on Aerial Navigation. If it is
affirmed in paragraph 1 that this International Committee is placed
under the control of the League of Nations, this doubtless only
means that the Convention expressly recognizes Article 24 of the
pact of the League of Nations, according to which all bureaus to be
created at an ulterior time for the regulation of international affairs
shall be placed under the authority of the League of Nations. To
avoid misunderstandings it might perhaps be desirable to clarify the
relations between the CINA and the League of Nations.

If certain States such as the United States of America, France,
Italy, and Japan are granted two representatives in the Commission
Germany should demand two representatives also. But, on the
other hand, it could see no objection to limiting each State to one representative.

Apart from its functions as international legislative organ, the Commission, as far as the modification of Annexes A to G is concerned, has been entrusted with the collection of information in the fields of wireless telegraphy, of meteorology and of aerial medicine, publication of air maps and under the rules of Annex F, as well as the furnishing of expert opinions on questions submitted to it by the States. It might be possible to extend still further the field of activity of the CINA. The following might become new activities: the establishment of principles for the recording of statistics on aerial navigation, elaboration of principles for investigations in case of accidents happening to aircraft outside their own countries, elaboration of the principles to govern the responsibility of a temporary user of aircraft for its insurance, which is also a question of public aerial law (article 29 of the German law on aerial navigation of August 1, 1922); in a word, the attributions of the CINA could be conceived in such a manner that all the problems concerning sovereignty, which require international regulation, might be considered within the competency of the Commission, so that in future no other international conferences representatives of States would be necessary apart from those of the CINA.

Inasmuch as international cooperation must be rationalized, an attempt might be made to incorporate in the CINA the International Technical Committee of Juristic Aerial Experts (called CITEJA from the initials), which was instituted by the International Conference on Private Law of Paris in 1925, which has been entrusted with the preparation of the future international conferences of private aerial law by the elaboration of projects concerning the objects of international private aerial law in order to create one single universal code. The fundamental difference between the two organizations however consists in the fact that the CINA has established and rendered effective a uniform public aerial law which can be amended and completed at any moment by the CINA in a manner that is binding on its members, while the CITEJA only proposes plans for conventions on private international aerial law and recommends their adoption by an international conference. The resolutions reached by these conferences are not binding on the participating States but must be ratified, each State having the right to decide whether, because of its internal condition, it shall or shall not adhere to the Convention.
GERMANY AND CINA CONVENTION

The organization and activity of the CITEJA are therefore fundamentally different from those of the CINA. This state of affairs would not be modified even if the CITEJA were incorporated in the CINA. The only reason which would seem to justify the consideration of such an incorporation would be the rationalization of international cooperation, since, frequently, the representatives of the States on the Commission of the CINA are the same as those of the CITEJA and since the truth is that if the CINA has not been entrusted until now with the task of the CITEJA, it is because a limited number of States are members of it, hardly one-half of those who accepted the invitation of the French Government to take part in the International Conference on Private Aerial Law in October, 1925.

When examining article 34, it will be impossible to avoid the question of the following principle: is an organ such as the International Commission of article 34 necessary? We have pointed out its importance (above II, 11). But one fact is worthy of consideration; the Pan-American Convention renounces such a Commission or an organ possessing legislative functions. This may seem to be a backward step. If it is not considered advisable to give up the international control of minimum conditions of airworthiness, of instruction and of aptitude for pilots, of flying rules, of signals, lights, etc.; that is to say, the international control of all things the uniformity of which is necessary in the interest of the development and of the safety of aerial navigation, an organ with the power of improving and adapting the conditions of aerial navigation seems to be necessary in the present status of the evolution of flight. Otherwise, it would be preferable to abandon the decision of these questions to national legislation, because the necessity of calling together a diplomatic conference to modify the Convention and the slow progress of ratification of amendments and alterations would hinder the adaptation of rules to the needs of aerial navigation. But to allow these questions to be settled by national legislation alone would seem to me impossible because it would cause irreparable damage, it might even give a fatal blow to aerial navigation which can only develop internationally. In the examination of this problem, the judgment of the States of the CINA could be relied on because they are well able to appreciate the activity of their Commission.

(s) In a Convention meeting to discuss the establishment of universal public aerial law, it would, of course, be undesirable to draw a distinction between the States which have and which have not taken part in the World War. The reference to the war in
Article 41 should be eliminated and Article 42 would therefore have no further meaning.

(t) Since the Annexes to the Convention can be modified at any time by the Commission, the States which are not members of the CINA, which feel inclined to cooperate in its revision with the object of joining it later on, would only have to investigate at first to what extent the Annexes need at the present time modifications in order to permit them to become member States. As far as Annex H is concerned, in the interest of regular commercial aerial navigation and in conformity with the International Convention for the simplification of customs formalities of November 3, 1923, it will doubtless be possible to present proposals which would take into account the needs of flight better than the present rules of the CINA.

(u) According to the rules, publications of the CINA must be issued in French and in English. As a matter of fact, they are also published in Italian. Germany must insist that the German language be represented, recognized as having the same rights. Spain will demand similar treatment for the Spanish language. As all this would render the work of the CINA not only slower, but increasingly expensive, Germany might propose that all the publications be issued in one language only, the French language. In this respect, the question might be examined whether in the matter of aerial navigation the solution might not be arrived at which was reached in the international Convention on the transportation of passengers and merchandise by rail of October the 23, 1924, which provides expressly that the Convention, in conformity with diplomatic practice, should be formulated and signed in the French language to which would be joined a German and an Italian translation which would be considered official translations although, in the case of divergence in the text, the French text would be authoritative. But as it would undoubtedly be difficult to reach an agreement with regard to the languages to be used for the annexed translations the only solution would be to propose that the official text should be in French.

If we consider the matters above mentioned, of which only a few are of substantial importance and involve the question of principle, it will be seen immediately that Germany considers the CINA to be not only an appropriate basis for a single organization to be created, but as the one organization which, being the creator of international public aerial law, should alone be called upon to create universal public aerial law. In discussing the points to which others might be added by other States, it is not so much a question of winning in each debate as it is for each State interested in international
cooperation in a certain domain to have the opportunity of cooperating on a basis of equality in the realization of this international cooperation. If the CINA pays no attention to the warning of M. Giannini, we may perhaps lose the last opportunity of ending fragmentation in the formation of a public aerial law; we may also lose the opportunity of reuniting the entire civilized world in an organization the duty of which should be to create uniform juristic rules for the entire world in the domain of aerial navigation and perhaps initiate international cooperation of the nations in all fields of endeavor.

VI.

We have indicated at the end of the preceding chapter that only States enjoying equal rights can unite to create a common international legislative organ. We may now examine whether Germany, if it participates in a revision of the CINA and undertakes to examine the question of ratification, can be considered as an equal among equals. At present, the answer to this question must be no. In spite of the suppression of limitations in the domain of construction of aircraft, imposed on Germany by the ultimatum of London of May 9, 1921, thanks to the Paris agreement on aerial navigation of May 22, 1926, Germany is still subject, in the matter of aerial navigation, to limitations which apply to Germany, Austria, Hungary and Bulgaria but not to other States.

The following are the questions involved:

1. According to Article 42 of the Treaty of Versailles, Germany is forbidden to maintain or to construct fortifications either on the left bank of the Rhine, or on the right, west of the line drawn fifty kilometers to the east of the river; according to Article 43, the maintenance or the assembling of armed forces, either permanently or in a temporary way, as well as all military manoeuvres, of whatever nature, and the maintenance of any material facilities for mobilization are also forbidden within the zone described in Article 42. It is on these rules that the Conference of Ambassadors bases its interpretation that Germany must not maintain airports in the occupied territories, in the first evacuated zone or in the neutral zone which is said to have been demilitarized, because airports constitute material facilities for mobilization in the sense of Article 43 (decision of the Conference of Ambassadors of December 15, 1920).

In the agreement of Paris on aerial navigation of May 22, 1926, the Conference of Ambassadors, while maintaining the principle expressed in the decision of December 15, 1929, has consented
to the creation of four airports and of twelve other landing fields in the zone mentioned in Article 42, with the exception of the territory occupied at the present time. While the four airports may be provided with all the installations which are prescribed by German legislation or which are considered necessary by the management of the airports for the landing, the taking off and the stay of every kind of aircraft, the twelve landing fields are limited as to size and may only be provided with absolutely essential installations. Is this not a limitation of German civil aerial navigation, applicable only to Germany and not to other States? Commercial aerial traffic in the neutral zone and in the territories occupied needs airports and all installations to insure safety of aerial navigation just as much as they are necessary outside this zone. This is all the more important as the occupied territory is densely populated and the center of economic activities in the Rhineland and the Palatinate which participate in world trade to such an extent that they cannot do without the rapid transportation furnished by aircraft.

2. According to Article 198, the military forces of Germany must include neither military nor naval aviation. To guarantee this obligation, Germany was forced, in the agreement of Paris on aerial navigation of May 22, 1926, which suppressed restrictions of construction, to submit to the following stipulations:

(a) Germany to forbid the construction, the importing or the use of armored aircraft in whatsoever manner or provided with facilities for transporting war materials of any kind such as cannon, guns, torpedoes, bombs or apparatus for sighting or ejecting ammunition;

(b) Germany to take care that German civil aviation should be maintained within limits corresponding to a normal development and that in the matter of commercial aviation subsidies only justifiable sums should be voted for the benefit of craft to be used in pilot schools, as well as sporting aviation;

(c) Germany to forbid the construction or the importing of craft classified as modern sport planes unless they comply with specified demands as to weight, the relation of weight to the power of the motor, the arrangements of the seats, the safety of construction, the speed in rising and the speed of flight at an average elevation;

(d) Germany to forbid the authorities of the “Reich” and the countries forming the Reich to grant subsidies for sporting aviation;

(e) Germany to forbid the instruction and training of pilots for flights which have a military character or aim;
(f) Germany to forbid public authorities intrusted with the organization or the administration of an armed force to enter into any kind of relation with aviation having a military aim; this rule however not to restrict measures necessary for the aerial defense;

(g) Germany to forbid the instruction and the use of members of the Reichswehr in aviation of whatever kind with a few exceptions;

(h) Germany to maintain lists
(1) of factories manufacturing material that can be used for aviation,
(2) apparatus or aviation motors finished or in construction,
(3) of pilots and assistant pilots,
(4) of concerns running aerial lines,
(5) of associations, companies or persons interested in aviation or using craft,
(6) other owners of aircraft;

(i) Germany to forbid aircraft without a pilot;

(k) Germany to forbid the instruction and use of police officers in aviation in the same manner as it is forbidden to members of the Reichswehr;

(l) Germany to forbid the maintenance of police planes.

As long as there is the slightest hope that, inasmuch as Germany has completely disarmed, the Allied and Associated Powers will disarm their aerial forces in conformity with the preamble of part V of the Treaty of Versailles ("In order to render possible the preparation of a general limitation of armaments of all nations, Germany agrees to strictly observe the military, naval and aerial clauses which follow"), it will be possible for Germany, on examining the question whether Germany is to be considered in case of adhesion to the CINA, as enjoying the same rights, to leave for a later date questions which may be considered purely military and relating to Article 198 of the Treaty of Versailles without any connection with the CINA. As a matter of fact, the interest of Germany is not in a reintroduction of military aviation but rather, if at all possible, in its general interdiction, so as to end for all nations the burden which oppresses them in the matter of the terrible possibilities of a future aerial war. But what has the importance of civilian aviation in Germany to do with the interdiction of the maintenance of aerial military forces? Cannot the same thing be said in the matter of the construction of aircraft with the technical characteristics of modern sport planes which are of considerable importance for use as rapid
postal planes? Can the use of public funds to subsidize sport aviation be considered as maintenance of aerial forces? Is there not, on the contrary, a disposition in all countries to popularize the idea of aerial navigation in as wide circles of the population as possible and to facilitate sport flying?

But if German authorities are forbidden to aid sport flying, that means, considering the cost of the craft and the expense of their maintenance, that young men, full of enthusiasm, will be excluded from sport flying, which means that Germans will be prevented from attending international aviation contests, because other States place public funds at the service of sport flying. Can it be denied that the interdiction to use members of the Reichswehr and policemen from sport flying constitutes an attack on the individual and general rights of man, such as one finds nowhere else? Can one deny that an interdiction of this kind, even in its least offensive interpretation, has absolutely nothing to do with Article 198? The same thing can be said about interdiction of aircraft without a pilot. Who can seriously pretend that the use of aircraft by the police must be considered as maintenance of aerial forces within the meaning of Article 198? How could the German police forces participate in the pursuit of international criminals with as good results as up to the present; how could the police discover within the limits of the Reich traces of criminals, use the means at its disposal to reconstruct crimes and confound the criminals in cases of murder and of arson; how could the police effectively superintend aerial navigation and insure obedience to national and international flying rules, if the instruction of pilots and maintenance of aircraft is forbidden to the police? If we deny or question, in the matters just referred to, any connection with the maintenance of military aerial forces, that is no reason for not forbidding aircraft constructed so as to be able to handle war material. Germany raises no objection in principle (above V, 3 p), to the generic definition of military aircraft as it is established in the CINA. But if the CINA retains this generic definition would there not be an exceptional discrimination to the disadvantage of Germany, in case of its adhesion to the CINA? Would this rule not mean that Germany, in conformity with Article 2 of the CINA, would have to grant freedom of flight to the aircraft of all the States of the CINA even if they are armored and constructed so as to be able to serve for the purposes of war? Germany would be obliged to defend itself against this by means of its national legislation. Would it not also be disobeying Article 31 of the CINA according to which only an aircraft commanded by a military
GERMANY AND CINA CONVENTION

man commissioned to this effect is considered to be a military aircraft? From the German point of view would it therefore not be right to demand that, if a special generic rule for military aircraft is in force in the case of Germany, the generic regulations of the CINA relating to military aircraft should be modified so that they would harmonize with the laws and ordinances required by Germany.

3. According to Article 200 of the Treaty of Versailles, aircraft belonging to the powers the troops of which are now occupying the Rhineland should have freedom of flight in the air and the right of landing until the complete evacuation of German territory. This regulation is closely connected with the CINA; for, according to Article 32, paragraph 1, sentence 1, to which Germany raises no objection, no military aircraft of a contracting State may fly over the territory of another contracting State, nor land on it, if it has not been specially authorized to do so. But as long as military aircraft of certain powers have the unrestricted right to fly over Germany, Germany is under exceptional regulation, the sovereignty of Germany is not respected in the same way as the sovereignty of other States is respected.

4. All German laws concerning aerial navigation are applicable, it is true, in the occupied territories, but in addition to these, there is also the ordinance No. 309 which abrogates anew the principle of paragraph 1 of the German law of August 1, 1922, according to which the use of the air space by aircraft is free, by prescribing that a special authorization must be sought from the High Commission of the Rhineland for any flight above or in the occupied territories. Is it not astonishing that German aircraft can fly everywhere, without difficulty, as they choose to do so, over France, Belgium, Great Britain and Ulster, if the regulations contained in the aerial agreements concluded with these countries are respected, but that the occupied German territory may not be flown over either by German aircraft, or by aircraft belonging to France, Belgium or the other countries with which Germany has reached aerial agreements, without a special authorization of the High Interallied Commission for each flight, with the exception of traffic carried on by regular flight services, for which a general authorization may be granted. In case of adhesion to the CINA, Germany would therefore have to admit that it is not in full control of its own country, that it therefore was not able to grant to other contracting States freedom of flight over the occupied territories, in conformity with Article 2, against it has however raised no objection, since the High Inter-
allied Commission has subjected all flights over the occupied terri-
tories to the necessity of a special authorization, whether the aircraft
by German or foreign. Germany should at least make some reser-
vation on this point.

We have mentioned above the points in which Germany is in
law inferior to other States and we have also pointed out that the
purely military limitations must not prevent Germany from coop-
erating within the CINA, even if it is not yet possible to reckon
positively on a definite settlement of this question. But the govern-
ment of the Reich and the Reichstag would doubtless hesitate to
cooprate in this manner as long as Germany is considered as a State
not entitled to enjoy equal rights in the domain of civilian aerial
navigation. They would have to examine and to weigh carefully
the preliminary conditions under which they could consent to ratify
the CINA. The solution of the difficulty which consists in the fact,
that apart from the necessity of a material modification of the
CINA, it is necessary to demand, from the political standpoint, the
establishment of equality of rights in civil aviation, is rendered dif-
ficult by the fact that the CINA itself, as far as the generic defini-
tion of military aircraft (above No. 3) has to be considered, could
only contribute to avoid a difference in the manner in which Ger-
many is treated, while a decision on the subject could only be reached
by other States which, alone, can remedy the situation. If these
authorities consent and are willing to grant to Germany equal rights
with other States in civilian aviation, to such an extent that Ger-
many, in case of adhesion to the CINA, may feel that it is an equal
among equals, not only would the sincere and devoted cooperation
of Germany and of numerous other States be insured for the work
of the CINA, but much would be done for the pacification of the
entire world and for the development of a great civilizing work, the
union of all civilized States, if possible, in a unique organization the
object of which is the creation of a universal public aerial law.