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The International Conventions on Private Aerial Law

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THE INTERNATIONAL CONVENTIONS ON PRIVATE AERIAL LAW

STEPHEN LATCHFORD and JOSEPH H. FENNELL

I. Liability to Passengers and Shippers

THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL TRANSPORT BY AIR (Commonly called The Warsaw Convention of 19291)

According to the Government's information, the countries in respect of which the Warsaw Convention is in force as a result of ratification or adherence are the following:

<table>
<thead>
<tr>
<th>United States</th>
<th>Brazil</th>
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<tbody>
<tr>
<td>Australia</td>
<td>Czechoslovakia</td>
</tr>
<tr>
<td>(including Papua, Norfolk Island, New Guinea and Nauru)</td>
<td>Danzig</td>
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<tr>
<td>Belgium</td>
<td>France</td>
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<tr>
<td>(including the Channel Islands and the Isle of Man, Bahamas, Barbados, Bermuda, British Guiana, British Honduras, Ceylon, Cyprus, Falkland Islands and dependencies, Fiji Islands, Gambia (Colony and Protectorate), Gibraltar, Gold Coast of Africa (Colony, Ashanti, Northern Territories, Togo under British mandate), Hong Kong, Jamaica (comprising the Turks and Caicos Islands, the Cayman Islands), Kenya (Colony and Protectorate), the Leeward Islands (Antigua, Dominica, Montserrat, St. Christopher and Nevis, Virgin Islands), Federated Malay States: (Negri Sembilan, Pahang, Perak and Selangor); Unfederated Malay States: (Johore, Kedah, Kelantan, Perlis, Trengganu, Brunei); Malta, Mauritius, Nigeria (Colony, Protectorate, Cameroons under British mandate), North Borneo, Northern Rhodesia, Nyasaland Protectorate, Palestine (excluding Transjordania), Southern Rhodesia, St. Helena and Ascension Island, Sarawak, the Seychelles Islands, Sierra Leone (Colony and Protectorate), British Somaliland, the Straits Settlements, Territory of Tanganyika, Tonga, Trinidad and Tobago, Uganda Protectorate, Islands of the West Pacific (British Protectorate of the Solomon Islands, Colony of the Gilbert and Ellice Islands), the Windward...</td>
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</tbody>
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1. Concluded at Warsaw, October 12, 1929. 
Adherence advised by the Senate of the United States, with reservation, June 15, 1934 (legislative day of June 6, 1934). 
Adherence declared by the President of the United States, with reservation, June 27, 1934. 
Declaration of adherence of the United States deposited at Warsaw, July 31, 1934. 
Proclaimed by the President of the United States, October 29, 1934.
CHAPTER I. SCOPE—DEFINITIONS

Article 1

(1) This convention shall apply to all international transportation of persons, baggage, or goods performed by aircraft for hire. It shall apply equally to gratuitous transportation by aircraft performed by an air transportation enterprise.

(2) For the purposes of this convention the expression "international transportation" shall mean any transportation in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the transportation or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another power, even though that power is not a party to this convention. Transportation without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate, or authority of the same High Contracting Party shall not be deemed to be international for the purposes of this convention.

(3) Transportation to be performed by several successive air carriers shall be deemed, for the purposes of this convention, to be one undivided transportation, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it shall not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate, or authority of the same High Contracting Party.
Article 2

(1) This convention shall apply to transportation performed by the state or by legal entities constituted under public law provided it falls within the conditions laid down in article 1.

(2) This convention shall not apply to transportation performed under the terms of any international postal convention.

Chapter II. Transportation Documents

Section I—Passenger Ticket

Article 3

(1) For the transportation of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:

(a) The place and date of issue;
(b) The place of departure and of destination;
(c) The agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the transportation of its international character;
(d) The name and address of the carrier or carriers;
(e) A statement that the transportation is subject to the rules relating to liability established by this convention.

(2) The absence, irregularity, or loss of the passenger ticket shall not affect the existence or the validity of the contract of transportation, which shall none the less be subject to the rules of this convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this convention which exclude or limit his liability.

Section II—Baggage Check

Article 4

(1) For the transportation of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

(2) The baggage check shall be made out in duplicate, one part for the passenger and the other part for the carrier.

(3) The baggage check shall contain the following particulars:

(a) The place and date of issue;
(b) The place of departure and of destination;
(c) The name and address of the carrier or carriers;
(d) The number of the passenger ticket;
(e) A statement that delivery of the baggage will be made to the bearer of the baggage check;
(f) The number and weight of the packages;
(g) The amount of the value declared in accordance with article 22 (2);
(h) A statement that the transportation is subject to the rules relating to liability established by this convention.

(4) The absence, irregularity, or loss of the baggage check shall not affect the existence or the validity of the contract of transportation which shall none the less be subject to the rules of this convention. Nevertheless, if the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at (d), (f), and (h) above, the carrier shall not be entitled to avail himself of those provisions of the convention which exclude or limit his liability.

SECTION III—AIR WAYBILL

Article 5

(1) Every carrier of goods has the right to require the consignor to make and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity, or loss of this document shall not affect the existence or the validity of the contract of transportation which shall, subject to the provisions of article 9, be none the less governed by the rules of this convention.

Article 6

(1) The air waybill shall be made out by the consignor in three original parts and be handed over with the goods.

(2) The first part shall be marked "for the carrier," and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

(3) The carrier shall sign on acceptance of the goods.
(4) The signature of the carrier may be stamped; that of
the consignor may be printed or stamped.

(5) If, at the request of the consignor, the carrier makes out
the air waybill, he shall be deemed, subject to proof to the contrary,
to have done so on behalf of the consignor.

**Article 7**

The carrier of goods has the right to require the consignor to
make out separate waybills when there is more than one package.

**Article 8**

The air waybill shall contain the following particulars:

(a) The place and date of its execution;
(b) The place of departure and of destination;
(c) The agreed stopping places, provided that the carrier may
reserve the right to alter the stopping places in case of necessity,
and that if he exercises that right the alteration shall not have the
effect of depriving the transportation of its international character;
(d) The name and address of the consignor;
(e) The name and address of the first carrier;
(f) The name and address of the consignee, if the case so
requires;
(g) The nature of the goods;
(h) The number of packages, the method of packing, and the
particular marks or numbers upon them;
(i) The weight, the quantity, the volume, or dimensions of
the goods;
(j) The apparent condition of the goods and of the packing;
(k) The freight, if it has been agreed upon, the date and
place of payment, and the person who is to pay it;
(l) If the goods are sent for payment on delivery, the price
of the goods, and, if the case so requires, the amount of the expenses
incurred;
(m) The amount of the value declared in accordance with
article 22 (2);
(n) The number of parts of the air waybill;
(o) The documents handed to the carrier to accompany the
air waybill;
(p) The time fixed for the completion of the transportation
and a brief note of the route to be followed, if these matters have
been agreed upon;
(q) A statement that the transportation is subject to the rules relating to liability established by this convention.

Article 9

If the carrier accepts goods without an air waybill having been made out, or if the air waybill does not contain all the particulars set out in article 8 (a) to (i), inclusive, and (q), the carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability.

Article 10

(1) The consignor shall be responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air waybill.

(2) The consignor shall be liable for all damages suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

Article 11

(1) The air waybill shall be prima facie evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of transportation.

(2) The statements in the air waybill relating to the weight, dimensions, and packing of the goods, as well as those relating to the number of packages, shall be prima facie evidence of the facts stated; those relating to the quantity, volume, and condition of the goods shall not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

Article 12

(1) Subject to his liability to carry out all his obligations under the contract of transportation, the consignor shall have the right to dispose of the goods by withdrawing them at the airport of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination, or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring them to be returned to the airport of departure. He must not
exercise this right of disposition in such a way as to prejudice the carrier or other consignors, and he must repay any expenses occasioned by the exercise of this right.

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

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

(4) The right conferred on the consignor shall cease at the moment when that of the consignee begins in accordance with article 13, below. Nevertheless, if the consignee declines to accept the waybill or the goods, or if he cannot be communicated with, the consignor shall resume his right of disposition.

Article 13

(1) Except in the circumstances set out in the preceding article, the consignee shall be entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the goods to him, on payment of the charges due and on complying with the conditions of transportation set out in the air waybill.

(2) Unless it is otherwise agreed, it shall be the duty of the carrier to give notice to the consignee as soon as the goods arrive.

(3) If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee shall be entitled to put into force against the carrier the rights which flow from the contract of transportation.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

Article 15

(1) Articles 12, 13, and 14 shall not affect either the relations of the consignor and the consignee with each other or the relations
of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of articles 12, 13, and 14 can only be varied by express provision in the air waybill.

Article 16

(1) The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi, or police before the goods can be delivered to the consignee. The consignor shall be liable to the carrier for any damage occasioned by the absence, insufficiency, or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

Chapter III. Liability of the Carrier

Article 17

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

(1) The carrier shall be liable for damage sustained in the event of the destruction or loss of, or of damage to, any checked baggage or any goods, if the occurrence which caused the damage so sustained took place during the transportation by air.

(2) The transportation by air within the meaning of the preceding paragraph shall comprise the period during which the baggage or goods are in charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

(3) The period of the transportation by air shall not extend to any transportation by land, by sea, or by river performed outside an airport. If, however, such transportation takes place in the performance of a contract for transportation by air, for the purpose of loading, delivery or transshipment, any damage is presumed,
subject to proof to the contrary, to have been the result of an event which took place during the transportation by air.

Article 19

The carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage, or goods.

Article 20

(1) The carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(2) In the transportation of goods and baggage the carrier shall not be liable if he proves that the damage was occasioned by an error in piloting, in the handling of the aircraft, or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

(1) In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs. Where, in accordance with the law of the court to which the case is submitted, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.
(3) As regards objects of which the passenger takes charge himself the liability of the carrier shall be limited to 5,000 francs per passenger.

(4) The sums mentioned above shall be deemed to refer to the French franc consisting of 65½ milligrams of gold at the standard of fineness of nine hundred thousandths. These sums may be converted into any national currency in round figures.

Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this convention shall be null and void, but the nullity of any such provision shall not involve the nullity of the whole contract, which shall remain subject to the provisions of this convention.

Article 24

(1) In the cases covered by articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention.

(2) In the cases covered by article 17 the provisions of the preceding paragraph shall also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

(1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful misconduct.

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier acting within the scope of his employment.

Article 26

(1) Receipt by the person entitled to the delivery of baggage or goods without complaint shall be prima facie evidence that the same have been delivered in good condition and in accordance with the document of transportation.
(2) In case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within 3 days from the date of receipt in the case of baggage and 7 days from the date of receipt in the case of goods. In case of delay the complaint must be made at the latest within 14 days from the date on which the baggage or goods have been placed, at his disposal.

(3) Every complaint must be made in writing upon the document of transportation or by separate notice in writing dispatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this convention against those legally representing his estate.

Article 28

(1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination.

(2) Questions of procedure shall be governed by the law of the court to which the case is submitted.

Article 29

(1) The right to damages shall be extinguished if an action is not brought within 2 years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted.

Article 30

(1) In the case of transportation to be performed by various successive carriers and falling within the definition set out in the
INTERNATIONAL CONVENTIONS

third paragraph of article 1, each carrier who accepts passengers, baggage or goods shall be subject to the rules set out in this convention, and shall be deemed to be one of the contracting parties to the contract of transportation insofar as the contract deals with that part of the transportation which is performed under his supervision.

(2) In the case of transportation of this nature, the passenger or his representative can take action only against the carrier who performed the transportation during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or goods, the passenger or consignor shall have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery shall have a right of action against the last carrier, and further, each may take action against the carrier who performed the transportation during which the destruction, loss, damage, or delay took place. These carriers shall be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV. PROVISIONS RELATING TO COMBINED TRANSPORTATION

Article 31

(1) In the case of combined transportation performed partly by air and partly by any other mode of transportation, the provisions of this convention shall apply only to the transportation by air, provided that the transportation by air falls within the terms of article 1.

(2) Nothing in this convention shall prevent the parties in the case of combined transportation from inserting in the document of air transportation conditions relating to other modes of transportation, provided that the provisions of this convention are observed as regards the transportation by air.

CHAPTER V. GENERAL AND FINAL PROVISIONS

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the transportation
of goods arbitration clauses shall be allowed, subject to this con-
vention, if the arbitration is to take place within one of the jurisdic-
tions referred to in the first paragraph of article 28.

Article 33

Nothing contained in this convention shall prevent the carrier either from refusing to enter into any contract of transportation or from making regulations which do not conflict with the provisions of this convention.

Article 34

This convention shall not apply to international transportation by air performed by way of experimental trial by air navigation enterprises with the view to the establishment of regular lines of air navigation, nor shall it apply to transportation performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this convention means current days, not working days.

Article 36

This convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 37

(1) This convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which shall give notice of the deposit to the Government of each of the High Contracting Parties.

(2) As soon as this convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties which shall have ratified and the High Contract-
ing Party which deposits its instrument of ratification on the ninety-ninth day after the deposit.

(3) It shall be the duty of the Government of the Republic of Poland to notify the Government of each of the High Contracting Parties of the date on which this convention comes into force as well as the date of the deposit of each ratification.

**Article 38**

(1) This convention shall, after it has come into force, remain open for adherence by any state.

(2) The adherence shall be effected by a notification addressed to the Government of the Republic of Poland, which shall inform the Government of each of the High Contracting Parties thereof.

(3) The adherence shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

**Article 39**

(1) Any one of the High Contracting Parties may denounce this convention by a notification addressed to the Government of the Republic of Poland, which shall at once inform the Government of each of the High Contracting Parties.

(2) Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the party which shall have proceeded to denunciation.

**Article 40**

(1) Any High Contracting Party may, at the time of signature or of deposit of ratification or of adherence, declare that the acceptance which it gives to this convention does not apply to all or any of its colonies, protectorates, territories under mandate, or any other territory subject to its sovereignty or its authority, or any other territory under its suzerainty.

(2) Accordingly any High Contracting Party may subsequently adhere separately in the name of all or any of its colonies, protectorates, territories under mandate, or any other territory subject to its sovereignty or to its authority or any other territory under its suzerainty which have been thus excluded by its original declaration.

(3) Any High Contracting Party may denounce this conven-
tion, in accordance with its provisions, separately or for all or any of its colonies, protectorates, territories under mandate, or any other territory subject to its sovereignty or to its authority, or any other territory under its suzerainty.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this convention to call for the assembling of a new international conference in order to consider any improvements which may be made in this convention. To this end it will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such conference.

This convention, done at Warsaw on October 12, 1929, shall remain open for signature until January 31, 1930.

Additional Protocol

With Reference to Article 2

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of adherence that the first paragraph of article 2 of this convention shall not apply to international transportation by air performed directly by the state, its colonies, protectorates, or mandated territories, or by any other territory under its sovereignty, suzerainty, or authority.

II. Liability for Terrestrial Damage

Convention for the Unification of Certain Rules Relating to Damage Caused by Aircraft to Third Persons on the Surface

(Commonly called The Rome Convention of 1933 2)

Article 1

The High Contracting Parties agree to take the necessary measures in order to put into force the rules established by the present Convention.

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2. Concluded at Rome, May 29, 1933, at the Third International Conference on Private Air Law. According to the Government’s information the following countries have ratified the convention: Spain (applies to Spanish Zone of Morocco, but not to colonies), Rumania, and Belgium.
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Article 2

(1) The damage caused by an aircraft in flight to persons or property on the surface shall give a right to compensation by the mere fact that it is established that the damage exists and that it was caused by the aircraft.

(2) This provision shall be applicable to the following:
   (a) Damage caused by any body whatever falling from the aircraft, even in the case of regulation jettison of ballast or jettison made in a case of necessity;
   (b) Damage caused by any person on board the aircraft, except in the case of an act intentionally committed by a person who is not a member of the crew, not connected with the operations, without the operator or his agents having been able to prevent it.

(3) The aircraft is considered as in flight from the beginning of the operations of departure until the end of the operations of arrival.

Article 3

The liability contemplated in the preceding article cannot be reduced or avoided except in the case where the negligence of the injured party caused the damage or contributed thereto.

Article 4

(1) The liability contemplated in Article 2 shall attach to the operator of the aircraft.

(2) Any person who has the right of disposal of, and uses the aircraft on his own account shall be termed operator of the aircraft.

(3) In case the operator's name is not inscribed on the aeronautic register or any other official document, the owner shall be presumed to be the operator subject to proof to the contrary.

Article 5

Any person who, without having the right to dispose of the aircraft, makes use of it without the consent of the operator shall be liable for the damage caused, and the operator who has not taken the proper measures to avoid the unlawful use of his aircraft shall be jointly liable with him, each of them being bound on the conditions and within the limits of the present Convention.

Article 6

In case of damage caused on the surface by two or more colliding aircraft, the operators of such aircraft shall be jointly and
severally liable to the injured third parties, each one of them being bound on the conditions and within the limits of the present Convention.

Article 7

The preceding provisions shall not prejudge the question as to whether the operator of the aircraft shall or shall not have recourse against the author of the damage.

Article 8

(1) The operator shall be liable for each accident for an amount not to exceed a sum determined at the rate of 250 francs per kilogram of weight of the aircraft. By the weight of the aircraft shall be understood the weight of the aircraft with the full maximum load, as shown on the certificate of airworthiness or any other official document.

(2) However, the limit of the operator's liability cannot be less than 600,000 francs nor more than 2,000,000 francs.

(3) One-third of this value shall be assigned to compensation for damages caused to property and the other two-thirds to compensation for damages caused to persons, provided that in this last case the compensation contemplated cannot exceed 200,000 francs per person injured.

Article 9

If several persons have suffered damages in the same accident and if the total amount to be paid as compensation exceeds the limits contemplated in Article 8, a proportional reduction in each one's rights must be made in such manner that the total shall not exceed the above-mentioned limits.

Article 10

(1) The persons who have suffered damages in the same accident must assert their rights or give notice of their claims to the operator within the maximum period of six months from the day of the accident.

(2) This period having expired, settlement of the compensation may properly be made; the interested parties having permitted the above period to elapse without asserting their rights or giving notice of their claims shall not be able to exercise their rights except on such amount as shall not have been distributed.
Article 11

If different injured third parties act in accordance with the provisions of the preceding articles and Article 16 before courts situated in different countries, the defendant may submit a statement, before each of them, of the total amount of the claims and moneys due, with a view to preventing the limits of his liability from being exceeded.

Article 12

(1) Any aircraft entered on the register of a territory of one High Contracting Party, in order to navigate above the territory of another High Contracting Party, must be insured against the damages considered in the present Convention, within the limits determined in Article 8 above, with a public insurance institution or an insurer authorized for this risk in the territory of registry of the aircraft.

(2) The domestic legislation of any High Contracting Party may substitute for the insurance, wholly or in part, another guarantee for the risks considered in the present Convention:

(a) in the form of a cash deposit made in a public fund or a bank authorized for this purpose in the territory of registry of the aircraft;

(b) in the form of a guarantee given by a bank authorized for this purpose in the territory of registry of the aircraft.

Said cash deposit and said guarantee must be brought up to their full amount as soon as the sums which they represent become subject to reduction by the amount of a payment for compensation.

(3) The insurance, the cash deposit and the bank guarantee must be especially and preferentially assigned to payment of the compensations due on account of the damages contemplated in the present Convention.

Article 13

(1) The kind, extent and duration of the sureties contemplated in Article 12 above shall be evidenced either in an official certificate or by an official notation on one of the ship's papers. Said certificate or document must be produced whenever required by the public authorities or upon the request of any party concerned.

(2) Said certificate or said document shall serve to attest the situation of the aircraft with respect to the obligations of the present Convention.
Article 14

The operator shall not be entitled to avail himself of the provisions of the present Convention which limit his liability:

(a) if it is proved that the damage was caused by gross negligence or wilful misconduct on the part of the operator and his agents, unless the operator proves that the damage was due to an error in piloting, operation or navigation, or, in a matter affecting his agents, that he has taken all the proper measures to prevent the damage;

(b) if he has not furnished one of the sureties prescribed in the present Convention, or if the sureties furnished are not in force or do not cover the operator's liability for the damage caused within the terms and limits of the present Convention.

Article 15

In case the operator of more than one aircraft furnishes the surety prescribed in the present Convention in the form of a cash deposit or a bank guarantee, the surety shall be deemed to cover the full limit of his liability for all the aircraft operated, if the deposit or the guarantee amounts to a sum arrived at by reducing the amount of the surety which he should furnish for the total number of his aircraft by one-third in case he operates two aircraft, and by one-half in case he operates three or more. Furthermore it shall be deemed to cover the full limit of liability for all the aircraft if it amounts to the sum of 2,500,000 francs for two aircraft or 3,000,000 francs for three or more.

Article 16

The following have competent jurisdiction over suits or damages in the territory of any one of the High Contracting Parties, as the claimant may elect: the judicial authorities of the defendant's domicile and those of the place where the damage was caused, without prejudice to the injured third party's right of direct action against the insurer in a case in which it can be exercised.

Article 17

(1) Such suits shall be barred after one year from the day of the damage. If the injured party proves that he could not have known either of the damage or the identity of the person liable, the
period of limitation shall begin from the day when he could have had knowledge thereof.

(2) In every case, the suit shall be barred after three years from the day when the damage was caused.

(3) The manner of calculating the period of limitation as well as the causes of suspension and interruption of the period shall be determined by the law of the court before which the suit is brought.

Article 18

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

Article 19

The sums stated in francs in the present Convention are considered to refer to the French franc containing 65½ milligrams of gold to a fineness of 900/1000. They may be converted into any national currency in round numbers.

Article 20

(1) The present Convention shall be applicable whenever any damage has been caused on the surface in the territory of one High Contracting Party by an aircraft registered in the territory of another High Contracting Party.

(2) The expression "territory of one High Contracting Party" shall include, for the purposes of the present Convention, any territory under the sovereign power, suzerainty, protection, mandate or authority of the said High Contracting Party for which the latter is a party to the Convention.

Article 21

The present Convention shall not apply to military, custom-house or police aircraft.

Article 22

The present Convention shall not apply to damages caused on the surface compensation for which is governed by a transportation contract or a labor contract entered into between the injured party and the one upon whom liability falls under the terms of the present Convention.
Article 23

The present Convention shall be drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of the Kingdom of Italy, and of which a duly certified copy shall be sent by the Government of the Kingdom of Italy to each of the Governments concerned.

Article 24

(1) The present Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of the Kingdom of Italy, which shall notify each of the Governments concerned of the deposit thereof.

(2) As soon as five ratifications shall have been deposited, the Convention shall come into force as between the High Contracting Parties which shall have ratified it ninety days after the deposit of the fifth ratification. Any ratification which is deposited subsequently shall take effect ninety days after such deposit.

(3) It shall be the duty of the Government of the Kingdom of Italy to notify each of the Governments concerned of the date on which the present Convention comes into force.

Article 25

(1) The present Convention, after coming into force, shall be open for accession.

(2) Accession shall be made through a notification addressed to the Government of the Kingdom of Italy, which shall inform each of the Governments concerned thereof.

(3) The accession shall take effect ninety days after the notification to the Government of the Kingdom of Italy.

Article 26

(1) Any one of the High Contracting Parties may denounce the present Convention by a notification addressed to the Government of the Kingdom of Italy which shall at once inform each of the Governments concerned thereof.

(2) The denunciation shall take effect six months after the notification of the denunciation and shall operate only with respect to the party making the denunciation.
Article 27

(1) The High Contracting Parties may, at the time of signature, deposit of the ratifications or accession, declare that the acceptance which they give to the present Convention shall not apply to all or to any part of their colonies, protectorates, overseas territories, mandated territories or any other territory under their sovereignty, authority or suzerainty.

(2) The High Contracting Parties may subsequently notify the Government of the Kingdom of Italy that they intend to render the present Convention applicable to all or to any part of their colonies, protectorates, overseas territories, mandated territories or any other territory under their sovereignty, authority or suzerainty, so excluded from their original declaration.

(3) They may, at any time, notify the Government of the Kingdom of Italy that they intend to have the present Convention cease to apply to all or any part of their colonies, protectorates, overseas territories, mandated territories or any other territory under their sovereignty, authority or suzerainty.

(4) The Government of the Kingdom of Italy shall notify each of the Governments concerned of notifications made in accordance with the last two paragraphs.

Article 28

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of the present Convention to call for the meeting of another international Conference in order to consider any improvements which might be made in the present Convention. To this end it shall communicate with the Government of the French Republic which shall take the necessary measures in preparation of such Conference.

The present Convention, done at Rome, May 29, 1933, shall remain open for signature until January 1, 1934.

In testimony whereof the Plenipotentiaries have signed the present Convention.

For the United States of America:

The Delegation of the United States of America declares that the Convention shall apply only within the continental limits of the United States of America exclusive of the territory of Alaska.

John C. Cooper, Jr.
Jaeckel
John Jay Ide
III. Liability for Collision-Damage

Draft Convention for the Unification of Certain Rules Relating to Aerial Collisions

Article 1

The High Contracting Parties agree to take the necessary measures to put into effect the rules established in this Convention.

Article 2

(1) By an aerial collision is meant any physical impact which has occurred, for any reason whatever, between two or more aircraft in motion.

(2) The aircraft shall be considered to be in flight from the beginning of the operations of departure up to the end of the operations of arrival.

(3) The damage which one aircraft in motion has caused to another aircraft in motion or to the persons and goods embarked or shipped thereon, even when there has been no physical impact, shall be considered as damage arising out of a collision.

Article 3

(1) The indemnity due for damages caused in case of a collision that has occurred between aircraft shall, in accordance with the provisions of this Convention, be payable by the operator of the aircraft.

(2) Any person who has the right to use an aircraft and who uses it for his own account shall be termed operator of the aircraft. In case the name of the operator is not recorded on the aeronautic register or any other official document, the owner shall be deemed to be the operator, subject to proof to the contrary.

(3) Any person who, without having the right to use an aircraft, uses the same without the consent of the operator, shall be liable for the injury caused, and any operator who does not take the necessary measures to avoid such wrongful use of his aircraft shall be jointly and severally liable with him, each one of them being bound within the conditions and limits of this Convention.

Article 4

(1) If the collision is caused by the negligence of one of the aircraft, the liability for the injuries caused to the other aircraft and to the persons and property aboard shall be incumbent upon the person guilty of negligence.

(2) This liability shall be limited to the value of the negligent aircraft. Such value shall be determined on the basis of 250 francs per kilogram of weight of the aircraft. By weight of the aircraft shall be meant the weight of the aircraft with the total maximum load as shown on the certificate of airworthiness or on any other official document. However, the limit of the operator's liability shall not be less than 600,000 francs nor greater than two million francs. The said sum shall be considered as referring to the French franc containing 65½ milligrams of gold of a standard of fineness of 900/1000. It may be converted into each national currency in round numbers.

(3) One-third of this value shall be assigned to the reparation of injuries caused to property (the aircraft and the property aboard), and two-thirds to the reparation of injuries caused to persons; provided that, in the latter case, the indemnity set forth shall not exceed 125,000 francs per person injured. However, if that part of the value which is assigned to the reparation of injuries caused to property is not entirely absorbed in the reparation of such injuries, it shall be assigned to the reparation of injuries to persons.

(4) If several persons have suffered injuries in the same accident, and if the lump sum to be paid in damages exceeds the limits provided for in paragraph (2) of this article, the right of each one shall be reduced in proportion, so as not to exceed the above-mentioned limits, in the aggregate. Such persons must assert their rights or give notice of their claims to the operator within a maximum period of six months from the day of the accident. After the expiration of this period, settlement of the indemnities may properly be made; interested parties having allowed the above period to lapse without asserting their rights or giving notice of their claims, can exercise their rights only as to the amount which has not been distributed.

(5) The operator shall not be entitled to avail himself of the provisions of this article which limit his liability if it is proved that the collision was caused by his fraud or gross negligence or by the fraud or gross negligence of his employees, unless he proves,
where his employees are involved, that he has taken all the necessary measures to prevent the collision.

**Article 5**

(1) If the collision is caused by concurrent negligence, the liability of each one of the aircraft for the injuries caused to aircraft, to persons and goods embarked or shipped thereon, shall be in proportion to the degree of negligence shown; however, if, according to the circumstances, a proportion cannot be determined, or if the degrees of negligence appear to be equal, the liability shall be shared in equal parts.

(2) For injuries caused to negligent aircraft the liability of each one of the operators shall be governed by the provision contained in the preceding paragraph, and it shall be limited in conformity with the provisions of Article 4.

(3) For injuries caused to persons and to property on board, the injured persons may sue their carrier on the basis of their transportation contract, and the rule of paragraph (1) cannot be invoked against them. They may, furthermore, sue the operator of the other aircraft; however, the liability of the latter shall be limited in conformity with the provisions of Article 4.

(4) Any operator who, pursuant to the provisions of the foregoing paragraphs, pays an amount in excess of that which he is to bear according to the rule set forth in paragraph (1), shall have a right of recourse against the concurrently negligent operator; however, such recourse can never be exercised beyond the limits set forth in Article 4.

**Article 6**

In a fortuitous case or a case of force majeure, or where no negligence has been proved against any aircraft, the collision shall give no right of action under this Convention.

**Article 7**

(1) In case of damage caused on the surface by two or more aircraft that have collided, the operators of said aircraft shall be jointly and severally liable to the third parties suffering the damage, each one of them being bound within the terms and limits of his liability to third parties on the surface.

(2) The distribution of the liability among the aircraft that
collided shall be made on the following basis, but only within the above-mentioned limits:

(a) If the collision is due to the exclusive negligence of one of the aircraft, such aircraft shall be the only one liable;

(b) If there is concurrent negligence, the liability shall be apportioned in accordance with the rule in Article 5, paragraph (1) above;

(c) In a fortuitous event, or one of force majeure, or if no negligence is proved against any aircraft, the liability shall be shared equally.

(3) If, because of joint and several liability, the operator of an aircraft has paid to the parties suffering damage on the surface a sum which, in accordance with paragraph (2) of this article, he was not to bear, the recourse that such operator will have against the other aircraft can, in no case, be exercised, beyond the limits of liability of each aircraft toward third parties.

Article 8

The operator who is sued in damages for injuries caused by the collision must, within a period of six months, send notice of such suit to the operator of the aircraft against whom he intends to exercise the right of recourse, under penalty of having such recourse denied.

Article 9

(1) Any person exercising the functions of commanding officer on board one of the aircraft that have collided shall be bound to render every useful assistance to the other aircraft, and to inform the nearest authorities of this accident, by the most rapid method.

(2) Such commanding officer is likewise bound to communicate to the other aircraft, if possible, the nationality and registration marks of his aircraft as well as the places whence he proceeds and where he is going.

(3) The national legislations shall determine the penalties designed to secure the execution of this obligation, and the High Contracting Parties shall communicate to each other, through diplomatic channels, the texts of such laws.

Article 10

(1) To hear damage suits growing out of a collision the following shall have jurisdiction in the territory of the High Contracting Parties, at the option of the plaintiff:
(a) The judicial authorities of the defendant's domicile;
(b) Those of the place where the collision occurred;
(c) If there has been an attachment of one of the aircraft that collided, the judicial authorities of the place of such attachment.

(2) If the defendant does not have his domicile in one of the Contracting States, and if the collision occurred outside of the territory of the said States, the suit for damages may be brought before the judicial authorities of the place of registration of one of the aircraft that have collided, and whose operator is being sued.

(3) If various injured persons bring actions based on the foregoing articles in jurisdictions situated in different countries, the defendant may, in each one, submit a statement of the total of the claims and moneys due, with a view to preventing the limit of his liability from being exceeded.

Article 11

(1) Actions seeking compensation for injuries suffered as a result of a collision must be brought within one year of the day of the injury.

(2) If the injured person proves that he could not have had knowledge either of the injury or of the identity of the person liable, the period of limitation shall begin from the day on which he could have had such knowledge. In all cases, the action must be brought within three years from the day when the injury was caused.

(3) The period in which the actions in recourse permitted by the foregoing articles must be brought shall be one year. Such period shall begin only with the day of payment.

(4) The method of calculating the limitation period as well as the causes of suspension and interruption of such period shall be determined by the law of the court before which the action is brought.

Article 12

In case of death of the person liable, the suit for damages within the limits provided for by this Convention shall be brought against his representatives.

Article 13

This Convention shall apply even to government aircraft, other than military, customs, and police aircraft.
Article 14

(1) This Convention shall apply in all the Contracting States:
   (a) When the collision takes place on their territory and if one at least of the aircraft that have collided is registered in another Contracting State;
   (b) Regardless of the place of the collision, if two or more of the aircraft are registered in different Contracting States.

(2) The expression "territory of a Contracting State" shall include, for the purposes of this Convention, all the territory subject to the sovereign power, suzerainty, protectorate, mandate, or authority of said Contracting State for which the latter is a party to the Convention.

IV. Registration of Title

Draft Convention on the Ownership of Aircraft and the Aeronautic Register

Article 1

(1) The High Contracting Parties undertake to establish in their national laws that every aircraft registered according to the said laws shall be inscribed on a register for the publicity of rights, having in view the inscription of the ownership and the real rights by the competent authority of the said State.

(2) The said register may be the one in which the aircraft is registered on a distinct register. In the latter case agreement shall be established between the two registers.

Article 2

(1) An aircraft inscribed on the register of one of the High Contracting Parties cannot be inscribed on the register of another High Contracting Party unless the owner proves that he has effected the cancellation of the original inscription.

(2) In case the aircraft is encumbered with real charges on the register the inscription on the new register shall be subject to the proof that the creditors have been paid or have agreed to the transfer of the inscription. In the latter case the real charges shall

be inscribed on the new register solely upon the evidence of the inscriptions existing on the preceding register.

(3) In order to effect the transfer of the inscription from the register of one of the High Contracting Parties to that of another:

1. An application for inscription must be addressed to the Bureau of the State in which the aircraft is to be inscribed:

2. An application for cancellation with a view to transfer of the inscription to the register of another State must be addressed to the Bureau of the State in which the aircraft is inscribed. The application shall indicate the Bureau to which the inscription is to be transferred and must be accompanied, if the case applies, by the written consent in duplicate, duly legalized, of the creditors, or by the proof that the said creditors have been paid.

(4) The application for cancellation ipso facto shall render the mortgage claims payable.

(5) A note of the application for transfer shall be made on the register of the first State, and no inscription can be made thenceforth on the same register. However, if the Bureau of the First State receives under the conditions contemplated in article .... five an application relative to a forced execution after a note has been made of the application for transfer, the provisions of the said article shall be applied; a certified true copy of this application shall be transmitted immediately by the Bureau of the first State to that of the second State which also shall conform to article .... five.

(6) In case the Bureau of the first State does not oppose the cancellation on its register, it shall, by means of form A of the Annex, inform the Bureau of the State in which inscription is applied for, and shall transmit to it the application contemplated in section 1 of paragraph 3, and at the same time a certified true extract from the register certifying that there is no objection to the cancellation of the original inscription.

(7) The Bureau in which the new inscription is applied for shall proceed, if proper, according to formula B of the Annex, to the inscription of the aircraft and shall send without delay to the Bureau of the first State a certification of the inscription on its

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5. Article 8 of the Draft Convention on mortgages, other real securities and aerial liens is referred to. The number of this article has been left blank in view of the possible amalgamation of the two drafts by the International Conference on Private Aerial Law. [Footnote in the draft.]
register. Upon receiving this certification the inscription of the aircraft shall be cancelled on the register of the Bureau of the first State.

_Article 3_

Each of the Contracting States may inscribe on its registers, provisionally, aircraft under construction or not yet registered.

_Article 4_

The following are considered as forming an integral part of the aircraft: the motors, tools and, in general everything intended for the permanent use of the aircraft, indicated in the inventory, even if they are temporarily separated, with reservation of the rights of third parties who are purchasers in good faith.

_Article 5_

(1) The register contemplated in Article 1 shall be kept by the authorities determined by the national laws, and according to the rules provided in the same laws, in so far as they are not contrary to the provisions of the present Convention.

(2) The register must be public, and any person may demand certified true copies.

(3) The seat of the Bureau charged with keeping the register must be indicated on the certificate of registration.

(4) The Bureaus charged with keeping the register are authorized to correspond directly in order to assure the execution of the provisions of Article 2.

_Article 6_

The obligation to have the aircraft registered shall devolve upon the owner who must furnish all information which is necessary to effect the inscription in the terms of the following article.

_Article 7_

(1) The register provided in article 1 must contain all data relative to the aircraft and, especially, the number of the certificate or registration, the date of registration, the mark of nationality and registration, the type of craft, a brief description of the craft, the date and place of construction, serial number of construction, kind
and power of the motors, name and domicile of the owner, name of the insured, and the other data prescribed in article 9.

(2) For aircraft under construction the register shall contain the data which can actually be furnished; said data to be completed after the construction is finished.

Article 8

(1) If changes take place in the facts mentioned on the register, or if the aircraft perishes, is demolished or becomes permanently unfit for air navigation, the Bureau of inscription must be requested to make the necessary changes.

(2) The application must be signed by the owner and accompanied with the necessary documents of proof.

Article 9

(1) All transfers of property inter vivos, assignments, cessions of real rights and renunciations of the said rights are valid with regard to third parties only through their inscription on the register and produce no effect until the date of said inscription.

(2) Against the one who has acquired in good faith the ownership or a real right from the person inscribed on the register as holder of said right no objection can be made on the grounds of the lack of right of the person from whom his right is derived.

(3) The Contracting States shall take the measures necessary in order to effect the inscription in case of transfer due to decease.

Article 10

The inscription made on the register by virtue of articles 1, 8 and 9 must be reproduced on the certificate of registration.

FINAL PROVISIONS

Article 11

This Convention shall apply only to aircraft assigned to international navigation.

Article 12

The High Contracting Parties whose legislation may not be sufficient to assure the execution of the provisions of this Convention shall take the measures and enact sanctions necessary for this purpose.
ANNEX

FORM A

TRANSFER OF INSCRIPTION

In accordance with article 2 of the Convention 
under date of ............ we inform you 
that we have received an application for cancellation on 
our register of the inscription of aircraft ........... 
(name) ............ inscribed under number ............
which the interested parties desire to have inscribed 
on your register. There is no objection on our part, to 
this cancellation. The latter will be effected as soon as 
you send us the attestation certifying the inscription of 
the said aircraft on your register, accompanied with the 
certificate of inscription, issued by us and with the 
duplicate.*

We attach herewith the following documents:
1. The application for inscription;
2. Certified copy of the inscription on our reg-
ister;
3. A statement of the existing inscriptions or a 
certificate in the negative;†
4. The written and duly legalized consent of the 
mortgage creditors.

* Cross out this mention if there is no duplicate.
† Strike out the mention which does not apply.

FORM B

TRANSFER OF INSCRIPTION

With reference to your letter of ............ concern-
ing the cancellation on your register and the inscrip-
tion on our register of the aircraft inscribed on your 
register under the name ............ and number ............
we inform you that the inscription of this aircraft on 
our register was made on ............ under the 
name ............ and number ............

We send you enclosed the certificate of inscription 
issued by you and the duplicate * which we made in 
accordance with article 2 of the Convention ............ 
under date of ............

* Strike out this mention if there is no duplicate.
V. Mortgages, Etc., of Aircraft

Draft Convention on Mortgages, Other Real Securities, and Aerial Privileges

Chapter I.—On Mortgages and Other Real Securities

Article 1

In the meaning of the present Convention, by aerial mortgage is understood a real security, whatever may be its name and origin, which is inscribed on the register for the publicity of rights and which assigns the aircraft to the payment of a debt the amount of which is likewise inscribed thereon.

Article 2

Aerial mortgages regularly constituted and not extinguished, according to the law of the Contracting State on whose register the aircraft is inscribed, shall produce the effects determined by the present Convention.

Article 3

The aerial mortgage shall guarantee, equally with the principal sum, the current interests and the interest in arrears for one year, at the rate recorded on the register, as well as the costs of procedure, in so far as they are not privileged by paragraph 1 of Article 11.

Article 4

(1) The aerial mortgage shall include the insurance indemnity due in case of loss or damage to the aircraft.

(2) It shall not extend to the freight.

Article 5

The rank of aerial mortgages with respect to each other shall be determined by the inscription on the register.

Article 6

With reservation of the provisions of paragraph 4 of Article 8, and paragraph 5 of Article 13, the aerial mortgage shall take prece-

dence over all claims, even those of the Fisc, which are not privileged by virtue of Article 7.

CHAPTER II.—Privileges

Article 7

(1) The following shall be paid with preference over aerial mortgage claims:

(a) The airport fees or fees of any other public aerial navigation service arising out of the last voyage; 9

(b) Compensation due because of salvage or assistance;

(c) Expenses paid in case of repairs effected by the commander by virtue of his legal powers or upon his order in the course of a voyage for real needs of conservation of the aircraft.

(2) The rank of said claims with respect to each other shall be determined in the above order. Claims connected with one and the same voyage shall be privileged in the order in which they are arranged in paragraph 1. The claims contemplated under letters (b) and (c) within each of the said categories shall be paid preferably in the inverse order of the dates when they originated.

(3) The right of preference does not include the insurance indemnity.

(4) This right expires after a period of three months from the day when the operations which give rise to the privileged claim are completed. Considerations of interruption in the above period shall be determined by the law of the court taking cognizance.

CHAPTER III.—Forced Execution

Article 8

(1) When an aircraft is attached in order to be sold, or when proceedings of forced execution are begun without preliminary attachment, the competent authorities must apply to the Bureau charged with keeping the register for the publicity of rights to have a record thereof made on the register.

(2) The application shall be made out according to the attached (See Annex A); it may be delivered to the Consul of the

7. For the translation of this word, see note 6.—Ed.
8. It will be for the Governments to safeguard where necessary the interests of the Treasury, either by enlarging, at the Conference, the list in Article 7, or by making reservation, in the final protocol [Protocole de Clôture], of the right to privilege certain fiscal claims. [Footnote in the draft.]
9. The final protocol shall contain a reservation whereby each State is left free to establish among these claims a fixed order, inspired by regard for the interests of the Treasury. [Footnote in the draft.]
country where the register for the publicity of rights is kept, for
transmission by telegram to the said Bureau upon payment of the
charges.

(3) The Bureau charged with keeping the register for the
publicity of rights must take the measures necessary in order that,
upon receipt of the application, any person coming to consult the
inscription on the register relative to the attached aircraft may have
knowledge thereof, that record thereof may be made on the said
register, that the owner and the creditors inscribed may be informed
thereof and that a certified true copy of the record as well as the
list of the addresses of the owner and the creditors inscribed, fur-
nished by them, may be sent to the competent authorities indicated
in the application.

(4) No alienation can be alleged against the attaching or in-
tervening creditor or the beneficiary of the adjudication, if effected
after the receipt of the application by the Bureau charged with
keeping the register for the publicity of rights or if, at the time of
the alienation, the purchaser had knowledge or should reasonably
have had knowledge of the opening of the proceedings or of the at-
tachment. The same rule shall apply to the constitution of mortgages
and other real rights.

**Article 9**

(1) Sale by authority of justice has for effect the transfer of
the property and the settlement of the charges under the conditions
determined by the law of the place of the execution.

(2) This law must prescribe that the owner and the creditors
inscribed shall be notified, at least one month in advance, of the
date on or before which they may, in the conditions determined by
this law, present their rights, and that, at least one month in ad-
vance, the date of the sale shall be communicated to the owner and
to the said creditors and published in the place where the register
for the publicity of rights is kept.

**Article 10**

Failure to observe the formalities prescribed in Article 9 will
have for effect, according to the law of the place of the execution,
either nullity of the sale, or the invalidity of the sale as against
interested third parties, or compensation by the State for the dam-
age caused. The obligation to pay compensation cannot be made
conditional upon reciprocity.
Article 11

(1) There shall be deducted from the amount of the adjudication, before distribution thereof, only the court costs incurred in the common interest of the creditors in order to arrive at the sale and distribution of the price, including the expenses of custody, but excepting the expenses incurred with a view to obtaining an executionary title.

(2) The surplus of the price of adjudication shall be distributed to the creditors and to the owner, in accordance with the rules of procedure of the law of the place of the execution, taking into account the rank which belongs to the creditors in the terms of the present Convention.

Article 12

(1) The competent authorities of the country where the register for the publicity of rights is kept must proceed to release the mortgages extinguished under the conditions prescribed in Article 9 upon the presentation of an authentic certified copy of the act of adjudication, and after the competent authorities, according to the law of the court of inscription, shall have verified that the certified copy is authentic, that the authorities which performed the adjudication were competent, and that the conditions of publicity contemplated in Article 9 have been observed.

(2) The competent authorities of the country in which the register for the publicity of rights is kept shall notify the owner and the inscribed creditors of the release effected.

(3) The copy of the act of adjudication, verified in conformity with paragraph 1, shall constitute proof, with respect to the Bureau charged with keeping the register for the publicity of rights, of the transfer of ownership.

Chapter IV.—Precautionary Attachment

Article 13

(1) Proceedings of precautionary attachment shall be governed by the law of the place of the attachment. However, the following provisions must be observed:

(2) The competent authorities or the attaching creditor may apply to the Bureau charged with keeping the register for the publicity of rights to have a record of the attachment made on the register.

10. Superseded by the Draft Convention of 1933 on Attachment.—En.
(3) The application shall be drawn up according to the attached form (See Annex B); it may be sent to the Consul of the country in which the register for the publicity of rights is kept for transmission by telegraph to the said Bureau upon payment of the charges.

(4) The Bureau charged with keeping the register for the publicity of rights shall proceed according to the provisions of paragraph 3 of Article 8.

(5) No alienation can be alleged against the attaching creditor, if effected after the receipt of the application by the said Bureau or if, at the time of the alienation, the purchaser had knowledge or could reasonably have had knowledge of the attachment. The same rule shall apply to the constitution of mortgages or other real rights.

(6) The authorities charged with keeping the register must cancel the record of the precautionary attachment as soon as the act or the decision according the release of the attachment is sent to them.

CHAPTER V.—Final Provisions

Article 14

With a view to the application of the present Convention, the competent judicial and administrative authorities of the High Contracting Parties are authorized to correspond directly with each other.

Article 15

The provisions of the present Convention shall apply only when an aircraft registered by one of the High Contracting Parties is on the territory of another High Contracting Party.

ANNEX A

APPLICATION TO HAVE AN EXECUTIONARY ATTACHMENT RECORDED

The Bureau................... is requested to do what is necessary in order that a record may be made on the register for the publicity of rights of the fact that the aircraft belonging to*............. inscribed on the register at........... bearing the numbers.................. has been the subject of an executionary attachment under date of........by virtue of†..............by‡ .........................on the petition of...................... for a claim in the amount of........with interest and costs.

(Signed by the authorities which effected the attachment.)

* Name of the owner if known.
† Judgment or other executory title.
‡ The authorities which have effected the attachment.
ANNEX B

APPLICATION TO HAVE A PRECAUTIONARY ATTACHMENT RECORDED

The Bureau .................. is requested to do what is necessary in order that a record may be made on the register for the publicity of rights of the fact that the aircraft belonging to*............inscribed on the reg-
ister at...........bearing the numbers.................
has been the subject of a precautionary attachment under date of........by virtue of†............by‡
..............on the petition of.................
for a claim in the amount of...........with interest and costs.
(Signed by the authorities which effected the attachment or the attaching creditor.)

* Name of the owner if known.
† Judgment or other executory title.
‡ The authorities which have effected the attachment.

VI. Attachment of Aircraft

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO THE PRECAUTIONARY ATTACHMENT OF AIRCRAFT

Article 1

The High Contracting Parties agree to take the necessary measures to put into force the rules established by the present Convention.

Article 2

(1) By precautionary attachment within the meaning of the present Convention shall be understood any act, whatever it may be called, where an aircraft is seized, in a private interest, through the medium of agents of justice or of the public administration, for the benefit either of a creditor, or of the owner, or of the holder of a lien on the aircraft, where the attaching claimant cannot invoke a judgment and execution, obtained beforehand in the ordinary course of procedure, or an equivalent right of execution.

(2) In case the applicable law gives the creditor who holds the aircraft without the consent of the operator the right of deten-
tion, the exercise of this right shall, for the purposes of the present Convention, be the same as precautionary attachment and be governed by the régime contemplated in the present Convention.

**Article 3**

(1) The following aircraft shall be exempt from precautionary attachment:

(a) Aircraft assigned exclusively to a Government service, the postal service included, commerce excepted;

(b) Aircraft actually put in service on a regular line of public transportation and indispensable reserve aircraft;

(c) Any other aircraft assigned to transportation of persons or property for hire, when it is ready to depart for such transportation, except in a case involving a debt contracted for the trip which it is about to make or a claim arising in the course of the trip.

(2) The provisions of the present article shall not apply to a precautionary attachment made by the owner of an aircraft who has been dispossessed of the same by an unlawful act.

**Article 4**

(1) In case attachment is not prohibited or in case the aircraft is exempt from attachment and the operator does not invoke such exemption, an adequate bond shall prevent the precautionary attachment or give a right to immediate release.

(2) The bond shall be adequate if it covers the amount of the debt and the costs and is assigned exclusively to payment of the creditor, or if it covers the value of the aircraft in case this is less than the amount of the debt and costs.

**Article 5**

In every case a judgment shall be rendered on a suit for release of the precautionary attachment in a summary and rapid procedure.

**Article 6**

(1) If an aircraft has been attached which is exempt from attachment according to the provisions of the present Convention, or if the debtor has had to furnish bond to prevent the attachment or to obtain the release thereof, the attaching claimant shall be liable in accordance with the law of the forum for the resulting damage to the operator or the owner.
(2) The same rule shall apply in case a precautionary attachment has been made without just cause.

Article 7

The present Convention shall not apply to precautionary measures prescribed in bankruptcy proceedings, nor to precautionary measures taken in case of violation of customhouse, penal or police regulations.

Article 8

The present Convention shall not prevent the application of international conventions between the High Contracting Parties which provide for more liberal exemptions from attachment.

Article 9

(1) The present Convention shall apply on the territory of any one of the High Contracting Parties to any aircraft registered in the territory of another High Contracting Party.

(2) The expression "territory of a High Contracting Party" includes any territory under the sovereign power, suzerainty, protection, mandate or authority of the said High Contracting Party, for which the latter is a party to the Convention.

Article 10

The present Convention shall be drawn up in French in one original copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of the Kingdom of Italy, and of which a duly certified copy shall be sent by the Government of the Kingdom of Italy to each of the Governments concerned.

Article 11

(1) The present Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of the Kingdom of Italy, which shall notify each of the governments concerned of the deposit thereof.

(2) As soon as five ratifications shall have been deposited, the Convention shall come into force between the High Contracting Parties which shall have ratified it, ninety days after the deposit of the fifth ratification. Each ratification which shall be deposited subsequently shall take effect ninety days after such deposit.
(3) It shall be the duty of the Government of the Kingdom of Italy to notify each of the Governments concerned of the date on which the present Convention comes into force.

Article 12

(1) The present Convention, after its coming into force, shall be open for accession.

(2) The accession shall be effected through a notification addressed to the Government of the Kingdom of Italy, which shall inform each of the Governments concerned.

(3) The accession shall take effect ninety days after the notification made to the Government of the Kingdom of Italy.

Article 13

(1) Any one of the High Contracting Parties may denounce the present Convention through a notification made to the Government of the Kingdom of Italy, which shall at once notify each of the Governments concerned.

(2) The denunciation shall take effect six months after notification thereof and shall operate only with respect to the party making the denunciation.

Article 14

(1) The High Contracting Parties may, at the time of signature, deposit of the ratifications, or accession, declare that the acceptance which they give to the present Convention shall not apply to all or to any part of their colonies, protectorates, overseas territories, mandated territories or any other territory under their sovereignty, authority or suzerainty.

(2) The High Contracting Parties may subsequently notify the Government of the Kingdom of Italy that they intend to render the present Convention applicable to all or any part of their colonies, protectorates, overseas territories, mandated territories or any other territory under their sovereignty, authority or suzerainty so excluded from their original declaration.

(3) They may, at any time, notify the Government of the Kingdom of Italy that they intend to have the present Convention cease to apply to all or to any part of their colonies, protectorates, overseas territories, mandated territories, or any other territory under their sovereignty, authority or suzerainty.
(4) The Government of the Kingdom of Italy shall inform each of the Governments concerned of the notifications made in accordance with the last two paragraphs.

Article 15

Any of the High Contracting Parties shall be entitled, not earlier than two years after the coming into force of the present Convention, to call for a meeting of another international conference in order to consider any improvements which might be made in the present Convention. To this end it shall communicate with the Government of the French Republic, which will take the necessary measures in preparation for such conference.

The present Convention, done at Rome, May 29, 1933, shall remain open for signature until January 1, 1934.

For the United States of America:

The Delegation of the United States of America declares that the Convention shall apply only within the continental limits of the United States of America exclusive of the territory of Alaska.

John C. Cooper, Jr.
Jaeckel
John Jay Ide.

VII. Aircraft Commander's Authority

Draft Convention on the Legal Status of the Aircraft Commander

Article 1

(1) The Commander of the aircraft shall be the person vested with the powers of safety, discipline and authority on board the aircraft, and representing the operator.

(2) Any aircraft capable of carrying at least X persons or X tons of goods must have on board a person especially invested with the powers of a commander.

(3) On other aircraft the appointment of a commander shall be optional. In the absence of an appointed commander, the functions shall be performed by the navigator or, in his absence, by the pilot, the latter, in the absence of a special agency, having only the

powers of safety, discipline and authority, such as they are contemplated in this Convention.

(4) The choice of the commander and the granting of the special agency (paragraph 3), shall devolve upon the operator of the aircraft.

Article 2

The name of the aircraft commander or that of the navigator or pilot to whom a special agency has been given by virtue of Article 1, paragraph 3, must be recorded on the aircraft papers; this entry shall also be required in case the commander of the aircraft is the same person as the operator thereof.

Article 3

The aircraft commander shall be the master on board; he shall have disciplinary powers with respect to the navigating personnel (crew) and powers of authority with respect to the passengers.

Article 4

The aircraft commander shall have the right, even without a special agency:

a) to make the necessary purchases for the voyage undertaken;
b) to make the necessary repairs on the aircraft;
c) to take all necessary steps and incur the necessary expenditures to safeguard the baggage and the goods carried;
d) to make loans in order to supply the needs indicated above under a), b), and c);
c) to hire and dismiss members of the crew.

Article 5

(1) The powers of the aircraft commander, specified in Article 4, may be enlarged in a special agency.

(2) They may also be restricted. However, the use of such a restriction as a defense against third parties is conditioned upon proof, by the operator, that the third parties in question had knowledge of the restrictions involved.

Article 6

The aircraft commander shall not have the right to sell the aircraft or to encumber it with mortgages or other real rights, without a special agency.
Article 7

(1) The aircraft commander, in the exercise of his duties, shall have disciplinary powers over his crew, as long as he requires their services.

(2) The traveler shall be subject to the authority of the aircraft commander, as long as he is on board the aircraft.

(3) Representation of the operator by the aircraft commander, as well as the power to perform the acts mentioned in Article 4, shall last as long as the commander exercises his duties in connection with a specific voyage.

Article 8

The aircraft commander must attend to the safety of the voyage; during the voyage the aircraft shall remain under his supervision, and the commander may not leave the aircraft of his own free will, without serious reasons.

Article 9

Births and deaths occurring on board the aircraft shall be recorded on the aircraft documents by the aircraft commander who will issue transcripts thereof to the interested parties, and who must forward, as soon as possible, certified copies thereof to the competent authority of the country where the aircraft is registered, and to the competent authority of the country of the next landing, if the latter so requests.

Article 10

The provisions of this Convention shall not affect the provisions of international conventions or internal laws concerning requirements of public law, with which an aircraft commander and any person exercising some of his functions on board the aircraft must comply.

Article 11

Aircraft assigned exclusively to domestic navigation shall not be subject to the provisions of this Convention.

VOEU

The Committee proposes that the Conference express the wish that, in addition to applying this Convention, the Contracting States
bring their internal laws in conformity with the rules contained therein, and that they undertake, without delay, to establish minimum requirements for obtaining certificates of aircraft commander.

VIII. Aircraft Personnel’s Contract of Employment

Preliminary Draft of Convention Relative to the Legal Status of Aeronautical Flying Personnel

Article 1

By flying personnel, in the sense of this convention, shall be meant any person employed or hired in any capacity whatsoever, for the service of an aircraft in flight, with the exception of persons who are on board under special contracts.

Article 2

The legal status of the flying personnel, in all respects not regulated directly by this Convention, shall be subject to the national laws of the aircraft.

Article 3

Subject to the application of provisions of a public character, in the territorial legislation, the contract of hire for the flying personnel shall, for the requirements governing the making thereof, be subject to the national legislation of the aircraft (or aircrafts) for whose services the personnel is hired.

Article 4

The contract of hire must be in writing and must contain the following clauses:

1. The names and surnames of the parties, their nationality and domicile.
2. The place and date of the contract.
3. The service to which the person hired is to be assigned.
4. The date for the beginning of the service.
5. The amount of salary.
6. The duration of the employment.

14. Prepared by the Third Committee of the C.I.T.E.J.A.; to be considered further at the sessions of the Fourth Committee held in Paris, May, 1937.
15. The question whether the aircraft commander should not be excluded from this definition has been reserved. It will depend upon the final decision as to whether the draft of convention on the legal status of the aircraft commander will be kept separate or combined with this draft.
Furthermore, the national legislations may require the inclusion of other compulsory matters in the contract of hire.
Each person hired must receive a document evidencing his services on board by virtue of a contract of hire.

Article 5

In case of necessity, the commander of the aircraft may order any member of the flying personnel to perform a service other than that for which he was hired.

Article 6

Any contract of hire for a definite duration which terminates during the course of a voyage shall be extended up to the next stop of the aircraft.

Article 7

If the contract of hire is for an indefinite duration, the requirements as to notice must be the same for both parties to the contract.

Article 8

Notwithstanding the conditions stipulated in the contract of hire as to the termination thereof, it shall be terminated as a matter of right in the following cases:

1. Death of the person hired.
2. Loss or unseaworthiness of the aircraft, when the person was hired for that craft.
3. Any other cause stipulated by the national legislation of the aircraft.

Article 9

The national laws must contain provisions guaranteeing risks of accident, particularly those of death or permanent or temporary disability of the flying personnel, whatever may be the nationality of the victim or the place of the accident.

Article 10

The territorial legislations must insure an unattachable minimum of the salary of the flying personnel.
Article 11

Subject to the obligation to repatriate, the operator and the commander of the aircraft shall have the right to disembark any member of the flying personnel at the first stop, where there is a possibility of repatriation.

Article 12

The national legislation of the aircraft shall determine the circumstances in which the operator or the commander of the aircraft shall have the right to dismiss a member of the personnel without notice; the same legislation shall apply to the causes for which a member of the flying personnel may demand his own immediate disembarkation.

Article 13

Any member of the flying personnel, disembarked during the life or upon termination of his contract, shall have the right to be repatriated, taking account, however, of the duration of the services rendered by him to the operator under the terms of the contract of hire. Actual repatriation may be replaced by the payment to the Consul of the person in question of a sum of money required to cover the costs of repatriation.

Article 14

The costs of repatriation may not be imposed upon the person repatriated, except in cases where the causes of dismissal, according to the legislation applicable to the contract of hire, are imputable to the person repatriated.

Article 15

The members of the flying personnel can, in no case, load goods on the aircraft for their own account.

Article 16

The following shall have jurisdiction to settle litigation relative to the contract of hire:

1. The courts appointed by the legislation of the registration Government of the aircraft.
2. The courts appointed by the legislation of the Government where the contract was entered into.
The legislation of the jurisdiction taking cognizance of a case shall determine its procedure.

**Article 17**

The competent authorities of all the contracting Governments will extend to each other mutual aid and assistance in connection with the application of this convention. They may correspond directly with each other, using for their correspondence, their own language, with a translation into one of the following languages: German, English, French, Italian.

**Article 18**

When this convention uses the expression “national legislation (of the aircraft),” it is clearly understood that this shall mean the legislation of the Government where the aircraft is registered; when it uses the expression “territorial legislation,” it shall be clearly understood that this means the legislation of the place where the event occurred or of the authority taking cognizance.

**Article 19**

(Reserved.) This convention shall apply only to the aeronautical flying personnel hired on aircrafts operated commercially.

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**IX. Salvage at Sea**

**Preliminary Draft of a Convention for the Unification of Certain Rules Relating to Assistance and Salvage of Aircraft or by Aircraft at Sea**

**Article 1**

The High Contracting Parties agree to take the necessary measures to put into effect the rules established in this Convention.

**Article 2**

(1) Any person exercising the functions of commanding officer aboard an aircraft shall be bound to render assistance to any

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person who is at sea in danger of being lost, insofar as the aircraft can, without serious danger to itself, its crew, passengers or other persons, go to the scene with the possibility of rendering useful aid.

(2) Every ship captain shall be bound, under the circumstances contemplated in paragraph (1), to render assistance to any person who is at sea in danger of being lost on an aircraft or as the consequence of damage to an aircraft.

(3) Such obligation shall not exist unless the aircraft or the ship is in the course of a trip or ready to depart.

(4) The obligation of assistance shall cease when the person who is under such obligation has notice that assistance is assured by others under similar or better conditions than it could be by himself.

(5) The national legislations shall determine the penalties designed to insure the execution of this obligation, and the High Contracting Parties shall communicate to each other, through diplomatic channels, the texts of such laws.

(6) No liability can rest with the owner or the outfitter of the ship, or the operator of the aircraft, as such, by reason of failure to discharge such obligation, except in the case where he has ordered the person bound to render assistance not to render it.

*Article 3*

(1) Any assistance rendered in discharge of the obligation contemplated in the foregoing article shall call for an indemnity based on the expenses justified by circumstances, as well as the damage suffered in the course of the operations.

(2) If the assistance was rendered in the absence of any obligation to do so, the assister shall have no right to an indemnity unless he has obtained a useful result by saving persons or by contributing thereto.

(3) The indemnity shall be payable by the operator of the aircraft assisted or by the owner or the outfitter of the ship assisted.

(4) The said indemnity cannot exceed the sum of 125,000 francs per person saved and, if no persons have been saved, the sum total of 125,000 francs.

Furthermore, the owner or outfitter of the ship shall not be liable beyond the limits fixed by the laws and conventions in force with respect to his liability, and the aircraft operator shall not be liable beyond the value of the aircraft, such value being determined
on the basis of 250 francs per kilogram of weight of the aircraft, by
weight being understood the weight with the total maximum load
as shown on the certificate of airworthiness or on any other official
document.

However, the limits of the operator's obligation shall not be
greater than two million francs.

The amounts fixed in this paragraph shall be considered as
referring to the French franc containing 65½ milligrams of gold
of a standard of fineness of 900/1000. It may be converted into
each national currency in round numbers.

(5) In case there has been assistance by several ships or
aircraft, and the total sum of the indemnities due exceeds the limit
fixed in the foregoing paragraph a proportional reduction of the
indemnities shall be made.

(6) Any person who, without having the right to use an air-
craft, uses the same without the consent of the operator, shall be
bound to pay the indemnity, and any operator who does not take the
necessary measures to avoid such wrongful use of his aircraft shall
be jointly and severally liable with him, each one of them being
bound within the conditions and limits of this article.

Article 4

(1) In case of assistance and salvage of the aircraft or of the
things which are on board, the ship or aircraft which shall have
rendered assistance shall be entitled to remuneration to be deter-
mined on the following bases:

(a) In the first place, the success obtained, the efforts and
deserts of those who have rendered assistance, the danger
run by the aircraft assisted, by its passengers and crew,
by the cargo thereof and by the salving aircraft or ship,
the time spent, the expenses incurred and the damage
suffered and the liability and other risks run by the sal-
vors, the value of the property risked by them, taking
into account, if the case so requires, the special adaptation
of the assister;

(b) Secondly, the value of the things salved.

(2) In the case where indemnity or remuneration shall be due
both for the salvage of persons and for assistance or salvage of
the aircraft or of the articles on board, an equitable allocation shall
be made upon the bases and within the limits of Articles 3 and 4, of the expenses incurred and the damages suffered.

(3) The remuneration can never exceed the value of the property salved at the conclusion of the operations of assistance and salvage.

(4) In case there has been assistance or salvage by several ships or aircraft, the remuneration shall be divided among them on the bases established in paragraph one of this article.

(5) The same rules shall apply in case of assistance and salvage of a vessel or its cargo by an aircraft, in which case the owner or outfitter of the ship shall reserve the right to avail himself of the limit of liability fixed for him by the laws and conventions in force.

Article 5

In case there has been both assistance and salvage of persons and of property, the one who has saved persons shall be entitled to a fair share of the remuneration granted for the salvage of the property, without prejudice to the right to an indemnity which he has under Article 3.

Article 6

(1) No indemnity or remuneration shall be due if the assistance was rendered or the salvage effected in spite of express and reasonable prohibition to do so by the one who was assisted or salved.

(2) The court may reduce or disallow the indemnity or the remuneration if it appears that the person who performed the operation of salvage or assistance, through his negligence, rendered the salvage or assistance necessary, or has increased the damage.

Article 7

(1) The remuneration due for the operations of assistance or salvage shall be payable by the operator of the assisted aircraft or the owner or the outfitter of the assisted ship.

(2) The operator of the aircraft shall have a recourse against the owners of goods for such part of the remuneration as pertains to assistance and salvage of such goods.

(3) The recourse of the owner or of the outfitter of the ship against owners of goods shall remain subject to maritime rules.
INTERNATIONAL CONVENTIONS

Article 8

Neither the personal effects and baggage of the crew and passengers, nor articles transported under the régime of postal conventions, are to be included in the property, either for purposes of calculating the remuneration, or with regard to the recourse to be exercised.

Article 9

(1) Indemnity and remuneration actions must be brought within one year from the end of the operations of assistance.

(2) The method of calculating the limitation period, as well as the causes of suspension and interruption of such period, shall be determined by the law of the court before which the case is brought.

Article 10

Any agreement for assistance and salvage entered into at the time and under the influence of danger may, at the request of one of the parties, be annulled or modified by the court, if it considers that the terms thereof are not equitable, and particularly when the remuneration is excessively large or small and out of proportion with the services rendered.

Article 11

(1) To hear indemnity or remuneration actions the following authorities shall have jurisdiction, in the territory of each one of the High Contracting Parties, at the option of the plaintiff: the judicial authorities of the defendant's domicile, those of the place where the operations of assistance and salvage were effected and, if there has been an attachment of the aircraft or of the cargo salved, the judicial authorities of the place of such attachment.

(2) If different salvors bring action before jurisdictions located in different countries, the defendant may, before each one of them, produce a statement of the aggregate amount of the claims and monies due, with a view to preventing the limits of his liability from being exceeded.

Article 12

Any person who has the right to use an aircraft and who uses it for his own account shall be termed the operator of the aircraft. In case the name of the operator is not recorded on the aeronautic
register or any other official document, the owner shall be deemed to be the operator subject to proof to the contrary.

Article 13

This Convention shall apply to government ships and aircraft, including military, customs and police ships or aircraft, with reservation of the provisions of Article 11 relating to jurisdiction and, as regards military, customs and police ships or aircraft, with reservation of the provisions of Article 2 relating to the obligation of assistance and salvage.

Article 14

The provisions of this Convention shall be applied with respect to all interested parties when either the assisting or salving ship or aircraft or the assisted or salved ship or aircraft belong to a government of one of the High Contracting Parties or is registered therewith.

X. Salvage on Land

Preliminary Draft Convention for the Unification of Certain Rules Relative to Assisting of Salvaging Aircraft by Aircraft on Land

Article 1

The High Contracting Parties engage themselves to take the measures necessary to give effect to the rules established by the present Convention.

Article 2

Any person exercising the functions of commander on board an aircraft is required to render assistance to any aircraft in danger of being lost, on land, subject to fulfillment of the following conditions:

(a) There must be the certainty or presumption that the aircraft indicated as in danger of being lost is in one of the dangerous zones defined in Article 3 below;

17. Prepared by the Third Committee (Document 327 bis); to be considered further at the session of the Third Committee held in Paris, May, 1937.
(b) The salvaging aircraft must be in the course of a voyage or ready to take off, either within the dangerous zone in which the aircraft in need of assistance has been lost, or in the direction of such zone. In the second case, if it is a question of an aircraft about to take off, the obligation of assistance shall not apply to it, except insofar as it finds itself in an airport from which it can reach within two flying hours at the maximum, the nearest boundary of such zone.

(c) However, the assistance or, if necessary, the salvage must not involve any serious danger to the commander of the salvaging aircraft, its crew, its passengers, or other persons. The aircraft must particularly be able to go to the scene with the possibility of rendering useful assistance.

Article 3

(1) Under the terms of the present Convention, any tract of territory shall be called a dangerous zone which has been made the subject, on the part of the competent authorities of the State under the sovereignty of which it is placed, of a regulation including at least the following provisions:

(a) necessity of a previous authorization to undertake, single voyages or regular transportation over such tract;

(b) previous deposit of a guarantee, through an insurance contract, bank deposit or security, assigned to cover the costs of possible assistance;

(c) obligation to conform, during the passage, to the itinerary prescribed by the public authorities.

(2) The zones so defined shall be the subject, on ratification of the present Convention, and, in future, in proportion as the texts are promulgated which are designed to establish them, of a communication to all the High Contracting Parties, through the intervention of the Secretariat General of the C.I.T.E.J.A.

The High Contracting Parties must, each insofar as it is concerned, assure the circulation thereof among their nationals, and this must be done within a definite period of six months after the date of this communication.

(3) The international obligation of assistance shall apply to all nationals of the High Contracting Parties that have ratified the Convention, one year after the Convention has been put into force, with respect to the zones already established at the time of the ratification: with respect to the zones established later, one year...
Article 4

(a) The obligation of assistance ceases when the party who is obligated thereto knows that assistance is assured by others under conditions similar or better than those under which it could be rendered by him.

(b) The national laws shall determine the penal sanctions intended to assure the execution of such obligation, and the High Contracting Parties shall communicate the text of such provisions reciprocally to one another through diplomatic channels.

(c) No responsibility can rest on the operator of an aircraft considered as owner or amateur, by reason of the failure to fulfill such obligation, except in a case where he has given to the person required to render assistance the order not to render it.

(d) Neither can he incur responsibility with regard to persons bound to him by a transportation contract, because of the partial or total failure of such contract, by reason of the necessities for assistance or salvage.

Article 5

(1) Any assistance rendered in discharge of the obligation contemplated in the foregoing article shall call for an indemnity based on the expenses justified by circumstances, as well as the damage suffered in the course of the operations.

(2) If the assistance was rendered in the absence of any obligation to do so, the assister shall have no right to an indemnity unless he has obtained a useful result by saving persons or by contributing thereto.

(3) The indemnity shall be payable by the operator of the aircraft assisted.

(4) The said indemnity cannot exceed the sum of 125,000 francs per person saved and, if no persons have been saved, the sum total of 125,000 francs.

Furthermore, the aircraft operator shall not be liable beyond the value of the aircraft, such value being determined on the basis of 250 francs per kilogram of weight of the aircraft, by weight being understood the weight with the total maximum load as shown on the certificate of airworthiness or on any other official document.

However, the limit of the operator's obligation shall not be greater than two million francs.
The amounts fixed in this paragraph shall be considered as referring to the French franc containing 65½ milligrams of gold of a standard of fineness of 900/1000. It may be converted into each national currency in round numbers.

(5) In case there has been assistance by several aircraft, and the total sum of the indemnities due exceeds the limit fixed in the foregoing paragraph a proportional reduction of the indemnities shall be made.

(6) Any person who, without having the right to use an aircraft, uses the same without the consent of the operator, shall be bound to pay the indemnity, and any operator who does not take the necessary measures to avoid such wrongful use of his aircraft shall be jointly and severally liable with him, each one of them being bound within the conditions and limits of this article.

Article 6

(1) In case of assistance and salvage of the aircraft or of the things which are on board, the aircraft which shall have rendered assistance shall be entitled to remuneration to be determined on the following bases:

(a) In the first place, the success obtained, the efforts and deserts of those who have rendered assistance, the danger run by the aircraft assisted, by its passengers and crew, by the cargo thereof and by the salving aircraft, the time spent, the expenses incurred and the damage suffered and the liability and other risks run by the salvors, the value of the property risked by them, taking into account, if the case so requires, the special adaptation of the assister;

(b) Secondly, the value of the things salved.

(2) In the case where indemnity or remuneration shall be due both for the salvage of persons and for assistance or salvage of the aircraft or of the articles on board, an equitable allocation shall be made upon the bases and within the limits of Articles 4 and 5, of the expenses incurred and the damages suffered.

(3) The remuneration can never exceed the value of the property salved at the conclusion of the operations of assistance and salvage.

(4) In case there has been assistance or salvage by several aircraft, the remuneration shall be divided among them on the bases established in paragraph one of this article.
In case there has been both assistance and salvage of persons and of property, the one who has saved persons shall be entitled to a fair share of the remuneration granted for the salvage of the property, without prejudice to the right to an indemnity which he has under Article 5.

Article 8

(1) No indemnity or remuneration shall be due if the assistance was rendered or the salvage effected in spite of express and reasonable prohibition to do so by the one who was assisted or salved.

(2) The court may reduce or disallow the indemnity or the remuneration if it appears that the person who performed the operation of salvage or assistance, through his negligence, rendered the salvage or assistance necessary, or has increased the damage.

Article 9

(1) The remuneration due for the operations of assistance or salvage shall be payable by the operator of the assisted aircraft.

(2) The operator of the aircraft shall have a recourse against the owners of goods for such part of the remuneration as pertains to assistance and salvage of such goods.

Article 10

Neither the personal effects and baggage of the crew and passengers, nor articles transported under the régime of postal conventions, are to be included in the property, either for purposes of calculating the remuneration, or with regard to the recourse to be exercised.

Article 11

(1) Indemnity and remuneration actions must be brought within one year from the end of the operations of assistance.

(2) The method of calculating the limitation period, as well as the causes of suspension and interruption of such period, shall be determined by the law of the court before which the case is brought.

Article 12

Any agreement for assistance and salvage entered into at the time and under the influence of danger may, at the request of one
of the parties, be annulled or modified by the court, if it considers that the terms thereof are not equitable, and particularly when the remuneration is excessively large or small and out of proportion with the services rendered.

**Article 13**

(1) To hear indemnity or remuneration actions the following authorities shall have jurisdiction, in the territory of each one of the High Contracting Parties, at the option of the plaintiff: the judicial authorities of the defendant's domicile, those of the place where the operations of assistance and salvage were effected and, if there has been an attachment of the aircraft or of the cargo salved, the judicial authorities of the place of such attachment.

(2) If different salvors bring action before jurisdictions located in different countries, the defendant may, before each one of them, produce a statement of the aggregate amount of the claims and monies due, with a view to preventing the limits of his liability from being exceeded.

**Article 14**

Any person who has the right to use an aircraft and who uses it for his own account shall be termed the operator of the aircraft. In case the name of the operator is not recorded on the aeronautic register or any other official document, the owner shall be deemed to be the operator subject to proof to the contrary.

**Article 15**

This Convention shall apply to government aircraft, including military, customs and police aircraft, with reservation of the provisions of Article 13 relating to jurisdiction.

**Article 16**

The provisions of this Convention shall be applied with respect to all interested parties when either the assisting or salving aircraft or the assisted or salved aircraft belong to a government of one of the High Contracting Parties or is registered therewith.18

18. It seems unlikely that our Government would take an interest in the provisions of this Draft. In experience with air-accidents hitherto, prompt and ample help has been rendered by the local communities without any thought of reward. Moreover, in land-crashes, there is little left to salve.—J. H. W.
XI. Lessor's and Lessee's Relative Responsibility

[No text on this subject has yet been reported out of Committee. The Second Committee has been charged to prepare a draft18a and a report was made at the meeting of Committees in Paris, May, 1937.

This subject, following the analogy of maritime law, has been discussed in the C.I.T.E.J.A. in terms of "owner" and "charterer." But the same problem has of course long been familiar, as a troublesome one, in the law of realty and of personality. Whether landlord or tenant shall be responsible for injuries received in a defective building; whether a livery stable or garage owner shall be responsible for damage done in the driving of a leased vehicle; whether injury caused by a defective railway car shall be charged to the lessor company or the lessee company—those problems have long been a field for drawing fine lines of distinction in our law. No codified concise statement can probably ever be devised that will settle controversy beforehand; the circumstances of each case will still leave ample necessity for judicial decision. But there are plentiful analogies, in the shape of rules of thumb, in maritime law and land law, which will assist in framing some general principles for air law.

There will be plenty of situations in air traffic to give rise to legal questions. The scheduled airlines, of course, both own and control virtually all their aircraft. But there are hundreds of "contract planes," hired (chartered) for a single commercial trip, sometimes flown by the hirer himself, sometimes not. And the aviation schools often hire out their planes for amateurs and students.

In the State Uniform Aviation Liability Draft Act, the legal problem is supposed to be solved in the definition chapter, under the word "owner." But it is hardly a matter of a mere definition. Ultimately, a separate section will have to be devoted to the framing of a rule with subdivisions.—J. H. W.]

18a. See 7 JOURNAL OF AIR LAW 386 (1936). In the October, 1937, number the draft will be published.
XII. Interpretation and Application of These Conventions


I. Interpretation

Article 1

In case one of the Governments members of the C.I.T.E.J.A., or one of the international courts or any other official organization of an international character which might have to take cognizance of a private air law convention, should ask the C.I.T.E.J.A. its opinion on the meaning to be given to the terms and provisions of such convention, the C.I.T.E.J.A. is authorized to furnish full explanations as a purely consultative matter, making use of the preparatory labors of the preliminary draft convention, as well as all elements of interpretation.

Article 2

(1) The request addressed to the Committee shall be transmitted by the Secretariat General to a Permanent Commission designated by the C.I.T.E.J.A. The latter shall prepare the draft of the reply.

(2) The Committee, on the report of such Commission shall make a decision by a majority of the members present.

(3) The reply shall be reasoned; it shall be transmitted not only to the author of the request, but to all the Governments members of the C.I.T.E.J.A., upon whom it shall be incumbent to publish it.

(4) Any dissenting opinion, also reasoned, may, if the author thereof so desires, be joined with the reply.

II. Application

Article 3

(1) If the Conference, in the course of which an international convention on private air law is adopted, entrusts the C.I.T.E.J.A. with the preparation of any text of common application to all the signatory States in order to aid in putting such convention into force

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promptly, the C.I.T.E.J.A. shall proceed as follows: The Secretary General shall bring the question before the Commission charged with the preparation of the convention; the latter shall decide by a majority upon a draft text which it shall submit to the C.I.T.E.J.A., which shall adopt it by a majority vote without making any mention of any dissenting opinion except in the minutes.

(2) The text thus prepared by the C.I.T.E.J.A. must be accepted by each of the signatory States in order to be binding upon such State.

Article 4

If the Government charged with obtaining the signatures and receiving the deposit of the ratifications of an international convention on private air law believes, in the silence of the convention, that it should entrust to the C.I.T.E.J.A., the task prescribed in the first article, the C.I.T.E.J.A. should assume such task in the same manner as according to that article and with the same effects.

Article 5

To make it possible to follow the application of the international conventions, every signatory government is requested to communicate to the Secretariat General of the C.I.T.E.J.A. as soon as possible, every legislative, regulatory, administrative or judicial document, relative to such application.20

20. The proposal in this Draft is hardly consistent with the traditions of United States law and policy. The amendment of an international convention is a matter for the Governments only. The interpretation of its terms is a matter for judicial decision in either a national or an international tribunal.
—J. H. W.