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THE INTERNATIONAL ELEMENT IN AIR TRANSPORT

BY MICHEL POURCELET†

I. INTRODUCTION

IN THE PAST FEW YEARS world air traffic has undergone a steady growth not only in the transportation of passengers but also of cargo.[1] In a century in which speed is a prime factor in the development and increase of economical transportation, the demand on air transport to transcend vast distances expresses the international trend in this field. If in the past the principle of sovereignty has resulted in an organization highly protective of air transport, it appears that at present a new adjustment of air boundaries can be viewed, not only horizontally but also vertically. A writer's mention of the permeable boundaries[2] refers to the decline of nationalism as an outmoded concept in the present political and economic context and to the growth of a standard of internationalism in air transport. The parallel increase in the speed of aircraft and air traffic has rendered exceedingly more illusory the partitioning of air space according to national territorial limits. It is precisely this crossing of national boundaries that has allowed air transport to consolidate and improve the capabilities which characterize modern aircraft. If placed on a strictly economic basis, the income potentials of aircraft cannot be fully realized unless operated not only within their national territory but also beyond. These few considerations place air carriage within an international framework. These international elements manifest themselves by the uniformization of rules relating to air navigation and by collaboration and cooperation among nations in the politics, economics, and technology relating to air transport. This article will discuss these developments and the influence of these international elements on air law proper.

II. MANIFESTATION OF INTERNATIONAL ELEMENTS ON THE POLITICAL, ECONOMIC, AND TECHNICAL LEVELS

International collaboration was organized and facilitated by international organizations such as ICAO and IATA. The objectives of ICAO are to develop the principles and techniques of international air navigation and to encourage the establishment and stimulation of the develop-

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[1] ICAO Bull., No. 5, 1965, pp. 4-8. In 1964 air carriers transported 154 million passengers and carried cargo weighing 3920 million ton - kilometers. See also, Dutoit, *L'essor du trafic aérien en 1964*, 28 REVUE GENERALE DE L'AIR ET DE L'ESPACE 69 (1965) [hereinafter cited as R.G.A.E.].

[2] Huguenau, *Les formes de collaboration internationale dans le transport aérien*, 8 REVUE FRANCAISE DE DROIT AERIEN 345 (1954) [hereinafter cited as R.F.D.A.].

ment of international air carriage.[3] On the other hand, IATA has as its objective the encouragement of safe, regular, and economic carriage to the benefit of all the peoples of the world, to encourage air commerce and to study the corresponding problems, to furnish the means for collaboration among the air carriage enterprises directly or indirectly engaged in international services, to cooperate with the ICAO and with other international organizations. These two bodies have given an important impetus to air carriage and have achieved some unification in the coordination and exploitation of air services. It is advisable here to emphasize the international elements.

A. *Multilateral And Bilateral Agreements*

Since air carriage is a mode of transport with an international vocation, it implies the overflight of foreign territory and the need for technical and commercial stops. It has therefore been necessary to regulate the different problems brought about by air navigation. The controversial question of sovereignty over airspace was recognized by the Chicago Convention, and is presently the crux of the debates in the United Nations and ICAO since "sovereignty of States has not been set aside in the face of the development of air carriage" while a regime of freedom has been instituted for extra-aeronautic space. Logically, a common regime for the two spaces should be recognized.[4]

The principle of sovereignty has traditionally been recognized as a beneficial interest of the states. The Chicago Convention sets forth the famous "five freedoms" favoring international air carriage. The first two freedoms concern international air communications (overflight and technical stops); the other three are to be considered economic freedoms (the right to embark and disembark cargo and passengers).[5] These air freedoms, however, are only privileges of a very precarious nature, since they can be revoked at any time. There are business considerations that tend to strengthen air nationalism, so the States, in order to soften the restrictions, have established a system of exchanging commercial rights and certain reciprocal freedoms through bilateral agreements. These agreements concern air navigation and air carriage.

1. *Air Navigation*

Certain States that are not contracting parties to the Chicago Conven-

[3] Convention on International Civil Aviation (Chicago Convention), 7 Dec. 1944, art. 44, 61 Stat. 1180, T.I.A.S. 1591 (effective 4 April 1947) [hereinafter Chicago Convention].

[4] Chaumont, *Orientation actuelle du Droit de l'Espace*, 28 R.G.A.E. 7 (1965); Moon, *A Look at Airspace Sovereignty*, 29 J. AIR L. & COM. 328 (1963); Pradelle, *codes de l'Air et de l'Espace*, 27 R.G.A.E. 5 (1964); and Georgiades, *du Nationalisme aérien a l'internationalisme spatial*, 16 R.F.D.A. 129 (1962).

[5] However, a distinction should be made between scheduled and unscheduled flights. Scheduled international air services are subject to the regime of prior authorization, to be granted at the discretion of the State whose territory is overflown. But the State whose territory is overflown reserves the right to demand a landing, and in the case of a commercial flight, the interested State can impose "such regulations, conditions or limitations it may consider desirable." This distinction between scheduled and unscheduled services is illusory, given the fact that most States have discarded the spirit of Article 5 by the bringing into play of certain regulations submitting unscheduled services to the regime of prior authorization. Lemoune, *A la recherche du droit international aérien*, 9 R.F.D.A. 6 (1955).

tion participate in the evolution of international air law through bilateral agreements.[6] These agreements follow substantially the dispositions of the Chicago Convention and its appendices (rules of the air, certificates of navigability, infra-structure, meteorology) and establish special dispositions concerning the payment of airport taxes, customs, etc.

2. *Air Carriage*

It is justly said that "the regulation of air transport is an essential and the most original part of bilateral agreements."[7] In effect, these agreements contain dispositions relating to commercial freedoms to which the contracting parties agree on the basis of reciprocity. The greater part of these understandings take up the dispositions established in the Bermuda Agreement concluded between the United States and England setting forth precisely the commercial rights granted to each country.[8] Very specifically, the contracting parties agree to determine rights concerning international air relations:

(1) The right of exploitation, by the air companies specified by each party, of the air services mentioned in the route chart.

(2) The right to embark and disembark international passengers, mail, and cargo at the scheduled stops and over the routes designated by each country.

(3) Possibilities and equal rights; respect for the principle of equal division of the capability of competing for the exploitation of the approved services.

It is interesting to note that most of the agreements contain a clause providing for a procedure to regulate eventual conflicts. The arbitral procedure seems to be the rule, and recourse to the ICAO Council is the exception.[9]

B. *International Economic Coordination And Cooperation*

Because of the multiplicity of air routes, the cost of exploitation of air service is based upon increasing cooperation on the economic level among the different airlines. This collaboration is demonstrated by the development of pooling agreements and by attempts to merge the airlines.

A pooling agreement sets forth very strongly the concept of a joint exploitation by a determined air carrier.[10] It is an understanding among air carriers consisting of "the undertaking of joint exploitation, by the national air carrier and the carrier authorized to overfly the territory, of a section of the route or a designated route."[11] Besides an apportionment

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[6] Sand, *Die Entwiklung Des Luftfahrtrecht in Der Sowjet Union*, OSTEUROPA-RECHT 157-210 (1964).

[7] Cartou, *Droit aérien*, COLLECTION THEMIS 95 (1963).

[8] Cooper, *Le plan des Bermudes, un modele pour l'organisation mondiale du transport aérien*, 1 R.F.D.A. 139 (1947); Adriani, *The Bermuda Capacity Clauses*, 25 J. AIR L. & COM. 406 (1955); and McCarroll, *The Bermuda Capacity Clauses in the Jet Age*, 29 J. AIR L. & COM. 115 (1963).

[9] Larsen, *Arbitration of the United States-France Air Traffic Rights Dispute*, 30 J. AIR L. & COM. 231 (1964).

[10] Chicago Convention, art. 77.

[11] LEMOINE, TRAITE DE DROIT AERIEN 107 (1947), CHENG, THE LAW OF INTERNATIONAL AIR TRANSPORT 279 (1962).

of services, the pool provides for an apportionment of income derived from such exploitation. These pools have the advantage of avoiding competition among the carriers, of offering a better service on the exploited routes, and of apportioning income after taking into account the facilities offered by each company. In general, pooling agreements permit a better return from the route at less expense.[12]

The joint enterprise, the concentration or combination of various companies operating jointly, favors the expansion of air transport. In this respect an international element governs this concept of joint enterprise, the need for which was foreseen by the Chicago Convention. "Nothing in the present Convention shall impede two or more contracting states from constituting a joint organization for the joint exploitation of air transport." ICAO is given the power "to recommend to the interested contracting States that they form organizations for the joint exploitation of air services over all routes and in all regions."

The Scandinavian Airlines System (SAS), consisting of a consortium among the three Scandinavian countries (Sweden-Norway-Denmark), is an example of joint exploitation.[13] It is not, however, an international exploitation partnership because the national structures remain intact although every plane carries the same insignia.[14] It is rather a multinational association with an appropriate juridical entity, but which clashes with the principle of nationality in order to comply with the stature of an international partnership.[15]

It appears, then, that it would be advantageous to achieve an enterprise similar to that of the joint air transport associations. The Societe Air-Afrique[16] is a case in point. This association establishes international links among the different African member-states and, more precisely, it envisages "the exploitation of their right to air traffic concerning the relation between their territories and foreign countries. . . ." This association is believed to possess the nationality of each of its contracting States. In circumstances where nationality is determined by the place of registration, their aircraft are registered in the Ivory Coast and therefore acquire the nationality of that country, thus illustrating that joint registration is not easy to put into practice.

Efforts have also been made to integrate civil air carriage in Europe. The European Civil Aviation Commission (ECAC) was instituted in 1955 following a recommendation made at the Coordination of Air Trans-

[12] In May 1964, Air France and Japan Airlines renewed for a three year period their pooling agreement regulating the exploitation by both carriers of their Far East lines over India and the Pole. See, Dutoit, 28 R.G.A.E. 72 (1965). In its annual 1958-59 meeting, the BEA declared: "[P]ooling arrangements, by enabling us to spread our services over the Day in cooperation with our pool partners, give us the opportunity to secure these economic advantages. Our pools are thus a mean to achieve lower fares, not a monopolistic device to prevent them. . . ."

[13] Agreement of 20 Dec. 1951.

[14] Gourrier, *La notion juridique d'entreprise commune et les problèmes particuliers en matière de transports aériens,* 18 R.F.D.A. 143 (1964).

[15] Rodiere, *La constitution de sociétés multinationales de transports aériens,* 19 R.F.D.A. 159 (1965).

[16] Text of the treaty relating to air transport in Africa, reprinted in 17 R.F.D.A. 329 (1963). Air-Africa established a regional air transport organization joining eleven republics.

port Conference in Strasbourg in 1954.[17] Air-Union, established in 1958 and comprised of Air-France, Lufthansa, Sabena, and Alitalia, has as its aim a commercial and technical cooperation in the exploitation of air service in Europe and in foreign countries. Unfortunately, economic problems, particularly those relating to the apportionment of traffic, and political problems, such as the degree of State control to which the union would be subjected during the last few years, have paralyzed the establishment of a true European common market. At the Fifth Session of ECAC in 1964, the report of the Economic Commission of the Meeting of the Council of Europe, dealing with certain financial and economic aspects of air transport operations, was examined. Following a questionnaire relating to the problems of European civil aviation, experts unanimously admitted the need for a faster integration of European air enterprises in order to bring about better economic results. However, mention was made of the difficulties which would arise both internationally, from the creation of an organism to effect such mergers, and on a practical level, by the creation of an international association (considering the fact that many governments are not willing to renounce the attributes of sovereignty and, it appears, are not convinced of the real advantages that such renunciation would bring to their national air enterprises).[18]

It is safe to assume that the coordination and unification of air transport is being carried out and that "the economic unification on the surface"[19] will stimulate a process of joint exploitation even to the point of the creation of a European air carriage association—a supra-national international partnership. The organs already in existence militate in favor of such a possibility.

C. *International Coordination And Cooperation In The Field of Technical Services*

The majority of countries have, in their air legislation, reproduced rules in accordance with the dispositions of the Chicago Convention and its annexes (rules of the air, infra-structures, meteorology, navigability, personnel licenses, telecommunications, and airport facilities). In this field, uniformity is the rule and it is imperative.

On a purely technical level, the main forms of collaboration manifest themselves in the assistance and handling agreements. These agreements envisage particularly the guarantee that an air carrier, on the basis of reciprocity, will maintain and repair the aircraft of another air carrier. For example, the Boeing Pool Agreement, whose partial list of participants

[17] Air-Union plans came into being following the projects presented to the Council of Europe in view of the creation of a European organization in the field of aviation. Many plans were submitted: the Bonnefous Plan in 1950, the Sforza Plan in 1951 which envisaged the establishment of a mixed supranational authority and of a European aviation syndicate, and the Van de Kieft Plan in 1951 which advocated a European company. See 14 R.G.A.E. 359-70 (1951).

[18] Speech of Mr. Duynstee before Assemblée consultative de l'Europe on 23 April 1964.

[19] Villeneuve, *Les transports aériens reguliers de l'Europe occidentale,* 24 R.G.A.E. 340 (1961). The author leans toward a very close collaboration of companies in certain fields, although maintaining their autonomy. It is a formula that would permit the creation of a European common market in the form of a consortium. See also, Cartou, *La structure juridique du transport aérien en Europe a' la Veille du marche' commun,* 1957 ANNUAIRE FRANCAIS DE DROIT INTERNATIONAL 535.

includes Air France, PAA, BOAC, Lufthansa, Qantas, and Air India, is an agreement relating to the maintenance of Boeings in certain specified airports. In addition to these assistance and handling agreements, technical collaborations such as the Franco-British development of the supersonic Concorde aircraft deserve mention. Finally, an important aspect of international coordination and cooperation, Eurocontrol (European Organization for the Safety of Air Navigation), is operated as a public service[20] to assure the safety of air carriage in European air space.[21] Eurocontrol, comprised of the United Kingdom, Ireland, France, Germany, and the Benelux States, has established a common control institution necessitated by an increase in air traffic and speed of aircraft. Eurocontrol is a medium of cooperation among the member States[22] and the guardian of the different rights and obligations of its members. It has authority to enter into conventions with third-party States, and agreements have been signed with the Scandinavian countries, Switzerland, and the Federal Aviation Agency.

III. INTERNATIONALIZATION OF THE LAW OF AIR TRANSPORT

International air transport has greatly influenced the law that governs it. Both public and private air law have moved toward greater unification made necessary by air navigation. In fact, air law should be thought of as an international law if unsolvable conflicts of laws are to be avoided.[23] But the law should not be adapted to technology,[24] it should dominate it, and when internationalizing air transport, international juridical rules should be constructed.

Although criticized as being over-elaborate and difficult to put into operation,[25] international air law is a reality as testified by the different conventions that govern international air transport. In general, it may be stated that the development and acceleration of international relations have favored the expansion of international air law and have also engendered a "state of internationalist spirit"[26] which manifests itself by an "importation" of international rules into municipal law. Nevertheless, this uniformization of juridical rules applicable to air transport, either domestic or international, is curbed somewhat by economic, political, social, and juridical motives. Finally, the creation of international organizations of cooperation in air transport requires new juridical rules where the international element governs.

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[20] See le Monde hebdomadaire, 28 July 1965, p. 22.

[21] Civil and military aircraft are controlled and guided by Eurocontrol since they pass through European air space at 6,000 meters over Benelux and the German Federal Republic and at 7,500 meters over Ireland, the United Kingdom, and France.

[22] Only five countries of the community are parties to the Convention, as are also Great Britain and Ireland, who are not members of the European Economic Community.

[23] RIPERT, PREFACE AU TRAITE DE DROIT AERIEN DE M. DE JUGLART (1952).

[24] CAS, *Les Sources du Droit des transports aériens*, LIBRAIRIE DE DROIT ET DE JURISPRUDENCE 21 (1964).

[25] Lemoine, *A la recherche du Droit international aérien*, 9 R.F.D.A. 1 (1955).

[26] Guinchard, *L'influence de la Convention de Varsovie sur les régles de Droit interne relatives à la Responsabilité du transporteur aérien*, 11 R.F.D.A. 189 (1957).

A. *Internationalization Of The Rules Of Liability*

The countries that have ratified the Warsaw Convention submit their international air transport[27] to the rules of the Convention. However, municipal law has often "absorbed" international law because much internal air legislation has adopted international dispositions to regulate problems relating to the liability of the domestic air carrier; in this regard there is a parallelism between air law and the law of the sea.[28] However, in spite of the fact that air law has a strong tendency to "color itself with internationalism," it appears that a very marked juridical nationalism still impregnates domestic legislative texts. The analysis of national texts referring to the liability of the domestic air carrier reveals three clearly defined tendencies: certain texts emphasize the principles of the Warsaw Convention, others the Hague amendment to the Warsaw Convention, and, finally, others prefer the concept of presumption of fault.

B. *Obstacles To The Legislative Unification Of Air Carrier Liability*

The air legislation of many countries differs from that of the Warsaw Convention, and other countries simply apply common law principles. Even though "the Convention having a uniform law . . . establishes a juridical regime that is desirable for this particular milieu which is the international milieu, and for activities that should normally be exercised in this milieu,"[29] the tendency toward universalism[30] clashes with the domestic law written for the "economic customs and considerations proper to each State." The United States is a concrete example of this factual situation.

In the United States the common law of each state is applicable to domestic air carriage, and a glance at the rules of liability of the different states reveals a surprising lack of uniformity in the norms applicable to liability and in the application of the principles of common law.[31] The absence of uniform legislation gives rise to great difficulties, particularly in those situations which concern the choice of the applicable law. Fre-

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[27] On the concept of international carriage in the meaning of Article I of the Warsaw Convention, see Guinchard, 10 R.F.D.A. 14 (1956); and Pontavice, *Responsabilite da Transporteur aérien*, 28 R.G.A.E. 186 (1965).

[28] The countries that ratified or adhered to the Brussels Convention of 1924 incorporated the principal dispositions of the latter into their domestic water law. The same occurs with countries that are not contracting parties to the Convention. Canada, for example, has neither ratified nor adhered to the Brussels Convention of 25 Aug. 1925 relating to bills of lading but has incorporated the Hague Rules into its national legislation: Law of 13 July 1936 relating to the Water Carriage of Goods Act (4 CAN. REV. STAT. C. 291 (1952)). The same applies to the Brussels International Conventions of 25 Aug. 1924 and 10 Oct. 1957 on the limitation of responsibility of owners of sea going vessels. A law modifying Canada's Merchant Shipping Act, 1960-61, 9-10 Eliz. 2, c. 32 (Can.), introduced into domestic legislation the dispositions of the 1957 Convention, particularly in that which concerns the new limits of responsibility (art. 657 of the Merchant Shipping Act) and the persons who can avail themselves of the limitation (art. 659). Finally, Canadian marine transportation (charter party and bill of lading) is subject, in the matter of general average, to the rules of York and Anvers (1950), and, in the matter of collision, Canadian legislation has made use of the dispositions of the Brussels International Convention of 23 Sept. 1910.

[29] Chauveau, *Des conventions portant loi uniforme*, 1956 JOURNAL DE DROIT INTERNATIONAL 570.

[30] Limpens, *Les constantes de l'unification du Droit privé*, 10 REVUE INTERNATIONALE DE DROIT COMPARE 277 (1958).

[31] Sweeney, *Is Special Aviation Liability Legislation Essential* (pts. 1-2), 22 J. AIR L. & COM. 166, 317 (1952).

quently, states reject limits on liability[32] instituted by other states as being contrary to their public policy.[33] This is made possible by the evolution of recent American jurisprudence in the application of the concept of lex loci delicti which allows certain states to apply a law other than that of the place of the accident and thereby avoid the limitations of liability imposed by other states.[34] The adoption of a uniform law in the United States is thus necessary for "in no other place does the proceeding give rise to so many and such complex controversies in conflicts of laws."[35] However, the adoption of a uniform law, already envisaged,[36] could relieve some difficulties in the operation of such laws because it would have the approval of each state in the federation.

The common law is also applicable in the greater part of Canada. In Canada the adoption of a uniform air law is necessary but it would raise constitutional problems in view of the fact that questions concerning liability are grouped under the heading of civil rights reserved to the Provinces (which leaves some doubt as to the constitutionality of the air treaties ratified by Canada). Nevertheless, through constitutional amendments it would be possible to place in the hands of the central authority all powers to permit it to legislate in the field of aeronautics on the technical, administrative, and juridical levels.

The foregoing are some of the juridical, economic, and social questions that shackle the uniformization of juridical rules. One of the most obvious examples of United States reluctance concerns the interpretation of the Warsaw Convention and the adoption of limitations provided in the Hague Protocol of 1955. As stated by R. H. Mankiewicz, the lack of uniform application "is mainly imputable to an error of evaluation committed by the authors of the Convention who based the international regime on institutions and conceptions whose uniformity through national juridical order was more apparent than real."[37] The concept of wilful misconduct set out in Article 25 of the Warsaw Convention seems to be the most controversial area of disagreement, and it is sufficient to read the decisions handed down by common law and civil law courts to realize that the concept is not viewed in the same manner and with the same significance. On the other hand, and this is an economic and social problem, Warsaw's limitation of liability, although higher than the limits provided by certain states in America, is considered much too low. It is not disputed that the greater part of American judgments award spectacular amounts in cases involving fatal injuries and, consequently, the $16,000 limitation of the Hague Protocol may, when compared with these damage awards, seem ridiculously low. It is for this reason that American courts tend to give a much broader interpretation to Article 25 in order to align damage

[32] Note, 30 J. AIR L. & COM. 98 (1964).
[33] Wolens, *A Thaw in the Reign of Lex Loci Delicti*, 32 J. AIR L. & COM. 408 (1966).
[34] Reese, *Conflict of Laws and the Restatement Second*, 28 L. & CONTEMP. PROB. 679 (1963).
[35] Vries, *Universalisme et unification du Droit des Etats-Unis d' Amérique*, 7 REVUE INTERNATIONALE DE DROIT COMPARE 542 (1955).
[36] Sweeney, *supra* note 31.
[37] 2 MANKIEWICZ, MELANGES ROUBIER 110 (1961).

awards for fatalities arising out of international carriage with the awards of other types of suits. Under the new definition set out by the Hague Protocol, it is almost impossible to prove wilful misconduct without the complicity of the carrier. Thus, the only door left open is the benefits of Article 22. This is the reason why the American government has denounced the Warsaw Convention by a notice to the government of the Republic of Poland, in accordance with the dispositions of Article 39 of the Convention.[38]

The lack of judicial unification is demonstrated by judgments whose results vary with the court and with the region in which they are rendered. This encourages plaintiffs who are aware of these differences to file suit in the court they believe will be most favorable. The proceedings that took place in France and in the United States following the crash of a Sabena aircraft in Italy in 1955 are a good illustration of this disunification. The court of the Seine[39] kept the liability of the Sabena within the limits of Article 22, referring to the law of 2 March 1957 in order to estimate this liability. The decision of the Seine tribunal was criticized not only with respect to the application of the definitions of the law of 2 March 1957 (intentional fault—inexcusable fault) to qualify the fault of the carrier, but also the final judgment that, in spite of a factual situation showing the seriousness of the fault, was very favorable to the carrier. The New York court, on the other hand, handed down a contrary decision,[40] finding the existence of wilful misconduct and placing the guilt of the carrier on the basis of Article 25. It is decisions such as this, showing the lack of uniformity among courts in the same litigation, that favors an attitude of "forum shopping."[41]

C. *The Elaboration Of Juridical Rules Concerning The International Registration Of Aircraft*

Aircraft possess the nationality[42] of the State where they are registered and cannot be registered in more than one State. The development of air transport, as well as economic and financial problems, have brought about the merger of certain airlines and the accompanying problem of nationality under the Chicago Convention for these international com-

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[38] The American government denounced the Convention on 15 Nov. 1965; a special meeting on the limts of liability of the Warsaw Convention and the Hague Protocol was held at Montreal by ICAO. After this meeting, the Council of ICAO was invited to call a diplomatic conference to study the following four proposals: $33,200 plus court costs; $50,000 plus expenses; $49,800 plus judicial expenses or $66,400 including the judical expenses; or $58,100 plus judicial expenses or $74,700 including the judicial expenses. On 13 May 1966, the United States government withdrew its notice of denunciation following an agreement reached through the mediation of IATA and CAB, among more than forty air carriers accepting a limit of $75,000 and the principle that absolute liability (suppression of art. 20, line 1 of the Convention) for all international flights arriving or departing from the United States. Some air carriers (Aerolinas Argentinas, Saturn, World Airways, Pacific Northern Airlines) in accepting the limitation of liability, have nevertheless refused the principle of absolute liability (IATA, Press Release No. 14, 13 May 1966).

[39] Emery v. Sabena Belgian World Airlines, reprinted in 23 R.G.A.E. 359 (1960), *judgment confirmed on appeal,* 28 R.G.A.E. 331 (1965).

[40] Leroy v. Sabena Belgian World Airlines, 8 Av. Cas. ¶ 18,142 (S.D.N.Y. 1964).

[41] See McHenry, *Judicial Jurisdiction Under the Warsaw Convention,* 29 J. AIR L. & COM. 205 (1963).

[42] Roger, *Estude sur la nationalité des aéronefs,* 18 R.F.D.A. 159 (1964).

binations. The question of the registration of aircraft[43] has been examined by the ICAO Legal Committee since 1956. In fact, according to Article 77, it devolves on the Council to "determine the ways of applying the dispositions of the present Convention concerning the nationality of aircraft to aircraft used by the international organs of exploitation." In December of 1959 the Arab League brought to the attention of ICAO a project to create an international enterprise which would be open to participation by the Arab States and the Arab League. It requested the Council to determine under what conditions the disposition of the Convention relating to nationality could be applied to aircraft used by the projected enterprise. On 11 November 1964, multi-nationalistic Air Africa requested the Secretary General of ICAO to approach the Council on the same question. The subcommittee on the article was instituted by the President of the Juridical Committee which met in Montreal in July 1965. As an hypothesis for their work, the subcommittee took the constitution of an international organ of exploitation established by the States parties to the Convention without taking into consideration the incidences of such international registration. The subcommittee issued a notice that the dispositions of the Convention—without the necessity of amending them—presented no obstacle to the principle of joint international registration.

This opinion is interesting in that, by recognizing the possibility and validity of registration of an international organization, the organization is accepted as a substitute for a sovereign state capable of assuming the obligations imposed by the Convention on a country of registration. This represents a marked decline of the concept of national sovereignty with a corresponding boost to internationalism by giving life to this intergovernmental combination possessing all the rights and assuming all the obligations inherent in state sovereignty while at the same time lacking the juridical status of a sovereign state.

IV. Conclusion

The internationalism of air transport is an undeniable fact, and is a necessary condition for its development. The presence of international elements is explained by the multiplication of new techniques in the field of aviation, by economic imperatives, and finally, by the new needs that aviation must fulfill. Collaboration on all levels is necessary. As noted by Walter Binaghi, President of the Council of ICAO, at the twentieth anniversary of that organ, "aviation is so international in nature and marked by such rapid progress that national developments have to be followed very closely in order to establish realistic specifications and provide answers to world-wide or regional need . . . ." A long route still lies ahead in order to realize such a necessary uniformization in the technical, political, economic, and juridical fields.[44] This collaboration in air transport and the

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[43] Mankiewicz, *Aéronefs internationaux*, 1962 ANNUAIRE FRANCAIS DE DROIT INTERNATIONAL 685.

[44] Sand, *The International Unification of Air Law*, 30 L. & CONTEMP. PROB. 400 (1965).

unification of juridical systems governing this technology can be conceived and realized only in an atmosphere of mutual respect, assistance, and a desire to cooperate on all levels. In an age of conquest of the deepest layers of space, governments have a duty to accept the principle and reality of air transport subject to international norms and to collaborate in the standardization of rules which will govern aeronautics in an international perspective.