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REGULATION OF INTERNATIONAL AIR NAVIGATION UNDER THE PARIS CONVENTION

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I. INTRODUCTION.

Under Chapter VIII of the Paris Convention of October, 1919, regulating air navigation, the International Commission for Air Navigation is vested with various powers and duties. Specifically the Commission has, under paragraph (c) of that chapter, been charged with the duty "to amend the provisions of the Annexes A—G" of the Convention. These annexes are known as the technical regulations of the Convention.[1]

At a recent meeting of the Committee on Aeronautical Law of the American Bar Association, it was suggested that there might be room for contending that the effect of Chapter VIII of the Convention was to vest the Commission with powers in the field of international flight corresponding to those of police regulation with respect to domestic flight; that the ratification of the Paris Convention might constitute a delegation of police power to the Commission to be manifested in the form of regulations passed for the purpose of putting the treaty into effect; and that there might be lacking in the Senate of the United States the authority to execute a ratification involving the delegation of such powers to and their exercise by such an instrumentality as the Commission.

It was suggested that an attempt to solve the problem involved a consideration of the following three questions:

(a) Are these annexes parts of the Convention or are they merely regulations adopted pursuant to the Convention?

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1. See Article 37 and Resolution No. 50 of the Commission (Official Bulletin 2, pp. 35 and 36).

(b) Even if they are regulations, are they not as fully binding on the parties to the Convention as if their terms had been incorporated in the Convention?

(c) Assuming that the annexes provide in some instances what are approximately police regulations, can the Senate of the United States ratify a treaty which delegates what may be police powers to an organization such as the C. I. N. A.?

II. Nature of the Annexes.

Questions (a) and (b) seem, in the light of authentic data bearing on the origin of the annexes, and of provisions in the Convention which specifically cover the question of the force and effect of the annexes, to offer no difficulty in the way of solution. The conditions under which the annexes came into being are, briefly, as follows:

On February 12, 1919, Lord Milner proposed the establishment of an inter-allied Commission[2] composed of two representatives of the United States, the British Empire, France, Italy and Japan and of five representatives elected by the other States who participated in the Peace Conference assisted by qualified technical experts charged with the duty of studying the questions relative to air navigation which had been raised at the Conference, and of drafting an international convention. The French Government accepted this proposition on February 15th and the first meeting of this Commission was fixed for the 6th of March. At this meeting the American and Italian delegation accepted the British proposition and the Commission decided to create three sub-commissions, to wit, a technical sub-commission, a military sub-commission and a sub-commission dealing with commercial, legal and financial matters, and to proceed immediately toward the preparation of the International Convention for Air Navigation.

The Aeronautical Commission of the Peace Conference began to function regularly from this date. Two resolutions of the Supreme Council of the Peace Conference rendered on the 12th and 15th of March, 1919, authorized the creation of this Commission and charged it with the following duties: to study questions of aeronautics which would be submitted to it by the Supreme

2. The following statement of facts concerning the origin of the annexes is taken from the work of Dr. Albert Roper, Secretary General of the International Commission of Air Navigation, entitled "The International Convention of October 13, 1919—its origin—its application—its future." pp. 35-53; Paris, 1930. The Commission referred to in this relation of facts is in no wise to be confused with the C. I. N. A. which did not hold its first meeting until July 11, 1922, the date when the Convention came into effect.

Council of the Peace Conference; to study all questions on aeronautics which the Commission might deem proper to submit to the Supreme Council; and to draw up a convention on aerial navigation. Without going into detail as to the composition of the representations on the Commission and its three sub-commissions, it is enough to state that the United States appointed representatives on each of the four organizations. The Commission held its first working session on March 17, 1919, and undertook the study of the fundamental principles which were to be controlling in air navigation: state sovereignty over supervening air space which, it is interesting to note, was proposed by the United States; the admission of aircraft of the contracting states, equality of treatment, nationality principle, regulations adapted to safety in the conduct of international flights, special treatment for government aircraft, the principle of the right of transit, rights connected with landing, reparation for injuries inflicted, the necessity of a permanent international commission, the binding character of the Convention, and the effect of a state of war upon the Convention. On the same date certain questions were submitted for study to the three sub-commissions. On the 19th of March the sub-commissions took up their work, taking as the basis of discussion two drafts of the Convention which had been prepared, one by the British Government and the other by the French Government. The British project contains twenty-six articles and annexes A—D; the French project contains twenty-six articles and annexes A—E and a regulation dealing with pilots' licenses.

The work of the technical sub-commission involved the preparation of the annexes A, B, C, D, E, F and G to the Convention. Meanwhile, the juridical sub-commission prepared three reports on the text of the Convention and of Annex H which were presented to the Commission by M. de Lapradelle. The first report of the sub-commission was made on April 11th, accompanied by a draft of a Convention with forty-one articles which the Commission examined in the course of its four sessions held on April 14th and 16th. Various modifications were made to this text and the technical and juridical sub-commissions were invited to cooperate in order to unite into a single project the two drafts which they had presented for the purpose of assuring the exactness of the translations. The final report of the juridical sub-commission was dated April 27th, and was presented on May 5th to the Commission. It contained a revised draft of the Convention in forty-three articles completed by six technical annexes A—F, and an annex H

dealing with customs. The general revised draft was examined by the Commission in its sessions of the 5th, 6th, 7th and 8th of May, 1919. The final text of a "draft of Convention" to be presented to the Supreme Council of the Peace Conference was sent to a drafting Committee.[3] The draft accompanied a report of July 3, 1919, and was presented to the Supreme Council of the Peace Conference on July 10, 1919, containing certain reservations on the part of the delegations of the United States, Great Britain, France, Italy, Cuba and Portugal. The Supreme Council called upon the Commission to meet anew for the purpose of ascertaining whether the reservations could not be reduced in number. The Commission held two new sessions on July 24th and 30th for this purpose on the occasion of which the reservations of the Italian and Portuguese delegations were withdrawn. The draft of the Convention was then studied by the Drafting Committee of the Peace Conference which made certain changes and the draft was then presented to the Supreme Council of the Peace Conference on September 27, 1919. Subject to certain conditions, one of which takes into consideration the reservation made by the United States with respect to paragraphs 15, 25, 37, and 40 of the body of the Convention, *and to Annex H of the draft,* the draft of Convention was accepted without reservations by the Supreme Council of the Peace Conference and the Convention was thrown open for signature by the plenipotentiaries of the allied and associated powers mentioned in its preamble on October 13, 1919.[4] The annexes formed a part of the document which was signed by the respective powers.

Passing to the Convention itself, it will be observed that in no less than eleven of the forty-two articles contained therein, some one of the Annexes A—G, which have been characterized as "technical regulations," or a part of such annex, have been incor-

3. Including Annexes A to H. See *Roper,* op. cit., p. 293.

4. See *Roper,* op. cit., pp. 284 and 302. On pages 304-7 of this same work there appear certain reservations communicated by the Canadian Government on April 13, 1920, and by the United States on May 31, 1920. The reservations are addressed, *inter alia,* to Annexes A, D, E, F, G and H of the Convention.

See also the following statement:

"The Legal Sub-Commission drew up the text of the articles of the Convention itself and of Annex H. The technical Sub-Commission prepared the text of Annexes A, B, C, D, F and G of the said Convention. The three Sub-Commissions met together subsequently to examine the Convention and its Annexes as a whole. This entire text was then studied by the Plenary Commission, amended and finally framed by the Drafting Committee of the Commission. The Convention relating to the regulation of international aerial navigation, drawn up in due form by the Committee of Jurists of the Peace Conference, was adopted after discussion by the Supreme Council at its sitting of the 27th September, 1919, and was open, on the 13th October, 1919, to the signature of the plenipotentiaries of the thirty-two allied and associated Powers enumerated in its Preamble." "International Air Convention of the 13th October, 1919," Albert Roper, Secretary General of the International Commission for Air Navigation (1926).

porated into the body of the Convention by specific reference. In Articles 4 and 6 such reference is made to a specified paragraph or section of a designated annex. In Articles 10, 11, 12, 13, 15, 19, 25, 34 and 35 some duty or obligation is imposed "in accordance with annex" so and so, or in terms equivalent thereto. Article 34 imposes upon the International Commission for Air Navigation the duty "to amend the provisions of Annexes A—G;" and in this connection Article 14 is in point, which provides for the wireless equipment of certain types of aircraft "when the methods of employing such apparatus shall have been determined by the International Commission for Air Navigation."[5]

In Article 39 of the Convention it is laid down that "The provisions of the present Convention are completed by the Annexes A to H which, subject to Article 34 (c) shall have the same effect and shall come into force at the same time as the Convention itself."

Dr. Alfred Wegerdt, in his article, *Deutschland und das Pariser Luftverkehrsabkommen*,[6] comments as follows on this article:

"According to Article 39 Annexes A—H constitute a com-

5. The wording of these provisions is as follows:
Art. 4. Every aircraft finding itself above a prohibited area shall give signal of distress "provided in paragraph 17 of Annex D" and land, etc.
Art. 6. Aircraft possess nationality of State with which registered "in accordance with the provisions of Section 1 (c) of Annex A."
Art. 10. Aircraft in international navigation shall bear nationality and registration marks as well as name and residence of owner "in accordance with Annex A."
Art. 11. Aircraft in international navigation shall "in accordance with the conditions laid down in Annex B" be provided with certificates of airworthiness, etc.
Art. 12. Officers, etc., of aircraft shall "in accordance with the conditions laid down in Annex E" be provided with certificates of competency and licenses, etc.
Art. 13. Certificates of airworthiness and of competency and licenses issued "in accordance with the regulations established (conformément aux règles fixés par) by Annex B and Annex E and hereafter by the International Commission for Air Navigation, shall be recognized as valid by the other States."
Art. 14. Every aircraft capable of carrying 10 or more persons shall be equipped with wireless, etc. "when the methods of employing such apparatus shall have been determined by the International Commission for Air Navigation."
Art. 15. Aircraft shall land "if ordered to do so by means of the signals provided in Annex D."
Art. 19. Aircraft engaged in international navigation shall be provided with certificates of registration "in accordance with Annex A;" certificates of airworthiness "in accordance with Annex B;" certificates and licenses for personnel "in accordance with Annex H"; log books "in accordance with Annex C."
Art. 25. Each contracting State undertakes to adopt measures to ensure that every aircraft carrying its nationality mark "shall comply with the regulations contained in Annex D."
Art. 34. Among the duties of the International Commission for Air Navigation there is included duty "to amend the provisions of Annexes A—G;" to ensure publication of maps "in accordance with the provisions of Annex F." The Commission is empowered to make "any modification of the provisions of any one of the annexes" when such modification shall have been approved as provided in the article.
Art. 35. The parties to the Convention agree to cooperate regarding collection and dissemination of meteorological information "in accordance with the provisions of Annex C;" and in the publication of aeronautical maps, etc. "in accordance with the provisions of Annex F."

6. 2 *Zeitschrift für das gesamte Luftrecht* 25 (1928).

pletion—*bilden * * * eine Erganzung*—of the convention and have the same effect—*Wirkung*—as the treaty itself." Dr. Wegerdt's term in the original German is a faithful translation of the term used in Article 39 in English, French and Italian which sets out that the *provisions of the present Convention* "are completed"—*sont complétées—sono completate*—by the Annexes themselves The expression "are completed" has a real significance when read in conjunction with the established fact that the annexes were in existence when the draft Convention was accepted without reservations by the Supreme Council of the Peace Conference.[7]

However, there is additional material to be considered in this connection:

Article 37 of the Convention provides that "in the case of a disagreement between two or more states relating to the interpretation of the present Convention" the question in dispute shall be decided by the Permanent Court of International Justice, or under certain conditions, by arbitration.

It further provides that "disagreements relating to the technical regulations annexed to the present Convention shall be settled by the decision of the International Commission for Air Navigation by a majority of votes."

Finally, Article 37 provides that "in case the difference involves the question whether the interpretation of the Convention or that of a regulation is concerned, final decision shall be made by arbitration as provided by the first paragraph of this article."

Resolution No. 50 comes under the head of "Regulations adopted by the Commission." Its first article reads:

> In accordance with Article 37, paragraph 4, of the Convention, the ICAN is authorized to settle any disagreement relating to the interpretation of technical regulations (Annexes A to G of the Air Convention), which might arise between two or more States parties to the Convention. Such settlement will be proceeded with as hereinafter mentioned.

In the above article a clear distinction is drawn *in terms* between an interpretation of "the present Convention" and an interpretation of a "regulation," which should, if standing alone, lead logically to the conclusion that the Convention and the technical regulations are two different things.

Since the Annexes are announced to constitute a portion of the provisions of the Convention (Art. 39) and since portions of the Annex are actually incorporated into the body of the Con-

7. See ante, p. 302.

vention by Articles 4, 6, 10, 11, 12, 13, 15, 19 and 25 it would seem unsound to interpret the terms of Article 37 as announcing that the Annexes and the Convention are two separate examples of international legislation. The International Agreement between the Contracting Powers is presented under two different heads, one entitled the Convention and the other entitled Annexes. One of these Annexes (Annex H) is described in Article 36 as a special agreement in order to differentiate it from the other annexes which are apparently referred to in Article 37 as technical regulations. The International Commission was established for the primary purpose of perpetuating these technical regulations in the sense of amending them to keep step with the development of the technical requirements of international aviation.

In its Resolution No. 463, the Commission states: "The Commission considers that the terms of Article 34 of the Convention, fixing the duties of the Commission (c) to amend the provisions of the Annexes A—G give to the Commission the power not only to modify the original text of Annexes A to G, but also to complete it, taking into account the progress made in aeronautical technics and the development of air navigation; the Commission being required, however, in this work, which forms one of its most important duties, to remain always within the general frame-work of the Convention."[8]

As time goes on, and assuming that the treaty remains in force, the technical regulations will gradually come to be the product of the Commission itself. Nothing could be more sensible and natural than for the framers of the Convention to provide, as they have, in Article 37 that disagreements as to the meaning of these technical provisions shall be determined by the body which will, in the course of time, have formulated them.

Again, nothing was more natural than that the parties to the Convention should have provided that disagreement over the rules of conduct set out in the body of the Convention, or in Annex H, the amendment of which does not lie within the power of the International Commission, should be settled by some other authority—the Permanent Court or an arbitral tribunal set up by agreement of the parties between whom the issue may arise. It was therefore necessary to distinguish the two fields of jurisdiction as far as the settlement of disagreements was concerned. The jurisdictional field of the Commission is therefore described as "technical regulations;" that of the Permanent Court or other

8. Official Bulletin No. 15, p. 37.

arbitral tribunal as "the present Convention." Moreover, the term "technical regulations" appears only in this jurisdictional clause of the Convention (Art. 37). We are forced to conclude that the use in Article 37 of the terms "technical regulations" on the one hand, and "the present Convention" on the other, was solely for the purpose of defining jurisdiction; for on the contrary assumption we do violence to the articles in the body of the Convention already referred to, particularly to Article 39, which provides that the Annexes "complete the provisions" of the Convention. On the other hand we do not do violence to Article 37 if we interpret the term "Convention" as the "body of the Convention"—an interpretation which in the light of the necessity of making a distinction between the two separate fields of jurisdiction seems grammatically sound and in strict accord with the intention of the Contracting States.

It seems that the language of the Convention fails to support the proposition that the Annexes are "mere regulations pursuant to the Convention"; and that a construction to such effect is logically prohibited by those articles of the Convention which incorporate the technical Annexes by reference, and Article 39 which specifically sets out that "the provisions of this Convention are completed by the Annexes." But even if we were to assume, *arguendo,* that the Annexes are not incorporated by reference in the Convention, we are bound to conclude that they are as fully binding upon the Parties thereto as if they had been thus incorporated, in view of the provision of Article 39 that "the Annexes A to H * * * subject to Article 34 (c) shall have the same effect * * * as the Convention itself."

III. Amendment of the Annexes.

The above conclusions lead to a consideration of the question as to whether the exercise by the International Commission for Air Navigation of the power with which it is vested by Article 34 of the Convention to amend the technical annexes is an exercise of police power which could not be lawfully delegated by the Government of the United States. For reasons to be advanced it is believed demonstrable that no delegation of police power to the International Commission for Air Navigation is involved.

Technical Annexes A—G and their amendments constitute a code regulating the conduct of international flight. Their fundamental purpose is to bring about a uniformity of method in international flight in the way of markings, registration, minimum re-

quirements of airworthiness, log book, rules as to lights and signals, "rules of the road," licenses, medical examinations, certificates of competency in connection with the operating crew, aeronautical maps and markings, and collection and dissemination of information. The principal aims of the States parties to the Paris Convention were two: (1) to join in a general announcement confirming the principle of State sovereignty over supervening air space; (2) to establish the principle of the privilege of innocent passage in the course of international flight, in order that the general recognition of principle number (1) might not throttle the development of international air navigation. Innocent passage in international flight could only develop with a langour which would prove tantalizing in the view of the rapidity of the progress of technique in aviation generally, in the absence of a code which would establish uniformity in essentials. And the uniformity could only be extended to a limited field—the field of formulation of rules of guidance as distinguished from the field of enforcement of such rules; for, unless enforcement were left to the States parties to the Convention, each within the sphere of its territorial jurisdiction, through the local administrative agencies of each individual State, the principle of State sovereignty of supervening air space which the experience of the World War had shown to be essential to maintain in its integrity, would have been violated. Hence the technical Annexes which, in the terms of Article 39 of the Convention were stated to constitute a completion of the provisions of the Convention, and to be vested with the same legal effect.

The question of delegation of police powers is addressed directly to the functions of the International Commission for Air Navigation which is a creature of the Paris Convention. It is really addressed to the exercise of the functions of that body when they take the form of amending or supplementing those provisions of the Annexes which were incorporated into the treaty by the acts of the parties thereto. In this respect the functions of the Commission take the form of codification to the extent that the formulation of regulations for international flight in the form of amendment or supplementation of the code is accomplished by that body. The subject matter of the codification corresponds to what in domestic legislation could be correctly classified as legislative regulation in the field of the police power of the State in connection with aviation. Three questions must be answered in connection with the principal inquiry as to whether the powers of

amendment and amplification of Annexes A—G constitute a delegation of the police power of the States parties to the Convention: Has there been delegated to the International Commission police power—

(1) in the form of the power to regulate international flight within the jurisdiction of the States, parties to the Convention, in the nature of administration or enforcement?

(2) in the form of legislation in the field of the police regulation of international flight, which it is in the province of the national legislatures to enact—always assuming that such are not entrusted—as was Congress under the Articles of Confederation—with the exercise of the treaty making power?

(3) in the form of legislation with respect to international flight which any sovereign State, acting in conjunction with other sovereign States, may exercise under its treaty making power?

The extent to which each of the States parties to the Convention has retained its power of administration and control in the field of police regulation with respect to international aircraft, is as follows:[9]

9. The field in which the International Commission for Air Navigation may supplement and amend are the technical Annexes A—G. These Annexes cover the following subjects:

Annex A.

Annex A deals with the marking of aircraft and registration of aircraft call signs. Section 1 deals with the form and grouping of nationality and registration marks; Section 2 with the locations of marks; Section 3 with the measurements of nationality and registration marks; Section 4 with the measurement and type of letters, etc.; Section 5 with the maintenance and display of the marks; Section 6 with the register and certificate of registration in this connection; Section 7 is deleted; Section 8 with the table of marks; and Section 9 with call signs. The Annex contains a model of the form of the certificate of registration and a table of nationality marks. The body of the Convention contains the following references to Annex A: Article 6 provides that aircraft possess the nationality of the State on the register of which they are entered, in accordance with the provisions of Section 1, sub-paragraph (c) of Annex A. This sub-paragraph (c) provides "that entries in the register and certificates of registration shall be in accordance with the provisions of Section 6 of this Annex."

Article 10 provides that all aircraft engaged in international navigation shall bear their nationality and registration marks as well as the name and residence of the owner "in accordance with Annex A." Article 19 of the Convention provides that every aircraft, engaged in international navigation, shall be provided with a certificate of registration in accordance with Annex A. In a word, Annex A contains provisions the purpose of which is to identify aircraft of the contracting States engaged in international navigation; that is, to establish a system whereby uniformity shall be observed by those States in the matter of such identification. It will be observed in this connection that these provisions of the Annexes are purely and simply matters of form and that the procedure and method of registration are left entirely to the States by Article 7 of the treaty which provides that such registration "shall be made in accordance with the laws and special provisions of each contracting State."

Annex B.

Annex B deals with certificates of airworthiness. It is to be observed at the outset that under Article 11 of the Convention the issuance and validation

Article 2 provides that "regulations made by a contracting State as to the admission over its territory of the aircraft of the other contracting States shall be applied without distinction of nationality."

Under Article 3 each contracting State may, for military reasons or in the interest of public safety, prohibit the aircraft of

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of certificates of airworthiness are matters of domestic law. Annex B provides that certain minimum requirements shall be met in connection with the issuance of certificates of airworthiness (1) as respects the design of the aircraft in regard to safety: (2) as to the trials constituting demonstrations of the actual flying qualities of the type of aircraft examined; (3) as to the construction of aircraft involving construction control and construction tests. The last paragraph (5) of this Annex constitutes anything but "technical regulations" and shows how important it was that the Convention, in its 39th Article, should provide that the Annexes should constitute provisions of the Convention. It reads:

> "The minimum requirements of Paragraphs 1 to 3, inclusive, shall be fixed by the International Commission for Air Navigation. Until they have been so fixed each contracting State shall determine the detailed regulations under which certificates of airworthiness shall be granted or remain valid."

The provisions as to the minimum requirements simply mean that each State shall continue to exercise its police powers with respect to the issuance of certificates of airworthiness subject, however, to the one condition that the qualifications of airworthiness of national aircraft which are engaged in international flight shall measure up to the standards of the minimum requirements prescribed by the Commission. Here, again, there is no delegation of the exercise of the police power to the Commission. No State is bound to follow the minimum standards which the Commission may set; it may decide to adopt which appear to it to be higher standards. Needless to say the minimum requirements to be set by the Commission only obligate the States in connection with aircraft engaged, or to be engaged in, international flight.

Annex C.

The subject matter of Annex C is the log books to be carried by aircraft in international flight. As a matter of fact this Annex is picked up bodily and incorporated into the body of Article 19 of the Convention by the provision of that article that "every aircraft engaged in international navigation shall be provided with: * * * (f) log books in accordance with Annex C."

This Annex is composed of a description of four kinds of logs and defines the different types of aircraft on which the different logs shall be kept. The log books described are: journey log, section 1; aircraft log, section 2; engine log, section 3, signal log, section 4. Section 5 deals with the "form, arrangement and method of keeping log books."

Annex D.

Annex D is entitled "rules as to lights and signals; rules for air traffic." Passing "definitions" the subject matter of the Annex is as follows: rules as to lights and day marks, section I; rules as to signals, Section II; general rules of air traffic (rules of the road), Section III; the dropping of ballast other than fine sand or water prohibited, Section IV; special rules for air traffic on and in the vicinity of aerodromes open to public use, Section V, which is divided into the following subheads: aerodromes for land aerodynes, aerodromes for sea aerodynes, night rules and day rules being given; general provisions, Section VI.

Article 4 of the Convention provides that every aircraft finding itself in a prohibited area shall give the signal of distress provided in Paragraph 17 of Annex D; Article 15 that an aircraft of a contracting State will be obliged to land if ordered to do so by means of signals provided in Annex D; and Article 25 "undertakes to adopt measures to insure that every aircraft, flying above the limits of its territory, and that every aircraft wherever it may be, carrying its nationality mark, shall comply with the regulations contained in Annex D."

The effect of Article 25, as evidence of the retention by the States of their police powers to regulate and control aircraft engaged in international flight within their jurisdiction, has already been made the subject of comment. It suffices here again to advert to the fact that by the wording of Article 25 the regulations contained in Annex D have, as a whole, been incorporated into the body of the Convention.

Annex E—The operating crew.

Chapter 1 of this Annex deals with regulations for the issue and renewal of licenses, medical examinations and certificates of competency. In subject 1 of Paragraph 1, Section I, it is stated at the outset that "the conditions set forth in the present chapter are the minimum conditions required for the issue

other contracting States from flying over certain areas of its territory, and for a violation of such prohibition the offending aircraft may be subjected to the penalties provided by the domestic legislation of the State. Although freedom of interstate passage is granted, each contracting State reserves the right even in time of peace to restrict or prohibit flight over its territory or any part

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and renewal of licenses valid for international navigation." Sub-paragraph 2 of this same paragraph recognizes that each contracting State is at perfect liberty to issue licenses under conditions less stringent than the conditions contained in Annex E, but of course, in such case "the said licenses will not * * * be valid for flight over the territory of another contracting State." On the other hand, it is recognized in sub-paragraph 3 that each of the contracting States is perfectly free to demand more stringent requirements for the issuance of licenses than the annex does. Licenses are classified in Section II, while Section III sets age limit and time limit requirements. Section IV deals with medical examinations.

Section V covers "requirements for the issue of certificates of competency." As usual, the State has the complete control of the conditions under which certificates of competency are issued, for "all the examinations must be passed before examiners designated or accredited for the purpose by the contracting State issuing the license. All tests must be vouched for by persons designated accredited or accepted by the said State" (par. 16). Section VI deals with requirements as to obtaining a radio-telephone operator certificate. Chapter II of Annex E deals with Models of Licenses and Certificates of Competency for Aerial Navigation. Chapter III deals with the composition of the operating crew. Section II of this chapter deals with the composition of the operating crew of mechanically driven aerodynes, and Section III with the crews of dirigibles. Section I (par. 32) provides that the provisions of Sections II and III of this chapter are the minimum requirements regarding the composition of mechanically driven aerodynes and airships engaged in international navigation. It is stated that conditions more stringent may be made by any contracting State with respect to aircraft of its nationality—less stringent "in respect of national navigation."

Section IV designates the person in command of the aircraft.

Article 12 of the Convention provides that "in accordance with the conditions laid down in Annex E" such individuals shall be provided with certificates of competency and licenses issued or rendered valid by the State whose nationality the aircraft possess."

Article 19 of the Treaty provides that every aircraft engaged in international navigation shall be provided with "(c) certificates and licenses of the commanding officer, pilots and crew in accordance with Annex E."

Annex F—Aeronautical maps and ground markings.

Section I provides for maps sub-entitled A, international aeronautical maps; B, editing of the aeronautical maps; C, details of execution of the different international maps. C, is sub-entitled (1) design of the sheets of aeronautical maps; (2) topographical ground work of the various international maps; (3) Conventional signs for aeronautical information. Section II is a "Universal System of Ground Marks" which includes a table of signs

Article 35 of the Convention provides that "the High Contracting Parties undertake as far as they are respectively concerned to cooperate as far as possible in international measures concerning "(b) the publication of standard aeronautical maps, and the establishment of a uniform system of ground marks for flying, in accordance with the provisions of Annex F."

Annex G—Collection and Dissemination of Meteorological Information.

This Annex is constructed as follows: Section I, Classification of Information; Section II, Exchange of information under three classifications, A, climatological, B, current, and C, forecasts. Section III covers the subject of exhibition and supply of meteorological information at aerodromes; Section IV the meteorological organization on international airways. This Annex has appendices consisting of (1) appendix containing forms for summaries of observations made; (2) appendix containing international code for meteorological messages consisting of 1, symbols and their meanings, 2, symbolic form of messages, 3, specification of the code scales; (3) appendix dealing with meteorological reports to pilots in the air by radiotelegraphy; (4) appendix dealing with the synoptic chart; (5) appendix dealing with skeleton maps; (6) appendix dealing with publication and communication of meteorological information at aerodromes, with tables; (7) appendix dealing with warnings of dangerous weather and weather phenomena generally, including special observations; (8) appendix dealing with ground signals; (9) appendix covering corrections to altimeter readings; (10) appendix constituting a code for short period forecasts for aviation, with tables.

Article 35 of the Convention binds the contracting parties "to cooperate as far as possible in international measures concerning the collection and

thereof. This right may be exercised in exceptional circumstances. Undoubtedly the question as to what constitute exceptional circumstances is left to the judgment of the State flown over. The right, when exercised, takes immediate effect.

Under Article 5 each contracting State is entitled to conclude special conventions regarding international air navigation with non-contracting States.

While Article 6 provides that aircraft possess the nationality of the State on the register of which they are entered, in accordance with the provision of Section 1 (c) of Annex A, Article 7 provides that "the registration of aircraft referred to in the last preceding article shall be made in accordance with the laws, and special provisions of each contracting State."

Under Article 11 the power to issue certificates of airworthiness or to validate such certificates remains with the State; and under Article 12 there remains vested with the State the power to provide the commanding officer, pilots, engineers and other members of the operating crew of aircraft with certificates of competency and licenses issued or rendered valid by the State.

Under Article 13 a State has the right to refuse to recognize for purposes of flight above its own territory certificates of competency and licenses granted to one of its nationals by another contracting State.

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dissemination of statistical, current and special meteorological information, in accordance with the provisions of Annex C."

Authority of Commission in field of radio.

Article 14 provides that "no wireless apparatus shall be carried without a special license issued by the State whose nationality the aircraft possess," and that only members of the crew provided with a special license to do so shall make use of such apparatus. Article 15 provides that every aircraft engaged in international navigation, if equipped with wireless, shall have the special license prescribed by Article 14.

Article 14 further provides that every aircraft used in public transport of a certain passenger carrying capacity shall be equipped with sending and receiving apparatus "when the methods of employing such apparatus shall have been determined by the International Commission for Air Navigation;" and provides still further that the Commission "may later extend the obligation of carrying wireless apparatus to all other classes of aircraft in the conditions and according to the methods which it may determine."

In its Resolution No. 471 in force as from January 1, 1930, the Commission provides:

1. Every aircraft used in public international transport and capable of carrying at least ten persons, including the crew, shall, as from the 1st January, 1930, be fitted with wireless apparatus (emission and reception by radio telegraphy or radio telephony).
2. Such apparatus shall be operated under the conditions defined by the International Radio-Telegraph Convention of Washington.
3. The installation and use by radio electric stations of spark waves (type B of the General Regulations annexed to the International Radio-Telegraph Convention of Washington) is prohibited on board aircraft.
4. The application of the present regulations may, however, be suspended when, owing to the absence of land radio electric organizations available for air traffic, the employment of wireless apparatus on board the aircraft would serve no useful purpose. (See also Resolutions No. 621 and No. 632 in Official Bulletin No. 20, page 58.)

Article 35 of the Convention binds the contracting parties "to cooperate as far as possible in international measures concerning the use of wireless telegraphy in air navigation, the establishment of the necessary wireless stations, and the observance of international wireless regulations."

Article 14 provides that no wireless apparatus shall be carried without a special license issued by the State whose national the aircraft possesses.

Under Article 15 the State has the right to designate the route by which foreign aircraft exercise their privilege of innocent passage; and, "for reasons of general security," the State flown over has the right to order the foreign plane to land although in the exercise of its right under Article 15 to cross the air space of another State without landing. The State has full power to permit or deny passage to aircraft flying without pilots. The State has the right to require any foreign aircraft, passing into its territory, to land in any aerodrome which the State flown over may designate. No international airways through the aerial territory of the State may be established without the consent of the contracting State, whether or not the conduct of the lines operating on such airways involves a landing in the State.

Under Article 16 every State may establish reservations and restrictions in favor of its national aircraft in connection with the carriage of persons and goods for hire between two points on its territory.

Under Article 21 each State has the right of visitation of any foreign aircraft upon departure or landing, and of verifying its documents.

Article 25 is perhaps one of the most important in the way of evidence showing the extent to which, under the treaty, the contracting States maintain their power of police regulation with respect to international flight in their aerial domain. This article reads as follows:

> Each contracting State undertakes to adopt measures to insure that every aircraft flying above the limits of its territory and that every aircraft wherever it may be, carrying its nationality mark, shall comply with the regulations contained in Annex D.
>
> Each of the contracting States undertakes to insure the prosecution and punishment of all persons contravening these regulations.

This article shows more clearly by its own terms than could be shown by language attempting to describe their effect that the control of international flight is left completely in the hands of each State; and by the term "control," is meant the administrative police regulation of such flight. As will be seen from the Annexes,[10] we find that Annex D constitutes a set of traffic regu-

10. See note 9, pp. 15-20, incl.

lations and that the amendments thereof which have already been, or are in the future to be made, by the International Commission for Air Navigation have constituted, and will continue to constitute, such traffic regulations. The fact is that in this respect the International Commission for Air Navigation does no more than to formulate a code within the field of technical regulation—a code to be applied and enforced within the territorial limits of each State which is a party to the Convention through domestic legislation on the part of each individual State flown over. (Article 25.)

Under Article 27 each State may, within its discretion, prohibit or regulate the carriage or use of photographic apparatus in aerial navigation; and under Article 28 each State may exercise the right, as a measure of public safety, of restricting the carriage of objects other than photographic apparatus, mentioned in Article 27, or explosives or arms and munitions of war, the carriage of which by foreign aircraft between two points in the State flown over is forbidden by Article 26. In other words, under these three articles the State is left absolutely free to impose restrictions with respect to the carriage of any object in the course of international flight over its territory.

Under Article 33 it is provided that special arrangements between the States concerned will determine in what cases police and customs aircraft may be authorized to cross the frontier. In this connection, attention may be called to Article 35 under which the States, parties to the Convention, undertake to cooperate "as far as possible" in international measures concerning the collection and dissemination of statistical, current and special meteorological information, and the publication of standard aeronautical maps and the establishment of a uniform system of ground marks for flying —this is in accordance with the provisions of Annexes G and F which deal, respectively, with the subjects of the collection and dissemination of such information and the publication of maps and uniform system of ground marks. Under this article the States further agree to cooperate to a like extent in international measures concerning the use of wireless telegraphy in air navigation, the establishment of the necessary wireless stations and the observance of international wireless regulations.

Finally, under Article 43, provision is made for denunciation of the treaty by any State desiring to do so, such denunciation not to take effect until at least one year after the giving of notice, and shall take effect only with respect to the Power which has given notice. This provision, standing alone, indicates that there is not

involved any question here of a surrender, under the exercise of the treaty making power, of that attribute of State sovereignty known as the police power. The decisions which most unqualifiedly announce the principle of domestic law that States may not surrender their police power do so in answer to the contention that the State, having entered into a contract, had no right to break it by the application of the police powers of the State—that such powers were dead with respect to the particular contract. It was in answer to this particular contention that the Supreme Court of the United States and the highest courts of the States, cited with approval by the former, found it necessary to remind the litigants that the police power of government could not be bargained away.[11] Article 43 is of real, though secondary, importance here because even if the terms of the Convention were such as to justify the contention that the C. I. N. A. was vested thereby with regulatory police powers it could exercise these powers with respect to any one of the contracting States only as long as the latter did not denounce the treaty.

> *No form of the police power of the State in the sense of authority to administer or enforce such power is vested in the International Commission of Air Navigation under the Paris Convention.*

As they stand, the Annexes A—G constitute regulation of international air flight by the States parties to the Convention, in the sense that they provide rules for putting into practice with respect to international air navigation the principle of state sovereignty over supervening air space, and of the privilege of innocent passage of foreign aircraft in time of peace. But although the Annexes constitute an example of joint regulation by the contracting States of the conditions under which international flight can be conducted, the power to enforce observance of those conditions, that is, the administration of the local police power of each State over any and all aircraft within its territorial jurisdiction is left just where it was prior to the ratification of the Treaty in 1922. The sovereign power of administrative control of a State over all aircraft within its jurisdiction by the exercise of any

11. See in this connection *Stone* v. *Mississippi*, 101 U. S. 814 (1879); *Fertilizer Company* v. *Hyde Park*, 97 U. S. 659 (1878); *Butchers' Union Slaughter House Co.* v. *Crescent City Slaughter House Co.*, 111 U. S. 746 (1884); *Boyd* v. *Alabama*, 94 U. S. 646 (1876); *Beer Co.* v. *Mass.*, 97 U. S. 25 (1877); *New Orleans Gas Light Co.* v. *Drainage Commission of New Orleans*, 197 U. S. 453 (1904); *Pennsylvania Hospital* v. *Philadelphia*, 245 U. S. 20 (1917); *Pierce Oil Corporation* v. *City of Hope*, 248 U. S. 498 (1918).

domestic instrumentality vested with the duty of control has been neither enlarged nor diminished in any way by any provision of the Paris Convention of 1919. This is distinctly recognized in Article 25 of the Convention under which each State "undertakes to adopt measures to insure" compliance "with the regulations contained in Annex D;" and "to insure the prosecution and punishment of all persons contravening these regulations." The "measures" which each contracting State undertakes to adopt will, of course, be expressed in each case in terms of the local law. There is no attempt on the part of the contracting parties to reach an agreement as to what those measures shall be, or to reach out for uniformity in this respect—and of course such matters are completely beyond the scope of regulation by the International Commission. The legislation passed by the States in order to meet the obligations assumed under Article 25 will be identic in purpose only. Article 25 recognizes that in order to vest the technical Annexes, amended, or unamended, with a sanction as far as the action of individuals is concerned domestic legislation is required. For instance, were the United States to ratify the Paris Convention —and in ratifying it would necessarily be bound by the technical Annexes and their amendments by the Commission—no individual engaged in international flight in the United States could be "prosecuted" or "punished" for contravening such Annexes and their amendments unless such contravention had, by the domestic law, been made an offense subject to prosecution and punishment. The offense would in such case be an offense against a law of the United States regulating international air flight in the territory of the United States—i.e., an act violative of a law passed by the United States whether viewed as an Act passed by Congress in the exercise of its Federal police powers, in the exercise of its Constitutional power to regulate interstate and foreign commerce, or "as a necessary and proper means to execute the powers of the government."[12]

No form of the police power of the State in the sense of the power to legislate in the field of domestic police regulation is vested in the International Commission under the terms of the Paris Convention.

The problem presented here, which involves the regulation of the activities of national governments in the international field, makes it essential to distinguish between manifestations of the

12. See *Missouri* v. *Holland*, 252 U. S. 416, 432 (1919).

police power of a State by its local legislature and manifestations thereof by administrative acts. When we, in the United States, speak of the exercise of the police power, the term embraces two conceptions—the act of legislating on matters which come within the province of the police power of the Government, and the physical administration or control of such matters under the authority of such legislation. In other words, the general, and the correct, conception from the standpoint of domestic law is that the manifestations of the police power, in the form of administrative control and physical regulation, must always find its authority in laws passed by the Government. This, of course, is true when we are dealing with matters of purely municipal legislation. But when a situation arises where nations play a double role—the one in their capacity as sovereign States legislating from the standpoint of the municipal law, and the other in their capacity as sovereign States acting in the field of international intercourse, other standards govern.

The Paris Convention has brought into being a Commission, one of the chief attributes of which is so to amend the technical Annexes as to have them keep in step with the developments in *international* air flight. To meet the duty placed upon it by the Treaty the Commission amends or amplifies certain of the provisions, let us say, of Annex D—the "rules of the road" of international air traffic. These rules are here selected as being those of the Annex provisions most likely to be regarded as what may be referred to as examples of "police power regulation." Already the "rules for air traffic" as amended by the Commission present a very different set of regulations from those which composed Annex D on October 13, 1919. In time it is conceivable that hardly a trace of the wording of the original Annex will remain. The Annex as amended by the Commission will be binding on the States parties to the Convention. The resultant condition bids fair to be this: the International Commission will be promulgating the rules of international air flight, and the States parties to the Convention will be enforcing these rules, each with respect to its own territory. Has any one of the contracting States given up the power to regulate or control in the premises? No single State could give up the power *to regulate international air flight by local legislation* in the sense of doing what the International Commission does—i. e., formulate a code of rules governing such flight—for no such power can be claimed by any single member of the family of nations. No single State can undertake, by domestic legislation,

to impose upon other States rules of international conduct. If no State, by force of an act of its domestic legislature[13] has the power to legislate with respect to a subject of international concern, such as that of international flight, the power of the Commission to formulate rules of conduct cannot result from delegation by an organism which itself was devoid of the capacity to exercise the power.

No police powers with respect to the regulation of international flight which the State may exercise under its treaty making power were delegated to the International Commission under the Paris Convention.

Thus far the following points have been emphasized: That under the Paris Convention the power to amend and supplement the technical Annexes is the power to formulate rules under which international flight shall be conducted, and that this power is lodged in the Commission; that nevertheless the capacity of each contracting State to exercise its police powers of discipline and control with respect to international aircraft within its jurisdiction is not limited in any way, for by the terms of the Treaty itself the powers with which the Commission is vested with respect to the technical Annexes are not police powers of administrative regulation and control; and that the authority of that body to formulate regulations does not constitute a delegation to the Commission of the powers of National Legislatures to enact laws in this field; for their legislative scope is limited to the domestic field.

Now to regard the subject from another angle: It may be safely conceded that municipal legislation—as distinguished from the administrative enforcement of such legislation—concerning matters the regulation of which constitutes an exercise of the police power is of itself a manifestation of the police power. Municipal legislation in the form of regulations governing the flight of aircraft in the territory of a national government covers all aircraft to the extent that such legislation is not affected by agreements with other governments. Under the Paris Convention the power to amend and supply rules under which international air flight is conducted is vested in the Commission; in fact its particular province is to keep in existence by amendment and supplementation a code of rules regulating the technical features of

13. Reference is to national legislatures which, unlike the Congress under the Articles of Confederation, are not vested with the treaty making power. The argument is addressed to ratification of the Convention by a Government like the United States, where the power is no longer vested in Congress.

international flight. If, as must now be admitted, the power to subject to the operation of its local law any and all aircraft, foreign or national, within its jurisdiction is lodged in every national government, did not then every contracting State, by agreeing to vest the authority stated in the International Commission, part—temporarily at least—with its sovereign powers to regulate international flight over its territory? i. e., part with the power to specify and regulate the rules of the road for foreign aircraft engaged in international flight while they are within its territory?

An analysis of the above question emphasizes the following considerations. Every civilized State is vested with the right inherent in sovereignty, to legislate in two different ways. The first way is by means of the organ or organs whose province is that of domestic legislation which establish rules of conduct binding, generally speaking, on the citizens or subjects of the State, and always enforcible within the territorial jurisdiction of the State. The second way is by means of the treaty making power under which the State can, by agreement with another State or States exercising this power, establish rules of conduct acting upon persons and things which are not subject, in respect of their operation, to limitations with regard to allegiance or territorial limits of either one of the contracting States alone. In other words, under the exercise of the treaty making power a State can participate in the establishment of a rule of conduct extending beyond—while it may in some respect include—the sphere of legal operation of its domestic legislature, and limited by the field of action of all the governments concerned in the agreement, acting jointly with respect to the subject matter. And as concerns the people and territory of each one of the contracting States, the rules of conduct, or the engagement which is the treaty, constitutes, while in force, the domestic law of that particular State. By the act of entering into an agreement with another State both or all the States concerned bring into existence legal principles or rules of conduct which, from the moment of the ratification of the document become the law of each State—and the establishment of such rules through whatever agency the State may agree upon for the purpose, becomes establishment by the States themselves, or in behalf of the States themselves. That the rules of conduct agreed to in such engagements have, during the time the treaties remain in force, the effect of domestic legislation was so far recognized by the framers of the Constitution as to cause them to characterize such rules of conduct and engagements as the law of the land.

Applying these principles: International flight *as such,* is not, and cannot be, the subject of the domestic legislation of any one State, for its rules call for enforcement beyond the jurisdiction of enforcement of the laws of the Legislature of any single State. It can be made the subject of legislative control only by treaty, which is, to all practical effects and purposes, international legislation. In the exercise of the treaty making power each of the States parties to the Paris Convention has joined in designating the International Commission for Air Navigation the body to formulate rules for the conduct of international flight, as such, and in so doing has given it authority to perform a function which would not come within the province of purely domestic legislation by the legislature of any one of the contracting States. Assuming, *arguendo,* that establishing a code of rules governing such flight constitutes such an exercise of the police power, that for a State to divest itself of such authority would constitute, *pro tanto,* a delegation of the police power of the State, no such delegation occurs in the case before us. It is true that for the States parties to the Convention to place the authority in the hands of the Commission was to agree that each one of such States would refrain from applying the rules of the road of its municipal law to aircraft engaged in international flight. But there was no delegation of power involved. The States simply substituted for the exercise of the power to regulate international flight by purely domestic enactments the exercise by the States of the treaty making power. The fact that the States refrained from continuing to apply to foreign aircraft within their jurisdiction the rules provided by the local legislature did not affect their authority under their treaty making power to determine what the rules of the road of international air navigation above their territory were to be. Under the treaty making power it was quite competent for the States to provide that rules governing international aviation should differ from those governing domestic flight.

The legislative control of subjects of purely international concern by the exercise of the treaty making power is fundamentally a sovereign attribute of sovereign States. The existence of such a power in any entity other than a sovereign State is, consequently, unthinkable. Assuming that a nation could divest itself by delegation of one of the attributes of the treaty making power, it would have to be lodged somewhere. And it would have to be lodged in an organism of such a nature as to be capable of exercising the power vested in it by the act of delegation. There is no such

organism known to the law of nations except a sovereign State. If the above premises are correct, it would seem that they make the proposition that the States parties to the Paris Convention have delegated to the International Commission—which has no attribute of statehood—one of the attributes of national sovereignty, susceptible of a *reductio ad absurdum.* Aside from the proposition that, in the words of the Supreme Court, no civilized State can bargain away its police power—here the power of regulating international air navigation in the international field in the exercise of the treaty making power—the fact that the parties to the Convention never intended that such powers should be delegated to the Commission, is made apparent by the provision in Article 43 of the treaty recognizing the right of any State to denounce the Convention in its discretion; as well as by Article 25 under which, as already observed, domestic legislation is required in order to vest the Commission's acts with sanction in the field of police control. The Commission amends Annexes A—G by virtue of the authority conferred upon it under the power permanently vested in sovereign States to regulate international air navigation by treaty.

IV. Final Considerations.

Is there anything inherent in the codification of international flight by a Commission such as the I. C. A. N. in the exercise of the powers with which it is vested by the States parties to the Convention opposed to the exercise of the treaty making power under the authority of the United States? In discussing this question there are certain conditions of fact and law which are now, particularly in view of comparatively recent decisions of the Supreme Court, very generally admitted: That, whereas the States turned over to the Federal Government certain powers subject to Constitutional limitations of their exercise, the treaty powers with which the separate States were vested prior to the adoption of the Constitution (Confederation) were handed over with no restrictions whatever to the Federal Government—it being admitted that the treaty making power thus delivered was at the time of its delivery as untrammelled as that of any other sovereign State; that both Acts of Congress and treaties are made by the Constitution the law of the land; but "Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution while treaties are made so under the authority of the United States;"[14] that the Supreme Court has twice stated that "it

14. *Missouri* v. *Holland,* 252 U. S. 416, 433 (1919).

need hardly be said that a treaty cannot change the Constitution or be held valid if it be in violation of that instrument;"[15] that while that Court has never suggested that the treaty making power was free from Constitutional limitations, and in a number of dicta has expressed the view that it was thus limited, it has rendered no opinion which involved any specific finding of an unconstitutional abuse of the exercise of this power; and finally that, under the decisions of that tribunal the exercise of the treaty making power may be said to be limited to this extent: (1) The treaty making power is broad enough to cover all subjects that properly pertain to our foreign relations.[16] The limitation as to the power implicit in the above announcement is, that an attempted exercise of the treaty making power with respect to a matter not properly subject to international negotiation is unconstitutional. (2) While the treaty making power is not limited by any express provision of the Constitution it cannot extend "so far as to authorize what the Constitution forbids."[17] On this last point the language of the opinion in the case of *Missouri* v. *Holland* is significant. The statement that "we do not mean to imply that there are no qualifications to the treaty making power" (p. 433) is followed by the remark: "The treaty in question does not contravene any *prohibitory words* found in the Constitution. The only question is whether *it is forbidden* by some invisible radiation from the 10th Amendment."[18] (433, 434). After pointing out that in this case action by the States was beyond their sphere and that hence reliance on them would in this instance be vain, the opinion proceeds: ". . . and were it otherwise, the question is whether the United States *is forbidden* to act"[19] (435)—and upheld the treaty.

To announce that for two States to enter into a treaty whereby they mutually accord the privilege of innocent passage to their respective national aircraft is to remain within the field of proper treaty negotiation is to assert the obvious; and the same may be said with respect to a multilateral agreement covering the same subject matter such as the Havana Convention of February 20, 1928, which, like various bilateral agreements to the same effect, has been ratified by the United States. A fundamental distinction

15. *Boudinot* v. *United States*, 11 Wall. 620 (1870); *Thomas* v. *Gay*, 169 U. S. 264, 271 (1897).
16. *Santovicenzo* v. *Egan*, 284 U. S. 30, 40 (1931); *Asakura* v. *Seattle*, 265 U. S. 332, 341 (1923); *Geofroy* v. *Riggs*, 133 U. S. 258 (1889); *Re Ross*, 140 U. S. 453 (1890); *Missouri* v. *Holland*, 252 U. S. 416 (1919); *U. S.* v. *Lariviere*, 93 U. S. 188, 197 (1876); *Hauenstein* v. *Lynham*, 100 U. S. 483, 490 (1879).
17. *Asakura* v. *Seattle*, 265 U. S. 332, 341 (1923); *Geofroy* v. *Riggs*, 133 U. S. 258, 267 (1889).
18. Italics volunteered.
19. Italics volunteered.

exists between the Paris Convention and the Havana Convention both with respect to aim and method of operation. The object of the Paris Convention is stated in its title to be "the regulation of aerial navigation;" the regulation of international air navigation which was recognized in 1919 to have come to stay. The object of the Havana Convention is stated in that document to be the establishment by the Governments of the American Republics of "the rules they should observe among themselves for aerial traffic." As to the difference in operation, the Paris Convention creates by its technical Annexes a Code for international air traffic and the International Commission for Air Navigation composed of representatives of the contracting States whose duty it is to keep the Code alive by amendment in step with the development of international air navigation, and to act as a clearing house for all information bearing on the Convention and on international air traffic. Uniformity in the matter of international air navigation is the end and aim of these technical regulations. The Havana Convention contains no such code as is furnished by the Annexes of the Paris Convention, and needless to say provides for no such organism as the International Commission. Aside from what is contained in the body of the Havana Convention, which is modeled to a great extent on the articles of the Paris Convention, there is scant attempt at regulation. It is really an agreement between the contracting parties as to general principles governing the conditions under which the aircraft of the respective States may enter, remain and leave each other's territory. Under the Paris Convention the aircraft of the contracting States operate with respect to each other and above the territory of the contracting States under a common code or set of rules the enforcement of which is imposed on and accepted by the contracting States under Article 25 of the Convention. Under the terms of the Havana Convention there is no such common code, and as is provided by its Article XIII the pilots of contracting States must be provided with certificates of competency setting forth that "each pilot, in addition to having fulfilled the requirements of the State issuing the same, has passed a satisfactory examination with regard to the traffic rules existing in the other contracting States over which he desires to fly." Both the parties to the Paris Convention and to the Havana Convention recognize that uniformity of regulation and method are essential to the development of international air navigation. The fundamental difference in the method employed to obtain uniformity may be stated as follows: The States

parties to the Paris Convention recognized that the first step in the direction of uniformity was the abolishment, *for the purposes of international flight,* of as many separate sets of municipal codes covering aviation as there were, or might come to be, members signing or adhering to that treaty, and to substitute these codes, for treaty purposes, by a single code, embodied in the Convention at the time of its signature and ratification, to be maintained in being by the representatives of the contracting States on the International Commission for Air Navigation. The States parties to the Havana Convention merely agreed in Article XXXIII that "the contracting States shall procure as far as possible uniformity of laws and regulations governing aerial navigation."

The Constitution contains nothing which restricts the Federal Government in its choice of methods in the exercise of the treaty making power once it is admitted that the subject matter comes properly within the scope of international negotiations, and the proper officials act. The method selected by the States parties to the Paris Convention had, in October, 1933, received the sanction of thirty-three States. The reasons have already been advanced for concluding that the designation of the International Commission as the instrumentality for amending the Annexes and keeping the technical regulations applicable to international air navigation does not constitute a delegation of the functions of domestic legislation by a State, but is, on the contrary, an expression on the part of the contracting parties of their capacity to legislate under the treaty making power with respect to a matter of purely international concern.

Captain Albert Roper, the Secretary General of the Commission, has characterized the International Commission as "a kind of international parliament vested with the power at any time to adapt the technical regulations to the requirements of aerial traffic,"[20] adding that in the exercise of these functions as in that of certain others "the C. I. N. A. obviously acts only in the name of the States parties to the Convention."[21] The steps taken by the States to secure uniformity seem peculiarly adapted to the end sought—which in the case of the United States, as in that of any other civilized State, involve (a) the adequate protection of the citizens and property of the United States in connection with the exercise of the privilege of innocent passage by foreign aircraft engaged in international aviation; (b) the opportunity for aircraft of the

20. 1 *Revue Général de Droit Aérien* 37 (1932).
21. Ibid., 37-38, 40.

United States to enter foreign territory under conditions favorable to the safety of such aircraft, its passengers and crew, and such as would tend as far as reasonably possible to guarantee the United States against responsibility for damage to foreign interests as the result of the presence of United States aircraft on foreign territory.

Under the Paris Convention uniformity of regulation in international flight is the end, and in fact the attainment. If the formulation of rules is to constitute—as it does—an element of such regulation, the United States can, in the exercise of its treaty making power, agree with other States as to such formulation. A normal and efficient method of formulating rules involves the appointment of a committee or commission to draw them up. The International Commission for Air Navigation seems to constitute an effective instrumentality for obtaining uniformity of commercial aviation in the international field.