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DEVELOPMENT OF THE NATIONAL LEGISLATION ON AVIATION SINCE THE CHICAGO CONVENTION

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AFTER the signing of an international convention, especially one where legal problems are involved, States which have participated in its preparation, and have signed it, may be called upon to enact, either before or after ratification, laws or regulations in order to bring the provisions of the convention into force in their respective countries. Adhering States will be in the same position. Moreover in some cases signatory States which have been unable or which are unwilling to ratify the convention or adhere to it, and also other States which have not even participated in its preparation, may consider it advisable to have a legislative text based on the provisions of the convention. And, for some years, we have observed a large legislative movement to effect the introduction of the principles and provisions of new conventions in the national laws of a number of countries.

Such has been the case with the various conventions concerning aviation, *e.g.*, the Paris Convention relating to the regulation of Aerial Navigation (October 13, 1919), the Havana Convention on Commercial Aviation (February 20, 1928), certain conventions on private air law, such as the Warsaw Convention for the unification of certain rules relating to carriage by air (October 12, 1929). However, the influence of these conventions on the legislative activity of the States cannot be compared, either in size or importance, to the great influence of the Chicago Convention on International Civil Aviation (December 7, 1944).

(a) *Basic Air Laws in Force Before the Chicago Conference.*

Prior to the Paris Convention, air legislation was practically non-existent. It is possible to name in all Europe only a few, very short texts relating to limited subjects (right to fly, prohibited areas, licenses

of pilots).¹ In the United States, where aviation was not yet a matter of federal legislation, certain states, anxious to reduce the hazards of flight in the interest of their inhabitants, and disturbed by the possibility that their legal rights might be violated by the intrusion of unlicensed airmen, promulgated safety regulations.² In Asia, India has had, since 1911, an Aircraft Act (XVII of 1911). None of these texts had the character of basic law, nor covered all the legal problems connected with, or resulting from, air navigation.

In 1909, a group of European lawyers, members of the "Comité juridique international de l'Aviation" and aware of the necessity for the various states to adopt a uniform set of legal provisions on aviation, began to prepare a "Code de l'Air." Unfortunately, the Code was not completed before World War I. However, this effort was not without its influence on the further development of aviation legislation. During the war, in March of 1916, the countries of North and South America considered the same problem at the Pan American Aeronautical Conference of Santiago (Chile), and approved a recommendation in favor of a uniform code of laws on aeronautics. Matters to be covered were enumerated. However, nothing happened before the end of the war and the drafting of the Paris Convention.

The Paris Convention, the provisions of which were to be, for more than two decades, the guiding principles for most of the similar legislation of the world, was prepared during the Peace Conference of 1918-1920 by the representatives of 27 States of the five continents (the British Empire being counted as a single State). It was signed on October 13, 1919 on behalf of twenty-one States; three others thereafter acceded to it; three never signed, or acceded.³ During the long life of that convention, thirty-eight States have been parties to it, either by ratification, or by adherence.⁴

All these thirty-eight States, either before or after becoming parties

¹ In the United Kingdom, Aerial Navigation Acts of June 2, 1911 and February 14, 1913; in France, a decree of November 21, 1911, amended by another decree of December 17, 1913; in Germany, laws of 1910 and 1911 for Brandenburg, Bavaria and Prussia; in Austria, Ordinance of December 20, 1912; in the Netherlands, law of 1912; in Serbia, laws of February 2, and March 16, 1913.

² In 1911, Connecticut, Pennsylvania and California enacted Aviation Acts. In 1913, Massachusetts had an Aviation Law (ch. 663), which regulated the flight of aircraft.

³ Signatory States: Belgium, Bolivia, Brazil, British Empire, China, Cuba, Ecuador, France, Greece, Guatemala, Italy, Japan, Panama, Poland, Portugal, Rumania, Serbia, Czechoslovakia, Thailand, United States of America, Uruguay. Acceding States: Liberia, Nicaragua, Peru. Never signed, or acceded: Haiti, Hedjaz, Honduras.

⁴ Argentina, Australia, Belgium, Bolivia, Bulgaria, Canada, Chile, Denmark, Esthonia, Finland, France, Great Britian, Greece, India, Iran, Iraq, Ireland, Italy, Japan, Latvia, Norway, Netherlands, New Zealand, Panama, Paraguay, Peru, Poland, Portugal, Saar, Spain, Sweden, Switzerland, Thailand, Czechoslovakia, Uruguay, Yugoslavia. Prior to World War II, three States denounced the Convention: Bolivia, Chile and Panama, and two others disappeared as independent territories: Austria and Saar.

to that convention,⁵ promulgated laws and regulations;⁶ and many non-contracting States also prepared legislation based on the same principles.⁷ Such was the case of the "Air Code" enacted in 1932 by the USSR.⁸ Prepared in about three years by the Society for Aviation and Chemistry, it represents the first attempt to deal in a single text with most aviation problems. Divided into nine chapters (153 articles), it refers especially to air navigation matters, and contains a chapter on labor conditions, and certain provisions on liability. A number of regulations enacted in subsequent years have served to complete it.

It should be noted that the titles of most of the laws enacted during the twenties and thirties included the words ". . . for the regulation of air navigation," in accordance with the convention's title; that part of their contents which referred to air navigation particularly was divided into chapters corresponding to the Convention and its Annexes. As the Annexes were mandatory upon the contracting States, some of these States did not prepare detailed regulations, and only made reference to Annexes which had to be published without modification. With respect to the laws, while they were based on the same principles, they were lacking in uniformity, and the efforts of the "Comité juridique international de l'aviation" between the two World Wars to prepare a uniform "Code international de l'aviation" produced no real result. The Paris Convention contained no provision encouraging uniformity, or requesting the International Commission for Air Navigation

⁵ The Convention came into force on July 11, 1922.

⁶ List, in chronological order, of the laws and regulations enacted by States which were party to the Convention; in () is the date where they became party thereto:

Belgium	November 16, 1919	(1922)	Norway	December 7, 1923	(1931)
Canada	1919	(1922)	France	May 31, 1924	(1922)
Spain	November 25, 1919	(1934)	Czechoslovakia	July 8, 1925	(1923)
Austria	December 10, 1919	(1937)	Bulgaria	July 23, 1925	(1923)
Switzerland	January 27, 1920	(1934)	Argentina	September 4, 1925	(1936)
Australia	December 2, 1920	(1922)	Chile	October 17, 1925	(1926)
United Kingdom,			Latvia	June 17, 1926	(1937)
	December 23, 1920	(1922)	Yugoslavia	June 25, 1926	(1922)
India	1920	(1922)	Netherlands	July 30, 1926	(1928)
Ireland	1920	(1922)	Portugal	April 25, 1927	(1922)
New Zealand	Feb. 21, 1921	(1922)	Poland	March 14, 1928	(1924)
Japan	April 8, 1921	(1922)	Panama	May 4, 1929	(1929)
Sweden	May 26, 1922	(1927)	Uruguay	May, 1930	(1924)
Esthonia	March 8, 1923	(1938)	Bolivia	October 24, 1930	(1922)
Thailand	April 11, 1923	(1922)	Rumania	April 17, 1931	(1924)
Denmark	May 1, 1923	(1927)	Greece	June 3, 1931	(1922)
U. of S. Africa	May 21, 1923	(1922)	Peru	December 18, 1933	(1937)
Finland	May 25, 1923	(1931)	Iran	July 6, 1938	(1922)
Italy	August 20, 1923	(1923)	Iraq	August 6, 1939	(1922)

The texts of the above-mentioned laws, which are very difficult to find in national collections of laws, exist in French translation in the *Revue de la locomotion aérienne* (1910-1928), *Droit aérien* (1929-1931), *Revue générale de droit aérien* (1932-1939).

⁷ Chronological list of laws of non-contracting States, with the exception of laws of American States mentioned in Notes Nos. 9, 10 and 12:

USSR	January 17	1921	Turkey	September 9	1925
Lithuania	December 10	1921	Iceland	June	1929
Germany	August 1	1922	USSR Air Code of		1932
Hungary	December 30	1922	Egypt	May	1935

⁸ The text of the Code has been published in English in *Air Law Review*, Vol. 4 (1933), p. 164 and in French in the *Revue générale de droit aérien*, 1932, p. 417.

(ICAN) to collect national laws. Nevertheless, the Secretariat took the initiative of asking the States for their basic laws and regulations, and these were regularly received and published in the ICAN Information Bulletin. This activity was a stimulus for the preparation of national laws, especially in South America.

Colombia and Venezuela were the first American Republics to regulate aviation—as early as 1920.⁹ Three years later, the Fifth Pan American Conference (Santiago, 1923) noted that some American States had already signed the Paris Convention and recognized that its provisions “might serve for the preparation of an adequate legislation.” Nevertheless, as the Paris Convention met with certain objections from some States, among which were Brazil and the United States, the Conference decided to establish an Interamerican Commercial Aviation Commission, entrusted with the preparation of draft laws and regulations to be recommended to States, and also of a draft Pan American Convention on aviation. That commission did not meet until 1927, but Argentina, Brazil, Chile, and Salvador had, in the meantime, issued laws and regulations pursuant to the principles of the Paris Convention.¹⁰ In the United States, where, through the efforts of the Conference of Commissioners of Uniform State Laws, a Uniform Aeronautics Act had already been adopted in 1925 by ten States, the first federal Act on Aviation, popularly known as the “Air Commerce Act of 1926,” was enacted with the following title: “An Act to encourage and regulate the use of aircraft in commerce and for other purposes.”

The Commercial Aviation Commission, when it met in Washington in May 1927, did not prepare any set of laws or regulations, but only a draft convention, which, after consideration and approval by the Sixth Pan American Conference held at Havana, was signed on February 20, 1928.¹¹ During the discussions, it appeared that a certain degree of uniformity among the various aviation laws of the Americas was desired, at least with respect to certain matters, such as the rules for licensing of aircraft and pilots, rules for air traffic, types of documents for entry and clearance. Article 32 was inserted in the Convention to such effect; it reads as follows:

The Contracting States shall procure as far as possible uniformity of laws and regulations governing aerial navigation. The Pan American Union shall cooperate with the Governments of the Contracting States to attain the desired uniformity of laws and regulations for aerial navigation in the States party to this Convention.

Each Contracting State shall exchange with every other Contracting State within three months after the date of ratification of this Convention copies of its air traffic rules and requirements

⁹ Colombia, December 31, 1919, and March 15, 1920; Venezuela, June 16, 1920.

¹⁰ Argentina, September 4, 1925; Brazil, July 27, 1925; Chile, October 17, 1925; Salvador, May 17, 1923.

¹¹ Only passing mention need be made in this Article of the Ibero-American Convention signed in Madrid on November 1, 1926, which was practically without influence on the development of national legislation.

as to competency for aircraft commanders, pilots, engineers, and other members of the operating crews, and the requirements for airworthiness of aircraft intended to engage in international commerce.

Each Contracting State shall deposit with every other State party to this Convention and with the Pan American Union three months prior to the date proposed for their enforcement any additions to or amendments of the regulations referred to in the last preceding paragraph.

Immediately after the signature of the Havana Convention most of the American States which did not have any basic law on aviation hastily prepared draft texts; those in which an aviation law was already in force issued, as far as necessary, improving amendments.¹² At the opening of the Seventh Pan American Conference in 1933 at Montevideo, there were only two Republics (Costa Rica and Haiti) which did not then have any such law. However, with respect to uniformity, the situation was not so encouraging. In a very interesting comparative study of the laws and regulations governing aerial navigation, submitted to the Montevideo Conference,¹³ it was noted that "no organized effort appears so far to have been made to carry out the intention of Article 32, and each nation has, to a large extent, followed its own individual ideas in passing laws and regulations covering aerial navigation. It is recognized that a system of uniform national law adopted internationally is a novel suggestion; the airplane, with its speed of operation, has created a situation that cannot be treated with existing ideas."

After the Montevideo Conference, the American movement in favor of uniformity of air legislation did not stop. In 1933, Mr. Consentini, Director of the American Institute of Comparative Law and Legislation in Mexico City, published a Code of International Air Law which was widely distributed throughout the American Republics. This development received a new impetus in September 1937, when the International American Conference met in Lima and agreed to establish a Permanent Commission of American Aviation (CAPA)¹⁴ which was charged with the "gradual and progressive elaboration of the Aeronautical Code of the American States." The Commission was also empowered to make recommendations to States for the modification or amendment of their national laws or regulations which would not be in accord with approved standards. Although the CAPA never met, several American Republics reviewed their legislation during the subsequent years, and some enacted new laws before the Chicago Con-

¹² New laws: Cuba, April 21, 1928; Peru, April 1, 1929; Panama, May 4, 1929; Ecuador, August 1929; Nicaragua, August 31, 1929; Guatemala, September 5, 1929; Honduras, April 12, 1930; Uruguay, May and June, 1930; Mexico, June 30, 1930; Bolivia, October 24, 1930; Dominican Republic, February 12, 1932; Paraguay, March 17, 1932. Amending laws: Venezuela, July 16, 1930; Brazil, April 22, 1931; Chile, May 15, 1931 (final text of October 17, 1925); Panama, August 23, 1932; Peru, December 18, 1933.

¹³ Study made by Mr. Leland Hyzer, of Miami (Doc. of the Pan American Union).

¹⁴ Cf. *Revue aéronautique internationale*, 1937, pp. 340-368.

ference: Colombia and Brazil in 1938, Bolivia in 1939, Mexico in 1940, Uruguay in 1942, Nicaragua and Venezuela in 1944.¹⁵ These laws are still in force, except in Mexico and Venezuela whose laws were entirely revised in 1949 and 1955 respectively.

It should be noted that in Mexico those provisions which relate to aviation have been embodied since 1932 in a general law concerning all forms of communication: communications on land (railways and roads), communications on water (rivers and sea), aeronautical communications (67 articles), electric communications (telegraph, telephone, telecommunications, broadcasting), and mail services. The text of 1940 contains chapters on each of these various means of communication, and, in addition, two chapters of general applicability (one on penalties). Special mention should be made of the Brazilian and Uruguayan laws (called "Codes"); the former is to be considered as the first real Air Code promulgated in the world; the latter follows approximately the same pattern. They are divided into three parts: Public Air Law, Private Air Law, Violations and Penalties, and contain approximately the same number of articles (173 in the first, 184 in the second). Their provisions, placed in a logical order, cover not only air navigation matters, but also air transport subjects, including problems of liability for damage suffered by passengers and shippers, as well as by third parties on the surface.

As for the other continents, during the late thirties and prior to the Chicago Conference, very few new laws on aviation were promulgated. However, one should mention the publication in 1942 in Italy of a "Codice della Navigazione," which contains provisions relating to navigation on sea, rivers, and in the airspace. It was prepared by experts on maritime law, which was considered as the law applicable to any kind of navigation, and therefore to aviation, in the absence of any special provision. It is composed of a preliminary part of 14 articles applicable to all systems of navigation, of a complete maritime code (670 articles), of a code on air navigation (392 articles), and of a common part on penalties (234 articles). This Italian system was highly criticized, even in Italy. In other countries, only laws giving effect to the Warsaw Convention of 1929, and some regulations concerning the entry of foreign aircraft are to be found. There was in Europe—except perhaps in the Scandinavian countries—no trend comparable to the action of the Pan American Union towards uniformity; each State kept its legislation in harmony with technical progress through amended laws and additional regulations.

¹⁵ Colombia, *Ley sobre Aeronáutica Civil* (May 26, 1938), which supersedes laws of December 31, 1919 and March 15, 1920; Brazil, *Código do Az* (June 8, 1938), which supersedes the decree of July 22, 1925; Bolivia, *Reglamento sobre Tráfico Aéreo* (January 19, 1939), which supersedes a decree of October 24, 1930; Mexico, *Ley de Vías Generales de Comunicaciones* (February 19, 1940), which supersedes a law of August 29, 1932; Uruguay, *Código de Legislación Aeronáutica* (December 3, 1942); Nicaragua, *Ley de Aviación Civil* (June 13, 1944); Venezuela, *Ley de Aviación Civil* (June 13, 1944). During the same period, United States of America enacted the *Civil Aeronautics Act of 1938*, which repealed a number of provisions of the *Air Commerce Act of 1926*.

The States which had responsibilities in different continents (colonies, protectorates, mandates) extended—sometimes in a simplified form—their metropolitan legislation with a special delegation of power in order to meet local conditions.¹⁶

At the time when invitations were being sent out by the United States for the Chicago Conference, very few territories in the world were without legislation on aviation. In Europe there was only Luxemburg; in the Americas, Haiti; in Africa, Ethiopia and Liberia; in Asia, Afghanistan, Hedjaz, and China.

(b) *Basic Air Laws Enacted Since the Chicago Conference.*

The Convention on International Civil Aviation signed in Chicago on December 7, 1944 came into force on May 4, 1947. On that date, the International Civil Aviation Organization (ICAO) succeeded a Provisional Organization (PICAO) established by an Interim Agreement, signed also in Chicago and coming into force on June 6, 1945.

Neither the Convention nor the Interim Agreement contained any provision similar to Article 32 of the Havana Convention,¹⁷ having the effect of securing a certain degree of uniformity in the laws and regulations of all Contracting States, and of promoting the exchange of texts between these States. It is true that under Article 37 of Part I (Air Navigation) of the Chicago Convention, the Contracting States undertake

“to collaborate in securing the highest degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways, and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.”

But Article 38 permits deviations from adopted standards, and in addition, relates only to air navigation matters—only a part of the broad scope of the Chicago Convention.

Moreover, many articles of the Convention refer to national laws and regulations, and each Contracting State has the obligation of adopting measures ensuring that its aircraft will comply with the national laws and regulations of the other Contracting States when an aircraft of its nationality flies over or lands in these States.

In preparing for the coming into force of the Chicago Convention, the Interim Council of PICAO realized that it would be necessary to take inventory of the laws and regulations on aviation existing in at least those States which attended the Chicago Conference. The ICAN Information Bulletin previously referred to was suspended during the War, as well as the publication of the air law periodicals. As a result,

¹⁶ e.g. Decree of February 13, 1933 for the Dutch Indies; Dahir of October 1, 1928 (Morocco); Decree of February 8, 1935 for Tunisia; Decree of March 9 for Togo and Cameroon; Colonial Air Navigation (Application of Acts) Order 1937 for most of the British Colonies; Protectorates and Mandated Territories; Decree of Mai 11, 1928 for French Colonies.

¹⁷ See page 7.

upon the recommendation of an *ad hoc* Legal Sub-Committee, the ICAO Council agreed, on November 23, 1945, "that it was desirable to make a collection of national aviation laws" and instructed the Secretary General "to obtain the aviation laws of all countries of the world and any papers or studies that may have been published with respect thereto, which the Secretary General considers necessary or desirable."

A very short preliminary list of national aviation laws,¹⁸ prepared by the Secretariat from the scarce sources available in Montreal, was sent in October 1956 to the fifty-four States which had participated in the Chicago Conference, with a request for correction either by addition of new matter, or by deletion of laws which had superseded; twenty States did not even acknowledge the letter. Fortunately, the Archives of the International Commission of Air Navigation in Paris, and the collection of texts published in Italian before World War II by the Government of Italy made it possible to prepare a more complete list, which was distributed with the documentation of the first ICAO Assembly (May 1947).¹⁹

Most of the laws listed in that document, or at least some of their provisions, were entirely obsolete, *e.g.*, the specific references to the Paris Convention and its Annexes. To replace the system of the Paris Annexes and their amendments, which automatically came into force, it became necessary for the States to designate an authority having the power to issue regulations; and the entire system of administration and control of civil aviation, which in the past had very often come under military jurisdiction, was to be revised in order to take into account the prospective development of aeronautics.

The ratification of the Chicago Convention and the drafting of legislative measures necessary to put it into effect obliged the States to reconsider the contents of their basic laws; they rapidly became convinced that these laws should be revised. In some countries, the successive additions or amendments to their original laws and the abrogation of parts thereof had rendered their air legislation so complicated and so intricate that it became obvious that a kind of systematic codification would be necessary.

From 1947 to the beginning of 1957, *i.e.*, in the last ten years, twenty-five entirely new basic laws have been enacted (twelve during the years 1948 and 1949), and seven old laws have been amended. There follows a list of the new laws, year by year.

- 1947: *Spain*, Ley de Bases de la Navegación Aérea (December 27)
 1948: *Luxemburg*, Loi relative à la réglementation de la navigation aérienne (January 31)
New Zealand, Air Aviation Act (August 26)
Guatemala, Ley de Aviación Civil (October 28)
Switzerland, Loi fédérale (December 21)

¹⁸ PICA0—Doc. 2146, AT/141, October 15, 1946.

¹⁹ ICAO—A1-Le/11, May 1, 1947.

- 1948: *Lebanon*, Civil Aviation Law (January 11)
Dominican Republic, Ley sobre Navegación Aérea (January 19)
Yugoslavia, Decree relating to air navigation (June 1)
Iran, Law of civil aviation (July 19)
Costa-Rica, Ley General de Aviación Civil (October 18)
United Kingdom, Civil Aviation Act (November 24)
Syria, Law regulating air transportation and navigation (November 28)
Mexico, Ley de Aviación Civil (December 27)
- 1950: *Ceylon*, Air Navigation Act (March 29)
Honduras, Ley de Aviación (May 14)
- 1952: *Philippines*, Civil Aeronautics Act (June 20)
Japan, Civil Aeronautics Law (July 15)
- 1953: *China* (Taiwan), Civil Aeronautics Law (May 30)
- 1954: *Belgium*, Arrêté royal réglémentant la navigation aérienne et fixant l'entrée en vigueur de la loi du 27 juin 1937 (March 26)²⁰
Argentina, Ley No. 14307, Código Aeronáutico (July 15)
Thailand, Air Navigation Act (September 1)
Cuba, Ley Decreto (December 27)
- 1955: *Venezuela*, Ley de Aviación Civil (April 1)
El Salvador, Ley de Aeronáutica Civil (December 22)
- 1956: *Afghanistan*, Civil Aviation Act (March)

The pre-Chicago laws which have been amended in order to meet the obligations deriving from the Convention are those of the following States:

- Australia*, Air Navigation Act 1920-1950.
Canada, Aeronautics Act 1952 (Ch. 2 and 302).
Iceland, Air Traffic Law 1929 (revised by law of May 17, 1947).
Ireland, Air Navigation and Transport Acts, 1936 to 1950.
Pakistan, Aircraft Act 1934, as amended up to 1950.
Union of South Africa, Aviation Act 1923, as amended in 1946.
United States of America, Air Commerce Act of 1926 (Section 6), as amended August 1953.

In France, no modification of substance has been made in the basic law of 1924, but, in accordance with a general program of codification of legal texts, the codification of laws relating to aviation was undertaken in 1953. Provisions of the law of 1924, as well as of twenty other laws or ordinances, have been incorporated in a "Code de l'aviation civile et commerciale" promulgated by decree dated November 30, 1955.²¹

Consequently, at the beginning of 1957, the only States of the world that still had pre-Chicago laws unaffected by the Convention were: Austria, Bolivia, Brazil, Bulgaria, Burma, Cambodia,²² Chile, Colom-

²⁰ That law, prepared in the thirties to take the place of the basic law of November 16, 1919, was promulgated on June 27, 1937, but did not come into force until March 26, 1954.

²¹ See in this issue an article on the French Codification, page 24.

²² Cambodia, Laos, Morocco, Tunisia, Vietnam have still laws dating from the time when they were part of the French Union.

bia, Denmark, Egypt, Ecuador, Finland, Germany, Greece, India,²³ Indonesia, Iraq, Israel, Italy, Jordan, Laos,²² Lybia, Morocco,²² Netherlands, Nicaragua, Norway, Panama, Peru, Poland, Portugal, Rumania, Sudan, Sweden, Czechoslovakia, Tunisia,²² Turkey, USSR, Uruguay, Vietnam.²²

The following States have no basic aviation law at all: China, (Peiping), Ethiopia, Haiti, Liberia, Paraguay, Saudi Arabia, South Korea.

However, most States in these two groups are preparing either new or revised laws.

The enactment in the course of ten years of new or revised basic laws by thirty-two States—among the seventy that are parties to the Chicago Convention is certainly a great achievement. However, is it possible to detect in this activity some trend towards uniformity? Unfortunately, the laws of these thirty-two countries are far from being uniform with respect either to their length, their format and divisions, or their content.

The length of these laws varies from five articles (Australia) to 329 articles (El Salvador). The Acts prepared in accordance with the British technique are relatively short. The European laws, and those prepared in other countries in accordance with the same method, rarely have more than one hundred articles (the new French Code, with its 198 articles, is an exception). The Latin-American laws generally contain more than one hundred articles (the Cuban law, with its twenty-four articles, is also an exception).

The lengthy laws are often divided into Parts, Chapters, or Sections, but they do not necessarily present the various subject matters in the same order, and the provisions of the shorter laws are not always placed in a logical order.

The Australian Act, the shortest one, is essentially a text designating an authority with power to issue regulations. The other laws also contain delegations of authority, and, in addition, more or less different provisions covering various subjects.

Some of the additional provisions cover the organization, or administration of civil aviation, and also establish, besides a Ministry, or a Department of Aviation, another authority such as the Civil Aviation Council in Afghanistan, the Air Transport Board in Canada, the Comision de Aeronáutica Civil in Cuba, the Civil Aviation Board in Iran, the Civil Aeronautics Board in the Philippines, the Commission de la Navigation Aérienne in Switzerland, the Civil Aviation Board in Thailand, the Civil Aviation Advisory Committee in the Union of

²³ India is still using the Air Manual, which contains laws and regulations on aviation. In the last revised edition, corrected up to 1952, which is available in Montreal, Sect. 4 refers to "power of central government to make rules to implement the Paris Convention of 1919" (no mention of the Chicago Convention). The similar Air Manual used by Pakistan contains the same Aircraft Act 1934, but the corresponding provision has been amended in the edition of October 26, 1950, to read "to make rules to implement the Chicago Convention."

South Africa, and the Air Transport Advisory Council in the United Kingdom.

The scope of very few laws is limited to air navigation matters. The only laws thus limited are those of Afghanistan, the Dominican Republic, Iran and Thailand. The other laws also cover air transport matters, with provisions—more or less detailed—relating to liability for damages to third parties on the surface, and sometimes to passengers and cargo.

Certain laws deal with specific problems, such as: nuisance and trespass (New Zealand, Union of South Africa, United Kingdom); births and deaths on board (Argentina, Belgium, Iran, Mexico, Venezuela); carriage of narcotics (Venezuela).

A specific reference to the Chicago Convention exists only in the laws of Afghanistan, Australia, Ceylon, Costa Rica, Japan, New Zealand, Pakistan, Thailand, and the United Kingdom. A provision on sovereignty over air space—a common provision in pre-war laws—appears only in the laws of Afghanistan, Argentina, Costa Rica, Guatemala, Honduras, Iran, Lebanon, Mexico, Syria, United States of America, and Venezuela.

Finally, all the laws—except some in the British group—pay particular attention to violations and penalties; for instance, in the laws of Belgium and Luxemburg, three quarters of the articles are devoted to that question.

Such a rapid survey of these new laws will be enough to show how they differ from one another, and how great are the difficulties encountered by lawyers and scholars engaged in a comparative study of aviation legal problems. Nevertheless, it would be unfair to leave unmentioned some family resemblances which exist between some of these laws.

The laws of Belgium and Luxemburg are almost identical; these two member-countries of Benelux are accustomed to harmonizing their legislation.

The laws of two neighboring countries of the Middle East, Lebanon and Syria, are also very closely related.

The Philippines Act is partly a copy of the USA Civil Aeronautics Act of 1938.

The laws of the British group also have some similarity to each other.

While it is not the purpose of this article to consider in detail each of the above-mentioned laws, nor to determine what should be the contents of an ideal aviation law, it would nevertheless be of interest to devote some attention to three particular laws, prepared in three States of different legal cultures, the Ceylon Act, the Swiss law and the Salvadorean law, each one written in an official language of ICAO, English, French, and Spanish, respectively.

The Ceylon Act (1950) was drafted in the customary British style, but its contents are more comprehensive than in the other Common-

wealth Acts. It embodies the Air Navigation Act (1920-1947) with the necessary modifications, the Carriage by Air Act (1932), and some other matters. It contains forty-one Sections divided into six parts, namely:

- I. Air Navigation (power to give effect to the Chicago Convention and Annexes and to regulate Air Navigation; nuisance on aerodromes; trespass, nuisance and responsibility for damage; establishment of aerodromes, obstructions near aerodromes; dangerous flying; investigation into accidents; wreck and salvage; infringement of patents, exemption from seizure on patent claims; powers in case of emergency).
- II. Additional provisions applicable to Civil Aviation (requirements for air transport undertakings; use of customs aerodromes; licensing of air transport in commercial flying).
- III. Carriage by Air (Warsaw Convention to have force of law; actions against Governments which undertake carriage by air; extension to carriage by air which is not international).
- IV. Administration (Director of Civil Aviation; delegation of powers by Minister; various administrative provisions).
- V. Regulations and Orders (power to make regulations; detention of aircraft; publication of regulations and submission thereof to Parliament).
- VI. Miscellaneous (jurisdiction, offences, penalties, definitions, repeals).

The "Loi fédérale sur la navigation aérienne" (December 21, 1948) was very thoroughly studied by the Swiss lawyers and the Federal Assembly. It is a very fine example as a legal text on aviation. It contains one hundred eleven articles divided into four parts:

- I. Principles and basis of air navigation:
 1. Airspace and earth surface (sovereignty over airspace and consequences, use of airspace, ground installations).
 2. Aircraft and airmen.
- II. Legal relations resulting from air navigation:
 1. Civil liability towards third parties.
 2. The law of air transport.
 3. General provisions on civil liability.
 4. Attachment of aircraft prior to judgment.
 5. Violation and penalties.
- III. Development of air navigation (subsidies, participation, etc.).
- IV. Scope of the law (radiocommunications, customs, military aircraft, etc.).

The Salvadorean "Ley de Aeronáutica Civil" of 1955 is the most complete existing law on aviation.²⁴ It gives effect not only to the Chicago Convention, but also to the Warsaw, Rome and Geneva Conventions. In its preparation, the Air Code of Brazil, the Law on Communications of 1949 of Mexico, the Law of 1947 of Spain, the Code of Navigation of Italy, the Civil Aeronautics Act of 1938 of the United States, and the Draft Code of Chile of 1944 were taken into consideration. It contains 329 Articles divided into three parts, which do not have titles.

²⁴ Chapters deal, for the first time, with agricultural aviation, and also with aerial work, educational and scientific aviation.

Part I deals with: sovereignty; administration, Department of Aviation; aircraft (classification, nationality, legislation, airworthiness), aeronautical register; personnel licenses; air traffic; commercial operations; ancillary services; aerodromes; services of public air transport (certificates, special permits) private services; agricultural aviation; clubs, schools and manufacturers; investigation of accidents.

Part II deals with: contract of carriage by air; legal status of aircraft commander; sale and lease of aircraft; mortgages; civil liability (damages to passengers, luggage and cargo, damages to third parties; general provisions).

Part III concerns violation and penalties.

(c) *Assistance in the Preparation of New Basic Air Laws.*

Whatever the merits of these different laws as regards uniformity, overhauling of obsolete legislation has never been an easy task. States must overcome a number of difficulties, either in the preparation of the draft, or in trying to reduce the customary delays involved in discussions within governmental agencies and in Parliaments. Fortunately, the increasing interest in aviation all over the world has a stimulating effect on lawyers, officials and parliamentarians, and there is also the permanent influence exercised upon governments by the International Civil Aviation Organization, either on the occasion of intergovernmental meetings, or through special visits made to the various countries by the ICAO regional representatives.

The main difficulty encountered by most governments in the preparation of an aviation law is the lack of competent personnel. With the exception of some leading States in aviation, the specialized Department of Aviation is generally composed of one single lawyer in charge of all legal affairs. It is therefore difficult for him to devote weeks or months of uninterrupted work to a special project. In recent years, that difficulty has been overcome by regional cooperation, and by assistance given to States by the International Civil Aviation Organization.

The similarity between certain laws already mentioned is the result of regional cooperation, but the initiatives of the Scandinavian States and the Central American States deserve particular attention.

Soon after the ratification of the Chicago Convention by Sweden, the revision of the Swedish basic law was undertaken in cooperation with Denmark, Norway, Finland, and Iceland. A preliminary draft was prepared for consideration by the national committees established in the different countries. The results of their internal discussions were examined at several conferences attended by legal experts, and also by specialists when necessary. Regulations for the application of the basic law were prepared at the same time. The draft law in its final form is now going through the constitutional channels of each particular country.²⁵

In Central America, the Directors of the Civil Aeronautics Departments of the five Republics (Guatemala, Honduras, El Salvador, Costa

²⁵ See, in the same issue, the article of M. Torsten Nylén, page 36.

Rica, Nicaragua) and of Panama, who had been meeting from time to time since 1951 in order to discuss problems of common interest, decided, at their Third Conference held in Panama (April 14-17, 1953), to revise their legislation and to prepare a basic uniform air law draft. To such effect a Legal Commission was established, and, during the first session held in Tegucigalpa (September 21-29, 1953), a preliminary draft of a Law on Civil Aeronautics was discussed and circulated among the governments. The draft was revised at a second session of the Commission (Managua, February 1954). The final draft was considered by the Fourth Conference of Directors, who met in Managua from July 15 to 20, 1954, with the attendance, as observers, of representatives of Mexico and of ICAO; the Legal Adviser of an ICAO Mission in El Salvador acted as technical adviser of the Conference. After reconsideration by a Legal Commission of the Conference, the text of the draft "Codigo de Aviacion Civil" was approved and attached to the Final Act of the Conference.²⁶ A special resolution of the conference recommended its adoption by the States of the Central American isthmus "with the indispensable adjustments in order to fit the Constitution of each country, but maintaining as far as possible the format and the principles of the Code in order to obtain the maximum of uniformity in the Central American air legislations." The draft code has already been used for the Salvadorean Basic Law, and, in the near future, will be adopted by other Republics; it contains 269 articles divided into three parts which correspond more or less to the divisions of South American Codes like the Brazilian and Uruguayan Codes; however, the parts have no title, while in the latter Codes, they are called: Public Law, Private Law, and Penalties.

In bringing up to date their obsolete laws, States party to the Chicago Convention, and some others, have received assistance from the International Civil Aviation Organization. The Legal Bureau has constantly encouraged States to revise their laws and regulations in order to achieve conformity with the Convention and its Annexes; texts of newly enacted laws have been distributed²⁷ and advice has been given on request. However, the really effective guidance in this field has been given by the ICAO services of Technical Assistance and its missions on the spot. Fourteen States have had, or still have, the benefit of the advice of ICAO missions and, in some cases, of specialized lawyers attached for a limited time to the mission.²⁸ The basic laws of El Salvador, Thailand, and Afghanistan are already the result of the work accomplished by these missions.

²⁶ Acta Final de la Cuarta Conferencia de Directores de Aeronáutica Civil de Centro-América y Panamá (Managua, Julio de 1954). Imp. Editorial "Novedades," Managua.

²⁷ Unfortunately the new laws are not published and distributed by ICAO, as they were by ICAN.

²⁸ These lawyers, although they are highly qualified, do not necessarily possess an identical legal training, and they do not always work in accordance with similar practices in legislative drafting; the final result would perhaps not be as uniform as when assistance is given on a regional basis.

A further, not inconsiderable difficulty in the enactment of a new law without unreasonable delay resides in the necessity of obtaining the approval of other interested governmental agencies, and also in the customary length of the parliamentary phase, especially when the legislative bodies are not in continuous session, or hold only one session a year. An average of three years is the usual interval of time from the initial preparation of the draft up to the promulgation of the law, but may be and often is much longer. For example, in Argentina, apart from a comprehensive set of resolutions in force since 1925, there was no basic law up to recently: since 1923, at least half a dozen draft basic laws have been prepared, but never were discussed in the Parliament;²⁹ in 1950, a draft was prepared by the "Instituto de Derecho Aeronáutico de la Nación," a body of eminent lawyers; it was submitted to the Chamber of Deputies in 1951 and approved by the "Congreso Argentino" as "Codigo Aeronáutico" on July 15, 1954. In Chile, a "Codigo Aeronáutico" has been under preparation since 1938; two successive drafts were sent to the Chamber of Representatives in 1941 and in September 1944; the first one was withdrawn by the Administration; the second one was approved by the Chamber in September 1947, and submitted to the Senate; but the recent coming into force of the Chicago Convention has necessitated a number of modifications. A new draft was presented to the "Congreso Nacional" in 1952 and is awaiting approval.³⁰

The draft prepared with the help of the ICAO Technical Assistance Mission in El Salvador received better treatment. The Legal Adviser of the Mission, who is a lawyer of Latin-American training, prepared, in the late months of 1953, a draft law which was submitted to the Government in January 1954. A comprehensive introduction explained the reasons for such a law, and the sources of its 336 provisions. After the Conference of Managua in July 1954,³¹ the draft was revised, discussed at length with the various authorities, and a draft "Ley de Aeronáutica Civil" (not a "Codigo") was submitted to the Congress on June 29, 1955. In less than six months it was adopted. Two special Committees of the Congress considered the draft very carefully, and their reports were ready on October 26. Public discussion in full session lasted about five weeks. The ICAO Legal Adviser acted as an adviser to the Congress.³² On December 2, a text of 329 Articles was approved by the Congress and published in the "Diario Oficial" on December 23, 1955. It is interesting to note that, in the course of development of that law, regulations also prepared by the Mission were issued—in particular a Presidential Decree on crop-dusting, which came into force on September 2, 1954. The same text was enacted in

²⁹ Cf. Hector A. Perucchi, *Proyectos de Leyes Aeronáuticas en la Republica Argentina*. Buenos Aires, 1951.

³⁰ Cf. Eduardo Hamilton, *Manual de Derecho Aéreo*. Santiago, 1950.

³¹ See note 26.

³² It should be noted that Representatives of Airlines and of the Association of Pilots were authorized to present arguments before the Congress in full sessions.

Nicaragua on September 3, 1954. Regulation of this activity is of great importance to these agricultural countries.

(d) *Basic Air Laws Under Preparation.*

The great effort towards the renovation of obsolete legislation on aviation is still at work, but it may be said that the final objective is in view, at least in thirty-two States. A short description of the stage of preparation or approval of the laws will complete the picture of the air legislation development since the Chicago Conference.

A. *Africa*

Ethiopia—Ethiopia has neither law nor regulation on aviation. The efficient ICAO Technical Assistance Mission concentrated its efforts on the technical aspects of aviation. However, although the mission acted without benefit of lawyer, a short draft of basic law was prepared and submitted to the Government as early as 1950. After translation in Amharic, the draft is still before the Legislative Council. The same project has been used by the Technical Assistance Mission in Afghanistan, where a Civil Aviation Act was enacted in 1956 on a similar basis.

Liberia—There is no Aviation Department proper, or law on aviation; for a few months past, regulations have been in preparation in order to bring the ICAO Annexes into force.

Lybia—Theoretically under the Constitution, certain pre-war Italian air regulations appear still to be in force. In 1954, an excellent lawyer was sent to Lybia as Technical Assistance expert; a preliminary draft was attached to a report, and, after several months of discussion with the Lybian officials, a final draft was approved in 1956. However, the law is not yet in force, because of certain difficulties of translation into Arabic. Some regulations have also been prepared by the Technical Assistance Mission; it appears that they are informally observed although not effectively in force, in the absence of a law giving authority for their issuance.

Sudan—In the Sudan, which became an ICAO member on July 29, 1956, certain air regulations are in force which date from the period of the Anglo-Egyptian *condominium*. However, a Civil Aviation Act has been in preparation since 1953, and an ICAO Technical Assistance legal expert will probably be sent to Sudan in the near future.

Union of South Africa—An Aviation Act of 1923, as amended by an Act of June 14, 1946 is still in force.³³ The Act of 1923 refers to the Paris Convention of 1919, the text of which is attached thereto. The amending Act of 1946 refers to the Interim Agreement, and to the Air Transit Agreement, but not to the Chicago Convention. The authorities of the Civil Aviation Department are presently revising the laws and regulations, in order to adapt them to the Chicago Convention and its Annexes.

³³ See *South African Law Review*. Vol. 71 (1954), p. 190.

B. *The Americas*

Bolivia—A “Reglamento” of 1939 is still in force. The lawyer for the Aeronautical Administration has prepared, on the basis of the various laws and codes of South America, a “Codigo Boliviano de Aeronáutica Civil” (358 articles), which is under study by the government.

Brazil—According to recent information, studies are under way in order to review and, if necessary, to revise the “Codigo do Ar.”

Chile—It is hoped that the long expected “Codigo” will be approved in the near future by the “Congreso.”

Colombia—The Civil Aeronautical Law of May 26, 1938 is still in force. A draft of a new law has been under study since 1953, and, when completed, will be presented to the National Congress. A “Manual de Reglamentos,” initiated in 1948 by an efficient Director of Colombian Aviation in order to cover all ICAO Annexes, has never been completed.

Costa Rica—The country has a relatively new law dating from October 18, 1949.⁸⁴ Nevertheless, pursuant to the recommendation of the Managua Conference, a new Aviation Law has been in preparation since 1956, with the assistance of the legal adviser of the ICAO Mission in El Salvador.

Ecuador—The law in force dates back to 1936, regulations concerning only technical matters were issued in 1954. A “Proyecto de Codigo Aeronáutico, 1956 (204 articles), was prepared by the legal experts of the Ecuadorian Aviation, with the assistance of an American Mission.

Haiti—A former member of the Institute of International Air Law of McGill University, Montreal,⁸⁵ is presently working on an Aviation Law and a set of regulations, based on the Chicago Convention and its Annexes.

Honduras—Honduras, like Costa Rica, has a recent law (March 14, 1950). However, pursuant to the recommendation of the Managua Conference, a draft new law is in preparation, with the assistance of the legal adviser of the ICAO Mission in El Salvador. The representative of Honduras at the last ICAO Assembly (Caracas, June 1956) announced that the law will be enacted in the near future.

Nicaragua—The present law is a pre-Chicago text (June 13, 1944) and concerns only air navigation matters; the draft code recommended by the Managua Conference is likely to be approved.

Panama—A law of 1929, completed by two decrees of August 23, 1932 and January 19, 1937 is in force in the country, which is not yet a member of ICAO. A new Civil Aviation Law is in preparation, with the assistance of the ICAO legal adviser of the Mission in El Salvador.

⁸⁴ Article 139 of that law prescribes a provisional application of the United States Regulations and Standards, pending the enactment of other Rules.

⁸⁵ Lectures are delivered at the Institute on national laws and their preparation.

Paraguay—In September 1953, a Commission was appointed by the Minister of Defense for the drafting of a basic aeronautical law. The subsequent reorganization of the Civil Aviation Administration has given new life to the project; the draft has just been completed and will be submitted to the Congress sometime in 1957.

Peru—The law in force is a decree of December 18, 1933. During the Summer of 1956, a special Commission was entrusted with the drafting of a "Ley General de Aviacion Civil y Comercial." The legal adviser of the ICAO Technical Assistance Mission in Central America was recently called in consultation, and it is probable that the new law will follow the basic law of the Central American States.

C. *Asia*

Burma—An Aircraft Manual similar to those existing in India and Pakistan is still in use in Burma. No revision has been made. The Union of Burma Aircraft Act of 1934 is based on the provisions of the Paris Convention of 1919. The regulations in force date back to 1937, even to 1920. A very able lawyer has been sent to Burma by the ICAO Technical Assistance Service in order to study the modifications necessary to bring the Manual up to date. Burma, which has already adopted the regulations of the World Health Organization, is anxious to have adequate provisions in the aviation field as well.

Indonesia—The Dutch legislation dating from 1936, and still in force, fortunately gives to the Chief of Civil Aviation the necessary authority to make and enforce regulations on air traffic. An ICAO Technical Assistance Mission is preparing, in cooperation with the government, an Indonesian Air Law and Regulations, which will probably be based on other Asiatic models, such as the Japanese Law.

Israel—The texts in force are the United Kingdom Air Navigation Act of 1920, and the Air Navigation (Colonies, Protectorates, and Mandated Territories) Order of 1934, as amended in 1937, which are based on the Paris Convention, and were incorporated in the legislation of Israel when it became an independent State. The ICAO Technical Assistance Mission prepared in 1953, without the help of a legal expert, a draft Civil Aviation Act, which was submitted to the authorities. The mission also prepared technical regulations based on the Chicago Convention and its Annexes, but a basic law seems necessary to give a legal basis to the regulations.

Jordan—A draft law and regulations were prepared in 1952 by a British expert. They were translated into Arabic, studied by the authorities, and will probably reach Parliament in the near future.

Lebanon—An excellent lawyer, provided by the ICAO Technical Assistance Service, is presently working on a new law and regulations.

Pakistan—The amendment to the Aircraft Act of 1934, inasmuch as it referred to the Chicago Convention, has not been considered sufficient. A new Civil Aviation Act has been under study since 1951.

It will be based on the United Kingdom Civil Aviation Act of 1949, *i.e.* it will refer to Air Navigation matters. The Carriage by Air Act of 1934 will remain in force.

D. Europe

Austria—There is practically no law on aviation, except a text of 1951 concerning competencies in aviation matters. A draft law, which has been in preparation for three years, will give legal effect to the implementation of ICAO Annexes.

Greece—The law of 1931 is still in force. Since 1949, a "Legal Commission for the Codification of the Greek Air Law" has been working on the new law. That Commission, which is composed of eminent Greek lawyers, will complete its work in the near future.

Italy—A Commission has been established for the revision of the "Codice della navigazione." It would be premature to say whether the Code will remain as it is, or the aviation matters will constitute a separate document.

Scandinavia—The new laws prepared by the legal experts of the five governments (Denmark, Finland, Iceland, Norway, Sweden) will be very comprehensive, and replace a number of laws and regulations that are completely obsolete. The first law to be issued will probably be the Swedish Act, which is expected to come into force by January 1, 1958.³⁶

Turkey—The only source of Turkish air law is a "Regulation of Air Navigation" of September 9, 1925. Soon after the ratification of the Chicago Convention, the Ministry of Communications established a Commission entrusted with the preparation of a draft law on aviation. The draft so prepared was quite complete.³⁷ Some time later, an ICAO Technical Assistance Mission was sent to Turkey, with a legal expert. That Mission does not seem to have been successful in the preparation of a basic law. Recently, a new draft, conceived in general terms, has been under study and will be submitted to Parliament.

CONCLUSIONS

From the preceding general survey of the development of national basic laws, it is possible to foresee what form of legislation will predominate in the future. Will it be the simpler one, essentially consisting of a delegation of power for the issuance of regulations, or the more or less elaborate one, containing specific provisions relating to air navigation, air transport, and other matters?

These two concepts have been discussed by many governments during their preparation of new laws. The advantages and disadvantages of both were carefully weighed. For example, in Japan, after a long discussion, it was agreed that a law with detailed provisions was more

³⁶ See Article of Mr. Torsten Nylén in this issue, page 36.

³⁷ See Nasir Zeytinoglu. *Etude de droit aérien turc*. Lausanne, 1951; and *JOURNAL OF AIR LAW AND COMMERCE*, Vol. 23 (1956), pp. 379-478.

adequate, because matters affecting the rights and obligations of the people should be fully covered by a law.

It seems that the simpler form will be progressively abandoned, in spite of the fact that this form permits keeping the necessary regulations up to date, without the necessity for submitting to a Parliament the frequent modifications which come about as a result of the progress of aviation.

At the same time, the form of "Code" is making more and more progress; that form which existed before Chicago only in the USSR, Brazil and Uruguay, is now used either under the name of "Code" as in Argentina, Chile, Bolivia, Ecuador, and Central America, or under the name of "General Law on Aeronautics." The French new Code, incomplete as it may be, is an illustration of the same tendency.

When all the laws now in preparation or revision have been completed—probably in a year or two—a further stage in legislative development on aviation matters will have been accomplished; and the number of States still having pre-Chicago laws or no laws at all will be largely reduced. For example, among the fifty-four States which took part in the Chicago Conference, only eight of them — including four which at present have a seat in the ICAO Council — will not yet have modified their laws.

With respect to uniformity, some progress is also expected, at least regionally; it is probable that the Latin-American countries, which have been so anxious, since 1916, to arrive at real uniformity, will devote attention to the latest achievement in this field. The International Civil Aviation Organization will certainly continue to provide States all over the world with the necessary help, either through its legal officers or the lawyers attached to Technical Assistance Missions.

It is therefore hoped that in the near future all the States parties to the Chicago Convention, and perhaps some others, will have a modern and up-to-date basic Aviation Law.

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