

1954

International Review

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Recommended Citation

International Review, 21 J. AIR L. & COM. 330 (1954)
<https://scholar.smu.edu/jalc/vol21/iss3/7>

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INTERNATIONAL REVIEW*

INTERNATIONAL CIVIL AVIATION ORGANIZATION AIR TRANSPORT MATTERS

CONFERENCE ON THE CO-ORDINATION OF AIR TRANSPORT IN EUROPE
STRASBOURG — APRIL 21 - MAY 8, 1954

THE Strasbourg Conference on the co-ordination of air transport in Europe completed its deliberation two days before its original schedule. No final action was taken immediately affecting European air transport, but 29 recommendations were passed addressed to the governments of the States attending the Conference and to ICAO and these recommendations envisage a variety of different kinds of action over the next few years. In the fields of Facilitation and Air Navigation technology the chief function of the Conference was to review the regional machinery of ICAO and the results of such special meetings as the Cannes Facilitation Conference, but even here, as will be seen from the recommendations listed below a number of points were found on which it was felt that more radical or more rapid action might be taken.

In the economic field, which provided the main justification for the Strasbourg Conference, interest centered round the possibility of finding a basis for multilateral agreements concerning the operating rights of scheduled and non-scheduled air services within Europe. Here there were the usual differences of opinion; the Scandinavian countries at one extreme favored a general multilateral agreement according European carriers complete freedom of operation within Europe; Spain, Italy and France at the other extreme favored a cautious approach moving gradually from bilateralism with carefully devised safeguards against excessive competition or serious damage to the interests of carriers in relatively weak economic positions. The United Kingdom came forward at the meeting with a proposal to abandon capacity restriction clauses based on the distinction between "Fifth Freedom" and "Third Freedom" and "Fourth Freedom" traffic. This idea clearly appealed to a number of delegates but there was not time at the Conference to study its implications fully. The proposal from the Netherlands that governments should permit airlines to utilize each others operating rights so as to extend their air services, had been put forward at the Brighton Assembly of ICAO in 1953 and delegates came to the Strasbourg Conference prepared to approve this idea in principle. Some felt the scope for such route interchange was small, others that it could make a major contribution to the development of European air transport, particularly when defined in a broad way to cover a variety of forms of inter-airline co-operation approved by governments.

The Conference found it impossible to formulate a generally acceptable basis for a multilateral agreement, but asked ICAO to attempt to draft such agreements for both scheduled and non-scheduled air services in Europe and indicated the lines along which the drafts might be developed. For scheduled services in main points were that capacity should not be tied to "Third" and "Fourth" freedom traffic and that the airlines should have greater scope for expansion, but the granting of routes would remain to be bilaterally discussed and there would be safeguards against excessive competition and to ensure fair treatment for each carrier. In the non-scheduled field the draft multilateral agreement should aim to give substantial freedom of operation

* Compiled by J. G. Gazdik in co-operation with Dr. G. C. Bolla, Dr. G. F. Fitzgerald and Mr. A. M. Lester.

to all flights not seriously competing with the scheduled air services, particularly emergency flights, taxi flights (seating capacity less than 4 passengers), flights of aircraft wholly chartered to one individual or firm, flights carrying only freight and flights of not greater frequency than once a month. These categories of flight should be able to operate without prior permission and subject only to notification for purposes of traffic control. In the interim period before multilateral agreements can be concluded, European States are urged to encourage all forms of airline co-operation and to move as far as possible in the direction of liberalization, particularly with respect to freight services and non-scheduled services.

One of the most important points discussed at the Strasbourg Conference was whether to set up some form of permanent European body to consider air transport questions in the future. It was suggested that a sort of European air transport Commission might be appointed with a permanent Secretariat able to study European air transport problems and make recommendations to governments. It was felt, however, that it would be undesirable to create a new international agency in Europe and that ICAO had the requisite expert knowledge and experience to work on European air transport problems in the same way as it worked on regional air navigation problems. It was therefore decided that there should be established a permanent European Civil Aviation Conference meeting periodically and consisting of representatives from States taking part in the Strasbourg Conference. This permanent Conference would, at least at the outset, rely on ICAO to provide Secretariat services and make research studies of an international character.

The full set of 29 recommendations passed by the Strasbourg Conference are as follows:

RECOMMENDATIONS OF THE STRASBOURG CONFERENCE ON THE
CO-ORDINATION OF AIR TRANSPORT IN EUROPE

RECOMMENDATION NO. 1: *WHEREAS* the resolution of the Committee of Ministers of the Council of Europe, adopted on March 19, 1953, calls for expanded co-operation between European airlines and European governments;

and

WHEREAS such regional co-operation will help to achieve the objectives of ICAO set forth in Article 44 of the Convention on International Civil Aviation and is specifically provided for in Chapter XVI of that Convention;

THE CONFERENCE RECOMMENDS: to the States invited to be members of this Conference:

(a) that they give support to co-operative studies and arrangements among their airlines related to particular sections of the European air transport network, aiming at the development of the traffic by such measures as the interchange of routes and other bilateral or plurilateral route arrangements;

(b) that they give favorable consideration to arrangements of this kind devised by their carriers and, so far as practicable, make the required adjustments to the bilateral agreements concluded by those States, including, in consequence of co-operative measures, provision for eliminating distinctions between the traffic 'freedoms', or, if necessary, make new bilateral or plurilateral agreements;

(c) that they support common action between airlines with a view to improving on the one hand the services rendered to users, on the other

the productivity of the airlines and other measures for reducing operating costs by such means as :

- (i) mutual assistance in the rendering of technical, operational and commercial services;
- (ii) the more efficient and speedy performance of ground services through co-operation between carriers and between airlines and aerodrome authorities;
- (iii) the co-ordination and rationalization of time-tables;
- (iv) special measures of co-operation to deal with the problem of light traffic.

(d) that they notify ICAO of the action taken in pursuance of this recommendation, in order that other governments may be informed of such developments, and that they may take advantage of one another's experience and thereby spread the advantages of co-operation.

RECOMMENDATION No. 2—THE CONFERENCE RECOMMENDS: that the Council of ICAO and the proposed European Civil Aviation Conference have a draft made for a multilateral agreement embodying the principles and objectives set forth below and taking into account the views and proposals put forward at this Conference; and to transmit the draft to the States invited to be members of the Conference for their consideration; and after revision of the draft, if necessary, according to the suggestions received from these States, to circulate it to them for consideration at a diplomatic conference with a view to ultimate signature. The draft agreement to be prepared should :

- (i) establish in Europe the conditions favorable for active co-operation between European carriers that will enable them to solve their problems in common by the interchange of routes and other co-operative measures.
- (ii) aim at a progressive liberalisation of air transport undertaken by European operators in the European region and particularly at the relaxation of traffic restrictions based on the distinctions at present made between the various 'freedoms' of the air.
- (iii) embody in the best possible form those provisions that are common in substance to existing European bilateral agreements.
- (iv) embody safeguards to enable governments if necessary to prevent the development of excessive competition and to ensure fair treatment for each carrier; it being understood that routes would continue to be granted by bilateral or plurilateral negotiations between governments and that the multilateral agreement should not interfere with the fundamental principle of the sovereignty of each State over its air space.

RECOMMENDATION No. 3: WHEREAS this Conference considers that services confined to the carriage of freight may have possibilities of making a useful contribution to the future development of air transport in Europe and to the improvement of the European economy;

WHEREAS it is important to create the necessary conditions of flexibility and latitude to explore fully the possibilities of the air freight market;

THE CONFERENCE RECOMMENDS: to the States invited to be members of this Conference:

- (1) That distinctions, based on the place of origin or destination of traffic, made in bilateral Agreements between the States invited to be

members of this Conference should not be applied to scheduled services confined to the carriage of intra-European freight, so that any operators of such services entitled to operate on any route under the terms of a bilateral Agreement between the States invited to be members of this Conference may pick up or discharge at any European point specified on such a route freight destined for or coming from any other European point.

(2) That, as a corollary of (1), those provisions of such bilateral Agreements which provide for control of capacity by reference to distinctions based on places of origin and destination of the traffic should not apply to scheduled services confined to the carriage of freight.

(3) That, in the event of any difficulty arising in the application to such freight services of the remaining capacity provisions, the relevant provisions in the bilateral Agreements for consultation and subsequent procedures for dealing with such a difficulty would apply.

(4) That these arrangements should come into force on 1 October, 1954, for a period of 5 years and should be reviewed by the States invited to be members of this Conference shortly before the end of that period in order to decide whether they should be continued. The arrangements will continue in force pending the results of any review.

(5) That the States in favor of this resolution should confirm to ICAO by 1 August, 1954, that it is their intention to implement its provisions.

RECOMMENDATION No. 4: *WHEREAS* this Conference considers that the development of scheduled services confined to the carriage of freight may be of value to manufacturers and consignors of merchandise and so improve trade and the economy of Europe;

WHEREAS the development of this promotional and speculative market requires that the operator should have the freedom necessary to cater for the traffic;

THE CONFERENCE RECOMMENDS: to States invited to be members of this Conference that they should consider favorably any applications made to them on behalf of European operators for indirect routings required for the operation of scheduled services confined to the carriage of freight originating in and destined for points in Europe.

RECOMMENDATION No. 5: *WHEREAS* this Conference considers that intra-European non-scheduled operations should be accorded the maximum degree of freedom to develop, compatible with the safeguarding of the legitimate interests of the scheduled services in the sphere reserved to them by national laws and policies;

WHEREAS progress towards the liberalisation of European non-scheduled air services could be achieved by the development of a unified policy within a European multilateral agreement.

WHEREAS it has not been found practicable at this Conference to reach an Agreement upon a unified European policy which could be embodied in such an agreement;

THE CONFERENCE RECOMMENDS: to the States invited to be members of the Conference, as an interim measure until a multilateral agreement on the subject can be concluded,

(1) that they accept the general policy that all intra-European non-scheduled flights that do not affect the interests of the scheduled services could be freely admitted to their territories without the imposition of "regulations, conditions or limitations" referred to in the second para-

graph of Article 5 of the Convention on International Civil Aviation, provided that such flights comply with the other provisions of that Convention;

(2) that each government be understood to be free to place its own interpretation on which operations would be considered to affect the interests of the scheduled services and reserves the right to require any operator to cease any operations affecting the interests of the scheduled services according to that interpretation;

(3) that all States, on whatever prior notification they may require for purposes of air traffic control, should accord freedom of operation within their territory to intra-European non-scheduled services of the following types:

(a) flights for the purpose of meeting emergency or humanitarian needs;

(b) taxi-class operations employing aircraft with seating capacity for not more than four passengers, provided they do not become a systematic series;

(c) operation in which a single individual charters the entire space of an aircraft for his own use, or a firm or institution charters the entire space of an aircraft for the carriage of its staff or merchandise, provided that in either case no part of any such space is re-sold;

(d) operations confined to the carriage of freight (it being understood that the provisions of paragraph 2 concerning the possible cessation of operations apply to this category of flight).

(4) that for all other classes of non-scheduled operations the State in whose territory the operator desires to exercise commercial rights may require prior permission to be obtained from its aeronautical authorities (except in the case of single flight or flights not of greater frequency than once a month, which would require only prior notification as in paragraph (3) above). Applications for such permission shall be submitted at least forty-eight hours before the first flight is due to commence, unless a State notifies that a shorter notice is required;

(5) that each State should notify ICAO, before the 1st October 1954, of its policy with respect to intra-European non-scheduled air services, in order to facilitate the operation of these services.

RECOMMENDATION No. 6—THE CONFERENCE RECOMMENDS: that for the next stage the States invited to be members of the Conference conclude a multilateral agreement with the object of achieving the maximum degree of liberalisation of intra-European non-scheduled air services

AND REQUESTS the Council of ICAO and the proposed European Civil Aviation Conference to have a draft made for such a multilateral agreement taking into account the relevant views and proposals put forward at this Conference.

RECOMMENDATION No. 7—THE CONFERENCE RECOMMENDS: that the States invited to be members of the Conference encourage the airlines to study the possibility of interchanging aircraft, and the advantages which might be gained therefrom and should facilitate the conclusion of interchange agreements.

RECOMMENDATION No. 8—THE CONFERENCE RECOMMENDS: that arrangements for the interchange of aircraft should be subject to the approval of the States in which traffic rights are to be exercised.

RECOMMENDATION No. 9—*THE CONFERENCE RECOMMENDS*: that, subject to the provision of the preceding recommendation, participating States interpret bilateral agreements and authorizations to operate services in a sense which would permit an effective implementation of the interchange of aircraft.

RECOMMENDATION No. 10—*THE CONFERENCE RECOMMENDS*: that the States invited to be members of the Conference study their existing laws and regulations, including those on such matters as personnel licensing, operating standards and procedures, and maintenance of aircraft, with a view to making any amendment or other provision necessary to facilitate aircraft interchange agreements.

RECOMMENDATION No. 11—*THE CONFERENCE RECOMMENDS*: that the proposed European Civil Aviation Conference should be entrusted with the study of such problems associated with the interchange of aircraft as seem appropriate.

RECOMMENDATION No. 12: WHEREAS the interchangeability of aircraft requires that the airlines concerned conclude agreements the purpose of which is the chartering and hiring of such aircraft;

WHEREAS the development of such agreements might be facilitated by an international definition of the legal rules applicable to the chartering and hiring of aircraft, and to the responsibilities resulting therefrom;

THE CONFERENCE RECOMMENDS: that the Council of ICAO should consider the need for an international convention on the chartering and hiring of aircraft and the problems associated with its preparation.

RECOMMENDATION No. 13 — *THE CONFERENCE RECOMMENDS*: that visas be abolished as soon as possible, on a reciprocal basis, by means of bilateral agreements or other arrangements, for business or tourist travel between the countries invited to be members of this Conference.

RECOMMENDATION No. 14 — *THE CONFERENCE RECOMMENDS*: (a) that the States invited to be members of this Conference consider the possibility of using methods creating the least possible inconvenience to passengers and airlines with respect to examination of baggage by customs on departure; (b) that the States referred to above inform ICAO of the results of their studies and of their practical efforts toward the achievement of this aim by 15 September, 1954, so as to permit reference to this information at the next session of the FAL Division.

RECOMMENDATION No. 15—*THE CONFERENCE RECOMMENDS*: that the States invited to be members of this Conference establish as liberal a customs regime for non-scheduled commercial aircraft as they have already established for scheduled commercial aircraft, i.e. that non-scheduled commercial aircraft may temporarily enter and depart without the operator having to deposit a sum in respect of customs duties or furnish a guarantee as regards the aircraft.

RECOMMENDATION No. 16 — *THE CONFERENCE RECOMMENDS*: (a) that ICAO examine the possibility of amending the text of Article 29 of the Convention by deleting therefrom the list of documents to be carried by every aircraft engaged in international air navigation, and substituting for this list a simple reference to documents the use of which may be prescribed by the Annexes to the Convention. (b) that if amendment of Article 29 is not practicable within the relatively near

future ICAO should in the meantime consider alternative methods (e.g. a Resolution of the Council or the Assembly interpreting Article 29) which would provide that certain other documents inherently essential for present and future use on board aircraft could be deemed to satisfy the requirements of paragraphs (d), (f) and (g) of Article 29.

RECOMMENDATION No. 17—THE CONFERENCE RECOMMENDS: that the Air Transport Committee of ICAO consider framing the Agenda of the 4th Session of the Facilitation Division in such a way that it will be able to discuss, inter alia, the question of amending paragraphs 3.9(j) and 3.10 of Annex 9 so that the holder of a license or of a crew member's certificate is assured the right of re-entering the State whose authority has issued the respective license or crew member's certificate.

RECOMMENDATION No. 18—THE CONFERENCE RECOMMENDS: that the States invited to be members of this Conference study the possibility of dispensing with the requirement for mail entries on the air cargo manifest and advise the Secretary-General of ICAO of the results of their studies on this matter by 15th September, 1954. He should in turn inform the officials of the relevant European FAL Regional Meeting.

RECOMMENDATION No. 19—THE CONFERENCE RECOMMENDS: (a) that the States invited to be members of this Conference apply Cannes Recommendation A-1; (b) that, to ensure the uniform and reciprocal application of the recommendation, a group of European Public Health experts should:

(1) meet as early as possible in order to lay down the procedure and the rules for giving effect to the recommendation, in the spirit of the International Sanitary Regulation No. 2 of the World Health Organization, and in conformity with Article 104 of the said Regulations, and

(2) advise the Secretary-General of ICAO of the results of their deliberations by 15th September, 1954. He should in turn inform the officials of the relevant European FAL Regional Meeting.

RECOMMENDATION No. 20—THE CONFERENCE RECOMMENDS: that the States invited to be members of this Conference implement Cannes Recommendation B-2 by 1 October 1954.

RECOMMENDATION No. 21—THE CONFERENCE RECOMMENDS: that the States invited to be members of this Conference (a) no longer require presentation of a separate passenger manifest on entry and departure of aircraft engaged in transport between European States after 1st January, 1955; (b) advise the Secretary-General of ICAO by 15th September, 1954, either that they will be implementing this Resolution by 1st January, 1955, or the reasons why they feel unable to do so. He should in turn inform the officials of the relevant European FAL Regional Meeting.

RECOMMENDATION No. 22—THE CONFERENCE RECOMMENDS: (a) that the European States invited to be members of this Conference which are not yet in a position to renounce presentation of the Embarkation/Disembarkation Card adopt a uniform model with the following characteristics by 1 January 1955 (or earlier in cases of exhaustion of present stocks):

(1) the format of the card to be as given in Appendix 3 of Annex 9, i.e. of the following dimensions: 4x6 inches (102x152 mm);

(2) the languages used in the printed matter to be one or more of

the three official ICAO languages and possibly the language of the operator; (3) the only items contained on the card to be:

- | | |
|-------------------|--------------------------------------|
| 1) name | 5) nationality |
| 1a) maiden name | 6) occupation |
| 2) christian name | 7) legal residence |
| 3) date of birth | 8) point of destination or of origin |
| 4) place of birth | |

(4) printing to be effected in a vertical manner as illustrated in Appendix 3 of Annex 9. (b) that the States referred to above advise the Secretary-General of ICAO by 15th September, 1954 either that they will be implementing this Recommendation by 1 January, 1955 or the reasons why they feel unable to do so. We should in turn inform the officials of the relevant European FAL Regional Meeting.

RECOMMENDATION No. 23—THE CONFERENCE RECOMMENDS: that the States invited to be members of this Conference allow, subject to normal control measures, the loan of spare parts and aircraft equipment between airlines without payment of Customs duties and without any obligation to receive back the same spare parts and equipment. If equivalent spare parts and aircraft equipment are returned, no financial settlement should take place.

RECOMMENDATION No. 24—THE CONFERENCE RECOMMENDS: that each State invited to be a member of this Conference: (a) consider in detail, in co-operation with the airlines and airport operators, the present conditions of all technical and administrative formalities and operations taking place at its airports with a view to determining measures to save effort, time and installation and operation costs; (b) take into account in its detailed studies of this problem the Working Papers submitted at this Conference, (CATE Working Papers 19, 33 and 80) and of methods and practices applied in other means of transportation; (c) endeavor as soon as possible to ensure that any treatment accorded to air transport at its airports is not less favorable than the treatment accorded to surface transport at its docks, or at its bus or rail frontier posts; (d) submit the conclusions of its studies, the measures adopted and the results achieved to the Secretary-General of ICAO. He should, in turn, inform the officials of the relevant European FAL Regional Meeting. As soon as its study of one phase of the problem has been completed, each State is requested to submit a report on it. In any event each one of the participating States should submit a general progress report by 1 January 1955 as to what has been achieved up to and including October 1954.

RECOMMENDATION No. 25—THE CONFERENCE RECOMMENDS: that the States within the EUM (European-Mediterranean) Region be urged to hasten the implementation of the ICAO Regional Plan, particularly in respect of those serious deficiencies which have been isolated by the Council.

RECOMMENDATION No. 26—THE CONFERENCE RECOMMENDS: that ICAO examine, in conjunction with the interested States, what steps could be taken to improve the situation of the en-route radiotelephony services in the EUM Region in order to permit those operators who want to conduct their communications solely by telephony to do so.

RECOMMENDATION No. 27—THE CONFERENCE RECOMMENDS: that ICAO make a survey of the present situation in respect of the aero-

nautical information briefing and de-briefing practices at the international aerodromes of the EUM Region, and seek from the users of these services their advice as to the advantages and disadvantages of the various existing practices.

RECOMMENDATION No. 28—THE CONFERENCE RECOMMENDS that:

(1) There be established a European Civil Aviation Conference (hereinafter called the Conference) which would normally meet in plenary session once a year, additional meetings to be held with the agreement of a majority of the members;

(2) That the Conference shall be composed of the States invited to be members of the present Conference, together with such other European States as the Conference may unanimously admit as members;

(3) The objects of the Conference should be:

(a) to continue the work of this Conference, as set forth in its agenda and the records of its proceedings; (b) generally to review the development of intra-European air transport with the object of promoting the co-ordination, the better utilization, and the orderly development of such air transport; (c) to consider any special problem that may arise in this field.

(4) The Conference shall bring within its scope all matters relevant to these objects and shall supersede independent and more specialized arrangements for carrying out said objects;

(5) The functions of the Conference shall be consultative and its conclusions and recommendations shall be subject to the approval of governments;

(6) The Conference shall determine its own internal arrangements and procedures, including the formation of (i) groups of limited membership to study and discuss matters presenting special interest to certain members only and (ii) committees of experts to deal with specific aspects of intra-European air transport;

(7) States would be represented at meetings of the Conference by delegations in number and rank suitable for handling the problems to be discussed, it being understood that heads of delegations would normally be officials of high level;

(8) The Conference shall maintain close liaison with ICAO. It shall also establish relations with any other governmental or non-governmental international organizations concerned with European air transport;

(9) That the Conference should, at least at the outset, not establish a separate secretariat of its own, but should request the Council of ICAO to provide, to the extent practicable;

(a) secretariat services for studies, meetings or otherwise; (b) maintenance of records of the meetings, correspondence, etc., in the ICAO Paris Office.

(10) ICAO should arrange, in consultation with the States concerned, the calling of the first meeting of the Conference.

RECOMMENDATION No. 29—THE CONFERENCE, considering that the work of the proposed Civil Aviation Conference would be considerably facilitated if there existed an organization representing the carriers of participating States,

RECOMMENDS: that participating States encourage their carriers to undertake co-operative studies aimed at promoting the orderly development of European Air Transport.

ICAO—LEGAL MATTERS

Revision of the Warsaw Convention. In view of the generally favorable nature of the comments received from States on the draft Protocol to Amend the Warsaw Convention prepared by the Legal Committee at its Ninth Session (Rio de Janeiro, August-September 1952), the Council has decided to convene a conference for its consideration and approval on or about 6 September 1955 and has accepted the invitation of the Government of the Netherlands to hold the conference at The Hague. All Contracting States of ICAO and such non-Contracting States as are members of the United Nations or parties to the Warsaw Convention will be invited with full voting rights.

Tenth Session of the Legal Committee. The Council decided on 25 May 1954 to convene the Tenth Session of the Legal Committee at Montreal beginning 7 September 1954. The main item on the agenda of the Legal Committee was to be the consideration of the report and draft convention prepared by the Sub-committee on Aerial Collisions which met in Paris from January 12th to 22nd 1954.

Negotiability of the Air Waybill. The Council decided on 16 February 1954 to include the question of the negotiability of the air waybill in the programme of current work of the Legal Committee. Thereafter, the Chairman of the Legal Committee appointed a Sub-committee to deal with this question. No date has yet been set for a meeting of the Sub-committee.

CONVENTIONS ON INTERNATIONAL PRIVATE AIR LAW

Convention for the Unification of Certain Rules Relating to International Transportation by Air, signed at Warsaw on 12 October 1929. Ratification is necessary with respect to the text as set forth in Vol. 20, No. 3, page 315 of the Journal of Air Law and Commerce. Argentina and Japan when acceding to or ratifying the Warsaw Convention have made no reservation.

By an exchange of notes, Germany and Belgium have agreed to reciprocally apply the Warsaw Convention (communication of 22 July 1953).

Convention on the International Recognition of Rights in Aircraft,* signed at Geneva on 19 June 1948. The Government of Norway deposited with ICAO on 5 March 1954 its instrument of ratification of the Geneva Convention.

*Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface*** signed at Rome on 7 October 1952. The Government of Egypt deposited with ICAO on 23 February 1954 its instrument of ratification of the Rome Convention.

The Government of Canada signed the Rome Convention on 26 May 1954.

ICAO COUNCIL (22ND SESSION) ON
POLICY ON INTERNATIONAL AIRWORTHINESS STANDARDS

The Council considered a report from the ICAO Air Navigation Commission which indicated that efforts to develop a set of complete, comprehensive and detailed international airworthiness specifications for the type certification and operation of aircraft were impracticable of attainment; the report stated that the primary objective of international airworthiness standards should be to define, for application by the competent national authorities, the minimum international basis for the recognition by states of certificates of airworthiness for the purpose of the flight of foreign aircraft into and over their territories, thereby achieving, among other things,

* For text see 15 Jour. of Air L. and Com. 348.

** For text see 9 Jour. of Air L. and Com. 447.

protection of other aircraft, third persons and property. The new airworthiness code should be less detailed than existing international airworthiness and corresponding aircraft operations standards.

The Council authorized the Air Navigation Commission to convene a panel of experts to prepare the initial draft for the development of new standards, on the basis of the principles listed above, and requested the Commission to report back when this has been done.

INTERNATIONAL AIR TRANSPORT ASSOCIATION

CONDITIONS OF CARRIAGE

As was indicated in the Winter, 1954, issue of the JOURNAL OF AIR LAW & COMMERCE, (Vol. 21, No. 1) the IATA Honolulu Traffic Conferences adopted the Uniform Conditions of Carriage to cover carriage of passengers, baggage and cargo. These conditions will become effective as of January 1st, 1956. On August 5th, 1954, the Civil Aeronautics Board issued an Order No. E-8543 approving several articles of the Conditions of Carriage but objecting to others. This Order has not as yet become effective. Whatever may be the outcome of the CAB Order, the fact that the Airlines were able to agree to a uniform set of Conditions of Carriage establishes a milestone in the development of international air transport.

CONDITIONS OF CARRIAGE — PASSENGERS AND BAGGAGE

ARTICLE 1: DEFINITIONS

Baggage, which is equivalent to luggage, means such articles, effects and other personal property of a passenger as are necessary or appropriate for wear, use, comfort or convenience in connection with his trip. Unless otherwise specified, it shall include both checked and unchecked baggage of the passenger.

Baggage check means those portions of the ticket which provide for the carriage of passenger's checked baggage and which are issued by Carrier as a receipt for passenger's checked baggage.

Baggage tag means a document issued by Carrier solely for identification of checked baggage, the baggage (strap) tag portion of which is attached by Carrier to a particular article of checked baggage and the baggage (claim) tag portion of which is given to the passenger.

Carriage, which is equivalent to transportation, means carriage of passenger and/or baggage by air, gratuitously or for hire.

Carrier includes the air carrier issuing the ticket and all air carriers that carry or undertake to carry the passenger and/or his baggage thereunder or perform or undertake to perform any other services related to such air carriage.

Checked baggage, which is equivalent to registered luggage, means baggage of which the Carrier takes sole custody and for which Carrier has issued a baggage check and baggage (claim) tag(s).

Circle trip means travel from one point and return thereto by a continuous circuitous air route; provided, that where no reasonably direct scheduled air service is available between two points, a break in the circle may be travelled by any other means of transportation without prejudice to the circle trip.

Conjunction ticket means two or more tickets concurrently issued to a passenger and which together constitute a single contract of carriage.

Days means full calendar days, including Sundays and legal holidays; provided, that for the purposes of notification the balance of the day upon which notice is despatched shall not be counted; and that for purposes of

determining duration of validity, the balance of the day upon which the ticket is issued or flight commenced shall not be counted.

Exchange order means a document issued by a Carrier or its agents requesting issue of an appropriate passenger ticket and baggage check or provision of services to the person named in such document.

Flight coupon means a portion of the passenger ticket that indicates particular places between which the coupon is good for carriage.

French gold francs means francs consisting of 65½ milligrams of gold with a fineness of nine hundred thousandths.

Open-jaw trip means travel which is essentially of a round-trip nature but the outward point of departure and inward point of arrival and/or outward point of arrival and inward point of departure of which are not the same.

Passenger means any person, except members of the crew, carried or to be carried in an aircraft with the consent of Carrier.

Passenger coupon means that portion of the passenger ticket constituting the passenger's written evidence of the contract of carriage.

Passenger ticket means those portions of the ticket issued by Carrier which provide for the carriage of the passenger.

Round-trip, which is equivalent to return journey, means (a) travel from one point to another and return by the same air route used outbound whether or not the fares outbound and inbound be the same, or (b) travel from one point to another and return by an air route different from that used outbound, for which the same through one-way fare is established.

Stopover, which is equivalent to a break of journey, means a deliberate interruption of a journey by the passenger, agreed to in advance by Carrier, at a point between the place of departure and the place of destination.

Ticket means the "Passenger Ticket and Baggage Check," including all flight, passenger and other coupons therein issued by Carrier, which provides for the carriage of the passenger and his baggage.

To validate means to stamp or write on the passenger ticket an indication that the passenger ticket has been officially issued by Carrier.

Unchecked baggage, which is equivalent to hand luggage, is baggage other than checked baggage.

ARTICLE 2: APPLICABILITY OF TARIFF

1) *General*: Except as excluded by Carrier's regulations in relation to carriage wholly on its own domestic services, this tariff shall apply to all carriage of passengers and baggage, including all services incidental thereto, performed by Carrier at fares and rates published in connection with this tariff.*

2) *Gratuitous Carriage*: With respect to gratuitous carriage, Carrier reserves the right to exclude the application of all or any part of this tariff.

3) *Charter Agreements*: With respect to carriage of passengers and baggage performed pursuant to a charter agreement with a Carrier, such carriage shall be subject to such Carrier's charter tariff applicable thereto, if any, and this tariff shall not apply except to the extent provided in said charter tariff. Where a Carrier has no charter tariff applicable to such charter agreement, this tariff shall apply to such agreement except that the Carrier reserves the right to exclude the application of all or any part of

* (a) A Carrier (Member) may provide in the alternative: "This tariff shall apply to carriage of passengers and baggage including all services incidental thereto performed by Carrier under local and joint rates and charges of Carrier contained in tariffs which make specific reference to this tariff for governing rules, regulations and conditions of carriage."

(b) All international carriage of passengers and baggage performed by Carrier (Member) must be governed by tariffs which incorporate these conditions of carriage.

this tariff, and, in case of divergence between the applicable provisions of this tariff and the conditions contained or referred to in the charter agreement, the latter shall prevail and the passenger, by accepting carriage pursuant to a charter agreement, whether or not concluded with the passenger, agrees to be bound by the applicable terms thereof.

4) *Change without Notice*: Except as may be required by applicable laws, government regulations, orders and requirements, Carrier's rules, regulations and conditions of carriage are subject to change without notice; provided, that no such change shall apply to a contract of carriage after the carriage has commenced.

5) *Effective Rules*: All carriage of passengers and/or baggage shall be subject to Carrier's rules, regulations and tariffs in effect on the date of commencement of carriage covered by the first flight coupon of the ticket.

ARTICLE 3: TICKETS

1) *General*: A ticket will not be issued and in any case Carrier will not be obliged to carry until the passenger has paid the applicable fare or has complied with credit arrangements established by Carrier.

2) *Validity*: When validated the ticket is good for carriage from the airport at the place of departure to the airport at the place of destination via the route shown therein and for the applicable class of service and is valid for one year from the date of commencement of flight except as otherwise specified in Carrier's regulations. Each flight coupon will be accepted for carriage on the date and flight for which accommodation has been reserved. When flight coupons are issued on an "Open Date" basis, accommodation will be reserved upon application subject to the availability of space. The place and date of issue are set forth on the flight coupons. Any extension of ticket validity will be in accordance with Carrier's regulations.

3) *Coupon Sequence and Production of the Ticket*: Flight coupons must be used in sequence from the place of departure as shown on the passenger coupon. The passenger throughout his journey must retain the passenger coupon and all flight coupons of the ticket not previously surrendered to Carrier. He must, when required, produce the ticket or surrender any applicable portion to Carrier.

4) *Absence, Loss or Irregularities of ticket*: Carrier reserves the right to refuse carriage to any person not in possession of a valid ticket. In the case of loss or non-presentation of the ticket or the applicable portion thereof, carriage will not be furnished for that part of the trip covered by such ticket or portion thereof until the passenger purchases another ticket at the current applicable fare for the carriage to be performed. Carrier is not obliged to accept a ticket if any part of it is mutilated or if it has been altered by other than Carrier or if it is presented without the passenger coupon and all unused flight coupons. Notwithstanding the foregoing, Carrier may issue at the passenger's request a new ticket to replace the lost one upon receipt of proof of loss satisfactory to Carrier, and if the circumstances of the case in Carrier's opinion warrant such action; provided, that the passenger agrees, in such form as may be prescribed by Carrier, to indemnify Carrier for any loss or damage which Carrier may sustain by reason thereof.

5) *Non-Transferability*: A ticket is not transferable, but Carrier shall not be liable to the person entitled to be transported or to the person entitled to receive such refund for honoring or refunding such ticket when presented by someone other than the person entitled to be transported thereunder or to a refund in connection therewith. If a ticket is in fact used by any person other than the person to whom it was issued, with or without the knowledge and consent of the person to whom it was issued, Carrier will not be liable for the death or injury of such unauthorized person

or for the destruction, damage or delay of such person's baggage or other personal property arising from or in connection with such unauthorized use.

ARTICLE 4: STOPOVERS

1) Stopovers within the period of validity of the ticket will be permitted at any scheduled stop unless Carrier's regulations or government regulations do not permit a stopover at such stop.

2) Stopovers must be arranged with Carrier in advance and specified on the ticket.

ARTICLE 5: FARES AND ROUTINGS

1) *General*: Except as provided in Paragraph 4) published fares apply only for carriage from the airport at the point of origin to the airport at the point of destination.

2) *Precedence of Fares*: Unless otherwise provided in Carrier's regulations, a published fare takes precedence over the combination of intermediate fares applicable to the same class of service between the same points via the same routing.

3) *Applicable Fares*: Applicable fares for carriage governed by this tariff are those duly published by Carrier, and, except as otherwise provided in Carrier's regulations, shall be those in effect on the date of commencement of the carriage covered by first flight coupon of the ticket. When the fare collected is not the applicable fare, the difference will be refunded to or collected from the passenger, as may be appropriate.

4) *Ground Transfers*: Published fares do not include ground transfer service between airports and between airports and town centers unless Carrier's regulations specifically provide that such ground transfer service will be furnished without additional charge.

5) *Construction of Unpublished Fares*: When the fare between any two points is not specifically published, such fare will be constructed as provided in Carrier's regulations.

6) *Routing*: Unless otherwise provided in Carrier's regulations, fares apply in either direction and only to routings published in connection therewith. If there is more than one routing at the same fare, the passenger, prior to issuance of the ticket, may specify the routing, and in respect to any open-date portion of such ticket, may specify optional routings; if no routing is specified, Carrier may determine the routing.

7) *Currency of Fares and Charges*: Fares and charges are payable in any currency acceptable to Carrier. When payment is made in a currency other than the currency in which the fare is published, such payment will be made at the rate of exchange established for such purpose by Carrier, the current statement of which is available for inspection by the passenger at Carrier's office where the ticket is purchased. The provisions of this Paragraph are subject to applicable exchange laws and government regulations.

ARTICLE 6: REVISED ROUTINGS, FAILURE TO CARRY AND MISSED CONNECTIONS

Reroutings and missed connections will be dealt with in the manner prescribed by, and subject to, Carrier's regulations.

ARTICLE 7: RESERVATIONS

1) *General*: A ticket will be valid only for the flight(s) for which reservations(s) shall have been made, and only between the points named on the ticket or applicable flight coupons. A passenger holding an unused open date ticket or portion thereof or exchange order for onward travel, or who wishes to change his ticketed reservations to another date, shall not be entitled to any preferential right with respect to the obtaining of a reservation.

2) *Conditions of Reservation*: Reservations shall be tentative unless and until Carrier has issued a validated ticket, or exchange order, or the passenger has made a deposit in accordance with Carrier's regulations for the carriage for which space is reserved. Except in case of such deposit, Carrier reserves the right to cancel a reservation at any time without notice on the failure of the passenger to purchase a ticket for the space reserved.

3) *Arrival of Passengers at Airports*: The passenger must arrive at the airport or other point of departure at the time fixed by Carrier, or if no time is fixed, sufficiently in advance of flight departure to permit completion of government formalities and departure procedures. If the passenger fails to arrive at such airport or other point of departure by the established time limit or appears improperly documented and not ready to travel, Carrier may cancel the space reserved for him. Departures will not be delayed for passengers who arrive at airports or other points of departure too late in Carrier's opinion for such formalities to be completed before scheduled departure time. Carrier is not liable to the passenger for loss or expense due to passenger's failure to comply with this provision.

4) *Service Charge*: A service charge may be made in accordance with Carrier's regulations against any passenger who fails to give notice of cancellation as prescribed in said regulations, or fails to arrive at the airport or other point of departure by the time fixed by Carrier (or if no time is fixed, sufficiently in advance of flight departure to permit completion of government formalities and departure procedures) and as a consequence thereof does not use the space reserved, or who appears improperly documented and not ready to travel on the flight for which space has been reserved for him.

ARTICLE 8: LIMITATIONS OF CARRIAGE

1) *Refusal, Cancellations or Removal*: Carrier may refuse to carry, cancel the reserved space of, or remove en route any passenger when, in the exercise of its reasonable discretion, Carrier decides:

- (a) such action is necessary for reason of safety;
- (b) such action is necessary to prevent violation of any applicable laws, regulations, or orders of any state or country to be flown from, into or over;
- (c) the conduct, status, age or mental or physical condition of the passenger is such as to
 - (i) require special assistance of Carrier;
 - (ii) cause discomfort or make himself objectionable to other passengers; or
 - (iii) involve any hazard or risk to himself or to other persons or to property; or
- (d) the passenger fails to observe the instructions of Carrier.

If question arises of an aircraft's being overloaded, Carrier shall decide in its reasonable discretion which passengers or articles shall be carried.

2) *Recourse of Passenger*: A person refused carriage or removed en route for the reasons specified in Paragraph 1) shall have such rights as may be stipulated in Carrier's regulations.

3) *Conditional Acceptance for Carriage*: If a passenger, whose status, age, or mental or physical condition is such as to involve any hazard or risk to himself is carried, it is on the express condition that Carrier shall not be liable for any injury, illness or disability or any aggravation or consequences thereof, including death, caused by such status, age, or mental or physical condition.

4) *Carriage of Children*: Children will be carried in accordance with Carrier's regulations.

ARTICLE 9: BAGGAGE

1) *Checked Baggage*: (a) Nothing contained in this tariff shall entitle a passenger to have his baggage checked on a journey for which Carrier does not offer facilities for checking of baggage.

(b) Upon delivery to Carrier of the baggage to be checked, Carrier will insert in the ticket the number of pieces and weight of the checked baggage (which act shall constitute the issuance of the baggage check); in addition Carrier will issue for identification purposes only, a baggage (claim) tag for each piece of baggage so delivered and covered by the baggage check. All checked baggage must be properly packed in suitcases or similar containers in order to ensure safe carriage with ordinary care in handling. Fragile or perishable articles, money, jewelry, silverware, negotiable papers, securities or other valuables, business documents or samples, will not be accepted as checked baggage.

2) *Movement of Baggage*: Checked baggage will be carried in the same aircraft as the passenger unless such carriage is deemed impracticable by Carrier, in which event Carrier will move the baggage on the next preceding or subsequent flight on which space is available.

3) *Inspection by Carrier*: Carrier has the right, but not the obligation, to verify in the presence of the passenger the contents of his baggage, and, in the case of unaccompanied baggage, to open and examine such baggage whether or not the passenger is present. The existence or exercise of such right shall not be construed as an agreement, expressed or implied, by Carrier to carry such contents as would otherwise be precluded from carriage.

4) *Dangerous, Damageable or Unsuitable Baggage*: Passenger must not include in his baggage articles which are likely to endanger the aircraft, persons, or property, which are likely to be damaged by air carriage or which are unsuitably packed, or the carriage of which is forbidden by any applicable laws, regulations or orders of any state to be flown from, into, or over. If, in the opinion of Carrier, the weight, size or character of baggage renders it unsuitable for carriage on the aircraft, Carrier, prior to or at any stage of the journey, may refuse to carry the baggage. The following articles will be carried as baggage only with the prior consent of and arrangement with Carrier, in accordance with Carrier's regulations:

- (a) firearms;
- (b) explosives, munitions, corrosives and articles which are easily ignited;
- (c) liquids; and
- (d) live animals, including birds and reptiles.

5) *Free Baggage Allowance*: Passengers may carry free of charge baggage to the weight specified and subject to the conditions and limitations in Carrier's regulations.

6) *Combination of Free Baggage Allowances*: Where two or more passengers, travelling as one party to a common destination by the same flight, present themselves and their baggage for travelling at the same time and place, they shall be permitted a total free baggage allowance equal to the combination of their individual free baggage allowances.

7) *Excess Weight Charges*: Baggage weighing in excess of the applicable free baggage allowance will be charged for at the rate and in the manner provided in Carrier's regulations.

8) *Collection of Excess Weight Charges*: Excess weight charges will be payable in accordance with Carrier's regulations.

9) *Excess Value Charges*: A passenger may declare a value for baggage

in excess of \$100 (U.S. currency) or its equivalent. When such a declaration is made, charges for value in excess of \$100 (U.S. currency) will be in accordance with Carrier's regulations.

(a) Nothing contained herein shall entitle the passenger to declare such excess value for baggage in connection with carriage over Carrier's route in relation to which the Carrier's regulations do not permit such declarations unless the carriage over such route forms a part of through carriage including other routes in respect to which such declarations are permitted.

10) *Collection of Excess Value Charges*: Except as otherwise provided in Carrier's regulations, excess value charges will be payable at the point of origin for the entire journey to final destination; provided, that if at a stopover en route a passenger declares a higher excess value than that originally declared, additional excess value charges for the increased value from the stopover at which the higher excess value was declared to final destination will be payable.

11) *Payment of Charges*: Carrier will not be obliged to carry baggage until the passenger has paid all applicable charges or has complied with credit arrangements established by Carrier.

12) *Delivery of Checked Baggage by Carrier*: (a) Checked baggage will be delivered to the bearer of the baggage check upon payment of all unpaid sums due to Carrier under contract of carriage and upon return to Carrier of baggage (claim) tag(s) issued in connection with such baggage. Carrier is under no obligation to ascertain that the bearer of the baggage check and baggage (claim) tag is entitled to delivery of the baggage and Carrier is not liable for any loss, damage or expense arising out of or in connection with his failure so to ascertain. Except as otherwise provided in Sub-paragraph (c) hereof, delivery will be made at the destination shown in the baggage check.

(b) If the provisions of Sub-paragraph (a) above are not complied with by a person claiming the baggage, Carrier will deliver the baggage only on condition that such person establishes to Carrier's satisfaction his rights thereto, and if required by Carrier, such person shall furnish adequate security to indemnify Carrier for any loss, damage or expense which may be incurred by Carrier as a result of such delivery.

(c) At the request of the bearer of the baggage check and baggage (claim) tag(s), checked baggage will be delivered at the place of departure or an intermediate stopping place upon the same conditions provided for in Sub-paragraph (a) hereof, unless precluded by government regulations, or unless time and circumstances do not permit. In delivering baggage at the place of departure or at an intermediate stopping place, Carrier shall be under no obligation to refund any charge paid.

(d) Acceptance of baggage by the bearer of the baggage check and baggage (claim) tag(s) without written complaint at the time of delivery is presumptive evidence that the baggage has been delivered in good condition and in accordance with the contract of carriage.

13) *Accompanied Pets*: The weight of accompanied pets, when accepted, including the containers carried, may not be included in the free baggage allowance of the passenger and the passenger will be assessed the applicable excess baggage weight charge.

ARTICLE 10: SCHEDULES, DELAYS AND CANCELLATIONS OF FLIGHTS

1) *Schedules*: Times shown in timetables or elsewhere are approximate and not guaranteed, and form no part of the contract of carriage. Schedules are subject to change without notice and Carrier assumes no responsibility for making connections. Carrier will not be responsible for errors or omis-

sions either in timetables or other representations of schedules. No employee, agent or representative of Carrier is authorized to bind Carrier by any statements or representations as to the dates or times of departure or arrival, or of the operation of any flight.

2) *Cancellations*: (a) Carrier may, without notice, substitute alternate Carriers or aircraft.

(b) Carrier may, without notice, cancel, terminate, divert, postpone or delay any flight or the further right of carriage or reservation of traffic accommodations and determine if any departure or landing should be made, without any liability except to refund in accordance with its tariffs the fare and baggage charges for any unused portion of the ticket, if it considers that it would be advisable to do so:

- (i) because of any fact beyond its control (including, but without limitation, meteorological conditions, acts of God, force majeure, strikes, riots, civil commotions, embargoes, wars, hostilities, disturbances, or unsettled international conditions) actual, threatened or reported, or because of any delay, demand, condition, circumstance or requirement due, directly or indirectly, to such fact; or
- (ii) because of any fact not reasonably to be foreseen, anticipated or predicted; or
- (iii) because of any government regulation, demand or requirement; or
- (iv) because of shortage of labor, fuel or facilities, or labor difficulties of Carrier or others.

(c) Carrier may cancel the right or further right of carriage of the passenger and his baggage upon refusal of the passenger, after demand by Carrier, to pay the fare or portion thereof so demanded, or to pay any charge so demanded and assessable with respect to the baggage of the passenger, without being subject to any liability therefor except to refund, in accordance herewith, the unused portion of the fare and baggage charge(s) previously paid, if any.

ARTICLE 11: REFUNDS

1) In case of refund, whether due to failure of Carrier to provide the accommodation called for by the ticket, or to voluntary change of arrangements by the passenger, the conditions and amount of refund will be governed except as provided below, by Carrier's regulations.

2) Carrier reserves the right to refund only to the person who originally paid for the ticket.

3) Carrier reserves the right to refuse refund when application therefor is made later than 30 days after the expiry date of the ticket or exchange order.

4) Carrier reserves the right to refuse refund on a ticket which has been presented to Government officials of a country or to Carrier as evidence of intention to depart therefrom, unless the passenger establishes to the Carrier's satisfaction that he has permission to remain in the country or that he will depart therefrom by another carrier or conveyance.

ARTICLE 12: GROUND TRANSFER SERVICE

Except as otherwise indicated in Carrier's regulations, Carrier does not maintain, operate or provide ground transfer service between airports or between airports and town centers. Except where ground transfer service is directly operated by Carrier, it is agreed that any such service is performed by independent operators who are not and shall not be deemed to be

agents or servants of Carrier. Anything done by an employee, agent or representative of Carrier in assisting the passenger to make arrangements for such ground transfer service shall in no way make Carrier liable for the acts or omissions of such an independent operator. In cases where a Carrier maintains and operates for its passengers local transfer services, the terms, conditions, rules and regulations of the Carrier, including (but without limitation) those stated or referred to in their tickets, baggage checks and baggage valuation agreements shall be deemed applicable to such local services. No portion of the fare shall be refundable in the event local transfer services are not used.

ARTICLE 13: ARRANGEMENTS BY CARRIER

In making arrangements for hotel or other housing and board accommodation for passengers or for excursion trips on the ground or other similar arrangements whether or not the cost of such arrangements is for the account of Carrier, Carrier acts only as agent for the passenger and Carrier is not liable for loss, damage, or expense of any nature whatsoever incurred by the passenger as a result of or in connection with the use by the passenger of such accommodation or the denial of the use thereof to the passenger by any other person, company or agency.

ARTICLE 14: TAXES

Any tax or other charge imposed by government authority and collectible from a passenger will be in addition to the published fares and charges.

ARTICLE 15: ADMINISTRATIVE FORMALITIES

1) *Compliance with Regulations*: The passenger shall comply with all laws, regulations, orders, demands or travel requirements of countries to be flown from, into or over, and with all rules, regulations and instructions of Carrier. Carrier shall not be liable for any aid or information given by any agent or employee of Carrier to any passenger in connection with obtaining necessary documents or complying with such laws, regulations, orders, demands, requirements or instructions, whether given orally or in writing, or otherwise; or for the consequences to any passenger resulting from his failure to obtain such documents or to comply with such laws, regulations, orders, demands, requirements or instructions.

2) *Passports and Visas*: (a) The passenger must present all exit, entry and other documents required by laws, regulations, orders, demands or requirements of the countries concerned. Carrier reserves the right to refuse carriage to any passenger who has not complied with applicable laws, regulations, orders, demands or requirements or whose documents are not complete. Carrier is not liable to the passenger for loss or expense due to the passenger's failure to comply with this provision.

(b) Subject to applicable laws and regulations, the passenger agrees to pay the applicable fare whenever Carrier, on government order, is required to return a passenger to his point of origin or elsewhere due to the passenger's inadmissibility into a country, whether of transit or of destination. Carrier may apply to the payment of such fares any funds paid by the passenger to Carrier for unused carriage, or any funds of the passenger in the possession of Carrier. The fare collected for carriage to the point of refusal or deportation will not be refunded by Carrier.

3) *Customs Inspection*: If required, the passenger must attend inspection of his baggage, checked or unchecked, by customs or other government officials. Carrier accepts no responsibility toward the passenger if the latter fails to observe this condition. If damage is caused to Carrier because of the passenger's failure to observe this condition, the passenger shall indemnify Carrier therefor.

4) *Government Regulation*: No liability shall attach to Carrier if Carrier in good faith determines that what it understands to be applicable law, government regulation, demand, order or requirement requires that it refuse and it does refuse to carry a passenger.

ARTICLE 16: SUCCESSIVE CARRIERS

Carriage to be performed under one ticket or under a ticket and any conjunction ticket issued in connection therewith by several successive Carriers is regarded as a single operation.

ARTICLE 17: LAWS AND PROVISIONS APPLICABLE

1) Carriage hereunder is subject to the rules relating to liability established by the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, October 12, 1929 (hereinafter called "the Convention") unless such carriage is not carriage 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 carriage or a trans-shipment are situated either within the territories of two High Contracting Parties to the Convention, 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 the Convention. (See Note at end of this Article.)

2) To the extent not in conflict with the provisions of Paragraph 1) above, all carriage and other services performed by each Carrier are subject to:

(a) Applicable laws (including national laws implementing the Convention or extending the rules of the Convention to carriage which is not "international carriage" as defined in the Convention), government regulations, orders and requirements;

(b) This and other applicable tariffs, rules, regulations and timetables (but not the times of departure and arrival therein specified) of Carrier, which may be inspected at any of its offices and at airports from which it operates regular services.

3) Carrier's name may be abbreviated in the ticket, the full name and its abbreviation being set forth in Carrier's regulations or timetables and, for the purpose of the Convention, Carrier's address shall be the airport of departure shown opposite the first abbreviation of Carrier's name in the ticket, and the agreed stopping places (which may be altered by Carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth in the ticket and any conjunction ticket issued therein or shown in Carrier's timetables as scheduled stopping places on the passenger's route.

NOTE: The High Contracting Parties to the Warsaw Convention 1929 were shown (unofficially) by the International Civil Aviation Organization on July 20, 1953, to be:

<p>Argentina; Australia, including Nauru, New Guinea, Norfolk Island, Papua; Belgium, including all territories subject to the sovereignty or authority of Belgium; Brazil; Bulgaria; Burma; Canada; Ceylon; Czechoslovakia; Denmark and the Faroe Islands; Ethiopia; Finland; France, including territories whose external relations are under her au-</p>	<p>thority and the Associated States: Cambodia, Laos and Viet-Nam; Germany; Greece; Hungary; Iceland; India; Indonesia; Ireland; Israel; Italy, including territories under Italian administration; Japan; Liberia; Liechtenstein; Luxembourg; Mexico; Netherlands, Netherlands Antilles, Netherlands New Guinea, Surinam; New Zealand, including</p>
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Cook Islands, Tokelau Islands and Western Samoa; Norway, including all territories subject to the sovereignty or authority of Norway; Pakistan; Philippines; Poland; Portugal; Rumania; Spain, including: colonies, Spanish Morocco; Sweden; Switzerland; Union of Soviet Socialist Republics; United Kingdom, and Aden (Colony) (Protectorate), Bahamas, Barbados, Basutoland, Bechuanaland (Protectorate), Bermuda, British Guiana, British Honduras, Brunei, Channel Islands and Isle of Man, Cyprus, Falkland Islands and Dependencies, Federation of Malaya, Malacca, Penang, Johore, Kedah, Kelantan, Negri Sembilan, Pahang, Perak, Perlis, Selangor and Trengganu, Fiji, Gambia (Colony and Protectorate), Gold Coast (Colony, Ashanti, Northern Territories, Togoland under United Kingdom Trusteeship), Hong Kong, Jamaica (including Turks and Caicos and

Caymen Islands), Kenya (Colony and Protectorate), Leeward Islands: Antigua, Montserrat, St. Christopher and Nevis, Virgin Islands, Malta, Mauritius, Nigeria (Colony, Protectorate, Cameroons under United Kingdom Trusteeship), North Borneo, Northern Rhodesia, Nyasaland Protectorate, St. Helena and Ascension, Sarawak, Seychelles, Sierra Leone (Colony and Protectorate), Singapore, Somaliland (Protectorate), Southern Rhodesia, Swaziland, Tanganyika, Trinidad and Tobago, Uganda (Protectorate); Western Pacific: British Solomon Islands, Protectorate, Gilbert and Ellice Islands Colony and Tonga; Windward Islands: Grenada, St. Lucia, St. Vincent, Dominica, Zanzibar (Protectorate); United States including all territories subject to the sovereignty or authority of the United States; Yugoslavia.

ARTICLE 18: LIMITATION OF LIABILITY

Except as the Convention or other applicable law may otherwise require:

1) Carrier is not liable for any death, injury, delay, loss or claim of whatsoever nature (hereinafter in this tariff collectively referred to as "damage") arising out of or in connection with carriage or other services performed by Carrier incidental thereto, unless such damage is proved to have been caused by the negligence or wilful fault of Carrier and there has been no contributory negligence of the passenger.

2) Under no circumstances will Carrier be liable for damage to unchecked baggage not attributable to the negligence of Carrier. Assistance rendered to the passenger by Carrier's employees in loading, unloading, or transshipping unchecked baggage shall be considered as gratuitous service to the passenger.

3) Carrier is not liable for any damage directly or indirectly arising out of compliance with laws, government regulations, order or requirements or from any cause beyond Carrier's control.

4) In any event liability of Carrier for death, injury or delay of a passenger shall not exceed 125,000 French gold francs, or its equivalent.

5) The passenger having been offered a choice of rates according to value except as provided in Article 9, Paragraph 9), any liability of Carrier in respect of baggage and other personal property is limited to its declared value (or its actual value if less) which shall not exceed \$100 (U.S. currency) or its equivalent per passenger, unless a higher valuation is declared in advance and additional charges are paid pursuant to Carrier's regulations.

6) In the event of delivery to the passenger of part but not all of his checked baggage, or in the event of damage to part but not all of such baggage, the liability of the Carrier with respect to the undelivered or damaged portion shall be reduced proportionately on the basis of weight, notwithstanding the value or any part of the baggage or contents thereof.

7) Carrier is not liable for damage to a passenger's baggage caused by property contained in the passenger's baggage. Any passenger whose prop-

erty caused damage to another passenger's baggage or to the property of Carrier shall indemnify Carrier for all losses and expenses incurred by Carrier as a result thereof.

8) Carrier is not liable for loss, damage to or delay in the delivery of fragile or perishable articles, money, jewelry, silverware, negotiable papers, securities or other valuables, business documents, or samples which are included in the passenger's checked baggage, whether with or without the knowledge of Carrier.

9) Carrier may refuse to accept any articles which do not constitute baggage as such term is defined herein, but if delivered to and received by Carrier, such article shall be deemed to be within the baggage valuation and limit of liability and shall be subject to the published rates and charges of Carrier.

10) A Carrier issuing a ticket or checking baggage for carriage over the lines of others does so only as agent. No Carrier shall be liable for the death, injury, or delay of a passenger, or the loss, damage or delay of unchecked baggage, not occurring on its own line; and no Carrier shall be liable for the loss, damage or delay of checked baggage not occurring on its own line, except that the passenger shall have a right of action for such loss, damage, or delay on the terms herein provided against the first Carrier or the last Carrier under the agreement to carry.

11) Carrier shall not be liable in any event for any consequential or special damage arising from carriage subject to this tariff, whether or not Carrier had knowledge that such damages might be incurred.

12) Whenever the liability of Carrier is excluded or limited under these conditions, such exclusion or limitation shall apply to agents, servants or representatives of the Carrier and also any Carrier whose aircraft is used for carriage and its agents, servants or representatives.

ARTICLE 19: TIME LIMITATION ON CLAIMS AND ACTIONS

1) No action shall be maintained in the case of damage to baggage or other property unless written notice of the claim is presented to an office of Carrier within three days from the date of receipt thereof; and in the case of delay or loss, unless such a written notice is so presented within fourteen days from the date the baggage or other property is placed at the passenger's disposal (in case of delay) or should have been placed at the passenger's disposal (in case of loss).

2) Any right to damages against Carrier shall be extinguished unless an action is brought within two years after the occurrence of the events giving rise to the claim.

ARTICLE 20: OVERRIDING LAW

Insofar as any provision contained or referred to in the ticket or in this tariff may be contrary to mandatory law, government regulations, orders or requirements, such provision shall remain applicable to the extent that it is not overridden thereby. The invalidity of any provision shall not affect any other part.

ARTICLE 21: MODIFICATION AND WAIVER

No agent, servant or representative of Carrier has authority to alter, modify or waive any provisions of the contract of carriage or of this tariff.

CONDITIONS OF CARRIAGE — CARGO

ARTICLE 1: DEFINITIONS

Air waybill, which is equivalent to the term air consignment note, means the document entitled "Air Waybill/Consignment Note" made out by or on

behalf of the shipper which evidences the contract between the shipper and Carrier for carriage of cargo over routes of Carrier.

Cargo, which is equivalent to the term goods, means anything carried or to be carried in an aircraft, other than mail or baggage; provided, that unaccompanied baggage moving under an air waybill is cargo.

Carriage, which is equivalent to transportation, means carriage of cargo by air, gratuitously or for reward.

Carrier includes the air carrier issuing the air waybill and all air carriers that carry or undertake to carry the cargo under such air waybill or to perform any other services related to such air carriage.

Charges collect means the charges entered on the air waybill for collection from consignee.

City terminal service means the surface carriage of consignments between Carrier's city handling station and the airport of departure or destination, as the case may be.

C.O.D. means an arrangement between the shipper and Carrier whereby the latter, upon delivery of the consignment, is to collect from the consignee the amount indicated on the air waybill as payable to the shipper.

Consignment means one or more pieces of goods accepted by the Carrier from one shipper at one time and at one address, receipted for in one lot and moving on one air waybill to one consignee at one destination address.

Customs consignee, which is equivalent to the terms Customs Clearance Agent, means a Customs Broker or other agent of the consignee designated to perform customs clearance services for the consignee.

Days means full calendar days, including Sundays and legal holidays; provided, that for purposes of notification the balance of the day upon which notice is dispatched shall not be counted.

Delivery service means the surface carriage of inbound consignments from the airport of destination to the address of the consignee or that of his designated agent or to the custody of the appropriate government agency when required.

French gold franc means francs consisting of 65½ milligrams of gold with a fineness of nine hundred thousandths.

Pick-up service means the surface carriage of outbound consignments from the point of pick-up to the airport of departure.

Shipper, which is equivalent to the term Consignor, means the person whose name appears on the air waybill as the party contracting with Carrier for the carriage of cargo.

ARTICLE 2: APPLICABILITY OF TARIFF

1) *General*: Except as excluded by Carrier's regulations in relation to carriage wholly on its own domestic services, this tariff shall apply to all carriage of cargo including all services incidental thereto, performed by Carrier at rates published in connection with this tariff.*

2) *Gratuitous Carriage*: With respect to gratuitous carriage, Carrier reserves the right to exclude the application of all or any part of this tariff.

3) *Charter Agreements*: With respect to carriage of cargo performed pursuant to a charter agreement with a Carrier, such carriage shall be subject to such Carrier's charter tariff applicable thereto, if any, and this tariff shall not apply except to the extent provided in said charter tariff. Where a Carrier has no charter tariff applicable to such charter agreement, this

* (a) A Carrier (Member) may provide in the alternative: "This tariff shall apply to carriage of cargo including all services incidental thereto performed by Carrier under local and joint rates and charges of Carrier contained in tariffs which make specific reference to this tariff for governing rules, regulations and conditions of carriage."

(b) All international carriage of cargo performed by Carrier (Member) must be governed by tariffs which incorporate these Conditions of Carriage.

tariff shall apply to such agreement except that the Carrier reserves the right to exclude the application of all or any part of this tariff, and, in case of divergence between the applicable provisions of this tariff and the conditions contained or referred to in the charter agreement, the latter shall prevail and the shipper, by accepting carriage pursuant to a charter agreement, whether or not concluded with the shipper, agrees to be bound by the applicable terms thereof.

4) *Change without Notice*: This tariff and the published rates and charges are subject to change without notice except to the extent otherwise provided by applicable law or government regulations or order; provided, however, that no such change shall apply to a contract of carriage after the date of issuance of the air waybill by Carrier.

5) *Effective Rules*: All carriage of cargo governed by this tariff shall be subject to Carrier's rules, regulations and tariffs in effect on the date of issuance of the air waybill by Carrier.

ARTICLE 3: EXECUTION OF AIR WAYBILL

1) *Preparation by Shipper*: The shipper shall make out, or have made out on his behalf, an air waybill in the form, manner and number of copies prescribed by Carrier, and shall deliver such air waybill to Carrier simultaneously with the acceptance of the cargo by Carrier for carriage. However, charges for carriage and other charges, insofar as they have been ascertained, shall be inserted in the air waybill by Carrier. Carrier may require the shipper to make out, or have made out on his behalf, separate air waybills when there is more than one package or when all of the consignment cannot be carried in one aircraft or cannot, without breach of government requirements or regulation of Carrier, be carried on one air waybill.

2) *Apparent Order and Condition of Cargo*: If the apparent order and condition of the cargo and/or packing is other than good, the shipper shall insert in the air waybill what the apparent order and condition is. However, if the shipper fails to do so, or if such statement is inaccurate, Carrier may insert in the air waybill a statement of the apparent order and condition or note a correction thereon.

3) *Preparation, Completion or Correction by Carrier*: Carrier may at the request of the shipper, expressed or implied, make out the air waybill, in which event, subject to proof to the contrary, Carrier shall be deemed to have done so on behalf of the shipper. If the air waybill handed over with the cargo does not contain all the required particulars, or if it contains any error, Carrier is authorized to complete or correct it to the best of Carrier's ability without being under any obligation to do so.

4) *Responsibility for Particulars*: The shipper is responsible to Carrier and all other persons for the correctness and completeness of the particulars and statements which he inserts in the air waybill, or which Carrier inserts on his behalf. The shipper shall be liable for all damages suffered by Carrier or any other person by reason of the irregularity, incorrectness or incompleteness of said particulars or statements, whether the air waybill was made out by or on behalf of the shipper or by Carrier (or completed by Carrier) on behalf of the shipper pursuant to the provisions of Article 3, Paragraph 3, above. In the case of consignments to be forwarded C.O.D., it shall be the sole responsibility of the shipper to enter the amount of the C.O.D. on the air waybill, and Carrier shall not be liable for failure to collect the C.O.D. amount when not so entered by the shipper.

5) *Alterations*: Air waybills the writing on which has been altered or erased need not be accepted by Carrier.

ARTICLE 4: CHARGES

1) *Applicable Rates and Charges*: Rates and charges for carriage governed by this tariff are those duly published by Carrier and in effect on the date of the issuance of the air waybill by Carrier. Such rates and charges are applicable to routings published in connection with this tariff and are not applicable for such periods as service is not available between the points named.

2) *Airport to Airport*: Except as otherwise provided in Carrier's regulation, rates and charges apply only from airport to airport.

3) *Precedence of Rates and Charges*: (a) Unless otherwise provided in Carrier's regulations, a published rate takes precedence over the combination of intermediate rates applicable between the same points via the same routings.

(b) Specific commodity rates and charges take precedence over rates and charges derived from commodity classifications and over general cargo rates and charges. Through specific commodity rates and charges take precedence over the combination of intermediate specific commodity rates and charges between the same points via the same carriers.

(c) Through general cargo rates and charges take precedence over the combination of intermediate general cargo rates and charges between the same points via the same Carriers.

4) *Quantity Reductions*: When a reduction in a rate or charge is published for a consignment of greater weight, size or value, such lower rate or charge will apply only to a consignment falling within the respective group, except that in no case shall the charge assessed for any consignment be greater than the minimum charge for a consignment in the next higher weight, size or value group respectively.

5) *Basis of Charges*: Rates and charges for carriage will consist of the total of the weight or volume charge, whichever is greater, and, if applicable, the valuation charge and/or value surcharge as specified in Carrier's regulations.

6) *Services not included in Published Rates and Charges*: Published rates and charges cover the carriage of consignments by air between airports or other landing places at or near the points shown in the published rates and charges. Except as otherwise specifically provided in Carrier's regulations, such published rates and charges do not include the following services or charges:

(a) pick-up, delivery and city terminal service to and from the airport from which Carrier operates; (b) storage charges; (c) insurance charges; (d) C.O.D. service charges; (e) advanced charges; (f) expenses incurred by Carrier in clearing the cargo through customs, or incurred by any other person whether acting as agent for the shipper, the consignee, the owner of the cargo, or Carrier; (g) charges or penalties imposed or collected by government authority including duties and taxes; (h) expenses incurred by Carrier in repairing faulty packing; (i) charges for carriage of cargo forwarded, transhipped or re-forwarded by any other transportation service, or returned to point of origin; or (j) any other similar services or charges.

7) *Payment of Charges*: (a) Rates and charges are published in the currency shown in the applicable rate tariffs, and are payable in any currency acceptable to Carrier. When payment is made in a currency other than in the currency in which the rate or charge is published, such payment will be made at the rate of exchange established for such purpose by Carrier, the current statement of which is available for inspection by the shipper at Carrier's office where the air waybill is issued or payment is

made. The provisions of this paragraph are subject to applicable exchange laws and government regulations.

(b) Full applicable charges, whether prepaid or collect, fees, duties, taxes, charges, advances and payment, made or incurred or to be incurred by Carrier and any other sums payable to Carrier, will be deemed fully earned, whether or not the cargo is lost or damaged, or fails to arrive at the destination specified in the air waybill. All such charges, sums and advances will be due and payable upon receipt of the cargo by Carrier, except that they may be collected by Carrier at any stage of the service performed under the air waybill.

(c) With respect to any charges, expenses or disbursements which cannot be determined at the time when the cargo is handed over for carriage, Carrier may require the shipper to deposit with Carrier a sum estimated by Carrier to be sufficient to cover such charges, expenses and disbursements. Any balance due from Carrier to the shipper or from the shipper to Carrier in connection with such deposit shall be paid after completion of the contract of carriage and determination of the exact amount of such expenses and disbursements.

(d) The shipper guarantees payment of all unpaid charges, advances and disbursements of Carrier. The shipper also guarantees payment of all costs, expenditures, fines, penalties, loss of time, damages and other sums which Carrier may incur or suffer by reason of the inclusion in the consignment of articles the carriage of which is prohibited by law, or the illegal, incorrect or insufficient marking, numbering, addressing or packing of packages or description of the cargo, or the absence, delay or incorrectness of any export or import license or any required certificate or document, or any improper customs valuation, or incorrect statement of weight or volume. By taking delivery or exercising any other right arising from the contract of carriage, the consignee agreed to pay such charges, sums and advances, except prepaid charges; but this shall not discharge the shipper's guarantee to pay the same. Carrier shall have a lien on the cargo for each of the foregoing and, in the event of non-payment thereof, shall have the right to dispose of the cargo at public or private sale (provided that prior to such sale Carrier shall have mailed notice thereof to the shipper or to the consignee at the address stated in the air waybill), and to pay itself out of the proceeds of such sale any and all such amounts. No such sale shall, however, discharge any liability to pay any deficiencies, for which the shipper and the consignee shall remain jointly and severally liable. No such lien or right of sale, and no right of Carrier to collect any of the foregoing shall be in any way affected, lost or prejudiced by reason of the acknowledgment of payment, if not actually paid, or, so far as concerns the right of Carrier to collect any of the foregoing, by reason of the delivery of the cargo or the surrender of the possession thereof.

(e) If the gross weight, measurement, quantity or declared value of the cargo exceeds the gross weight, measurement, quantity or declared value on which charges for carriage have been previously computed, Carrier shall be entitled to require payment of the charge on such excess.

(f) Charges collect consignments will be accepted only to countries listed in Carrier's regulations and subject to the conditions contained therein. In any event Carrier reserves the right to refuse consignment on a charges collect basis to any country where regulations prevent the conversion of funds into other currencies or the transfer of funds to other countries. Information on countries to which charges collect service is available may be obtained from offices and representatives of Carrier.

8) *Service Charge*: In addition to the weight (or volume) charge or valuation charge and/or value surcharge referred to heretofore, service

charges will be assessed when applicable to the consignment in accordance with Carrier's regulations.

9) *Construction of Unpublished Rates and Charges*: When the rate or charge between any two points is not specifically published, such rate or charge will be constructed as provided in Carrier's regulations.

ARTICLE 5: ACCEPTABILITY OF GOODS FOR CARRIAGE

1) *Valuation Limit of Consignment*: No consignment having a declared value in excess of the amount specified in Carrier's regulations will be accepted for carriage unless a special arrangement therefor has been made in advance between the shipper and Carrier.

2) *Valuation Limits for One Aircraft*: The limit of value of consignment or group of consignments to be carried in any one aircraft shall be as specified in Carrier's regulations. If a single consignment exceeds such limits, it may not be carried in the same aircraft but may be divided between two or more aircraft at the sole discretion of Carrier. The Carrier reserves the right to refuse to transport in any one aircraft shipments having declared valuations in the aggregate which violate or lead to violation of this rule.

3) *Packing and Marking of Cargo*: (a) Cargo must be packed so as to ensure safe carriage with ordinary care in handling and so as not to injure or damage any persons, goods or property. Each package shall be legibly and durably marked with the name and full street address of the shipper and consignee.

(b) In the case of C.O.D. consignments, the letters "C.O.D." shall be legibly marked by the shipper on each package next to the shipper's and consignee's name and address.

(c) Packages containing valuables as defined in Carrier's regulations must be sealed with wax, each seal showing a distinct and perfect impression of the sealing instrument, or by other sealing methods approved by Carrier.

4) *Cargo Acceptable*: Carrier undertakes to transport, subject to the availability of suitable equipment and space, general merchandise, goods, wares and products of all kinds, unless otherwise excluded by Carrier's regulations, and provided:

(a) the transportation, or the exportation or importation thereof is not prohibited by the laws or regulations of any country to be flown from, to, into or over; (b) they are packed in a manner suitable for carriage by aircraft; (c) they are accompanied by the requisite shipping documents; (d) they are not likely to endanger aircraft, persons or property, or cause annoyance to passengers.

5) *Cargo Acceptable only under Prescribed Conditions*: Explosives, live animals, perishables, and other articles specified in Carrier's regulations relating to the carriage of restricted articles are acceptable only under the conditions set forth therein.

6) *Responsibility for Non-Observance of Conditions Related to Restricted Cargo*: Responsibility for the non-observance of the conditions relating to cargo which is not acceptable for carriage or is acceptable only under certain conditions, rests upon the shipper and the owner of the cargo, who jointly and severally agree to indemnify Carrier for any loss, damage, delay, liability or penalties it may incur because of carriage of any such cargo.

7) *Carrier's Right of Inspection*: Carrier reserves the right to examine the contents of all consignments, but shall be under no obligation to do so.

ARTICLE 6: CONSIGNMENTS IN TRANSIT

1) *Compliance with Government Requirements*: The shipper shall comply with all applicable laws, customs and other government regulations of any country to, from, through or over which the cargo may be carried, including those relating to the packing, carriage or delivery of the cargo, and shall furnish such information and attach such documents to the air waybill as may be necessary to comply with such laws and regulations. Carrier shall not be obliged to inquire into the correctness or sufficiency of such information or documents. Carrier shall not be liable to the shipper or any other person for loss or expense due to shipper's failure to comply with this provision.

(b) No liability shall attach to Carrier if Carrier in good faith reasonably determines that what it understands to be the applicable law, government regulation, demand, order or requirement requires that it refuse and it does refuse to carry a consignment.

2) *Disbursements and Customs Formalities*: Carrier is authorized (but shall be under no obligation) to advance any duties, taxes or charges and to make any disbursements with respect to the cargo, and the shipper, owner and consignee shall be jointly and severally liable for the reimbursement thereof. No Carrier shall be under obligation to incur any expense or to make any advance in connection with the forwarding or reforwarding of the cargo except against prepayment by the shipper. If it is necessary to make customs entry of the cargo at any place, the cargo shall be deemed to be consigned at such place to the person named on the face of the air waybill as customs consignee or, if no such person be named, to the Carrier carrying the cargo to such place or to such customs consignee, if any, as such Carrier may designate. For any such purpose a copy of the air waybill, certified by Carrier, shall be deemed an original.

3) *Schedules, Routings and Cancellations*: (a) Times shown in time-tables or elsewhere are approximate and not guaranteed and form no part of the contract of carriage. No time is fixed for the commencement or completion of carriage or delivery of cargo. Unless otherwise provided in Carrier's regulations, Carrier assumes no obligation to carry the cargo by any specified aircraft or over any particular route or routes, or to make connections at any point according to any particular schedule, and Carrier is hereby authorized to select or deviate from the route or routes of consignment, notwithstanding that the same may be stated on the face of the air waybill. Carrier is not responsible for errors or omissions either in time-tables or other representations of schedules. No employee, agent or representative of Carrier is authorized to bind Carrier by any statements or representations of the dates or times of departure or arrival, or of the operation of any flight.

(b) Carrier may without notice substitute alternate Carriers or aircraft.

(c) Carrier may without notice, cancel, terminate, divert, postpone, or delay, any flight, or the further right of carriage, or proceed with any flight without all or any part of the cargo, if it considers that it would be advisable to do so,

(i) because of any fact beyond its control (including, but without limitation, meteorological conditions, acts of God, force majeure, strikes, riots, civil commotions, embargoes, wars, hostilities, disturbances, or unsettled international conditions) actual, threatened, or reported, or because of any delay, demand, condition, circumstance, or requirement due, directly or indirectly to such facts; or (ii) because of any fact not reasonably to be foreseen, anticipated, or predicted; or (iii) because of any government regulation, order, demand or requirement; or (iv)

because of shortage of labor, fuel, or facilities, or labor difficulties of Carrier or others.

(d) Carrier may cancel the carriage of consignment upon the refusal of the shipper, after demand by such Carrier to pay the charges or the portion thereof so demanded, without being subject to any liability therefor.

(e) In the event any flight is so cancelled, postponed or advanced or is terminated at a place other than the place of destination or in the event the carriage of any consignment is so cancelled, postponed, advanced or terminated, Carrier shall not be under any liability with respect thereto. In the event the carriage of the consignment or any part thereof is so terminated, delivery thereof by Carrier to any transfer agent for transfer or delivery or the placing of such consignment in storage shall be deemed complete delivery under the air waybill, and Carrier shall be without any further liability with respect thereto, except to give notice of the disposition of the consignment to the shipper or to the consignee, at the address stated in the air waybill. Carrier may, but shall not be obligated to, forward the consignment for carriage by any other route or forward the consignment as agent for the shipper or the consignee, for onward carriage by any transportation service on behalf of the shipper or the consignee. The cost of doing so attaches to the cargo.

(f) Subject to applicable government laws, regulations and orders, Carrier is authorized to determine the priority of carriage as between consignments and as between consignments and other cargo, mail and passengers, and to decide which articles shall be carried and which articles shall not be carried or shall be removed at any time or place whatsoever and to proceed with any flight without all or any part of the goods in one consignment.

4) *Certain Rights of Carrier over Consignment in Transit*: If in the opinion of Carrier it is necessary to hold the consignment at any place for any purpose, either before, during or after transit, Carrier may, upon giving notice thereof to the shipper or consignee at the address stated in the air waybill, store the consignment for the account and at the risk and expense of the shipper, owner and consignee of the consignment, or any one of them in any warehouse or other available place, or with the customs authorities; or Carrier may deliver the consignment to another transportation service for onward carriage to the consignee. The shipper, owner or consignee of the consignment shall be jointly and severally liable for and indemnify Carrier against any expense or risk so incurred.

ARTICLE 7: SHIPPER'S RIGHT OF DISPOSITION

1) *Exercise of Right of Disposition*: Every exercise of the right of disposition must be made by the shipper or his designated agent, if any, and must be applicable to the whole consignment under a single air waybill. The right of disposition over the cargo may only be exercised if the shipper or such agent produces the part of the air waybill which was delivered to him. Instructions as to disposition must be given in writing in the form prescribed by Carrier. In the event that the exercise of the right of disposition results in a change of consignee, such new consignee shall be deemed to be the consignee appearing on the air waybill.

2) *Shipper's Option*: Subject to his liability to carry out all his obligations under the contract of carriage and provided that this right of disposition is not exercised in such a way as to prejudice Carrier or other shippers, the shipper may dispose of the cargo either:

- (a) by withdrawing it at the airport of departure or of destination;
- (b) by stopping it in the course of the journey on any landing; (c) by calling for it 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 (d) by requiring it to be returned to the airport of departure.

3) *Payment of Expenses*: The shipper shall be liable for and shall indemnify Carrier for all loss or damage suffered or incurred by Carrier as a result of the exercise of his right of disposition. The shipper shall reimburse Carrier for any expenses occasioned by the exercise of his right of disposition.

4) *Carrier's Inability to Comply*: If in the opinion of the Carrier it is not reasonably practicable to carry out the order of the shipper, Carrier shall so inform him promptly. The cost of so doing attaches to the cargo.

5) *Extent of Shipper's Right*: The shipper's right of disposition shall cease at the moment when, after arrival of the cargo at the destination, the consignee takes possession or requests delivery of the cargo or air waybill, or otherwise shows his acceptance of the cargo. Nevertheless, if the consignee declines to accept the air waybill or the cargo, or if he cannot be communicated with, such right of disposition shall continue to vest in the shipper.

ARTICLE 8: DELIVERY

1) *Delivery to Consignee*: (a) Except as otherwise specifically provided in the air waybill, delivery of the consignment will be made only to the consignee named on the face of the air waybill unless such consignee is one of the Carriers participating in the carriage, in which event delivery shall be made to the person indicated on the face of the air waybill as the person to be notified. Delivery to the consignee shall be deemed to have been effected when the consignment has been delivered to customs or other government authorities as required by applicable law or customs regulation, and Carrier has delivered to the consignee any authorization from Carrier required to enable the consignee to obtain release of the consignment and has forwarded the notice of arrival referred to in Paragraph 2) of this Article.

(b) Delivery of the consignment shall be made by Carrier only upon written receipt of the consignee and upon compliance with all other applicable terms and conditions of the air waybill and of this tariff.

2) *Notice of Arrival*: Unless the consignment is to be reforwarded in accordance with Article 11, notice of arrival of the consignment will, in the absence of other instructions, be sent to the consignee or the person to be notified; such notice will be sent by ordinary methods. Carrier is not liable for non-receipt or delay in receipt of such notice.

3) *Place of Delivery*: The consignee must accept delivery of and collect the consignment at the airport of destination unless delivery service to the address of the consignee has been arranged for between the shipper or consignee and Carrier.

4) *Failure of Consignee to Take Delivery*: (a) Subject to the provisions in Paragraph 5) hereof, if the consignee refuses or fails to take delivery of the consignment after its arrival at the place of delivery, Carrier will endeavor to comply with any instructions of the shipper set forth on the face of the air waybill. If no such instructions are so set forth, or if such instructions reasonably cannot be complied with, Carrier, after forwarding to the shipper notice of the failure of the consignee to take delivery, may:

(i) return the consignment on its own service or on any other transportation service to the airport of departure, there to await instructions of the shipper; or (ii) after holding the consignment for a period of

not less than 30 days, sell such consignment in one or more lots at public or private sale.

(b) The shipper and owner are liable for all charges and expenses resulting from or in connection with the failure to take delivery of the consignment, including, but not limited to, carriage charges incurred in returning the consignment. If the consignment is returned to the airport of departure and the shipper or owner refuses or neglects to make such payments within fifteen days after such return, Carrier may dispose of the consignment or any part thereof at public or private sale after giving the shipper at the address stated on the air waybill ten days' notice of its intention to do so.

(c) In the event of the sale of the consignment as provided for above, either at the place of destination or at the place to which the consignment has been returned, Carrier is authorized to pay to itself and other transportation services out of the proceeds of such sale all charges, advances and expenses of Carrier and other transportation services plus costs of sale, holding any surplus subject to the order of the shipper. A sale of any consignment shall, however, not discharge the shipper and/or owner of any liability hereunder to pay any deficiencies.

5) *Disposal of Perishables*: When a consignment containing perishable articles is delayed in the possession of Carrier, is unclaimed or refused at place of delivery, or for other reasons is threatened with deterioration, Carrier may immediately take such steps as it sees fit for the protection of itself and other parties in interest, including but not limited to the destruction or abandonment of all or any part of the consignment, the sending of communications for instructions at the cost of the shipper, the storage of the consignment or any part thereof at the risk and cost of the shipper, or the disposition of the consignment or any part thereof at public or private sale without notice. The proceeds of any such sale shall be subject to the payment to Carrier of all accrued charges and expenses.

ARTICLE 9: C.O.D. CONSIGNMENTS

Consignments may be forwarded C.O.D. if and as provided in Carrier's regulations.

ARTICLE 10: PICK-UP, DELIVERY AND CITY TERMINAL SERVICES

1) *Availability of Service*: Pick-up, delivery and city terminal services will be available at the points and subject to the rates and charges established for such services in accordance with the applicable tariffs of Carrier.

2) *Request for Service*: Pick-up service, if available, will be provided when requested by the shipper. Except when otherwise provided by Carrier's regulations, delivery service will be provided unless contrary instructions are given by the shipper on the air waybill, or by the consignee. Such contrary instructions must be received by Carrier prior to removal of the consignment from Carrier's airport terminal at destination.

3) *Consignments for which Service is Unavailable*: Pick-up, delivery and city terminal service will not be provided by Carrier without special arrangement for any consignment which, in the opinion of Carrier, it is impracticable for Carrier to handle.

4) *Limitations on Service*: Pick-up, delivery and city terminal services will not be provided when it is impracticable to operate vehicles, or when the address of the shipper or consignee is not directly accessible to vehicles. Consignments will not be handled beyond loading platforms or doorways directly accessible to vehicles.

5) *Handling*: Pick-up, delivery and city terminal services will not be provided for pieces which cannot be handled by one man unless advance arrangements have been made, including, where necessary, the furnishing

of additional men and equipment by and at the risk and expense of the shipper or consignee.

6) *Hours of Service*: Except by prearrangement with Carrier, pick-up and delivery service will be provided only during regular business hours and on regularly scheduled cartage trips.

7) *Tender of Delivery*: Consignments which through no fault of Carrier cannot be delivered on the first tender of delivery to the consignee will be returned to Carrier's terminal and the consignee will be so notified. Further tenders will be made only upon request of the consignee, and an additional charge based on published rates will be made for each subsequent tender of delivery.

ARTICLE 11: FORWARDING AND REFORWARDING

The cargo or packages said to contain the goods, described on the face of the air waybill, are accepted for carriage from their receipt at Carrier's cargo terminal or airport office at the place of departure to the airport at the place of destination. If so specifically agreed, the cargo, or package said to contain the cargo, described in the air waybill are also accepted for forwarding to the airport of departure and for reforwarding beyond the airport of destination. If such forwarding or reforwarding is by carriage operated by Carrier, each carriage shall be upon the same terms as to liability as set forth in Paragraphs 1) and 2) of Article 13 hereof. In any other event, the issuing Carrier and last Carrier, respectively, in forwarding and reforwarding the cargo, shall do so only as agents of the shipper, owner, or consignee, as the case may be, and shall not be liable for any damage arising out of such additional carriage unless proved to have been caused by its own negligence or wilful fault. The shipper, owner and consignee hereby authorize such Carriers to do all things deemed advisable to effect such forwarding or reforwarding, including, but without limitation, selection of means of forwarding or reforwarding and the routes thereof (unless these have been specified by the shipper in the air waybill, execution and acceptance of documents of carriage (which may include provisions exempting from or limiting liability) and consigning of cargo with no declaration of value, notwithstanding any declaration of value in the air waybill.

ARTICLE 12: SUCCESSIVE CARRIERS

Carriage to be performed under one air waybill by several successive Carriers is regarded as a single operation.

ARTICLE 13: LAWS AND PROVISIONS APPLICABLE

1) Carriage hereunder is subject to the rules relating to liability established by the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, October 12, 1929 (hereinafter called "the Convention") unless such carriage is not carriage 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 carriage or a trans-shipment, are situated either within the territories of two High Contracting Parties to the Convention, 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 party to the Convention. (See Note after Article 17.)

2) To the extent not in conflict with the provisions of Paragraph 1) above, all carriage and other services performed by each Carrier are subject to:

(a) applicable laws (including national laws implementing the Convention or extending the rules of the Convention to carriage which is

not "international carriage" as defined in the Convention), government regulations, orders and requirements;

(b) this and other applicable tariffs, rules, regulations and timetables (but not the times of departure and arrival therein specified) of Carrier, which may be inspected at any of its offices and at airports from which it operates regular services.

3) For the purposes of the Convention, the agreed stopping places (which may be altered by Carrier in case of necessity) are those places except the place of departure and the place of destination, set forth in the air waybill or shown in Carrier's timetables as scheduled stopping places for the route

4) In the case of carriage subject to the Convention, the shipper acknowledges that he has been given an opportunity to make a special declaration of the value of the cargo at delivery and that the sum entered on the face of the air waybill as "shipper's declared value—for carriage," if in excess of 250 French gold francs or their equivalent per kilogram, constitutes such special declaration of value.

ARTICLE 14: LIMITATION OF LIABILITY

Except as the Convention or other applicable law may otherwise require:

1) Carrier is not liable to the shipper or to any other person for any damage, delay or loss of whatsoever nature (hereinafter in this tariff collectively referred to as "damage") arising out of or in connection with the carriage of the cargo or other services performed by Carrier incidental thereto, unless such damage is proved to have been caused by the negligence or wilful fault of the Carrier, (and there has been no contributory negligence of the shipper, consignee or other claimant.

2) Carrier is not liable for any damage directly or indirectly arising out of compliance with laws, government regulations, orders or requirements, or from any cause beyond Carrier's control.

3) The charges for carriage having been based upon the value declared by the shipper, it is agreed that any liability shall in no event exceed the shipper's declared value for carriage stated on the face of the air waybill and in the absence of such declaration by shipper, liability of Carrier shall not exceed 250 French gold francs or their equivalent per kilogram of cargo destroyed, lost, damaged or delayed; all claims shall be subject to proof of value.

4) In the event of delivery to the consignee (or any other person entitled to delivery) of part but not all of the consignment, or in the event of damage to part but not all of the consignment, liability of the carrier with respect to the undelivered or damaged portion shall be reduced proportionately on the basis of the weight, notwithstanding the value of any part of the consignment or contents thereof.

5) Carrier shall not be liable under any circumstances for damage to or destruction of a consignment caused by or as a result of property contained therein and the shipper, owner and consignee, whose property shall cause damage to or destruction of another consignment or of the property of Carrier, shall indemnify Carrier for all losses and expenses incurred by Carrier as a result thereof. Cargo which is likely to endanger aircraft, persons or property may be abandoned or destroyed by Carrier at any time without notice and without liability therefor attaching to Carrier.

6) No warranty concerning any aircraft engaged in the carriage or concerning its fitness for the carriage of the cargo to which the contract relates is implied in the contract of carriage.

7) A Carrier issuing an air waybill for carriage over the lines of others does so only as an agent. No Carrier shall be liable for the loss, damage, or

delay of cargo not occurring on its own line, except that the consignor shall have a right of action for such loss, damage, or delay on the terms herein provided against the first Carrier and the consignee who is entitled to delivery shall have such a right of action against the last Carrier under the agreement to carry.

8) Carrier will not be liable for any loss, damage or expense arising from death due to natural causes or death or injury of any animal caused by the conduct or acts of the animal itself or of other animals, such a biting, kicking, goring or smothering, nor for that caused or contributed to by the conditions, nature or propensities of the animals.

9) In no event will Carrier be liable for death or injury to an animal attendant caused or contributed to by the condition, conduct or acts of the animals.

10) Consignments, the contents of which are liable to deteriorate or perish due to change in climate, temperature, altitude or other ordinary exposure, or because of length of time in transit, will be accepted without responsibility on the part of Carrier for loss or damage due to such deterioration or perishability.

11) Carrier shall not be liable in any event for any consequential or special damages arising from carriage subject to this tariff, whether or not Carrier had knowledge that such damages might be incurred.

12) Whenever the liability of Carrier is excluded or limited under these conditions, such exclusion or limitation shall apply to agents, servants or representatives of the Carrier and also any Carrier whose aircraft is used for carriage and its agents, servants or representatives.

ARTICLE 15: TIME LIMITATIONS ON CLAIMS AND ACTIONS

1) Receipt by the person entitled to delivery of the cargo without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the contract of carriage.

2) No action shall be maintained in the case of damage to or partial loss of cargo unless a written notice, sufficiently describing the cargo concerned, the approximate date of the damage, and the details of the claim, is presented to an office of Carrier within 7 days from the date of receipt thereof, in the case of delay unless presented within 14 days from the date the cargo is placed at the disposal of the person entitled to delivery of the consignment, and in the case of loss (including non-delivery) unless presented within 120 days from the date of issue of the air waybill.

3) Any right to damages against Carrier shall be extinguished unless an action is brought within two years after the occurrence of the events given rise to the claim.

ARTICLE 16: OVERRIDING LAW

Insofar as any provision contained or referred to in the air waybill or in this tariff may be contrary to mandatory law, government regulations, orders or requirements, such provision shall remain applicable to the extent that it is not overridden thereby. The invalidity of any provision shall not affect any other part.

TECHNICAL CONFERENCES, BARCELONA, APRIL 26TH TO MAY 8TH, 1954

The IATA Technical Conference was held in Barcelona from April 26th to May 8th, 1954. They included "fruitful" discussions of the adequacy of air navigation facilities throughout the world; of proposed new international aircraft performance specifications; of new approaches to measurement of vertical dimensions in aircraft operations; and of pilot training and the use of flight simulators and other synthetic training devices.

The Conference was attended by more than 180 technical directors and specialists of IATA member airlines and observers for governments, manufacturers and other international agencies. José Ma. Ansaldo, Operations Director of IBERIA, was Chairman of the Conference, and R. K. Rourke, Manager, Aircraft Economic Analysis for Trans World Airlines, was Vice Chairman: Stanislaw Kyzyczkowski, Secretary of the IATA Technical Committee, also acted as Conference Secretary.

Organization: The Conference drew up a new pattern for the IATA technical work program which was designed to provide greater flexibility and efficiency, particularly in field work throughout the world. It will replace the present structure of specialized sub-committees, roughly paralleling the divisions of the International Civil Aviation Organization, which was formed during the immediate postwar years when overall international standards for civil regulation were being developed.

Emphasis has now been shifted to problems of actual operations, of regional implementation of regulations and facilities, and to questions arising from the development of new types of aircraft, power plants and facilities. As a result, work done by IATA under the direction of the Technical Committee will now be carried on at the worldwide level by "problem" groups consisting of experts in all technical specialties concerned in the specific matter under study, and at regional levels by overall IATA technical panels which can deal with their problems, if necessary, by creation of similar local task forces.

A new Helicopter Committee was also created which will concentrate on ironing out obstacles to the fullest and earliest possible use of the new form of air transport on international routes, and on measures of standardization and simplification to achieve the utmost economy of operations. It will also be charged with developing airline views on desirable trends in the future helicopter development, a work which stems from the Helicopter Symposium held during the 1953 Technical Conference of IATA at Puerto Rico.

The Committee on turbine fuel requirements, which has been working on an ad hoc basis for more than a year, has been given similar "task force" status to continue its investigations into the kind of fuel best suited to airline operation of jet and turbo-prop aircraft.

Air Navigation Facilities—Much time was devoted at the Conference to proposals for speeding up the provision of facilities throughout all regions of the world air network and the transition to new improved types of communications and air navigation aids. Recommendations which will be presented to ICAO and other interested governmental agencies have the ultimate objectives of reducing the amount and cost of ground installations to an essential minimum and of bringing about the earliest possible switch-over in all areas to the latest systems accepted by ICAO as international standards.

International Aircraft Performance Requirements—The Barcelona meetings reaffirmed IATA's support for the development in ICAO of international requirements based on a sound statistical analysis of the various factors affecting aircraft performance. They took the view that internationally accepted standards are not only technically desirable, but also necessary in order to facilitate aircraft operated in accordance with these rules to enter and fly over the territory of any ICAO member country without having to comply in detail with the varying performance rules of individual states.

Measurement of Vertical Dimensions—Special attention was given at Barcelona to better means of measuring vertical dimensions in flight operations so that not only may pilots know more accurately the altitude at which they are flying, but can also maintain the necessary separation of flight levels.

After a consideration of all available data, the IATA sessions have agreed that as a long-term policy, vertical separation of aircraft should be based on constant pressure intervals, with a fixed pressure assigned to each flight level. An implication of this requirement, it was pointed out, may be the need for new instrumentation in all aircraft indicating flight levels based on constant pressure intervals as well as altitudes.

Pilot Training Discussions—The final four days of the Conference were spent in an informal exchange between the airlines of their knowledge and experience of methods used to bring their captains and pilots to the required standards of proficiency for scheduled airline operations. One of the days was devoted to an exploration of the potentialities of flight simulators and other devices for synthetic training, in which a number of manufacturers and other interested observers from France, the United Kingdom and the United States participated.

The discussions were entirely informal and each participant was left to record what data interested him and to draw his own conclusions as to how they could best be applied to his own peculiar problems. It was the consensus of opinion of those who attended these discussions that this mutual exchange of views on pilot training has helped to enrich individual understanding of training problems and solutions and as far as the whole industry is concerned, it should lead to still further enhancement of flight safety standards.

INTERNATIONAL PERFORMANCE REQUIREMENTS CODE FOR TRANSPORT AIRCRAFT

Based on discussions at the Seventh IATA Technical Conference at Barcelona, IATA submitted to the Air Navigation Commission of the International Civil Aviation Organization a new statement of the international airlines' position on international performance requirements for transport aircraft.

As this question has gone through many phases in the past years since ICAO was organized it might be useful to recall its background.

Before any aircraft might be used in transport operations, it must meet the airworthiness requirements set up by the government of the State in which it was manufactured and be accepted by the authorities of the other States in which it was to be used. These requirements covered, for example, aircraft structures, engines, propellers, design and construction. In addition, and of particular interest to the operator, airworthiness requirements stipulated the performance required of an aircraft in order that it might be considered acceptably safe for commercial operation.

Performance codes had, for the most part, been developed separately by individual States. The results of the first post-war attempt to set up an international standard code through ICAO were, in 1949, set forth in two Annexes to the ICAO (Chicago) Convention — Annex 8 which deals with airworthiness generally, and Annex 6 which deals with the operational phases of international commercial air transport. For lack of anything better the performance parts of these Annexes were based almost entirely on the US performance regulations, which were generally built around the DC-3 and which dated back to about 1940. Subsequent progress in aircraft design and in the development of new power plants had made these ICAO standards obsolescent: the US itself had since had to revise its own code and governments generally had felt that the ICAO Annexes were not only incomplete, but also did not provide a proper basis for the elaboration of new and more detailed international specifications. As a practical situation, therefore, there was no effective international agreement on performance requirements.

ICAO had actively been seeking to remedy this situation and since 1951 its Standing Committee on Performance (SCP) had been working on the development of an entirely new type of code. Where the old requirements were necessarily based on arbitrary assumption in the absence of any large background of systematically recorded operational experience, the SCP had been seeking a 'rational' basis for the new code—that is, one which would be derived from the statistical experience of actual aircraft operation and which would take into account the variation and probability of occurrence of all factors having a deleterious effect on aircraft performance. Such a work, however, could progress only slowly: in the meanwhile, new aircraft were being designed, new forms of power exploited, new kinds of operations begun, and individual governments must rely on their own national codes to deal with them.

The Operator's Point of View—Final Objective—Although most aspects of airworthiness requirements were of the greatest primary concern to manufacturers, the international airlines were directly and vitally affected by the lack of international agreement on performance requirements. Because they represented very definite and basic limitations upon the use of the aircraft which they operated, and since equipment could be bought in any one of a number of countries and must be operated virtually anywhere in the world, the conflicts and discrepancies of differing national codes created a legion of hard, practical and expensive difficulties for any airline.

These arose, not only in attempting to evaluate new purchases (for aircraft manufactured in different countries would not have performance data scheduled in comparable form), but also in putting the eventual choice into use (for the airline must then make certain that the aircraft would satisfy the requirements of every country through which it was to fly.)

In their statement therefore, the international carriers, through IATA, reiterated their consistent support of the efforts of governments to devise a new, practical and internationally accepted code of performance requirements.

They also reaffirmed their stand that such a code should be based on a 'rational' approach and statistically derived from the examination of all stages of flight.

They also repeated their unanimous recommendation that performance requirements for conventional piston-engined aircraft should not be automatically applied to all turbine-engined equipment, and that requirements should therefore be separately but simultaneously developed for the two categories.

IATA further stressed the airlines' belief that for practical reasons, international standardization must be sought by national enactment of a uniform code worked out in ICAO.

The IATA policy statement reasserted the unanimous opinion that international specifications for performance were necessary for these reasons:

- 1) To contribute to the establishment of a uniform minimum world-wide level of safety, it being recognized that (a) performance was only one aspect contributing towards the overall safety of operation, and that (b) the achieved level of safety would undoubtedly be considerably higher than the design level.
- 2) To facilitate the acquisition by airlines of aeroplanes manufactured in other countries.
- 3) To make it possible for the purchaser of foreign aircraft to obtain an "Aircraft Operating Manual" for his aircraft that was based on the same code under which he was required to operate. (Under existing conditions where each country had its own regulations it was generally difficult and more often impossible for the operator to obtain such a manual).

- 4) To facilitate recognition of foreign certificates of airworthiness by any state overflown or flown into.
- 5) To enable the collective views of the airlines, as expressed through IATA, to be brought to the attention of national authorities through the medium of ICAO.
- 6) To contribute towards the pooling of knowledge internationally for the benefit of all.
- 7) To discourage states from imposing performance requirements composed of piecemeal extracts from various other requirements.

While the IATA statement acknowledged that the difficulties inherent in the construction of a specific code of performance requirements would delay its completion for at least a few years, it strongly urged ICAO not to abandon the project.

Recommendations for an interim objective — In the interim, however, IATA expressed the hope that ICAO would achieve agreement on the standardization of performance requirements at least to the extent that aircraft operated in accordance with a national code which met the intent of those requirements might be flown into and over the territory of other ICAO Member States without having to comply with each of their individual performance codes.

IATA believed that this could be done through the formulation of broad 'objective' requirements and cited some parts of the present Annex 6 as examples of what these requirements might be. However, in view of the wide variation in the capabilities of new types of aircraft, IATA recommended against the inclusion of fixed numerical values in the descriptions of minimum requirements for safety in these 'objective' requirements.

At the same time, IATA also asked ICAO to point out to its Member States the dangers involved in the tendency on the part of some to create national codes by putting together excerpts from the dissimilar requirements of other countries, a process which the airlines felt created unwarranted economic penalties without achieving any commensurate increases in safety levels.

In putting this statement of the airlines' viewpoint to ICAO, IATA emphasized that there was no disagreement between governments and operators on the eventual goal, and that all parties concerned—States, manufacturers, airlines and the public — stood to benefit equally from its attainment.

OBSERVATIONS AND COMMENTS ON FOREIGN CASES

HENNESSY VS. AIR FRANCE, Court of Appeal of Paris (1st Chamber), 25 February 1954. The plaintiff, representing the minor children of a woman passenger killed at the time of the accident which occurred to an aircraft of Air France in the Azores during the night of 27-28 October 1949, claimed from the carrier the payment of 25 million francs (about 70,000 dollars) in damages, as compensation for the total damage caused by the death of that passenger. The defendant invoked the limits of liability provided by the Warsaw Convention.

The Court did not accept the argument of the claimant to the effect that the limit of liability would apply only to the damage suffered by the passenger herself and not to that of her representatives ("ayant-droit") and considered, pursuant to Article 24 of the Convention, that any action for damages, however founded, could only be brought subject to the conditions and limits set out in the Convention. The Court also declared that the plaintiff could not in this case claim delictual liability on the part of Air France, since, far from renouncing the stipulation implicitly made in favor of her children by the deceased passenger in entering into the contract of carriage, the action

of the plaintiff was based on this contract which bound the plaintiff. The said plaintiff could not, therefore, invoke the delictual liability of the carrier in addition to the latter's contractual liability.

As to the allegation of gross negligence ("faute lourde") of the carrier (Article 25 of the Warsaw Convention), the Court considered that if the errors of the commander and crew were certain, the cause of these errors was unknown; that there were no survivors; that the last messages of the aircraft and the examination of the wreckage had given no precise indication as to the circumstances which had caused such confusion on the part of the numerous and experienced crew, nor as to the nature and role of the material failures which had, perhaps, occurred.

The Court was also of the opinion that, since in the case of navigation, the task of the commander was still very complex; that this task required a considerable amount of initiative and personal decisions and that it was necessary to be more prudent in estimating the seriousness of the fault since it was possible in this case to make only suppositions as to the manner in which the commander's judgment was in default.

The Court noted that French jurisprudence to which the Convention referred for the determination of the default equivalent to wilful misconduct ("dol") gave the concept of gross negligence ("faute lourde") a stricter interpretation for the carrier than that of the Belgian courts and British and American jurisdictions on the concept of wilful misconduct. In French jurisprudence, it was not indispensable that it be proved that the author of the fault had acted knowingly, deliberately, without regard to the probable consequences of his act, but it was nevertheless up to the plaintiff to establish that the carrier or his crew had acted with especially serious negligence, carelessness, or recklessness. But, neither taken alone nor considered as a whole, did the actions actually proved have, in the accident in question, the nature of gross negligence ("faute lourde").

The Court confirmed the judgment of the Court of first instance, condemning the carrier to pay to the children of the passenger the sum of 128,000 French francs of the year 1929 (about 8,500 dollars) and costs.

G. C. B.

DELPHY VS. AIR FRANCE, Tribunal de Commerce de la Seine, 12th January 1954. *Vizioz vs. Air France*, Civil Court—Bordeaux, 29th Juen 1953. These two cases deal with French law for non-international air transportation. The first one has been discussed in several French law reviews but it might be interesting to note that in these two cases, French Courts decided on the same matter in the opposite directions.

French Law (Loi du 31 mai 1924) does not establish a legal system of liability for the air carrier (according to Ripert, anyway; other authors hold different views, but Ripert is partly responsible for the Act of 1924) but Art. 42 allows "nautical errors" (but not for commercial errors). This provision is very similar to the "negligence clause" in maritime transportation.

Now in maritime transportation, several Cour de Cassation decisions, commonly referred to as "jurisprudence des arrêts Lamoricière," have allowed the deceased's relatives to bring an action, not on contract, as his heirs, but on tort, for personal loss. They can thus invoke Art. 1384 al. 1 C. Civ., which establishes a presumption of liability on the carrier, as keeper of the thing (the plane) having caused the injury.

In the first case, *Vizioz vs. Air France*, the Court has ruled, in a similar way, that the family of a deceased passenger could bring an action in tort against the carrier, based on the general principles of liability in French Civil Law (Art. 1384 C. civ.). The contractual exoneration of liability, per-

mitted under Art. 42 of the Act of 1924, could not be opposed to a tort action.

In the second case, *Delpy vs. AirFrance*, the Court was held just the opposite, saying they would follow, not the Court decisions on Maritime cases, but those on gratuitous transportation, in which the victim, having no action on contract, is not entitled either to bring an action under Art. 1384.

Those are only First Instance Judgments. Their inconsistency may be attributed, to some extent, to the inadequacy of the Act of 1924, which was made mainly to protect the air carrier. Therefore, the Courts have to find some other way to protect the interests of the passengers. The situation will no doubt be different when the new limits are applied and when a new Law, in line with the Warsaw Convention, has been passed in French Parliament.

JANINE DE LUBAC

MUNIER VS. DIVRY, Tribunal de la Seine (2e Chambre), Paris, November 27, 1953.—*Facts*: Among the passengers killed in the crash of a T.W.A. Constellation near Cairo, August 31, 1950, was one M.L.T. Divry, a French citizen domiciled in France. The carriage having been international in the sense of the Warsaw Convention, T.W.A.'s insurer deposited ffrs. 2,900,000.—with a notary in Paris, to cover death damages within the limits of the Convention. The partitioning of this sum was litigated between Mrs. Divry, the widow of deceased, and two minors born in a first marriage of deceased, represented by Mrs. Munier, their mother.—*The Court*: The relation between carrier and passenger being qualified as a contract by the Convention (Art. 1, para 2), French Courts are bound by this qualification insofar as all questions arising out of the execution or inexecution of the contract have to be judged according to the proper law of the contract, which in the case at bar was generally agreed to be French law. According to Articles 1122 and 1784 of the (French) Code civil, the carrier is obliged safely to carry the passenger to his destination, and in a case of a fatal accident it is presumed that an accessory stipulation has been made in favor of persons whom the passenger is legally bound to maintain. In the present case the deceased having thus been bound to maintain his wife and the minor children born in his first marriage, both parties are entitled to a share in the amount paid by the carrier. According to an alleged will of the deceased, the portion of the widow was fixed to a quarter and that of the children to three quarters.—*Remarks*: The justness and correctness of the result depend upon questions of French law which the present reviewer does not feel competent to discuss. It must be pointed out, however, that the first link in the chain of the Court's reasoning is not only superfluous to reach a satisfactory solution, but also a rather weak argument. Moreover, it seems to be doubtful as to whether the implication given to Art. 1, para 2, of the Convention, that all claims for damages "sustained in the event of the death or wounding of a passenger" (Art. 17) must be based upon the contract of carriage lest they be dismissed, would hold good. This construction which certainly relies on the fact that the word "contract" is used in defining the expression "international carriage" goes beyond the language, the sense and the purpose of the pertinent articles of the Convention. These articles purport to establish (or confirm) the principle of carrier's liability, create a presumption and fix certain limits—but which have the question open "as to who are the persons who have the right to bring suit and what are their respective rights" (Art. 24, para 2). Therefore, it belongs to the *lex fori* to classify the factual relations and then according to its conflict rules either to apply its own substantive law or, to draw upon the law of another country, not at all being barred by the Convention to apply, if that is the law, e.g., a tort

or delictual basis. This view seems to be confirmed in American (New York State) law: (*Komlos vs. Air France*, 1952 U.S. & C.A.V. R. 310 ss. which contains a very careful and thorough analysis of these difficult questions); in U.K. law: (*Carriage by Air Act, 1932*, Second Schedule, which limits the right to sue for death damages to "such of the members of the passenger's family as sustained damage by reason of his death"); in Switzerland: (Art. 11, para 1, of the *Lufttransport reglement, 1952* which simply refers to the Code of Obligations, 1911/1936, according to which such claims may be based either upon contract or upon tort).

DR. WERNER GUILDIMANN

RUGANI VS. K.L.M. ROYAL DUTCH AIRLINES, New York City Court of the City of New York, January 20, 1954 — This case deals with the loss of a shipment of fur skins by theft from the Defendant's cargo room at Idlewild Airport. Plaintiff endeavored to make Defendant responsible as an insurer under Article 18 (2) of the Warsaw Convention omitting the effect of Article 20 of the Convention providing.

"that the Carrier is not 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."

i.e., the strong defenses of which the carrier may avail himself, the first half of the above paragraph placing upon him the onus of proving that he and his agents have not neglected a positive duty and the second half of the above paragraph placing upon him the onus of proving that the situation was quite outside the control of himself and his agents would seem to have been ignored.

However, the Court was satisfied that the liability rules of the contract of carriage were quite consistent with and duly embodied, the terms of Article 20 of the Convention which was taken into consideration. There was no complication here as, for example, in the case of *Westminister Bank vs. Imperial Airways Ltd.* (1936) 2 All E.R. 890 where Judge Lewis refused to accept the terms of the Consignment Note as being a statement that the carriage was subject to the rules relating to the liability established by the Warsaw Convention.

The question, however, did arise as to whether the Plaintiff had presented his claim in time. The Court here differentiated between "Physical damage to goods" and "loss." They decided that this was a case of "loss" and, as such, the Plaintiff was well within the time limit of the contract, viz. 120 days, in presenting his claim.

The real interest in this case centers round Article 20 (1) of the Warsaw Convention and the operative words, of course, are "all necessary measures." If we interpret "all necessary measures" as "all reasonable measures," then the question before the Court was: Had the Plaintiff taken all reasonable measures to protect the goods? And the answer of the Court was "No."

This case arose in the State of New York where guards are not only permitted to be armed, but where the regulations of the Defendant require that guards should, in fact, be armed.

In the course of cross-examination, it transpired that the guard in question on the night of the robbery had not been armed. Because the only means whereby he could have got possession of the gun for guarding purposes was to have it given to him by the preceding guard and examination revealed the fact that there had been no guard on duty between the hours of 4 p.m. and midnight at which time Maquire came in to commence his work.

On cross-examination the guard stated that both he and the cargo clerk were tied up for 15 minutes while the robbery was effected; on re-examination he stated that he did not know where the cargo clerk was during the robbery.

The Defendant, of course, argued that, even had the guard been armed, it would have been of no avail because the two armed robbers came on the scene with such precipitation (and at a moment when the guard had his back turned to them) that no gun would have served any useful purpose.

The Court accordingly found that the Defendant:—1) had had no guard on duty between 4 p.m. and midnight; 2) that the guard was not armed as per regulations; 3) that such a robbery should have been within the contemplation of the Defendant which ought to have taken all possible precautions; and 4) that two of the five doors of the cargo room were open when, according to regulations, all five doors should have been locked. (The sixth door led on to the airfield and the guard, who was instructed to keep an eye on cargo already loaded in a plane outside the cargo room, was presumably permitted to have this one open.) The finding of the Court would seem to lend itself to the curious conclusion that the guards employed by airlines at airports must be armed, if carrier desires to avail himself of Article 20 of the Convention.

According to the report of the case, the Port Authority Police patrol the area generally, as distinguished from the place where the robbery occurred. But if Idlewild Airport is enclosed and police-protected at the entrances, as is generally the case on airfields, how did the intruders gain entrance to the area in the first place, and consequently to the cargo room?

Admittedly the Conditions prevailing in the cargo room, where skins valued at \$2,779.20, together with other consignments, were awaiting shipment, were not in line with regulations but the full responsibility for guarding the goods has apparently been placed on the air carrier, the decision of the Court having been in favor of the Plaintiff against the Defendant for the value of the skins plus interest.

S. F. MACBRAYNE