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SURVEY OF COMMERCIAL AERIAL NAVIGATION LAW IN LATIN AMERICA

JULIUS I. PUENTE*

INTRODUCTION

Notwithstanding that international aerial navigation in Latin America has developed much slower than in Europe and the United States as an active accessory to commerce, yet, most of those countries early manifested a lively interest, theoretically, at least, in the formulation of, or adhesion to, an international code for the regulation and control of air traffic:† an interest which has, with many of them, lately assumed a very definite practical attitude, and has prompted the more progressive of them to undertake the framing of suitable local regulations to meet their own specific needs in the novel sphere of commercial aerial navigation. But international conventions in regard to this type of navigation, as all conventions attempting to define or regulate matters of general interest to the Society of Nations, can only set certain basic flexible juristic principles in a broad conceptual mold, leaving with each State the greatest possible latitude of legislative action, within the basic principles laid down, to meet its own peculiar local problems.

The entire body of the territorial law in Latin America on this subject is in a formative state, and as we shall see, there as in Europe and elsewhere, the crude expedient of applying to aerial navigation, by analogy, the rules appertaining to terrestrial and maritime commerce, has been made use of in order to fill the legislative vacuity in the domain of air law: a clear admission, beyond a doubt, of the absence of juridical conceptions suitable to the novel problems con-

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†Convention Internationale de Navigation Aérienne, 1919. See also: Convencion Ibero-Americana de Navegacion Aerea, 1926; Pan-American Convention on Commercial Aviation, 1928.
fronting them. This condition is not surprising, since the Latin American countries cannot possibly be expected to borrow, except in a small measure, the details of this sort of legislation from other quarters, owing mainly, to radical differences between their physical position and problems and the position and problems of other countries. The details must be the outgrowth of the individual experience of each.

We conceive, moreover, that in the same measure as the peculiar problems of a goodly number of those countries have forced them into regional (as contradistinguished from general) conventions on various matters of common concern, such as extradition and consular rights, so the conventions of the future in Latin America on the subject of aerial navigation will be inspired by a due regard for regional interests; and we should not be at all surprised to find there in the course of a few years, a series of local multilateral compacts designed to cope the more effectually with the peculiar problems arising primarily from territorial propinquity, commercial interrelations, or political exigencies. The practical-minded cannot conceive how the pressing problems of aerial navigation can be successfully handled, even in their broad outline, by a group of States brought together by inconsequential intellectual or racial sympathies, as in the case of the Convencion Ibero-Americana de Navegacion Aerea of 1926. In the abstract, Commerce, as the relentless and all-pervading force that it is, cannot be circumscribed by racial or spiritual affinities, and it compellingly demands that the general problems which it presents be handled along entirely utilitarian lines by associations of nations possessing more or less identic material interests. In the view thus taken, conferences composed only of Powers chosen from a particular ethnic group, barely justify their own precarious existence, as they can serve but a theoretical purpose. Being in many cases without common concrete national interests, the nations gathered at these conferences can only engage in an academic restatement of such juristic principles as they might conceive to be of universal application: principles which the same group of Powers may have assisted in framing as members of more general and undoubtedly more authoritative gatherings.

With these introductory considerations in view, we shall attempt in this article, a summary discussion, with a minimum of theorizing, of certain fundamental conceptions of the law of aerial navigation

2. Congreso Boliviano de Caracas, 1911; Central American Extradition Conventions of 1887 and 1907. See Aerial Convention of Aug. 18, 1922, between Argentine and Uruguay.
in Latin America: conceptions which, because of their universality, we could today rightfully consider as part of the common law of nations.ª

I.

JURISDICTION

In a national sense, that is, in the sense of territorial law, there has never been any doubt in Latin America, about the right of the private owner of the soil to ownership also of the atmospheric space above it, conformably with the ancient maxim: *qui dominus est soli, dominus est coeli et inferorum*: a maxim which is reflected in some of their legislation somewhat on the fashion of the Brazilian Civil Code:ª

"The ownership of the soil embraces whatever is above and below it to whatever height or depth, and which is useful to its exercise."

Or, as the Civil Codeª of Venezuela expresses the doctrine: the ownership of the soil "embraces the ownership of the surface and of everything which is above or below the surface." This ownership is "presumed to be exclusive and unlimited until proof to the contrary."ª

Such, then, being the juristic principle with respect to private ownership of the soil and the air space above it, could it be possibly contended that the ownership, or more accurately still, the sovereignty, of the State over the national domain, of which the privately-owned soil is but a fraction, would be less complete, less exclusive or less unlimited than that of the individual over his private estate? Of course no such contention could be successfully maintained anywhere today. The legal presumption that the rights of sovereignty over the air space are as complete and exclusive as over the subjacent territorial domain and jurisdictional waters, is so inescapable as to resemble—in fact, is—a juristic axiom. It is a presumption which flows with perfect naturalness from the principle of self-preservation. Without it the conception of sovereignty would be incomplete.

5. Art. 527.
6. Art. 527, Civil Code, Brazil.
But whatever doubts, in an international sense, might have been formerly entertained in regard to the jurisdiction of a State over the atmospheric space above its territorial domain and marginal seas, the legal opinion of the world on this question has finally become crystalized in the principle definitely enunciated at the International Air Navigation Convention of 1919, in these words:  

“The high contracting parties recognize that every power has complete and exclusive sovereignty over the air space above its territory.”

And in further definition of this principle:

“For the purpose of the present convention the territory of a State shall be understood as including the national territory, both that of the mother country and of the colonies, and the territorial waters adjacent thereto.”

Among the Latin American countries which are either signatories of, or have adhered to, this Convention, are Brazil, Chile, Cuba, Ecuador, Guatemala, Nicaragua, Panama, Peru and Uruguay: of which Chile and Uruguay have thus far ratified it.

The principle of the Convention of 1919 has been restated, with entire subserviency, in Article 1 of the Convencion Ibero-Americana de Navegacion Aerea of 1926, of which Argentine, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay and Venezuela, in addition to Spain and Portugal, are the signatories.

Two years later the Pan American Convention on Commercial Aviation, put forth the following succinct statement of principle on the question of jurisdiction, which also embodies every essential element in the definition of the Convention of 1919:

“The high contracting parties recognize that every state has complete and exclusive sovereignty over the air space above its territory and territorial waters.”

The idea—the juridical principle—of these international compacts has been incorporated—out of abundant caution, we take it—into the municipal laws or regulations concerning aerial navigation, of such of the Latin American countries as have legislated upon that subject. Let us illustrate: in Argentine, the Executive decree of

7. Art. 1, par. 1.
8. Art. 1, par. 2.
September 4, 1925, provides that pending the regulation of the right of aerial navigation by Congress:

"It is necessary to exercise the national sovereignty, exclusively of every other sovereign State, over the air space within our boundaries and jurisdictional waters."

Brazil,¹⁰ and Chile,¹¹ each provides that its jurisdiction shall be absolute and exclusive over the space above its "territory and its territorial waters"; while Cuba,¹² claims that its jurisdiction comprises also "in a complete and exclusive way, the air space over its territory, including therein its jurisdictional waters"; and Venezuela,¹³ pretends to the right to prescribe conditions to regulate the flying and landing of aircraft over its territory, by virtue of the "sovereignty which the State exercises over the air which covers the National Territory and its territorial waters."

The object of these provisions is, of course, to establish, with respect to foreign Powers, a jurisdictional claim over the national domain, including the atmospheric space above it, which shall be at once juridically complete—civilly, criminally and administratively—and politically exclusive. As a lone star in the political firmament of Latin America, the Republic of Panama has incorporated in its Administrative Code,¹⁴ the thesis so earnestly, but hopelessly, contended for by M. Fauchille,¹⁵ in 1910, that:

"The air is free. The State has over it only such rights as are necessary for its proper protection, as well in time of peace as in time of war."

This liberal doctrine, grounded as it is on considerations entirely detached from the realities of international life, may be regarded today as definitely unacceptable. It is at variance with the national instinct of self-preservation.

Not content, apparently, with the general jurisdictional claim to the air space put forward, with but one exception, by every State in Latin America—a claim which, if admitted by other Powers, as it certainly would be, carries with it the entire train of legal consequences flowing from its valid admission under International Law—Chile¹⁶ has made further general provision to the effect that:

10. Art. 1, Decree of July 27, 1925.
"The legal relations subsisting between persons arriving within the limits of its territory and of Chilian territorial waters, on board a national aircraft, shall be governed by Chilian law."

Needless to say, if a person, whatever his nationality, is on board a Chilian commercial aircraft outside the territorial jurisdiction of any other State, or is in Chilian territory, his rights and obligations will be regulated by no other law than that of Chile. That doctrine is too well settled in International Law to admit of the slightest doubt. May we infer the purpose of this section to have been to leave the determination of the relative rights and obligations of persons coming to Chile on a foreign aircraft to the laws of the State where the aircraft is registered? Could it be that Chile is seeking to renounce, by inference, what Brazil has renounced by the following express enactment: 17

"The legal relations subsisting between persons arriving on board a foreign aircraft flying over the national territory shall be governed by the law of the flag of the aircraft, in so far as said law is not repugnant to the national law in force."

This jurisdictional renunciation must be understood, however, as extending to civil acts or relations only, for another portion of the same law provides:

"However, in case of a crime or offense committed on board a foreign aircraft, the Brazilian tribunals shall take jurisdiction if the actor or the victim is of Brazilian nationality, or if the aircraft lands in Brazil after the commission of the crime or offense."

Venezuela, too, has declined to join in any self-abnegation in criminal matters, preferring, rather, to exercise its jurisdictional rights under International Law; and thus she has provided that: 18

"In case of a crime or offense committed by an occupant against another occupant on board a foreign aircraft, when the crime has been committed on the air space of the Republic, or when the victim or the accused are of Venezuelan nationality and no prosecution has been instituted in a foreign country, or if the aircraft has landed in Venezuela after the commission of the crime or offense, the Tribunals of Venezuela shall be competent to take cognizance of the same."

There can be no doubt that the commission of a crime or offense on an aircraft on the aerial domain above the territory and marginal waters of a State, would sustain a demand for the extradition of the accused. 19

17. Art. 46, Decree of July 27, 1925.
But whether we speak of territorial or marginal waters adjacent to the national domain, the question at once suggests itself: What is the exact legal extent of the jurisdiction of a State over the atmospheric space above its marginal waters? Is it the traditional one marine league or three-mile limit of International Law, or can that jurisdiction be rightfully extended for administrative purposes over the air space above those portions of the sea beyond the three mile limitation as the States may also claim to be under their jurisdiction for similar purposes? There is nothing in the wording of the international compacts or local laws relative to aerial navigation to prevent such a jurisdictional extension for administrative objects; although in Venezuela, the definition of the phrase “National Territory,” in the law regulating aerial navigation,\(^{20}\) as “The national territory properly speaking and the territorial waters, when the intent to make a distinction is not clear and express,” would seem to keep the application of the air law well within the jurisdictional limits recognized by International Law. However, “hovering” statutes, as they are now known, exist in many of the Latin American republics. Argentine, for example, claims\(^{21}\) ownership only of:

“The seas adjacent to the territory of the Republic, to a distance of one marine league, measured from the low water mark; but the rights of police for purposes connected with the security of the country and for the enforcement of the revenue laws, extends to a distance of four marine leagues measured in the same manner.”

Chile,\(^{22}\) Salvador,\(^{23}\) and Ecuador,\(^{24}\) have identical Code provisions. There is no doubt that, legislation of that sort, is a valid exercise of the national police power, even in the light of our own judicial decisions.\(^{25}\) Would, then, an act, whether civil or criminal, attempted or committed and aimed at the territorial sovereign by an alien on an aircraft of foreign nationality, over this extension of the maritime belt beyond the three-mile limit, be cognizable by local law, or should it be considered as outside the jurisdictional competency of the local sovereign? Or, suppose that the aircraft is caught flying over the “territorial waters adjacent to the coast”—a phrase which might be construed to include the extension alluded to for administrative and

\(^{20}\) Art. 74, Law No. 13,447, June 21, 1920.
\(^{21}\) Art. 2374, par. 1, Codigo Civil.
\(^{22}\) Art. 593, Codigo Civil.
\(^{23}\) Art. 579, Codigo Civil.
\(^{24}\) Art. 582, Codigo Civil.
\(^{25}\) Church v. Hubbart (1804) 2 Cranch (U. S.) 187, 235; Gillam v. United States (1928) 27 Fed. (2d) 296. See also: Prof. Edwin D. Dickinson’s instructive article, Jurisdiction at the Maritime Frontier, in 40 Harvard Law Rev. 1 (Nov., 1926).
police purposes—without having previously obtained permission to do so, and that it is compelled by the civil and military authorities to land, as it may be in Colombia by express enactment, could the occupants of the aircraft or the craft itself be subjected to the sanctions of the local law for an actual or attempted disregard of its provisions? We believe that the application of those sanctions would be entirely permissible, in view of the admitted power of the State to secure itself from injury even beyond the limits of its territory and marginal waters. There are, as has been truly observed by one of our ablest writers on International Law, many important territorial inhibitions and regulations which are “peculiarly open to violation from the sea. Some territorial interests are inadequately protected by a narrow belt of territorial water and with respect to others it has not been possible to establish at any point an arbitrary and all-sufficient line. Indeed, ever since the modern conception of a territorial belt in the marginal seas first developed, the necessities of territorial security have been an obstacle in the way of agreement upon the width of the belt and have confounded the attempts of publicists or foreign offices to find a solution in simple rules.” And this peculiar susceptibility of certain territorial laws to violation from the open sea, is now immeasurably increased from the air, owing, as we can readily conceive, to the accessibility of the territorial domain of a State by aircraft and the rapidity with which it may arrive and depart over unknown routes; so that the self-same reasons which compel acquiescence in the extension of the marginal maritime belt as a measure of national security, also compel acquiescence in a corresponding extension of the marginal aerial belt beyond the limit ordinarily sanctioned by International Law. The parallel is so exact as to admit of no doubt. The situation is, of course, simplified in a small measure with respect to the signatories, when the extension of the marginal waters for certain purposes has received the sanction of international engagements, as in the Treaty of Montevideo of 1889, on International Penal Law, which says:

“Territorial waters are, for the purpose of penal jurisdiction, those comprised within five miles from the mainland and islands forming part of the territory of each State.

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The future cannot fail to show, in the proportion that air navigation grows in volume and frequency, that vigilance of the aerial approaches to a State will be infinitely more necessary for military and administrative purposes than of the maritime approaches, and that the regulations now in force as to the latter will be clearly inadequate as to the former. We foresee the nations accepting—and necessarily so—a very wide latitude of local policy and practice in the framing and enforcement of aerial “hovering” statutes, a latitude which, we hope, will ultimately result in the adoption of correspondingly broad rules of customary or conventional international law.

II.

FREEDOM OF AERIAL NAVIGATION

Three years before the C. I. N. A. of 1919 met, Panama had established as positive law, the important principle that:

“Aerial navigation is free over the whole territory of the Republic, without any other restriction than as provided by law with respect to certain portions of the atmosphere for the proper security of the State.”

The doctrine of the freedom of aerial navigation which had been ably put forth long prior to the Panama legislation, and has been accepted in principle in the various International Conventions on Air Law, is, in reality, a qualified concession, dictated by considerations of commercial convenience, to the proponents of the rejected theory of the freedom of the air; a concession, we say, because in the strictly juristic sense, there can be no greater right to navigate freely the air superincumbent upon the territorial domain than to pass innocently through the national territory proper without the consent of the local sovereign, expressly or tacitly given.

When the great Convention of 1919 on International Aerial Navigation committed its signatories to guarantee to each other in times of peace the “freedom of innocent passage above its territory to the aircraft of the other contracting States,” and further, that: “Every aircraft of a contracting State has the right to cross the air space of another State without landing,” that eminent body of jurists was simply restating in slightly modified phraseology but without altering the substance, the self-same idea which had gained currency among scholars and had been made part of the positive legislation of Panama.

30. Art. 1968, Codigo Administrativo.
31. Art. 2.
32. Art. 15.
The principle of the freedom of innocent passage was accepted also by the signatories of the C. I. A. N. A. of 1926, and of the Pan American Convention on Commercial Aviation of 1928.

Although the principle of Conventions such as C. I. N. A., C. I. A. N. A., and the Pan American Convention, is to insure as much as possible the continuity of aerial navigation between States, many of the countries of Latin America, as Argentine, Brazil, Chile, Colombia, Cuba, Salvador, and Venezuela, lay it down that in the absence of conventional engagement, no foreign aircraft shall land or fly over the national territory or marginal seas without the permission of the local authorities previously secured. But in Venezuela authority may be “permanently given” in time of peace, for foreign aircraft to land on national airdromes upon conditions fixed at the time the permission is given. This permission is “revocable at any time and will be granted only on the basis of reciprocity.” It may be withdrawn for military reasons, or for reasons of public security, order or convenience, or it may be temporarily or permanently restricted to certain zones.

This conventional right to navigate freely over foreign territory imports also the subsidiary right to transport persons, merchandise and mail between one country and another, subject to such conditions as may be prescribed by the local law of aerial navigation, or the Codes of Commerce. Aircraft engaged in international navigation must arrive and depart over the route prescribed for such traffic. The right of the State to reserve intrastate air traffic to its national aircraft, has been everywhere recognized. This has been done in Argentine and in Brazil. In the latter country

33. Articles 2 and 15.
34. Art. 4.
35. Articles 4 and 5, Decree of Sept. 4, 1925, and Art. 74, Decree of July 30, 1926.
38. Art. 18, Decree 559, March 15, 1920. Art. 16, of Law No. 126, of Dec. 31, 1919, provides: “It is prohibited to cross the frontier in places other than the routes designated, without first taking up the matter with the authorities and securing the corresponding permit.”
40. Art. 17, Decree of May 17, 1923.
43. Art. 34, Decree of April 21, 1928; Art. 3, Law No. 13,477, June 21, 1920.
44. Art. 10, Decree of Sept. 4, 1925, Argentine.
45. Art. 71, Decree of July 22, 1925, Brazil.
46. Articles 575-589, Codigo Commercial Brazileiro.
47. Art. 53, Decree of July 27, 1925, Brazil.
48. Art. 10, Decree of Sept. 4, 1925.
49. Art. 70, Decree of July 22, 1925.
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Coastwise traffic is reserved by the Constitution to national vessels, and this reservation has been extended to aircraft navigation by Law No. 4,911 of January 12, 1925. These restrictions upon intrastate navigation by foreign aircraft have been sanctioned as well by the C. I. N. A., the C. I. A. N. A., as the Pan American Convention.

There are certain conditions which a foreign aircraft entering the national territory must observe, such as: (a) following a designated route; (b) landing at specified customs-airdromes; and (c) departing within a given time. And there is but one cause that will justify a disregard of those conditions, namely, vis majeur.

As measures of public safety, too, the carriage by aircraft of certain articles is prohibited, not only by the international compacts to which the republics of Latin America are parties, but also by their internal legislation. Among these articles may be mentioned: explosives, arms and munitions of war, photographic and cinematographic apparatus, wireless and radiotelegraphic apparatus and materials for radio communication, asphyxiating gas, messenger

51. Art. 19.
52. Art. 16.
53. Art. 16.
54. Art. 54.

55. Art. 6, Decree of Sept. 4, 1925 (No. 2366), and Art. 75, Decree of July 30, 1926, Argentina; Art. 49, Decree of July 27, 1925, Brazil; Art. 15, Decree No. 559, of March 15, 1920, Colombia; Art. 5, Law No. 13,277, June 21, 1920, Venezuela; Art. 18, par. 4, Pan-American Convention on Commercial Aviation, 1928.

56. Art. 78, Decree of July 30, 1926, Argentina; Art. 18, par. 5, Pan-American Convention on Commercial Aviation of 1928.

57. Art. 82, Decree of July 30, 1926, Argentina; Art. 78, Decree of July 22, 1925, Brazil; Art. 23, Decree of Oct. 17, 1925, Chile; Art. 11, Decree No. 559, March 15, 1920; Art. 19, Decree of May 17, 1923, Salvador; Art. 26, C. I. N. A.; Art. 26, C. I. A. N. A.; Art. 15, Pan-American Convention.

58. Art. 82, Decree of July 30, 1926, Argentina; Art. 78, Decree of July 22, 1925, Brazil; Art. 11, Decree No. 559, of March 15, 1920, Colombia; Art. 19, Decree of May 17, 1923, Brazil; Art. 26, C. I. N. A.; Art. 15, Pan-American Convention.

59. Art. 98, Decree of July 30, 1926, Argentina; Art. 79, Decree of July 22, 1925, Brazil; Art. 23, Decree of Oct. 17, 1925; Art. 11, Decree No. 559, March 15, 1920; Art. 30, Decree of April 21, 1928; Art. 27, C. I. N. A.; Art. 27, C. I. A. N. A.; Art. 16, Pan-American Convention.

60. Art. 16, Decree of July 22, 1925, Brazil; Art. 11, Decree No. 559, March 15, 1920, Colombia; Arts. 28, 29, Decree of April 21, 1928, Cuba; Art. 12, Law No. 13,477, June 21, 1920, Venezuela; Art. 14, C. I. N. A.; Art. 14, C. I. A. N. A.

61. Art. 82, Decree of July 30, 1926, Argentina.
doves,\textsuperscript{62} products of State monopoly,\textsuperscript{63} and the like. This general prohibition extends to the carriage of the prohibited articles "either between points situated within the territory of any of the contracting States or through the same even though simply in transit,"\textsuperscript{64} unless special authority is obtained from the governments concerned.\textsuperscript{65}

In like manner, considerations of military reasons or public convenience and security often lead States to forbid aerial flights over designated portions of the national territory. The countries of Latin America,\textsuperscript{66} have all inserted prohibitory clauses of this sort in their local legislation; and the International Conventions,\textsuperscript{67} empower the signatories to legislate in the prohibitory sense mentioned. Article 5 of the Pan America Convention of 1928 authorizes each contracting State to "prohibit, for reasons which it deems convenient in the public interest, the flight over fixed zones of its territory by the aircraft of the other contracting States and privately owned national aircraft employed in the service of international commercial aviation, with the reservation that no distinction shall be made in this respect between its own private aircraft engaged in international commerce and those of the other contracting States likewise engaged." Conformably with the right thus recognized, flights over the following places have been forbidden by the local laws and regulations on aerial navigation of Latin America: cities, villages and other important gatherings,\textsuperscript{68} fortresses and military posts,\textsuperscript{69} and places or territory in a state of siege.\textsuperscript{70}

\textsuperscript{62} Art. 98, Decree of July 30, 1926, Argentine; Art. 78, Decree of July 22, 1925, Brazil; Art. 23, Decree of Oct. 17, 1925, Chile; Art. 19, Decree of May 17, 1923.

\textsuperscript{63} Art. 78, Decree of July 22, 1925, Brazil; Art. 23, Decree of Oct. 17, 1925, Chile; Art. 19, Decree of May 17, 1923.

\textsuperscript{64} Art. 15, Pan-American Convention on Commercial Aviation, 1928.

\textsuperscript{65} Art. 78, Decree of July 22, 1925, Brazil; Art. 23, Decree of Oct. 17, 1925, Chile; Arts. 29, 30, Decree of April 21, 1928, Cuba; Art. 19, Decree of May 17, 1923, Salvador.

\textsuperscript{66} Art. 9, C. I. N. A., 1919; Art. 3, C. I. A. N. A., 1926; Art. 5, Pan-American Convention of 1928.

\textsuperscript{67} Art. 9, Law No. 2366, Sept. 4, 1925, Argentine; Art. 9, Law No. 126, Dec. 31, 1919, Colombia; Arts. 14 and 15, Decree of May 17, 1923, Salvador; Arts. 20 and 21, Law No. 13,477, of June 21, 1920, Venezuela.

\textsuperscript{68} Art. 57, Decree of July 22, 1925, Brazil; Art. 30, Decree of Oct. 17, 1925, Chile; Art. 13, Law No. 126, Dec. 31, 1919, Colombia; Arts. 14 and 15, Decree of May 17, 1923, Salvador; Arts. 20 and 21, Law No. 13,477, of June 21, 1920, Venezuela.

\textsuperscript{69} Art. 13, Law No. 126, Dec. 31, 1919, Colombia; Art. 19, Codigo Administrativo, Panama; Art. 11, Decree of May 17, 1923, Salvador.

\textsuperscript{70} Art. 22, Decree of Oct. 17, 1925, Chile.
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Documents Required

As in the case of maritime navigation, so in aerial navigation, a certain documentation has been generally thought necessary to create a presumption of and establish the \textit{bona fides} of air traffic. Among these documents may be mentioned: (a) Certificate of registration and airworthiness;\textsuperscript{71} (b) Sailing permit issued by the State of registration;\textsuperscript{72} (c) Certificate of fitness and capacity of the commander, pilot, mechanics and other personnel;\textsuperscript{73} (d) Certificate of health;\textsuperscript{74} (e) If it carries wireless apparatus, license therefor;\textsuperscript{75} (f) List of passengers;\textsuperscript{76} (g) Inventory of personal baggage;\textsuperscript{77} (h) Bill of Lading, Manifest and Invoices, if it carries merchandise;\textsuperscript{78} (i) Log book;\textsuperscript{79} and such other books as Aircraft book,\textsuperscript{80} Motor book,\textsuperscript{81} and Signal book.\textsuperscript{82}

\textsuperscript{71} Art. 84, Decree of July 30, 1926, Argentina; Art. 13, par. 1 and 2, Decree of Oct. 17, 1925, Chile; Art. 12, par. (a), Decree No. 559, March 15, 1920, Colombia; Art. 31, pars. 1 and 2, Decree of April 21, 1928, Cuba; Art. 53, par 1, Law No. 13,447 of June 21, 1920, Venezuela; Art. 19, pars. (a) and (b), C. I. N. A.; Art. 19, pars. (a) and (b), C. I. A. N. A.; Art. 10 (a) and (b), Pan-American Convention.

\textsuperscript{72} Art. 1984, Codigo Administrativo, Panama; Art. 53, par. 2, Law No. 13,477 of June 21, 1920, Venezuela.

\textsuperscript{73} Art. 84, Decree of July 30, 1926, Argentina; Art. 13, par. 3, Decree of Oct. 17, 1925, Chile; Art. 12, par. (c), Decree No. 559, of March 15, 1920, Colombia; Arts. 23 and 31, par. 3, Decree of April 21, 1928, Cuba; Art. 1984, Codigo Administrativo, Panama; Art. 53, par. 3, Law No. 13,477 of June 21, 1920, Venezuela; Art. 19, par. (c), C. I. N. A.; Art. 19, par (c), C. I. A. N. A.; Art. 10, par. (c), and Arts. 13 and 14, Pan-American Convention.

\textsuperscript{74} Art. 84, Decree of July 30, 1926, Argentina.

\textsuperscript{75} Art. 13, par. 7, Decree of Oct. 17, 1925, Chile; Art. 12, par. (f), Decree No. 559, of March 15, 1920, Colombia; Art. 31, par. 7, Decree of April 21, 1928, Cuba; Art. 53, par. 8, Law No. 13,477, of June 21, 1920; Art. 19, par. (g), C. I. N. A.; Art. 19, par. (g), C. I. A. N. A.; Art. 10, par. (g), Pan-American Convention.

\textsuperscript{76} Arts. 84 and 86, Decree of July 30, 1926, Argentina; Art. 13, par. 5, Decree of Oct. 17, 1925, Chile; Art. 12, par. (d), Decree No. 559, March 15, 1920, Colombia; Art. 31, par. 4, Decree of April 21, 1928, Cuba; Art. 53, par. 4, Law No. 13,477 of June 21, 1920, Venezuela; Art. 19, par. (d), C. I. N. A.; Art. 19, par. (d), C. I. A. N. A.; Art. 10, par. (d), Pan-American Convention.

\textsuperscript{77} Art. 31, par. 5, Decree of April 21, 1928, Cuba; Art. 53, par. 5, Law No. 13,477 of June 21, 1920, Venezuela.

\textsuperscript{78} Art. 84, Decree of July 30, 1926, Argentina; Art. 13, par. 6, Decree of Oct. 17, 1925, Chile; Art. 12, par. (e), Decree No. 559, March 15, 1920, Colombia; Art. 31, par. 6, Decree of April 21, 1928, Cuba; Art. 1984, Codigo Administrativo, Panama; Art. 53, par. 6, Law No. 13,477 of June 21, 1920, Venezuela; Art. 19, par. (e), C. I. N. A.; Art. 19, par. (e), C. I. A. N. A.; Art. 10, par. (e), Pan-American Convention.

\textsuperscript{79} Art. 12, par. (g), Decree No. 559, March 15, 1920, Colombia; Art. 53, par. 2, Law No. 13,477 of June 21, 1920; Venezuela; Art. 19, par. (f), C. I. N. A.; Art. 19, par. (f), C. I. A. N. A.; Art. 10, par. (f), Pan-American Convention.

\textsuperscript{80} Art. 12, par. (g), Decree No. 559, March 15, 1920, Colombia; Art. 1984, Codigo Administrativo, Panama.

\textsuperscript{81} Art. 12, par. (g), Decree No. 559, March 15, 1920, Colombia.

\textsuperscript{82} Art. 12, par. (g), Decree No. 559, March 15, 1920, Colombia.
III.
CIVIL AND PENAL RESPONSIBILITY

Liability in the law of aerial navigation is classifiable into: (A) Civil, and (B) Criminal. "Every person on board an aircraft," says the Colombian law,83 "must abide by the laws concerning the general security, military orders and regulations touching aerial navigation." That is the general jurisdictional doctrine of municipal law: a doctrine which has been expressly recognized in its correlative as embodied in the Pan American Convention of 1928:84

"Reparations for damages caused to persons or property located in the subjacent territory shall be governed by the laws of each State."

These doctrines are a clear acknowledgment, on the one hand, of (a) the territorial jurisdiction of the State, and, (b) the territoriality of the law.

A. Civil Responsibility

Notwithstanding the Civil Law doctrine85 of the private ownership of the atmospheric space above the soil, to which we have adverted, there is at present no room for doubt, in view of the enabling legislation of every country—legislation which must be considered as in a sense restrictive rather than negative of the absolute right of private ownership of the air space—about the right of aircraft to circulate over private property provided it causes no damage or interferes with the primary right of ownership guaranteed by the Codes.86 This right of navigation is subject, of course, to a corresponding obligation, namely, the joint87 liability of the owner of the aircraft, the commander and the perpetrator of the injury, to respond in damages, as the Chilian law puts it,88 for any "injury caused by an aircraft to persons or things at the moment of the take-off on a service flight, or in the course of regular transit;" although the liability is restricted in Salvador,89 only to the owner, "without exceptions," for damages due to accident or negligence.

84. Art. 28.
85. See cases cited under Note 4 for the Common Law doctrine.
86. Art. 47, Decree of July 22, 1925, Brazil. See also, Art. 526, Civil Code, Brazil.
87. Art. 84, Decree of July 22, 1925, Brazil; Arts. 1518 to 1553, Civil Code, Brazil; Art. 53, Decree of Oct. 17, 1925, Chile; Art. 63, Law No. 13,477 of June 21, 1920, Venezuela.
89. Art. 5, Decree of May 17, 1923.
This liability is mitigated under the law of Chile,40 "if the victim is partly responsible for the accident, or if he has exposed himself to injury." According, again, to Chilian law,41 the party injured by the aircraft has the right to be indemnified "without it being necessary for him to establish the negligence or intentional fault of the wrongdoer, unless the injury is imputable to the victim." Under the law of Brazil,42 in case of jettison or forced landing on private property, the owner cannot prevent the removal of the airplane unless some damage has been done to his injury, in which case he may oppose its removal until the arrival of the competent authorities. In Chile, too, the commander of the aircraft enjoys43 the right to jettison, along his route, any articles of merchandise on board, if he finds it "necessary to the safety of the aircraft." "No responsibility is assumed by the carrier," it adds, "with respect to the consignor or consignee on account of the said merchandise. But liability will subsist for damages caused upon the surface." By article 68 of the Chilian law, the wrongdoer is made liable under articles 490-492 of the Penal Code,44 for damage done to persons on the ground. But, discussing further the law of Chile, we may add that that country has gone considerably farther than her sister republics in materially relieving the carrier from liability, for she has provided:45

"The carrier may, by express agreement, relieve himself from liability to which he might be subject by reason of the risks of the air or of acts done by any person employed on board in the management of the aircraft; for losses which might be sustained by the passengers or the merchandise if the aircraft is in navigable condition when it departs and the personnel is in accordance with the requirements of Article 16."

The extent of the liability in Argentine,46 is governed by the provisions of the Customs Law of the Republic in regard to forced landings, damage to merchandise on board, jettisoning of baggage, and the like, on navigable rivers.47

But in addition to whatever responsibility may be incurred under the respective laws for injury to passengers, merchandise or property owners on the surface, in some countries48 the tribunal having jur-

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41. Art. 54, Decree of Oct. 17, 1925.
42. Art. 48, Decree of July 22, 1925.
43. Art. 74, Decree of Oct. 17, 1925.
44. On "Quasi-Crimes."
46. Art. 94, Decree of July 30, 1926.
47. Arts. 856-969, and Arts. 1274-1367, Codigo de Comercio, Argentine.
isdiction of the cause is given power to order the cancellation of (a) the navigation permit, (b) the license of the guilty party, if a member of the crew, and (c) the franchise of the company; or (d) to confiscate the apparatus and its contents.

The suit for damages may be brought: (a) where the injury is done; (b) at the place of registration of the aircraft; and (c) in the domicile of the owner, or legal situs of the operating company. If the question involved is the damage done to an aircraft in transit, the tribunal of the place where the craft is forced down will be considered as competent to take jurisdiction of the cause.

B. Penal Responsibility

In addition to the civil responsibility that might be incurred, there is the penal responsibility that may attach either to the owner, the commander, or the pilot, or to all of them, for offences of the following description:

The owner may be penally liable: (a) for permitting the aircraft to navigate without having previously secured certificates of registration and airworthiness; (b) if the airplane is not provided with the marks of nationality and registration; and (c) if the certificate of airworthiness has expired.

Like the owner, the commander of the aircraft may incur the sanctions of the penal law: (a) for commanding the vessel without possessing the evidence of fitness and capacity, and without carrying the certificate of registration of the craft; (b) for destroying any of the books required to be carried aboard the vessel, or making false and misleading entries therein; (c) for violating the aerial regulations or other instructions issued by the proper authorities, such as carrying photographic instruments without the required permit; and (d) for placing false marks on the aircraft.

The sanctions of the penal laws apply to the pilot: (a) for conducting the aircraft without observing certain requirements of

100. Art. 56, Decree of Oct. 17, 1925, Chile.
101. Art. 90, par. 1, Decree of July 22, 1925, Brazil; Art. 61, Decree of Oct. 17, 1925, Chile.
102. Art. 90, par. 2, Decree of July 22, 1925, Brazil; Arts. 63 and 64, Decree of Oct. 17, 1925, Chile; Art. 60, par. 1, Law No. 13,477 of June 21, 1920, Venezuela.
103. Art. 62, Decree of Oct. 17, 1925, Chile.
104. Art. 58, Decree of Oct. 17, 1925, Chile.
the local air laws,\textsuperscript{105} (b) for flying over \textit{prohibited zones},\textsuperscript{106} and (c) for \textit{reckless flying}.\textsuperscript{107}

In addition to the criminal responsibility of the owner, the commander, and the pilot, a like responsibility may be incurred by those who on board an aircraft: (a) indulge in “acts or omissions” punishable by the laws;\textsuperscript{108} (b) unnecessarily jettison articles likely to cause damage to persons or property on the ground;\textsuperscript{109} and (c) as to the aircraft: its detention may be ordered if it cannot produce the certificate of airworthiness or has no marks of identification.\textsuperscript{110} The provisions of the Penal Codes apply to those guilty of forging any of the documents required to be carried on board.\textsuperscript{111}

C. \textit{The Formula of “Analogy” as a Source of Law}

The legislators of Latin America, in common with those of other countries, have been somewhat hesitant to undertake the task—a very formidable task, to be sure—of formulating Codes of law suitable for the peculiar conditions of aerial navigation. In attempting to regulate it, they have found it necessary to provide for the application to it, by the formula of \textit{legal} and \textit{factual} analogy, of such rules of the civil, maritime and penal legislation in force in the respective countries, as are applicable. Crude as the expedient may be, the want of legislative prevision of the contingencies that may arise in the novel field of aerial navigation, prevents the framing, at this time, of a complete Code of laws for exclusive application to this type of communication. The utmost that the wisdom of the legislator has been able to do in this field, is to lay down certain elementary principles in the air regulations, and to provide that when the rules thus given are found inadequate to deal with unexpected situations of law, recourse shall be had to the rules prescribed by the Codes for other cases factually analogous. This application of the rules of the Codes by analogy to cases for which no legal provision has been made, is, to the civil jurist, nothing more than the application of an existing principle of law to cases which the legislative wisdom has not foreseen, but which the courts, through reasons of social interest, will extend to those cases.\textsuperscript{112}

\begin{itemize}
  \item[105.] In Brazil, for instance, for not complying with Art. 49, of the Decree of July 22, 1925.
  \item[106.] Art. 90, par. 3, Decree of July 22, 1925, Brazil.
  \item[107.] Arts. 57 and 60, Decree of Oct. 17, 1925, Chile.
  \item[108.] Art. 60, Law No. 13,477 of June 21, 1920, Venezuela.
  \item[109.] Art. 67, Decree of Oct. 17, 1925, Chile.
  \item[110.] Art. 59, Decree of Oct. 17, 1925, Chile.
  \item[111.] Art. 94, Decree of July 22, 1925, Brazil.
  \item[112.] App. 9, p. 505, Codigo Civil, Peru, de la Lama's ed. (1920, 5th).
\end{itemize}
But were the air laws silent upon this question, we discover in the Civil Codes of Latin America, provisions somewhat in substance like this one in the Peruvian Code.\textsuperscript{113}

“The courts cannot suspend or decline the administration of justice, on account of the absence, vagueness, or insufficiency of the laws; but shall, in such cases, proceed to a decision, taking into consideration: . . . 2d., other provisions respecting analogous cases; and, 3rd., the general principles of law.”

Thus we see that whether by force of the air regulations or of the Codes, the “invisible radiation,” as Mr. Justice Holmes would say,\textsuperscript{114} of the formula of “legal analogy,” will be felt in all those special cases which have escaped the attention of the legislator, or where he has shown a general deficiency of juristic concepts about the subject matter.

The existing Codes which it has been specially provided in the air regulations shall apply by force of analogy, are:

\begin{enumerate}
\item \textbf{Civil Code}
\begin{itemize}
\item Brazil\textsuperscript{115} provides:
\end{itemize}
\begin{itemize}
\item “The provisions of the Civil Code and the Code of Commerce applicable to national vessels are equally applicable to aircraft.”\textsuperscript{116}
\end{itemize}

\item \textbf{Commerce Code}
\begin{itemize}
\item In Chile,\textsuperscript{117}
\end{itemize}
\begin{itemize}
\item “The promoter of aerial transportation is subject to the provisions of Title V of the Code of Commerce concerning transportation by land, by sea, by canal, or by navigable rivers, in so far as they are not in contravention of the provisions of this text.”\textsuperscript{118}
\end{itemize}

Somewhat similar is the provision of the Brazilian law,\textsuperscript{119} that the responsibility of the air carrier with respect to the merchandise transported shall be determined “by the rules established for transportation by rail and by the rules of the Code of Commerce,” in so far as applicable and not contrary to the regulations relative to air navigation.\textsuperscript{120}

\begin{itemize}
\item \textsuperscript{113} Art. IX, Tit. Prelim., Codigo Civil. See also: Art. 1, secs. 15 and 16, Tit. I, Codigo Civil, Argentine; Art. 7, Intro., Codigo Civil, Brazil.
\item \textsuperscript{114} Missouri v. Holland (1920) 252 U. S. 416.
\item \textsuperscript{115} Art. 18, Decree of July 22, 1925.
\item \textsuperscript{116} Art. 825, Civil Code, Brazil; and Arts. 457-796, Codigo Commercial Brasileiro.
\item \textsuperscript{117} Art. 43, Decree of Oct. 17, 1925.
\item \textsuperscript{118} Arts. 1084-1168, Codigo de Comercio, Chile.
\item \textsuperscript{119} Art. 73, Decree of July 22, 1925.
\item \textsuperscript{120} Arts. 457-796, Codigo Commercial Brasileiro.
\end{itemize}
(3) **Penal Code**

In Brazil, again, the law\(^{121}\) prescribes that:

"The sanctions provided in the Penal Code in regard to crimes against the safety in the use of the means of transportation and communication, are applicable to aerial navigation."\(^{122}\)

(4) **Maritime Law**

The parent Convention of 1919, which has already been ratified by Chile and Uruguay, contains the following specific provision in regard to salvage:\(^{123}\)

"With regard to the salvage of aircraft lost at sea, the principles of maritime law will apply, in the absence of any agreement to the contrary."

And Chile,\(^{124}\) always abreast of the latest developments in air law, provides:

"The laws concerning shipwreck and maritime salvage are applicable to aircraft in danger in the open sea and on the coast."\(^{125}\)

But as expressing what may be regarded as the general legislative sense of the Latin American republic, we quote the Pan American Convention of 1928:\(^{126}\)

"The salvage of aircraft lost at sea shall be regulated, in the absence of any agreement to the contrary, by the principles of maritime law."

The grant in Costa Rica,\(^{127}\) of a franchise to private parties for the establishing of air transport service is subject to the laws in force concerning Maritime Commerce, which shall apply by "legal analogy," to the extent that such laws are "applicable to the special conditions presented by Maritime Commercial Aviation."\(^{128}\)

\(^{121}\) Art. 93, Decree of July 22, 1925. Art. 1, sec. 16, Tit. I, of the Codigo Civil of Argentine, limits the application of the formula of "analogy" to civil cases only. See also: *The Nation v. Castillo* [1919], 27 Gaceta Judicial 117, 3a, Sup. Ct. Colombia.

\(^{122}\) Arts. 149-155, Penal Code of Brazil.

\(^{123}\) Art. 23.

\(^{124}\) Art. 49, Decree of Oct. 17, 1925.

\(^{125}\) Arts. 1150-1167, Codigo de Comercio, Chile.

\(^{126}\) Art. 26.

\(^{127}\) Art. 12, Agreement with Alfonso Altschul Tietjen, vol. 2, year 1925, Coleccion de Leyes y Decretos, pp. 526, 531.

\(^{128}\) Arts. 530-940, Codigo de Comercio, Costa Rica.
(5) **Customs and Sanitary Regulations**

Provision is made in Argentine by the regulations of September 4, 1925, and by those of July 30, 1926, that:

"Any aircraft flying over the national territory, and the crew and passengers thereon, are subject to the obligations imposed by the customs and sanitary legislation of Argentina, and must abide by the orders of the police and customs offices."

Colombia, in turn, has enacted that import trade carried on by aircraft must comply with the provisions of the Tariff Law, and the Law concerning the Customs of the Republic.

It may, of course, be, as it has been, objected, that the application of the formula of "legal analogy," is neither accurate nor complete. There is, no doubt, some truth in the objection; but that objection may be disposed of thus: If the provisions of the Codes now in force are not applied by analogy to cases arising in the domain of aerial navigation, and there are no legislative provisions to govern those cases, how are the respective rights and obligations of interested parties, such as the State, the carrier, passengers, consignors and consignees, crews, and those whose personal and proprietary rights may have been invaded by the air carrier, to be adjusted? Surely, to leave those rights and obligations unenforced because of a vacuum in the law of aerial navigation, would, by far, be a greater social evil than such as might result from supplying the deficiency by analogy from other Codes. We recognize the need of a complete Code on aerial law; but jurists and legislators are yet too bewildered by the unexpected momentum of air navigation to betake themselves earnestly to the task of codifying what might be deemed suitable principles of law for its regulation. The factual and legal analogy may not be altogether accurate or complete, but, in a practical sense, there is enough of it in certain cases to warrant the application of the formula. And let us remind ourselves in this connection that the Latin American jurists entertain no fears that, from the application of the rules of the Codes to analogous cases in air navigation, "precedents," in the Common Law acceptation of that word, may be created that might ultimately interfere with the independent development of a body of air law proper. "Judicial decisions possess no obligatory force except in

130. Art. 83.
131. Arts. 16 and 17, Decree No. 559 of March 15, 1920.
132. Law No. 117, Dec. 6, 1913.
133. Law No. 85, Dec. 9, 1913.
the cases in which they were rendered." They do not constitute a legal doctrine binding upon the judiciary for all time; they are, at the most, the opinions of men learned in the law and entitled as such to respectful consideration.

(IV)

CLASSIFICATION

It is but natural that international conventions and local legislation on aerial navigation should attempt some classification of the sort of ownership, in the light of the service rendered, of which this new type of conveyance may be the object. Classification here has become as necessary as in the case of ships and similar means of transportation affected with a public interest, in order to determine the measure of control that the local authorities may exercise over them and avoid international complications. By analogy to vessels, aircraft have been classified into:

A. Public, State, or Official

By public, or state, or official (terms which we use interchangeably), we understand that the aircraft are: (1) Owned either by (a) the General Government (the Union, in federal republics), (b) the States or provinces (meaning, of course, the major political divisions of the country), or (c) the Municipalities (or local subdivisions); (2) in the Military; or (3) in the Administrative service, such as (i) posts, (ii) customs, and (iii) police. With respect to aircraft in this category, there can be no doubt that the principles of public law applicable to vessels similarly circumstanced will also apply.

134. Art. 3, par. 2, Tit. Prel., Codigo Civil, Chile; Art. 17, Ch. 3, Titl. Prel., Codigo Civil, Colombia.
135. Art. 1, Decree of July 30, 1926, Argentina; Art. 4, par. 1, Decree of July 22, 1925, Brazil; Art. 14, Decree of April 21, 1928, Cuba; Art. 19, Codigo Administrativo, Panama; Art. 28, Law No. 13,477 of June 21, 1920, Venezuela.
B. **Private**

This category includes aircraft (1) *Owned* and operated by (a) a person, partnership, corporation, or other civil or mercantile private institution for profit; or (2) *engaged* in (a) Commercial (such as the carriage of persons or merchandise), (b) Instructional, (c) Sportive, or (d) Experimental, service. This type of aircraft does not come under the classification of "public utility," as that term is understood in Latin America. They are subject, in the full sense of the law, to the express provisions and implications of the local legislation.

Some countries have undertaken to classify aircraft, in addition to *public* and *private*, into:

C. **General**

This classification is intended to cover aircraft engaged essentially in the *public transport* of passengers or freight, as contradistinguished from the *private transport* of persons or things for the sole benefit of the owner or operator. It must be publicly owned, and is regarded as a "public utility."

There seems to be no doubt of the right of the State, under the power of *eminent domain*, to expropriate privately-owned aircraft in cases of national necessity. The law in Colombia authorizes the Nation, "in case of war, to appropriate to its service all aviation material, upon indemnifying its owners on the basis of its cost, according to the invoices, estimates and conditions."

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139. Art. 4, par. 2, Decree of July 22, 1925, Brazil; Art. 2, Decree of Oct. 17, 1925, Chile; Art. 14, Decree of April 21, 1928, Cuba; Art. 1971, Codigo Administrativo, Panama.

140. Art. 1, Decree of July 30, 1926, Argentina; Art. 4, par. 2, Decree of July 22, 1925, Brazil; Art. 2, Decree No. 559, March 15, 1920, Colombia; Art. 14, Decree of April 21, 1928, Cuba; Art. 30, Law No. 13,477 of June 21, 1920, Venezuela.


145. Art. 17, Constitution of Argentine (1860); Art. 72, sec. 17, Constitution of Brazil (1891); Arts. 32 and 33, Constitution of Colombia (1911); Art. 15, Constitution of Costa Rica (1917); Art. 26, par. 4, Constitution of Ecuador (1906) Arts. 66 and 67, Constitution of Honduras (1925); Art. 27, par. 2, Constitution of Mexico (1917); Arts. 38 and 39, Constitution of Peru (1920); Art. 144, Constitution of Uruguay (1887).

146. Art. 12, Law No. 126, Dec. 31, 1919.

147. Art. 3, Decree of May 17, 1923.
propriation may be effected not only in case of war, but also of "rebellion, or sedition, or revolutionary attempts from the outside." No provision exists in the Aviation Law of Salvador for indemnifying the owner, in view, perhaps, of the fact that the right to compensation is safeguarded by the National Constitution.\textsuperscript{148} All the International Conventions on aerial navigation contain a provision like this:\textsuperscript{149}

"All State aircraft, other than military, naval, customs and police aircraft shall be treated as private aircraft and as such shall be subject to all the provisions of the present Convention."

The principle of the provision is a very important one from the point of view of international law, as it limits the privilege of sovereign immunity from foreign judicial process only to aircraft engaged in a recognized governmental service, which the signatories have properly kept within the bounds of the executive and administrative prerogatives enumerated in the conventions. Heretofore, the established law had been that: "the property possessed by a government, be it owned or requisitioned, engaged in enterprises not strictly governmental, but partaking more of a commercial nature, for profit, is not deprived of the privilege, decreed by international comity, of immunity from the process of arrest."\textsuperscript{150} Under the terms of these conventions, aircraft engaged in "General" service, such as we have described above, will be amenable to judicial or executive process or action in a foreign country.

\textsuperscript{148} Arts. 18 and 31.

\textsuperscript{149} Arts. 30, C. I. N. A.; Art. 30, C. I. A. N. A.; Art. 3, Pan-American Convention.

V.

NATIONALITY

The C. I. N. A. of 1919,\textsuperscript{151} has provided, by analogy to Maritime Law,\textsuperscript{152} that:

"Aircraft possess the nationality of the State on the register of which they are entered."

The C. I. A. N. A. of 1926,\textsuperscript{153} has done nothing more than to restate, \textit{ipsissima verba}, on this as on almost every other point, the words of the Convention of 1919. The Pan-American Convention of 1928, which is of more immediate practical interest to the Latin American republics, states the principle thus:\textsuperscript{154}

"Aircraft shall have the nationality of the State in which they are registered and can not be validly registered in more than one State."

These are, of course, principles incorporated in international conventions to which the great majority of the Powers are parties. But the same idea is found in the legislation of many States. For instance, the Cuban law\textsuperscript{155} says that:

"Aircraft shall, for the purpose of aerial navigation, have the nationality of the State in which they are registered."

The Argentine law,\textsuperscript{156} says:

"The nationality of aircraft for legal effects, is that of the country of registration."

In Chile we meet with very detailed provisions\textsuperscript{157} relative to the registration and nationality of aircraft. Article 7 of its law provides that:

"Chilian nationality, be it original or acquired by naturalization, is required of every owner of Chilian aircraft. But foreigners may be owners if domiciled in Chile and engaged in commerce, industry or a profession."

By article 10 of the same law, aircraft already registered in a foreign country cannot be inscribed in the national register; and in the

\textsuperscript{151} Art. 6. Article 8 provides: "An aircraft cannot be validly registered in more than one State."
\textsuperscript{152} Westlake, Traite de Droit International (1924, de la Pradelle's translation), 176; Sauder's Maritime Law (1910), 2nd ed., 16; McMillan's Scottish Maritime Practice (1926), 116.
\textsuperscript{153} Art. 6.
\textsuperscript{154} Art. 7, par. 1.
\textsuperscript{155} Art. 15, Decree of April 21, 1928.
\textsuperscript{156} Art. 2, par. 3, Law No. 2366, Sept. 4, 1925.
\textsuperscript{157} Title II, Arts. 5-12, Decree of Oct. 17, 1925.
event of the simultaneous registration of an aircraft in Chile and in some other country, the Chilian registration shall be null and of no effect.

A clause which is likely to have far-reaching controversial effects in the not distant future, which will likely be adopted with respect to aircraft, by the other republics of Latin America, is the so-called "Calvo" clause, found in this form in the aviation law of Colombia:\textsuperscript{158}

"Private aviation enterprises established or to be established in the territory of the Republic, shall be considered as national, and likewise any privately-owned aircraft intended for touring or commerce."

We might merely observe that the tendency is to uphold the validity of a clause of this character under International Law, and that the government to which such enterprises or aircraft belong, can interfere only when there has been "a denial or delay of justice," in the connotations of those words in International Law.\textsuperscript{159}

And so we conclude this cursory analysis of the law of aerial navigation in Latin America.

\textsuperscript{158} Art. 3, Decree No. 559, March 15, 1920. Article 23 of the Constitution of Ecuador of 1906 provides: "Every contract which a foreigner or foreign company may make with the Government, or with a private individual, shall implicitly carry the condition of renunciation of all diplomatic claim." To the same effect: Art. 14, Law Respecting Foreigners, August 25, 1892, Ecuador; Art. 15, par. 2, Law Respecting Foreigners and Naturalization, Nov. 17, 1888, Colombia; Art. 27, par. 7, subsec. 1, Constitution of Mexico (1917).

\textsuperscript{159} United States on behalf of North American Dredging Company of Texas, claimant v. The United Mexican States (1926), opinions of Commissioners, U. S.-Mex. Claims Commission, pp. 21, 24, 27.