

AIRCRAFT AND
AIR NAVIGATION FACILITIES
IN LATIN AMERICA

GOVERNMENT REGULATION OF AIRCRAFT
AND AIR NAVIGATION FACILITIES
IN LATIN AMERICA

by

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To my Parents
my Wife Margery
my Brother Edgar

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As required by the Faculty of Graduate Studies and Research, it is declared herewith that the preparation of this thesis is entirely the work of the author, and was done without assistance beyond the normal direction provided by members of the Faculty of the Institute.

SUMMARY

On October 1974, the Latin American Civil Aviation Commission decided to initiate a detailed study of the Civil Aviation Legislation in the region. The purpose of this exercise was to unify the law relating to aviation as a major legal contribution to the already existing traditional and identical legal systems.

The doctrinal and legislative analyses in this dissertation therefore deals with the law pertaining to aircraft and air navigation facilities in Latin America, and discusses the relationship of these regulations to the Chicago Convention and the position of each individual Latin American state in relation thereto. Some broad suggestions have been put forward on the method arriving at uniform law in the Latin American region and the practicability of these solutions in the field of Air Law.

Hopefully, the review of the drawbacks and advantages of the Latin American Civil Aviation Legislation would contribute to a further modification of the law in this area to the benefit of the whole region.

SOMMAIRE

En Octobre 1974, la Commission Latino-américaine de l'Aviation Civile décida d'entreprendre une étude détaillée de la législation régionale sur l'aviation civile.

Le but de cette entreprise résidait dans l'unification de la loi relative à l'aviation en vue d'apporter une contribution juridique d'importance primordiale aux systèmes juridiques traditionnels et similaires en vigueur.

L'analyse doctrinale et législative dans cette thèse porte donc sur la loi relative aux aéronefs ainsi qu'aux facilités de navigation aérienne en Amérique latine, et envisage le rapport entre ces réglementations et la Convention de Chicago, de même que la position de chaque état Latino-américain dans le même contexte.

Certaines suggestions à caractère général ont été avancées concernant la méthode qui assure l'unification du droit en Amérique latine, ainsi que le caractère pratique de ces solutions dans le domaine du droit aérien.

Il faut espérer que la révision des faiblesses comme des points forts de la législation Latino-américaine sur l'aviation civile résultera en une amélioration marquée de ce domaine au bénéfice du régime d'ensemble.

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ABBREVIATIONS

ABAJ	American Bar Association Journal
ALR	Air Law Review
ASDA	Association Suisse de Droit Aerien et Spatial
CLP	Current Legal Problems
CYIL	Canadian Yearbook of International Law
DSB	Department of State Bulletin
IASL	Institute of Air and Space Law
ICAO	International Civil Aviation Organization
ICAN	International Commission for Air Navigation
IDA	Il Diritto Aereo
IDAeI	Instituto de Derecho Aeronautico e Interplanetario
IDAN	Instituto de Derecho Aeronautico de la Nacion
IFTA	Institut Français du Transport Aérien
ILA	International Law Association
ITA	Institut du Transport Aérien
ITA (Boletin)	Instituto Tecnológico de Aeronautica
JAL	Journal of Air Law
JALC	Journal of Air Law and Commerce
JRAS	Journal of the Royal Aeronautical Society
OAS	Organization of American States
RBDA	Revista Brasileira de Direito Aeronautico
RFDA	Revue Française de Droit Aérien
RGA	Revue Générale de l'Air

RGAE	Revue Générale de l'Air et de l'Espace
RGDA	Revue Générale de Droit Aérien
RGDIP	Revue Générale de Droit International Public
RIDA	Revista del Instituto de Derecho Aeronautico
SGAC	Secrétariat Générale à l'Aviation Civile
SOVEDAE	Sociedad Venezolana de Derecho Aeronautico y Espacial
UNAH	Universidad Nacional Autonoma de Honduras
UNAM	Universidad Nacional Autonoma de Mexico
UNIO	United Nations Information Office
YASL	Yearbook of Air and Space Law

INDEX OF LEGAL TEXTS

ARGENTINA	Aeronautical Code, May 17, 1967.
BOLIVIA	Decree regulating Air Service in the Republic, October 24, 1930. Regulations for Air Traffic over National Territory, January 10, 1939.
BRAZIL	Air Code, November 18, 1966.
CHILE	Air Navigation Decree - Law, October 17, 1925. Law 16.572, January, 1958.
COLOMBIA	Law on Civil Aviation, May 26, 1938.
COSTA RICA	Law on Civil Aviation, October 18, 1949.
CUBA	Regulation on Civil Aviation, April 21, 1928.
DOMINICAN REPUBLIC	Civil Aviation Law, November 4, 1969.
ECUADOR	Law of Air Traffic, January 4, 1960. Civil Aviation Law, November 29, 1963.
EL SALVADOR	Law on Civil Aviation, December 20, 1955.
GUATEMALA	Civil Aviation Law, October 28, 1949.
HONDURAS	Civil Aviation Law, March 14, 1950, amended in 1957.
MEXICO	Book Four of the Law of General Means of Communication, December 30, 1950.
NICARAGUA	Civil Aviation Code, May 18, 1956.
PANAMA	Regulation on National Aviation, August 8, 1963.
PARAGUAY	Aeronautical Code, September 30, 1957.
PERU	Civil Aeronautics Law, December 11, 1965.
URUGUAY	Code of Aeronautical Law, December 3, 1942.
VENEZUELA	Civil Aviation Law, April 1, 1955.

INTRODUCTION

A. Purpose of This Work

The question of whether there is unity or diversity in Latin American legislation motivated the present work. For many years Latin American jurists have been discussing which route should be followed in future legislation and whether a Latin American Air Code is necessary or not. On many occasions in our study we will be asking ourselves the same questions, which we shall try to answer in the conclusion.

The law is a reflection of the social, cultural, economic and political conditions within the state of its application. In Latin America we find common traditions, common political and economic problems, and, most important, a common legal background.¹

Perhaps Latin America, more than anywhere else in the world, is the ideal location for unification, and has the greatest likelihood of achieving it. Already the Central American Republics proudly display a degree of unification in Aviation Law, without precedent in the Western Hemisphere.²

The geographical area of Latin America extends from south of the Rio Grande down to "Tierra del Fuego" in the Chilean/Argentinian Patagonia. This is the geo-

¹ Tolle, "Posibilidad e 'conveniencia de un Código Aeronáutico Latinoamericano", Primeras Jornadas Latinoamericanas de Derecho Aeronáutico, De Palma, (Buenos Aires: 1960), p. 402.

² A vivid example of what can be achieved in the field of Civil Aviation through association, at a regional level, is the creation of the Central American Inter-Governmental Corporation of Aeronautical Communications. The contracting states are: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. OAS2 "Study of Air Transport in the Americas", Pan American Union, (Washington, D.C.: 1964), p. 265.

graphical scope of our study. The American countries in this area are those that once formed the old Spanish and Portuguese Empires. Latin America comprises South America, Central America, Mexico and the Islands of the Caribbean.³ States such as Guyana, Surinam, Haiti, Trinidad-Tobago, Grenada, Jamaica and a few others, are excluded from the analysis because they do not have their roots in the period of Iberian domination.

Latin American States' legislation and the Chicago Convention (1944)⁴ have their sources in the Paris Convention (1919) and the⁵ Panamerican Convention (1928).⁶

The Paris and Havana Conventions influenced most Latin American legislation, since there was no recorded legislation before them. The Paris Convention not only was the basis for legislation, but it also was a supplement to the law. This fact can be acknowledged with the Chilean Air Navigation Decree with force of law (1931), which indicated that in silence of the law, the Paris Convention would preside.⁷

³ Encyclopaedia Britannica, s.v. "Latin America", (1968), p. 744.

⁴ Convention on International Civil Aviation, Chicago, 1944, (hereinafter referred to as Chicago Convention).

⁵ International Convention for the Regulation of International Air Navigation, Paris, October 13th, 1919, (hereinafter referred to as Paris Convention).

⁶ Panamerican Convention on Commercial Aviation, Havana, February 20th, 1928, (hereinafter referred to as Panamerican Convention or Havana Convention).

⁷ Hamilton, "Le Development du Droit Aerien en Amerique Latina face a la Politique des Transports Aeriens", 6LRGDIP, (1957), p. 383.

The relation between the Iberic Peninsula and Latin America is first noticed with the signing of the Ibero American Convention on Air Navigation, in Madrid on November 1st, 1926.⁸ Another regional effort which was even more influential in the development of international Air Law, was the Havana Convention, 1928, signed by all the American Republics.⁹

The results of Madrid and Havana Conventions¹⁰ were not successful, but they are evidence of the community of interests surrounding the American states.

The importance of civil air transportation was recognized by the American States at an early date.¹¹ A Pan American Aeronautic Conference, convoked by the Aero-Club of Chile and expressly approved by the Chilean government was held in Santiago in 1916.¹²

⁸ The Ibero-American Convention of Air Navigation was signed in Madrid, November 1st, 1926. It was the greatest achievement of the Ibero-American Aeronautical Congress. The original text was signed by Spain, Portugal and 19 Latin American states. Cocca, "L'unification du Droit Aerien en Amerique Latine", 19RFDA, (1965), p. 270.

⁹ York, "International Air Law in the American Republics", 3JALC, (1932), p. 413.

¹⁰ The Havana Convention did manage to be of important influence when the amendments to the 1919 Paris Convention were discussed in 1929. Roper, La Convention Aérienne Internationale du 13 Octobre 1919, Sirey, (Paris: 1930), p. 108.

¹¹ Organizacion de Estados Americanos, 2 Air Transport in the Americas (1964), p. 43.

¹² The meeting recommended that the American Republics should make their national aviation legislation uniform with a view to the formation of an International Air Code. Sand, Sousa Freitas and Pratt, "An Historical Survey of International Air Law Before The Second World War", 7 McGill Law Journal, (1960), p. 29.

At the Inter-American Technical Aviation Conference (Lima, 1937), a Permanent American Aeronautic Commission (CAPA) was established. Its duty was to codify international public and private air law, coordinate and develop mutual interests in technical subjects, and organize and mark inter-American air routes.¹³

The first bilateral agreement signed in Latin America was one between Argentina and Uruguay in 1922.¹⁴ Later the agreement was shown to be in accord with the principles set forth in the Havana Convention. The agreement granted reciprocal rights to both countries.¹⁵

The International Civil Aviation Convention, drafted at the Chicago Conference (1944) had the attendance of all but one of the American States.¹⁶ Many of them decided at a later date, when drafting their air laws and regulations, to follow very closely the principles and issues approved at Chicago.

13 Bauza Araujo, "La unificación legislativa doctrinal y jurisprudencial Iberoamericana en Derecho Aéreo", Segundas Jornadas Ibero-americanas de Derecho Aeronáutico y del Espacio, (Salamanca: 1964), p. 15.

14 November 18th, 1922.

15 York, "International Air Law", 3JALC (1932), p. 413.

16 Latin American States attending the Chicago Conference on International Civil Aviation were: Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela. The only country absent was Argentina. Report of the Chicago Conference on International Civil Aviation, Nov. 1-Dec. 7, 1944. United Nations Information Organization, (London: 1944), p. 3.

The need, the idea and the plans for unification of Latin America's government regulation in Air Law have been under consideration for many years, and various organizations have undertaken the task:

- 1) ALALC (Latin American Association of Free Trade) created a Transport Commission;¹⁷
- 2) OAS (Organization of American States) convened two meetings of Civil Aviation Governmental experts;¹⁸
- 3) COCESNA (Central American Corporation of Air Navigation Services) has been in operation since 1961 in five Central American States with excellent results;¹⁹
- 4) Three Civil Aviation Regional Conferences took place between 1959 and 1962;²¹
- 5) The CITA (Interamerican Commission of Air Transport) held thirteen meetings between 1960 and 1969;²¹
- 6) There have been Latin American Presidents' statements and aeronautical authorities meetings, the most important being the one held in Santiago de Chile in 1966;²²
- 7) The creation of CLAC,²³ which had its first meeting in 1974 (Buenos Aires),²⁴ was the most recent effort.

¹⁷ The Commission is called "Comision Asesora de Transporte" (CAT).

¹⁸ Washington, D.C. (1963) and Santiago de Chile (1964).

¹⁹ The following are the member states of COCESNA: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. Litvine, Droit Aérien, Bruylant, Bruxelles (1970), p. 84.

²⁰ CRAC meetings: Rio de Janeiro (1959), Montevideo (1960), Bogota (1962).

²¹ CITA is a private organization with headquarters in Buenos Aires.

²² Statements of Bogota (1966) and Punta del Este (1967).

²³ Latin American Civil Aviation Commission.

²⁴ ICAO, "LACAC Holds First Assembly in Argentina", 29ICAO Bulletin, (October, 1974), p. 34.

A review of the Latin American legislation indicates several reasons to believe in the idea of unification, especially when certain conclusions are drawn and analyzed. These conclusions suggest the logic and practicality of further developing Air Law Regulation in Latin America.

Some of the arguments are the following:

- 1) There is a lack of Air Codes: Only five Codes exist in Latin America, most of them quite recent - Brazil (1966),²⁵ Uruguay (1942), Nicaragua (1956), Paraguay (1957) and Argentina (1967). The absence of Codes is really a disadvantage, since a Code is a body of laws designed to regulate completely the Air Law field.
- 2) Legislations are very old in many states, some of them having been drafted even before the Chicago Convention.²⁶ The Cuban Civil Aviation Regulation dates from 1928; Chile's Air Navigation Decree dates from 1925 (proclaimed in 1931); Bolivia has a decree from 1930 and since 1938 Colombia has had a Civil Aviation law. After Chicago, Costa Rica, Guatemala and Mexico enacted their legislation which is still in force. During the period 1950-1960 some laws replaced very old ones.²⁷ After 1960 more legislation

²⁵ This Code replaces the former Brazilian Air Code, which dated from 1938, and which chronologically was the first Air Code in the world. Cocca, "L'unification du droit Aerien", 19RFDA (1965), p. 288.

²⁶ Mapelli, "La Codificacion Aeronautica en America y Europa", Vol. II, Cuaderno de Informacion y Documentacion Aeronautica, (Madrid: 1967), p. 9.

²⁷ Venezuela's Civil Aviation Law (1955) replacing the Aviation Law of 1930; Nicaragua's Air Code (1956) replacing a decree of 1929; El Salvador's law on Civil Aviation (1955) replacing a decree of 1929. Hyzer, "Pan American Air Regulation: A Comparative Study", 4JALC, (1933), p. 533.

was enacted, the latest Civil Aviation law being that of the Dominican Republic, dating from 1969.²⁸ It is obvious that there are vast differences in the approach, in the rules, and in the procedure between Chile's Air Navigation law or Cuba's Regulation and the Argentinian or Brazilian Air Codes and Dominican Republic's 1969 law.

3) There is a great variation in the degree of importance given to aeronautical legislation in Latin America. It can run the gamut from Air Codes to laws, to regulations, to decrees and even to a book within a particular law. It has been stated that only five states have Codes; most countries have either Civil Aviation laws or Regulations. Also, there is the interesting case of Mexico where Civil Aviation is included among the subjects covered by the law of General Means of Communication. The variations mean not only that more importance is given to the subject in some states, but also that the procedure, the effects and the force of the law, are different in those states where Codes are in effect, than in those where only Regulations have been enacted. The non-uniformity in this matter is a serious obstacle to any progress in the field of government regulation in Latin America.

4) Closely related to the various degrees of air laws in Latin America is the fact that the texts also use different nomenclature: "Air Traffic Law" in Ecuador; "Civil Aviation Law" in Guatemala; "Air Navigation Law" in Chile; "Aeronautical Code" in Argentina; "Air Code" in Brazil. Each name directly relates to the importance

²⁸ Mapelli, "La Codificación Aeronautica en America y en Europa" in Cuestiones Actuales de Derecho Aeronautico, Eudeba, (Buenos Aires: 1968), p. 114.

given to Air Law in the particular state. The organization of the law, together with administrative reasons, also causes the variety, especially considering that approval of Civil Aviation laws by Parliament is rare.²⁹ Some countries decide to avoid the Parliament procedure and prefer to follow the decree system. The "de facto" governments, which come into power through military or political interventions, are obligated to follow a different system of sanctioning the law, than the system followed by a constitutional government. The objective in all states though, is the same: to group in a single and harmonic legal body those rules that refer to civil aeronautics.³⁰

5) The location of the Civil Aviation activity in the governmental structure follows a wide variety of alternatives in Latin America, being an influential factor in the drafting of Air Laws and regulations. In eight countries, including several of those in which the commercial aviation industry is relatively most advanced, military ministries have the principal responsibility for the civil air activity. Argentina, Brazil and Peru have the directorates of civil aviation as dependencies of the Ministry of Aeronautics, while Chile,³¹ Ecuador, Nicaragua, Paraguay and Uruguay

²⁹ The following are the countries where Parliament has approved Aviation Laws: Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Nicaragua, Paraguay, Peru and Venezuela.

³⁰ Mapelli, "Codigos y Leyes de Aviacion Civil de Iberoamerica", Instituto de Cultura Hispanica, (Madrid: 1970), p. 7.

³¹ In Chile, the Civil Aeronautics Board (Ministry of Economy, Reconstruction and Development) is responsible for Civil Aviation. The administration and management of public airports and navigation aid services is a function of the Chilean Air Forces (Ministry of National Defence).

are subordinated to the Ministry of National Defense. In Bolivia, Dominican Republic, El Salvador, Guatemala and Honduras, the civil aviation directorates are dependencies of the Ministry of Public Works. Costa Rica and Panama have located the directorate under the Ministry of the Interior. Mexico has it under the Ministry of Communications and Transportation, while Venezuela has it as a dependency of the Ministry of Communications. In Colombia, Civil Aviation is directly under the Presidency of the Republic.³²

There is an urgent need for up-to-date legislation, meeting today's demands in aviation. The need is even more serious with regard to those laws in force before the Chicago Convention, such as the Chilean Air Navigation Decree, which mentions organizations created by the Paris Convention (1919).

This work indicates that there is a certain unity of principles and doctrines in the Latin American legislation. Their differences are the natural results of different grades of development within the legal process of each country. Also legislative bodies react slowly and cannot keep pace with Air Law's latest developments.

There is no question about the links found in the Latin American Region.³³ Many organizations have

³² OAS2 "Air Transport in the Americas", (1964), p. 262.

³³ Ambrosini, the well known air law expert, was surprised by the fact that Latin America did not have a common Air Code. He stated that "it is surprising that countries which follow an almost identical law, product of the Latin Origin, i.e. Imperial and Catholic Rome, still have the thought of enacting different air codes, which sometimes even oppose each other." Ambrosini, "Problemas relacionados con las fuentes del Derecho Aviatorio", in Primera Jornada de Derecho Aeronautico Economie y Politica del Transporte Aereo, Revista de la Facultad de Ciencias Economicas, Universidad Nacional de Cordoba (Cordoba: 1950), p. 127.

been working for years in the Aviation Law field, to improve communications among jurists, in order to achieve some kind of positive result, such as a Latin American Aviation Code.³⁴

In their aviation laws and Codes, Latin American Republics cover all problems inherent in or connected with aviation. A unification of aviation laws, if limited to Latin American countries, should tend to adopt the same systematic arrangement and cover the same matters as are presently contained in their legislation.

Today, more than ever before we find a desire and a need for legislative uniformity, for both doctrinal and practical reasons. Commercial aviation today requires cooperation among the different airlines of the Latin American states, and with this, effective international operation can be developed through uniformity in the legislation.³⁶

The following are some important positive factors influencing the idea of integration:

- 1) Concentration of regional traffic;
- 2) Competition with foreign airlines;
- 3) High cost of aeronautical material;
- 4) A need to coordinate routes and tariffs;

³⁴ The following are the two most important organizations of Air Law experts in Ibero-America: "Instituto Ibero-Americano de Derecho Aeronautico, Espacial y de la Navegacion Comercial", headquarters in Madrid; "Asociacion Latino-Americana de Derecho Aeronautico" (ALADA), headquarters in Buenos Aires, which is presently working in the draft study of the Latin American Aviation Code.

³⁵ Bayitch, "Unificacion del Derecho de la Aviacion en el Hemisferio Occidental", 22RIDA, (1964-1965), p. 101.

³⁶ Mapelli, Leyes de Aviacion Civil, (1970), p. 8.

5) Abundance of small aeronautical enterprises.

These factors determine common aeronautical interests in the region, which are affected mainly by the diversity of legislative principles. Uniformity can contribute to an aeronautical development in Latin America,³⁷ especially considering common philosophical, traditional and doctrinal elements.³⁸

During the process of our research, we have been informed that at least five Latin American states are at work drafting new Aviation Laws and Codes: Costa Rica, Bolivia, Uruguay, Venezuela and Chile.³⁹ We feel that this is a good measure, and hope that other states will follow this procedure.

The most recent measure in the area of uniformity has been the decision by the Latin American Civil Aviation Commission to study in detail the Civil Aviation legislation of the region.⁴⁰

The idea of unification is attractive, expressing the ideal of parity under equal laws and satisfying the longing for justice for all through legal uniformity.

³⁷ Tapia Salinas, Estudios y proyectos para la Constitucion de una flota aérea Latino Americana de Carga, Universidad de Los Andes, (Mérida: 1974), p. 40.

³⁸ The uniformity principle has already created ideas, such as the Air Cargo Latin American Fleet, or an Andean Market fleet. Pino, "La colaboracion e integracion aérea internacional, antecedentes historicos, empresas multinacionales, perspectivas en Latino America", 1 Revista Latino Americano de Derecho Aeronautico, (1969), p. 27.

³⁹ Ministry of National Defense, Decree creating Drafting Commission of the Chilean Aeronautical Code, (August 12th, 1974), 51 IDA, (1974), p. 373.

⁴⁰ CLAC/CE/4-5, p. 16.

Even though there are in Latin America different socio-economic factors, policies and structures, still the unification seems to be the best perspective.⁴¹ We will have to consider both the idealistic position and the pragmatic position on unification of Air Law. From our analysis we hope to be better able to contemplate the actual usefulness and relevance of a uniform Air Law.

The idea of unification has proven to be effective in Central America, where the periodical Conferences of the directors of Civil Aviation have achieved a significant uniformity, expressed by the drafting and entering into force of Panama's Regulation on Civil Aviation (1963).⁴²

The Latin American identity favours unification for several reasons: same problems and situations;⁴³ identical Air Law sources; the similar influence of public and private organizations and the fact that Public and Private International Law Conventions have had the same effect.⁴⁴

41 Not only analagous principles should be attained in the law, but also the complementary administrative rules should be uniform. Mapelli, Cooperacion e Integracion Internacional en el Transporte Aéreo y algunas de sus formulas contractuales practicas, Universidad de Carabobo, (Carabobo: 1974), p. 36.

42 Bayitch, "Unificacion del Derecho de la Aviacion", 22RIDA, (1964-1965), p. 114.

43 By same problems and situations we mean that Latin American states have the same links of race, history, culture, geographical location, and similar problems of production, commerce and industry.

44 We agree with Guildimann regarding unification in Air Law. He states the following: "Success in international legislation depends not very differently from the situation in national legislation, on two main conditions: positively the need must be felt by the Community; and negatively, obstacles and resistance must not become prohibitive." Guildimann, "International Air Law in the Making", 27CLP, (1974), p. 234.

B. Scope of This Work

This work tries to determine both the source of the legal matter and its relationship to International Law. The legislative and doctrinal analysis comprises two important subjects in the field of government regulation: firstly, air navigation facilities with the appropriate ground organization, and secondly, the aircraft. Our study of air navigation facilities examines the environment where the aeronautical activity takes place and the ways the facilities support the air navigation activity. The aircraft study looks upon the legal regulation of the aeronautic vehicle.

Latin American legislation, as well as the Chicago Convention have their sources in the Paris and Havana Conventions. We have analyzed the latter two conventions in order to emphasize the actual rules of the Chicago Convention, and their development.

Classifications have been used throughout the work in order to give a better view of the legal matter. In each analysis an example of Latin American law is shown in order to develop an explanation of the specific subject, and to allow at the same time a comparison of wording used in each text.

The work restricts itself to public law matters. In order to clarify certain subjects, some private law references are made. It has been necessary to deal with the aircraft as an object of law, i.e., a private law matter, so as to allow a better understanding of the position taken by Latin American laws when they refer to the aircraft, and especially to its registration.

In the work we consider only the civil aviation viewpoint, and we only refer to military aviation when it is absolutely necessary.

Our conclusions point out a major finding of this research, that uniformity of law in Latin America is a viable possibility in the aviation field.

PART 1. AIR NAVIGATION FACILITIES

CHAPTER 1. DEFINITION AND CHARACTERISTICS

Section A. Definition

Air navigation develops in the airspace, and the aircraft is its instrument. The aircraft in turn is sustained by air navigation facilities.⁴⁵

Aircraft can be operated safely only if airports, navigation aids, air traffic control devices and communication systems are suitable for their needs.⁴⁶ Today, this is more important than ever, since air traffic is increasing yearly; introduction of new aircraft, such as the Concorde is occurring; advances are being made in vertical flight, and this directly relates to the demands and importance which facilities for air navigation and traffic control must have.⁴⁷

Air Navigation must be understood as the art of conducting an aircraft from place to place.⁴⁸ This definition means that the aircraft not only has to find its way, but must avoid collision. In general the processes of navigation consist of defining the route, con-

⁴⁵ Martinez Garcia. Un programa para la institucionalizacion de los tecnicos de aviacion civil, Instituto Iberoamericano de Derecho Aeronautico y del Espacio, Centro de Estudios, (Madrid: 1973), p. 4.

⁴⁶ The Curtis Report, "Aviation Facilities Planning", U.S. & C.A. v. R. (1957), p. 310.

⁴⁷ Hederer, "Les problemes de l'infrastructure aeronautique", 12 RGA, (1949), p. 171.

⁴⁸ AGARD Aeronautical Multilingual Dictionary, Pergamon Press, (Oxford: 1960), No. 11101.

ducting the aircraft along it and finding the aircraft's position from time to time to check its progress.

Methods of locating aircraft used today include visual fixes, astronomical navigation, radio systems and radar. Dead-reckoning methods include the magnetic compass and distance or speed indicators, and inertial guidance systems.

Because of the speeds used in Air Transportation, quick navigational methods are used, such as radio aids, even at the expense of some accuracy. In addition certain major decisions are made on the ground in the planning stage, to be implemented by the cruise and flight control.

After World War II the direction finder and its associated radio beacon and the low frequency radio range station were fully developed. Later other systems were incorporated such as the loran, decca, consol, very high-frequency omnidirectional range (VOR), distance measuring equipment (DME) and radar.⁴⁹

The Chicago Convention, 1944,⁵⁰ establishes the International Civil Aviation Organization.⁵¹ In

⁴⁹ Encyclopaedia Britannica, s.v. "Navigation", (1968).

⁵⁰ ICAO Doc. 7300, signed at Chicago on December 7, 1944. "Convention on International Civil Aviation".

⁵¹ For a detailed study of the Chicago Conference, see: "Proceedings of the International Civil Aviation Conference", Chicago, 1944, U.S. Dept. of State Publication 2820, (Washington: 1948). For a detailed study of the background leading to the Chicago Convention see, Miller, Air Diplomacy: The Chicago Civil Aviation Conference of 1944 in Anglo American Wartime relations and post-war planning, Ph.D. Dissertation, Yale University (1971).

the preamble states that one of the goals for which that Convention was convened was that "International Civil aviation may be developed in a safe and orderly manner...".⁵²

Thus the development of Air Navigation is related to the aid given to promote safe and orderly operation, a matter considered in certain articles and annexes of the Chicago Convention.⁵³

Civil Aviation needs proper air navigation facilities and article 28 of the Chicago Convention, 1944,⁵⁴ makes it obligatory on each member state to provide in its territory, airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation.⁵⁵

⁵² Seabrooke, Air Law, University of London Press, (London: 1964), p. 108.

⁵³ Dr. Edward Warner referred to the importance of air navigation facilities by stating: "There would be no Air Transportation without radio stations at short intervals along the route, maintaining constant communications with the aircraft; or without weather observers and forecasts keeping up a steady flow of reports; or without centralized traffic control to permit a pilot to fly for hour after hour through the densest clouds or fog, free from fear of collision". - cited by Pandya, Joint Support arrangements for Air Navigation Facilities in International Civil Aviation, LL.M. Thesis, McGill University, (Montreal: 1961), p. 13.

⁵⁴ Article 28 Chicago Convention, concerning "Air navigation Facilities and standard systems". We shall discuss further the obligations imposed under Article 28.

⁵⁵ The other air navigation facilities mentioned are: markings, signals, lighting, maps and charts.

Article 28 correlates to ICAO's view on the importance of the matter. For this reason Chicago finds a way of helping those states which do not already have adequate facilities, determining means "by which the situation may be remedied". Detailed provisions of these means are found in Chapter XV of the Chicago Convention, which as the title suggests, "Airports and other Air Navigation Facilities", deals with the above mentioned matter of providing air navigation facilities and services.⁵⁶

Chapter XV⁵⁷ provides for a procedure, whereby states which are not in a position to fulfill their international obligations of providing proper air navigation or services,⁵⁸ may request financial and technical assistance from ICAO. During the Chicago Conference it was pointed out that,

"...without such provisions, international air transportation might be hampered by a lack of airports in strategically located states that were either unwilling or unable to provide adequate facilities." 59

Article 69, Chicago Convention, refers to the improvement of air navigation facilities and states that they should be adequate for the safe, regular, efficient

⁵⁶ Cyr, "Facilities for International Civil Aviation", XVII U.S. Dept. of State Bulletin, (July, 1947), p. 170.

⁵⁷ Chapter XV, Chicago Convention, Article 68 to 76, inclusive.

⁵⁸ See obligations imposed by Article 28, Chicago Convention.

⁵⁹ Bin Cheng, The Law of International Air Transport, Stevens, (London: 1962), p. 77.

and economical operation of international air services.⁶⁰ The Council is authorized to consult with those states affected by inadequate facilities, and to determine a method of improving them. If the state fails to provide the necessary air navigation facilities the Council may agree to provide for all or a portion of the costs for installing the necessary facilities.⁶¹

Article 44 of Chicago Convention, in describing the aims and objectives of ICAO, mentions that it shall encourage the development of airways, airports, and air navigation facilities for international civil aviation.⁶²

The most important legislation function performed by ICAO consists in the formulation and adoption of International Standards and Recommended Practices (SARPS)⁶³ and this is provided by Article 37 of Chicago Convention. This article also encompasses the area of Air Navigation Facilities.⁶⁴ ICAO has the task, together with contracting states, of obtaining a high degree of uniformity in regulations, standards, procedures and organization, in order to facilitate and improve air

⁶⁰ The powers of the Council under Article 69 are limited to those of consultation and recommendations. It has no power to compel a state to carry out its recommendations.

⁶¹ Article 70, Chicago Convention.

⁶² Pandya, Joint Support Arrangements, (1961), p. 30.

⁶³ Buergenthal, Law-making in the International Civil Aviation Organization, Syracuse University Press, (New York: 1969), p. 58.

⁶⁴ Article 37 of Chicago Convention refers to the following air navigation facilities: communications systems and air navigation aids, including ground marking; airports and landing areas; air traffic control; meteorological information; aeronautical maps and charts.

navigation.⁶⁵

Under the terms of the Chicago Convention each state undertakes to provide air navigation facilities and services in its own territory. Some services and facilities must also be provided in regions of undetermined sovereignty and on the high seas, where no one nation can be responsible for this task. In addition navigation aids are not only complex, but also costly, and sometimes states cannot afford either to operate them or do not have the labour force or experts to handle them.⁶⁶ In ICAO's first Assembly a resolution was taken, by which a Committee, composed of Council members, would study these problems.⁶⁷ The Committee on Joint Support of Air Navigation Services assists the Council⁶⁸ in mat-

⁶⁵ Sheffy, "The Air Navigation Commission of the International Civil Aviation Organization", 25 JALC (1958), p. 428.

⁶⁶ Iceland and Greenland are not normal stopping points for transatlantic flights, but their location plays an important role in the information and services for flights along their routes. For example flight planning in the area requires reliable weather information; requirements of air traffic control and meteorological services give rise to the need for fixed telecommunications services with aircraft in flight; LORAN Stations are also necessary in the area. The majority of the aircraft using the services are non-Icelandic or Danish, so it would be an unreasonable burden to place on the two countries their operations and costs. The result is a joint financing arrangement providing the funds. ICAO, Memorandum on ICAO, Public Information Office of ICAO, (Montreal: July, 1975), p. 38.

⁶⁷ Schenkman, International Civil Aviation Organization, (Geneve: 1955), p. 184.

⁶⁸ Buergenthal, Law-making in ICAO, (1969), p. 10.

ters related to technical and financial demands for the purpose of providing and maintaining the infrastructure of international civil aviation.⁶⁹

Article 15 of Chicago Convention establishes that all airports and air navigation facilities available for public use by the national aircraft of a contracting state, must also be made available, under uniform conditions (including charges) to the aircraft of all other contracting states.⁷⁰

Related to Article 15 of the Chicago Convention, Article 68 of that same convention determines that every contracting state reserves the right to designate airports to be used for international services.⁷¹ Each state can dictate the conditions of utilization of its air navigation facilities, but these conditions will be applicable equally and without distinction to aircraft of all contracting states, as well as to their own aircraft.⁷²

69 ICAO now has 3 agreements on Joint Financing: Greenland and The Faroes, Iceland and the North Atlantic Ocean Stations. ICAO, Doc. 9085, p. 74.

70 Article 15, Chicago Convention applies the principle of non-discrimination. Other articles following this principle include: Article 7 (Cabotage); Article 9(b) (Prohibited Areas); Article 11 (applicability of air regulations) and Article 35(b) (Cargo restrictions). Shawcross and Beaumont, On Air Law, Butterworths, (London: 1966), p. 213.

71 Riese et Lacour, Précis de Droit Aérien, Librairie Générale de Droit et Jurisprudence, (Paris: 1951), p. 136.

72 Article 15, Chicago Convention, considers that the use of aerodromes and air navigation facilities must have the same tariffs for foreign and national aircraft.

As previously mentioned, Article 37 of Chicago gives to ICAO the power to adopt international standards and recommended practices.⁷³ For convenience, these are designated as annexes to the Convention, five of which are related to the study of air navigation facilities:

1-Annex 3. Meteorology: incorporates standard and recommended practices governing the obligations of contracting states and relating to the exchange of meteorological information between ground stations and air-ground communications.⁷⁴

2-Annex 4. Aeronautical Charts: deals with their standardization, for use in International Civil Aviation. The main purpose of Annex 4 is to ensure that Charts published by the contracting states are produced in a standardized form.⁷⁵

3-Annex 5. Refers to dimensional units to be used in air-ground communications, and looks at the reduction in the variety of dimensional systems to be recognized for

73 Standard: "any specification for physical characteristics, configuration, material, performance, personnel, or procedure, the uniform application of which is recognized as necessary for the safety or regularity of International air navigation and, to which member states will conform in accordance with the Convention; in the event of impossibility of compliance, notification to the Council is compulsory under Article 38 of the Convention. The definition of "recommended practice" will follow the same wording, except that it will change "necessary" for "desirable" and "will conform" for "will endeavour to conform" (emphasis added). ICAO Doc: 4411, Assembly Resolution A1-31 (A1-P/45), (1947).

74 Schenkman, International Civil Aviation Organization, (1955), p. 260-261.

75 Wijesinha, Legal Status of the Annexes to the Chicago Convention, LL.M. Thesis, McGill University, (Montreal: 1960), p. 138.

use in international aviation.⁷⁶

4-Annex 10. Deals with aeronautical telecommunications and the standardization of communication systems and radio in navigation aids.⁷⁷

5-Annex 14. Aerodromes. Its analysis shall be done later on in this work.⁷⁸

Chapter XV, Chicago Convention determines ICAO to give financial and technical aid in those areas⁷⁹ where air navigation facilities or services are not adequate for a safe, efficient, regular and economic operation of international air services. The 1st Assembly of ICAO, which met in Montreal in 1947, established a general policy regarding the joint support of Air Navigation Services, following the rules of Chapter XV.⁸⁰

Annex 1 of this general policy described that which was to be considered, inter alia, as air navigation facilities and services:

- (1) Aerodromes and Ground aids to Navigation,
- (2) Air Traffic Control Service,
- (3) Meteorological Service,
- (4) Search and Rescue Service,
- (5) Telecommunications and radio-aids to Air Navigation.⁸¹

⁷⁶ Schenkman, International Civil Aviation Organization, (1955), p. 260-261.

⁷⁷ Ibid.

⁷⁸ See Chapter 2, "Definition of Aerodromes and Related Concepts".

⁷⁹ The areas which Chapter XV refers to are: those of undetermined sovereignty; on the high seas; and in the territories of such states which are not undertaking the provision of required facilities.

⁸⁰ Joint Support Policy, Res. A1-65.

⁸¹ ICAO Doc. 4411, A1. P/45, (3/6/47), p. 72.

Later on, while ICAO was studying the subject of charges for international route Air Navigation Facilities, decided to expand the list of air navigation facilities mentioned in the 1st Assembly. A report from the Air Transport Committee in May 1956 gave the following list of facilities and services:

- (1) Communication Facilities,
- (2) Navigation Aids,
- (3) Air Traffic Services,
- (4) Meteorological Services,
- (5) Emergency Landing Grounds,
- (6) Search and Rescue Services,
- (7) Miscellaneous Services.⁸²

During the Route Facilities Charges Conference, held in Montreal (1958), the Report of the Air Transport Committee was found acceptable.⁸³

In our study of Air Navigation Facilities, we shall follow the explanations rendered by the A.T.C. Report, since it gives a thorough explanation of what the facilities and services are, and their role in air navigation.

The Statement by the Council to contracting states on Route Facility Charges, indicates which facilities and services should be regarded as route air navigation facilities and services for charging purposes.⁸⁴

⁸² ICAO Doc. 7684, C/891 (1956), p. 1.

⁸³ Some changes were only made in the explanatory notes.
ICAO Doc. 7874, RFC/1-1, (Montreal: 1958), p. 5.

⁸⁴ ICAO Doc. 7941-C/913, (10-12/58), p. 2.

For our study, the list of items is also applicable, since it includes facilities and services provided for the safety and efficiency of international air navigation. As we shall see, the list does not include airports because of the fact that the list was made for the purpose of charges. According to the rules and principles of the Chicago Convention, airports are included as air navigation facilities in the present study.⁸⁵

The following are the air navigation facilities and services considered by the statement of the Council:

- 1) Communication Facilities: These cover those facilities for safety and regularity of en route flight including both air/ground communications and ground to ground communications when those are used directly or indirectly in connection with preparation for or conduct of a flight.⁸⁶
- 2) Navigation aids: include all ground radio and visual aids to navigation en route.⁸⁷
- 3) Air Traffic services: covers air traffic services provided for aircraft en route, including area control and flight information services, as distinct from the services provided for approach and aerodrome control.
- 4) Meteorological services: those allocated to civil aviation, including meteorological observation stations, and meteorological services to air crews provided at airports.⁸⁸
- 5) Emergency landing grounds: any provided

⁸⁵ The Council Report refers also to facilities and services provided at airports. Chapter XV of Chicago Convention mentions airports also.

⁸⁶ Communications used for approach or aerodrome control are excluded.

⁸⁷ The difference between en route facilities and services, and those facilities and services at airports shall be distinguished later on. *Infra* P.28.

⁸⁸ Ocean weather ships are included in the meteorological services.

especially for international civil aviation as a requirement in a Regional Plan. 6) Search and Rescue Services: any permanent establishment of equipment and personnel for Search and Rescue purposes. 7) Miscellaneous Services: any permanent establishment of equipment and personnel maintained for the purposes of providing aeronautical charts and information services.

The precedent to the Chicago Convention was the Paris Convention relating to the Regulation of Aerial Navigation, held in Paris in 1919.⁸⁹ The Convention followed the signing of the Armistice. Allied and Associated Powers reached a quick agreement on international aerial regulations to be adopted, so as to include them in the Peace Treaty, and thus, define the limits of future German aerial activities and the privileges which Allied aviators were to enjoy when flying over German territory.⁹⁰

The Paris Convention recognized that the organization of air navigation facilities depended primarily on the contracting states. Paris Convention also appreciated the importance which air navigation facilities have. Article 35 of the Convention and annexes "D", "F" and "G" regulated this subject.⁹¹

⁸⁹ International Convention for Air Navigation, 13th October, 1919.

⁹⁰ Woodhouse, Textbook of Aerial Laws, F. Stokes, (New York: 1920), p. 13.

⁹¹ Paris Convention set down in great detail in its annexes to the Convention, the regulations, standards and practices in respect to which international uniformity was thought desirable. Annexes had the same binding force as the Convention itself. Latchford, "Comparison of the Chicago Convention with the Paris and Habana Conventions", XII, U.S. Dept. of State Bulletin, (1945), p. 419.

Annex "D" regulated lights and signals; Annex "F" referred to International aeronautical maps and ground markings; Annex "G" ruled the collection and dissemination of Meteorological Information.⁹²

Article 35 of Paris Convention corresponds to Article 28 of Chicago, and states that:

"The High Contracting Parties undertake as far as they are respectively concerned to cooperate as far as possible in international measures concerning...meteorological information, maps, ground information and wireless telegraphy and stations." 93

The Panamerican Convention for Air Navigation, signed in Havana, 1928,⁹⁴ follows a similar idea regarding air navigation facilities as the one taken by the Paris Convention. This Convention was signed as a result of the refusal of United States and some South American Republics to become parties to the Paris Convention.⁹⁵

Article 31 of Havana must be related to Article 35 of Paris Convention, and consequently to Article 28 of Chicago. It provides:

⁹² Annex G set down very detailed stipulations on the subject, some 35 printed pages. Warner, "The International Convention for Air Navigation and the Pan American Convention for Air Navigation: A Comparative and critical analysis", 3 A.L.R., (1932), p. 293.

⁹³ Le Goff, Manuel de Droit Aérien, Dalloz, (Paris: 1954), p. 387.

⁹⁴ Havana Convention, 20th February, 1928 on Commercial Aviation.

⁹⁵ Only sixteen states ratified the Havana Convention. Johnson, Rights in Air Space, The University Press, (Manchester: 1965), p. 36.

"The contracting state obligate themselves insofar as possible to cooperate in inter-american measures, relative to...meteorological information, aeronautical charts, signals and radio telegraphy in air navigation." 96

Clearly, between Paris and Havana there are no major differences, with the exception that Paris regulates the subject in detail in its annexes, while Havana only in its Article 31.⁹⁷

The analysis of the Paris, Havana and Chicago Convention allows us to define Air Navigation Facilities, and to make a distinction between airport and en route facilities.

The distinction between facilities and services at airports and en route shall be based upon the use the service will have.⁹⁸ Airport facilities are those used when the aircraft is on the ground, or in connection with a landing or take-off. En route facilities or services are those outside the airport, used during the flight of an aircraft.⁹⁹

⁹⁶ Warner, "Convention for Air Navigation", 3 ALR, (1932), p. 293.

⁹⁷ The Paris Convention has 7 annexes (A to G inclusive) which contain technical rules and regulations designed to give effect to the Convention. No annexes are provided in Havana, so the Articles are more detailed and elaborated in order to fill that gap. Latchford, "Havana Convention on Commercial Aviation", 2 JAL, (1931), p. 209.

⁹⁸ Jaworski, "International route air navigation facilities and services. Its financial aspects from a Canadian point of view", 26 JALC, (1959), p. 137.

⁹⁹ There will be instances when the same facility or service can be considered as both an airport and a route activity. An example of this would be when traffic control calls an aircraft to land and gives information to another aircraft on the ground.

ICAO gives the following definition of route air navigation facilities and services:

"Facilities and services provided for the safety and efficiency of air navigation along the route." 100

From what has been said, and taking into account the mentioned distinction between airport and en route air navigation facilities and services, we submit the following broad definition: Air Navigation Facilities and services are those provided for the safety and efficiency of air navigation along the route and at airports.

The nature of air navigation facilities can be ascertained analyzing them through four elements:

- 1) The complimentary character air navigation facilities have with respect to the air environment. The facilities are considered to be indispensable accessories to the aeronautical activity,¹⁰¹ and together with the airspace, they form the scope in which the aeronautical activity takes place.¹⁰²
- 2) The function of service air navigation facilities have for air navigation. This function is established by the fact that air navigation facilities are a complex of installations and services, which from the surface, sea and even airspace, serve and cooperate in a permanent way with air navigation and air operations. Air traffic could not take place in an efficient manner without adequate air navigation facilities, and this function could well be the qualifying element of infrastructure.

100 ICAO Doc. 7684-C/891, (May, 1956), p. 1.

101 Videla Escalada, 1 Derecho Aeronautico, Victor P. de Zavalia, (Buenos Aires: 1969), p. 267.

102 Ambrosini, Instituciones de Derecho de la Aviacion, De Palma, (Buenos Aires: 1949), p. XXVIII.

3) The public nature of the purpose and organization of air navigation facilities. There has always been public interest in air navigation facilities, especially because, through these facilities, states are able to demonstrate their sovereignty, power and control over the national airspace.¹⁰³ The facilities are useful as physical support structures for the different functions the state exercises. Through air navigation facilities the state controls and renders the public service entrusted to the State Administrative Agencies.¹⁰⁴

The constant intervention of State Administrative Agencies in air navigation facilities is justified by the essential factor of air safety, which also has a general interest value.

The state plays an active role in planning air navigation facilities, distributing aerodromes and flight protection services, coordinating these elements, and even in certain occasions assuming their management. The state supervises the air navigation facilities system, but private operators are allowed to operate devices and services of that system.¹⁰⁵

4) There are enumerative criteria of devices and services which form the air navigation facilities. The criteria to be followed should be the one provided by ICAO and the Chicago Convention. One must make a distinction between installations and services. Aerodromes¹⁰⁶ and

¹⁰³ Charlier, 2 Droit Aerien, Centre D'enseignement supérieur Aérien, (Paris: 1955), p. 29.

¹⁰⁴ Gay de Montella, Principios de Derecho Aeronautico, De Palma, (Buenos Aires: 1950), p. 218.

¹⁰⁵ This same public interest for air safety originates limitations to property in favour of air navigation and its facilities. The subject shall be discussed later. *Infra* Chapter 9, p. 115.

¹⁰⁶ The different kinds of aerodromes compose the installations. de Juglart, Traité élémentaire de Droit Aerien, L.G.D.J., (Paris: 1952), p. 110.

navigation aids form the installations. Services to be considered are communication, meteorology, air traffic control and search and rescue.¹⁰⁷

The organization, administration and control of air navigation facilities is undertaken as a whole. Still there will be times when it shall be difficult to make a distinction between the service and the installation legally, especially since ordinarily the installations are the instruments of the aeronautical service.

Some of the doctrine included among air navigation facilities services such as customs, police, post office, sanitation, information, and tourist booths. However, these services, nowadays, are no longer accepted as part of air navigation facilities.¹⁰⁸ The explanation for excluding them, is that besides the fact that they are not properly aeronautic services, their direct objective is not air navigation safety.¹⁰⁹

107

Lemoine, Traité de Droit Aérien, Sirey, (Paris: 1947), p. 117.

108

Cobo Cayon, Manual de Derecho Aéreo, L. Lucros, (Bogota: 1966), p. 336. Gay de Montella, Principios de Derecho Aeronautico, De Palma, (Buenos Aires: 1950), p. 218.

109

Air navigation facilities are also considered as a joint enterprise between airways and aerodromes, but without indicating in which way airways can be considered as devices or services. Cartou, Le Droit Aérien, Presses Universitaires, (Paris: 1962), p. 64.

The concept of air navigation facilities is largely absent from Latin American texts,^{110A} even though all of them have regulated to a greater or lesser degree aerodromes and flight protection services.^{110B}

The laws of Argentina and Paraguay group the rules regarding air navigation facilities under "Ground Organization". Chapter I, Title III, of the Argentinian Aeronautical Air Code¹¹¹ refers to Aerodromes. Paraguay's Aeronautical Code¹¹² refers in two chapters to Air Navigation Facilities - Chapter I "Aerodromes" and Chapter II "Installations and Services for air to Air Navigation".¹¹³

110A The U.S. Federal Aviation Act of 1958 defines "Air Navigation Facility" as "any facility used in, or designed for use in, or available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finder, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft. The definition is found in Sec. 101(8). It is our belief that Latin American laws should define the facilities for administrative and practical reasons.

110B The subject of limitations to property, i.e. those which benefit air navigation and its facilities is regulated by a small number of Latin American texts.

111 Codigo Aeronautico de la Nacion. Law 17.285, 17th May, 1967, (hereinafter cited as Argentina's Aeronautical Code). Zamora, Codigo Aeronautico, Zavalia, (Buenos Aires: 1969), p. 22.

112 Adopted by law 469 of September 30, 1957 (hereinafter cited as Aeronautical Code).

113 Title IV of the Aeronautical Code. Bayitch, "The Aviation Code of Paraguay: A Comparative Study", 3 Inter American Law Review, (1961), p. 239.

Brazil and Costa Rica are the only two laws giving a definition of Air Navigation Facilities. Brazil's Air Code¹¹⁴ provides in its Article 43 the following:

"Air Navigation facilities shall be deemed all aerodromes, buildings, installations, areas and services designed to facilitate and make safe air navigation, expressly including those of air traffic, telecommunications, meteorology, and coordination of search and rescue, as well as radio or visual aid installations. 115

Article 142 of Costa Rica's Civil Aviation Law defines Air Navigation Facilities as:

"Any facility used, or which may be used or is designated to be used as aid to Air Navigation, including landing fields, lights, apparatus or equipment to receive and give weather information, signals, radio orientation, radio or electric communications and any other structure or mechanism for similar purposes to guide or control flight, take offs or landings of aircraft." 116

El Salvador's civil aviation law, even though it does not define air navigation facilities, it classifies in Article 77 which services are of aid to air navigation Article 77 and giving indirectly a good definition of them:

114 Codigo Brasileiro do Ar. Deeree-Law 32. 18th November, 1966 (hereinafter cited as Air Code).

115 The former Brazilian Air Code (June 8, 1938 as amended to 1947) in its Article 38, was much less explicit and instead of using the term "air navigation facilities", used "ground units". Valle, Comentarios ao NovoCodigo Brasileiro do Ar, Coelho Branco, (Rio de Janeiro: 1967), p. 86.

116 Law on Civil Aviation. - Decree Law 762 of Oct. 18, 1949. (hereinafter cited as Costa Rica's law on Civil Aviation).

"Services of aid to air navigation shall be those of traffic control, aviation radio communications, meteorological information, services of day and night beacons and any others necessary to assure safety and regularity of air navigation." 117

Section B. Characteristics

In order to characterize Air Navigation Facilities, definitions and concepts are needed. The most relevant qualities of air navigation facilities are the following:

1) The complexity of air navigation facilities: the nature of the organization, and also the great number of services which integrate the facilities determine this characteristic.¹¹⁸ Economical, financial, technical and legal factors of growing complexity are involved with the operation and the establishment of the facilities.¹¹⁹ The services and facilities rendered are by themselves intricate; today more than ever, good administration, is essential because of the large number of people and resources involved in their operation.

117 Decree No. 2011, Law on Civil Aviation of December 20, 1955 (hereinafter cited as El Salvador's law on Civil Aviation).

118 Mirabel, the new Montreal airport is an example of the complexity of which we are speaking: the area of the airport comprises 138 square miles. 850,000 cubic yards of concrete went into the paving of the runways, taxiways and aircraft aprons and hundreds of specialists at three levels of government, as well as dozens of consultants from universities and the private sector co-operated in the development of the airport. The final phase of Mirabel will be completed 50 years from now.

119 Rodruiguez Jurado, Teoria y Practica del Derecho Aeronautico, De Palma, (Buenos Aires: 1963), p. 115.

2) The elements integrated into Air Navigation Facilities do not themselves constitute the main factor in aeronautical activity, but definitely are an important auxiliary, almost irreplaceable in modern aviation, and therefore comprise one of the basic pillars of air environment.¹²⁰

3) Internationality of Air Navigation Facilities: One of the Air Law Characteristics in its International Character.¹²¹ This character is applicable to Air Navigation Facilities, and the Internationality is a manifestation of the need to create air safety without border considerations. Internationality has been achieved, and the following three principles prove this fact:

I - Obligation of States to look for a standardized minimum degree in airport installations;¹²²

II - Duty of States to open their airports to International Air traffic under certain conditions;¹²³

III - Recognition of ICAO's right to exercise an intervention and to give assistance to State's in this matter.¹²⁴

¹²⁰ Rodriguez Jurado, Derecho Aeronautico, (1963), p. 115.

¹²¹ For a further and detailed analysis of the International Character of Air Law, see, Matte, Traité de Droit Aerien - Aeronautique, Pedone, (Paris: 1964), p. 39-40.

¹²² See Articles 28 and 37 Chicago Convention and Annex 14 (Aerodromes).

¹²³ See Articles 10, 15 and 68 Chicago Convention.

¹²⁴ Cartou, Droit Aerien, Presses Universitaires, (Paris: 1963), p. 204.

- 4) The air navigation facility service has a public interest character, already discussed in this chapter.¹²⁵
- 5) Air navigation facilities are a permanent and global service.¹²⁶ The service arises as a consequence of the public interest attributed to the facilities.¹²⁷

¹²⁵ We refer the analysis of this characteristic to what has already been said in the Chapter.

¹²⁶ Alessandri, "L'infrastructure aerienne", 16 Revue Aeronautique Internationale, (1935), p. 171.

¹²⁷ Certain authors, such as Hamilton and Delascio, perceive Air Navigation Facilities in relation to the aircraft flight time. It is our understanding that Air Navigation facilities support air navigation, long before departure and even for a while after aircraft landing.

CHAPTER 2. DEFINITION OF AERODROMES AND RELATED CONCEPTS

Section A. Definition of Aerodromes

Annex 14 of the Chicago Convention defines Aerodrome as:

"A defined area or land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure, and movement of aircraft." ¹²⁸

This definition is found throughout ICAO documents.¹²⁹ Some legislation follows very closely the ICAO definition, but adds the so-called legislative element.¹³⁰

Three elements which outline the aerodrome definition are:

- 1) Technique
- 2) Function
- 3) Legislation.

1) Technical element: Refers to the requirements of the art of navigation in order that a surface can be used for manoeuvres, take-off and landing of aircraft.¹³¹ Most

¹²⁸ Annex 14. International Standards and Recommended Practices "Aerodromes", 6th Edition, (September, 1971), paragraph I.1.

¹²⁹ The aerodrome definition is also provided in Annexes 2, 3, 4, 6/I, 6/II, 11 and 17. Also in PANS (Procedures for Air Navigation Services) of Meteorology and Rules of the Air and Air Traffic Services.

¹³⁰ The legislative element will be subject of a study later in this work. *Infra P.*

¹³¹ Tapia Salinas, Manual de Derecho Aeronautico, Bosch, (Barcelona: 1944), p. 71. Gay de Montella, Principios Derecho Aeronautico, (1950), p. 217.

Latin American legislation recognize this element in their texts,¹³² the exception being those States which do not give a definition of aerodrome in their laws. This is the case in the laws of Argentina, Bolivia, El Salvador, Honduras and Nicaragua.

Article 5 of Cuba's Regulation provides:¹³³

"Aerodrome shall mean an area or space on land previously marked out, identified and intended for the take off and landing of terrestrial aircraft."

132 The Latin American texts recognizing the Technical element are the following: Article 5, Cuba, Regulation on Civil Aviation, Decree 548 of April 21, 1928 (hereinafter cited as Cuba's Regulation on Civil Aviation); Article 34, Chile, Air Navigation, Decree with force of law, No. 221 of May 15, 1931 (hereinafter cited as Chile's Air Navigation Decree Law); Article 4, Ecuador, Law of Air Traffic, Jan. 4, 1960 (hereinafter cited as Ecuador's Air Traffic Law); Article 78, Guatemala, Civil Aviation Law of Oct. 28, 1948 (hereinafter cited as Guatemala's Civil Aviation Law); Article 44 of Brazil's Air Code; Article 48, Colombia, Law on Civil Aviation, Law 89 of May 26, 1938 (hereinafter cited as Colombia's law on Civil Aviation); Article 88, Dominican Republic, Civil Aviation Law, No. 505, Nov. 22, 1969 (hereinafter cited as Dominican Republic Civil Aviation Law); Article 40, Panama, Regulation on Civil Aviation, Decree-law No. 19 of August 8, 1963 (hereinafter cited as Panama's Regulation on Civil Aviation); Article 50 Paraguay, Aeronautical Code, Law 469 of Sept. 30, 1957 (hereinafter cited as Paraguay's Aeronautical Code); Article 40, Uruguay, Code of Aeronautical Law, Decree-law 10.288, Dec. 3, 1942 (hereinafter cited as Uruguay's Code of Aeronautical Law); Article 46, Peru, Civil Aeronautics Law, No. 15.720, 11th Dec, 1965 (hereinafter cited as Peru's Civil Aeronautics Law).

133 Regulation on Civil Aviation. (Cuba, 1928).

Article 34 of Chile's Decree law states:¹³⁴

"An aerodrome is defined as any area on land or water especially equipped for the parking, take-off or landing of aircraft." ¹³⁵

Article 78 of Guatemala's Law states:¹³⁶

"An aerodrome shall be deemed any place on land, water, lake or river, intended for the departure, arrival, parking and control of aircraft." ¹³⁷

In those, legal texts where there is no aerodrome definition, the doctrinal elaboration will be of vital importance, since the concept of aerodrome will vary substantially depending upon whether or not the legislator accepts one or more the defining elements under our consideration.

2) Functional element: requires that the aerodrome must be destined specifically to serve as a base for air operations.¹³⁸ The fact that a surface can be naturally capable of departures, manoeuvres or arrivals of aircraft is not sufficient to define an aerodrome, since any surface that is long enough or smooth enough could fulfill this requirement.

¹³⁴ Air Navigation Decree-law (Chile, 1931).

¹³⁵ Hamilton, Manual de Derecho Aéreo, Jurídica, (Santiago: 1960), p. 265.

¹³⁶ Civil Aviation Law (Guatemala, 1948).

¹³⁷ Martinez-Sobral, Derecho Aeronautico, San Antonio, (Guatemala: 1968), p. 40.

¹³⁸ Gay de Montella, Principios de Derecho Aeronautico, (1950), p. 217.

Among the Latin American legislations only ten texts consider this conclusive element, using words such as "destined",¹³⁹ "equipped",¹⁴⁰ "intended",¹⁴¹ "used"¹⁴² or "suitable"¹⁴³ to express in one way or another the exclusive use of the respective zones or areas for the manoeuvring of aircraft.

Article 44 of Brazil's Code states:¹⁴⁴

"Aerodrome is any area of land, water or floating destined for arrivals, departures and manoeuvres of aircraft." ¹⁴⁵

Article 4 of Ecuador's Air Traffic law states:¹⁴⁶

"An airport shall be deemed any place on land or water which is equipped for the take off, landing or parking of aircraft."

¹³⁹ Código Brasileiro do Ar, Article 44 (Brazil, 1966), Civil Aviation law-Article 88 (Dominican Republic, 1969).

¹⁴⁰ Air Navigation Decree law, Article 34 (Chile, 1931); Law of Air Traffic, Article 4 (Ecuador, 1960).

¹⁴¹ Civil Aviation law, Article 78 (Guatemala, 1948); Civil Aeronautics law, Article 46 (Peru, 1965); Regulation on Civil Aviation Article 5 (Cuba, 1928); Aeronautical Code, Article 50, (Paraguay, 1957); Code of Aeronautical law, Article 40, (Uruguay, 1942).

¹⁴² Regulation on Civil Aviation, Article 40 (Panama, 1963).

¹⁴³ Law on Civil Aviation, Article 43 (Colombia, 1938).

¹⁴⁴ Código Brasileiro do Ar, (Brazil, 1966).

¹⁴⁵ Valle, Código Brasileiro do Ar, (1967), p. 86.

¹⁴⁶ Law of Air Traffic (Ecuador, 1960).

Article 48 of Colombia's law provides:¹⁴⁷

"An aerodrome shall be deemed any location on land or water suitable for the landing and take-off of aircraft." 148

Article 50 of Paraguay's Code provides:¹⁴⁹

"An aeródrome shall be a defined area of land or water intended wholly or partially for the landing, parking or take-off of aircraft." 150

Article 40 of Panama's Regulation states:¹⁵¹

"An aerodrome shall be deemed to be any defined area on land or water including all of its buildings and equipment, used entirely or partially for the arrival, departure, and movement of aircraft."

The laws of Costa Rica, Mexico and Venezuela invite serious criticism due to the insufficiency of their legal definitions.¹⁵²

¹⁴⁷ Law on Civil Aviation (Colombia, 1938).

¹⁴⁸ Cobo Cayon, Derecho Aereo, (1966), p. 342.

¹⁴⁹ Aeronautical Code (Paraguay, 1957).

¹⁵⁰ Fuster, Manual de Derecho Aeronautico, El Arte, (Asuncion: 1958), p. 145.

¹⁵¹ Regulation on Civil Aviation (Panama, 1963).

¹⁵² Article 142 a) Costa Rica, Law on Civil Aviation, Decree-law 762 of Oct. 18, 1949 (hereinafter cited as Costa Rica's law on Civil Aviation); Article 327, Book Four of the law of General Means of Communication, Decree amending it, May 11, 1950 (hereinafter cited as Mexico's law of General Means of Communications); Article 33, Venezuela Civil Aviation law, April 21, 1955 (hereinafter cited as Venezuela's Civil Aviation law).

Article 327 of Mexico's law of General Means of Communications defines a civil aerodrome as:

"...any defined area of land or water which is suitable for the taking off, landing and movement of civil aircraft." 153

Venezuela also gives the definition of a civil aerodrome, while Costa Rica only uses the airport definition, based on the ICAO definition of aerodrome.¹⁵⁴

3) The legislative element: also called "administrative", referring to the procedure that characterizes it. It consists of the authorization given by the State for the functioning of the aerodrome, considering that without that authorization something essential would be missing.¹⁵⁵ This element, called "aerodrome authorization", is in the form of an administrative resolution, which identifies, situates, classifies and authorizes certain manoeuvres, take-offs and landings on a determined surface. The importance of this authorization can be seen by the fact that a great majority of Latin American texts, with only two exceptions,¹⁵⁶ contain the authorization, although a different wording is used.¹⁵⁷

153 Diaz, Ensayo sobre Navegacion Aérea, Unpublished Thesis, UNAM, (Mexico: 1950), p. 77.

154 Tolle, Air Law in Latin America, LL.M. Thesis, McGill University, (Montreal: 1960), p. 197, Appendix 29, p. 131.

155 Chauveau, Droit Aérien, Lib. Techniques, (Paris: 1951), p. 378.

156 The exceptions are the laws of Bolivia and Mexico.

157 Later on in the work, more shall be discussed about authorization.

We have already discussed the ICAO definition of Aerodrome. The expression "aerodrome" is a generic denomination that identifies every airfield, i.e., all surfaces destined for the landing and departure of aircraft. The word "surface" comprises both land and water¹⁵⁸ (including lakes and rivers), fit for such air operations. All Latin American laws that define aerodrome accept these principles.¹⁵⁹ The exception is Cuba's regulation, which refers to "an area or space on land...".¹⁶⁰

It is interesting to note that Article 44 of Brazil, already mentioned, makes reference to floating surfaces among aerodromes, thus an aircraft carrier would fit into this definition.¹⁶¹

The generic character of the aerodrome allows us to consider all surfaces destined for such a commission, whether or not they have complementary installations.¹⁶² The fact that an airfield has installations or other units for the purpose of obtaining greater safety in air operations, is the most accepted criterion in defining the term "airport", in both international texts¹⁶³ and doctrine and constitutes a type of the genre "aerodrome".

¹⁵⁸ A good definition of "landing field" is submitted by Costa Rica's Civil Aviation Law (1949), which in its Article 142 1) states that it is "a maritime, river or terrestrial area suitable for landing of aircraft."

¹⁵⁹ See, Supra, footnote 132.

¹⁶⁰ Regulation on civil aviation, Article 5 (Cuba, 1928).

¹⁶¹ Cobo Cayon, Derecho Aéreo, (1966), p. 338.

¹⁶² Rodruiguez Jurado, Derecho Aeronautico, (1963), p. 116.

¹⁶³ ICAO, Annex 14, "Aerodromes".

In Honduras the law¹⁶⁴ does not distinguish between the words "aerodrome" and "airport", nor does it define them. This case is an exception in Latin America.¹⁶⁵

Section B. Related Concepts

We shall now consider three special concepts of aerodromes:

- 1) Water aerodromes;
- 2) Emergency aerodromes;
- 3) Alternate aerodromes.

1) Water Aerodromes: These aerodromes originate in the diverse physical nature of their areas. Legally, this particular type of aerodrome does not create any important impact, and the law accords it very little import-

164 Honduras, Civil Aviation Law, March 14, 1950, as amended by Decree No. 146, 1957, (hereinafter cited as Honduras Civil Aviation Law).

165 The term "airport" is used in the following articles: 94 (no monopoly in the use of airports), 220 (liability of the carrier is stated as including the time while the aircraft is in an airport) and 39 (use of authorized airport). The term "aerodrome" is used by the following articles: 89 (operator required to inform which aerodrome he intends to use), 275 (fine on Captain who lands in other than authorized aerodromes) and 49 (notice if a non-authorized aerodrome is used by foreign aircraft). Tolle, "Direito Aeronautico no Honduras", 5 Boletin ITA, (1962), p. 5.

ance.¹⁶⁶ In Latin America no regulation about them seems to exist.¹⁶⁷

2) Emergency Aerodromes: These are land spaces specifically chosen for their suitability for emergency landings. They are situated along routes used by scheduled air services, and are either natural aerodromes, or are built for that purpose. The need for, and construction of, these aerodromes is directly proportionate to aeronautic progress. Consequently, there are less emergency aerodromes nowadays.¹⁶⁸

Among Latin American legislations only Uruguay mentions Emergency Aerodromes, stating in its Article 43¹⁶⁹ that they shall be "...landing fields or water surfaces for occasional use by any aircraft."¹⁷⁰

¹⁶⁶ ICAO's position on the matter shows how the importance of Water Aerodromes has diminished. The 1st edition of Annex 14 (1951) had clear references to these aerodromes in Part II, Chapter 3 (Reference Codes for Aerodrome Characteristics), Part III, Chapter 2 (Physical Characteristics of Aerodromes), Part V (Obstruction Clearing and Marking) and Part VI, Chapter 3, (Visual Ground Aids). The 6th Edition of Annex 14 (1971) has no references at all about Water Aerodromes.

¹⁶⁷ Videla Escalada, 1 Derecho Aeronautico, (1969), p. 413; Rodríguez Jurado, Derecho Aeronautico, (1963), p. 116.

¹⁶⁸ Le Goff, Manuel de Droit Aerien, Droit Public, Dalloz, (Paris: 1954), p. 354; Gay de Montella, Principios de Derecho Aeronautico, (1950), p. 218; Tapia Salinas, Derecho Aeronautico, (1944), p. 73.

¹⁶⁹ Code of Aeronautical Law (Uruguay, 1942).

¹⁷⁰ Tolle, "Direito Aeronautico no Uruguay", 3 Boletín ITA, (1960), p. 22.

3) The alternate aerodrome: is defined by ICAO's Lexicon¹⁷¹
as:

"an aerodrome specified in the flight
plan to which a flight may proceed
when it becomes inadvisable to land
at the aerodrome of intended landing." 172

The alternate aerodrome is an ordinary aerodrome, defined as such due to a technicality. This is the reason why we consider it a related concept. The idea of an alternate aerodrome is not found in Latin American texts.

¹⁷¹ ICAO Lexicon. Doc. 9110, Vol. II, Definition A94.17
(1974).

¹⁷² The term is found in Annexes 2, 6/I and 11 and in the
PANS of Rules of the Air and Air Traffic Services.

CHAPTER 3. AERODROMES CLASSIFICATION

Section A. Generalities

In order to facilitate regulation problems such as the creation, management and operation of aerodromes, all legislation has tried to establish a classification. Unfortunately the criteria used are numerous and sometimes irreconcilable.¹⁷³

We have decided to concentrate on two legal classifications of great importance. The first one distinguishes between civil and military aerodromes, while the second analyzes the most important of all classifications for civil aviation, that of public and private aerodromes. Other less important classifications will also be discussed.

Section B. Civil and Military Aerodromes

As a consequence of the potential of aviation for use in both peace and war there has always been the distinction between civil and military aerodromes.¹⁷⁴

- 1) However, the distinction is not made in the legislation of Argentina, Bolivia, Colombia, Cuba, Ecuador, Paraguay, Peru and Uruguay.
- 2) A second group of texts restricts regulation to civil aerodromes thereby implicitly recognizing the distinction between civil and military aerodromes. That is the case

¹⁷³ Guinchard, "Le probleme de la Classification des Aerodromes", 12 RFDA, (1958), p. 2.

¹⁷⁴ Videla Escalada, 1 Derecho Aeronautico, (1969), p. 413.

in El Salvador, Honduras, Mexico, Nicaragua, Panama and Venezuela.¹⁷⁵

Article 83 of El Salvador's law,¹⁷⁶ Chapter X "Aerodromes", considering the subject of classification states the following:

"Civil aerodromes and airports shall be classified as national, municipal and private, in accordance with their legal ownership. Pertinent regulations shall classify the aerodromes and define technical conditions and requirements for each class."

The laws of Nicaragua and El Salvador follow this definition very closely and the three of them mention military aerodromes in other articles of their laws.¹⁷⁷

Honduras law,¹⁷⁸ in its Article 69, indicates that civil aircraft can land in military aerodromes only in the case of an emergency or the granting of a special permit.¹⁷⁹

¹⁷⁵ Law on Civil Aviation, Article 83 (El Salvador, 1955); Civil Aviation Law, Article 64 (Honduras, 1950); Book Four, Article 327 (Mexico, 1950); Article 59, Nicaragua, Civil Aviation Code, Decree 176, Nov. 22, 1956 (hereinafter cited as Nicaragua's Code); Regulation on Civil Aviation, Article 41 (Panama, 1963); Civil Aviation Law, Article 33, (Venezuela, 1955).

¹⁷⁶ Law on Civil Aviation (El Salvador, 1955).

¹⁷⁷ Law on Civil Aviation, Article 83 (El Salvador, 1955); Civil Aviation Law, Article 69 (Honduras, 1950); Civil Aviation Code, Article 64, (Nicaragua, 1956).

¹⁷⁸ Civil Aviation Law (Honduras, 1950).

¹⁷⁹ Pino, Nociones Basicas de Derecho Aéreo y sobre la legislación Aeronautica de Honduras, U.N.A.H. (Tegucigalpa, 1974), p. 151.

3) A third legislative group is exemplified by the laws of Brazil, Chile, Dominican Republic and Costa Rica. They explicitly mention the category of military aerodromes, either in contrast to that of civil aerodromes¹⁸⁰ or to public and private aerodromes.¹⁸¹

Article 45 of Brazil's Code classifies aerodromes as civil and military. Civil aerodromes are those used for civil aircraft and military aerodromes those for military aircraft. It is a strict classification, although somewhat tempered by allowing civil aerodromes to be used by military aircraft and vice-versa.¹⁸²

Article 34, paragraph 2 of Chile's law provides: "Aerodromes are divided into military, public and private."¹⁸³ A similar position is followed by the laws of Dominican Republic and Costa Rica.

In principle a military aerodrome is not open to public use. In relation to civil aerodromes there are distinct differences, not only in the status of the people involved with the military aerodrome, but also in the special legal regime of its services. The characteristic of a military aerodrome is its objective of national defense, being under the control of the Air Force. A military aerodrome, due to its very specific nature, will keep its military characteristics without deviation.¹⁸⁴

¹⁸⁰ Air Code, Article 45 (Brazil, 1966).

¹⁸¹ Air Navigation Law, Article 34 (Chile, 1931); Civil Aviation Law, Article 89 (Dominican Republic, 1969); Law on Civil Aviation, Article 49 (Costa Rica, 1949).

¹⁸² Valle, Codigo Brasileiro do Ar, (1967), p. 87.

¹⁸³ Air Navigation Law (Chile, 1931).

¹⁸⁴ Hamilton, Derecho Aéreo, (1960), p. 266.

Article 91 of Dominican Republic's law defines military aerodromes merely "as those destined for the exclusive use of the Armed Forces of the Republic".¹⁸⁵

There is only one other law, Article 45 of Brazil's Air Code, which defines the military aerodrome. 'It is that aerodrome assigned for military aircraft use, but which can also be used by civil aircraft. Civil aerodromes are assigned for the use of Civil Aircraft, but can also be used by military aircraft. That provision means that in the final analysis civil aerodromes can be considered as military aerodromes.'¹⁸⁶

For the general interests of civil aviation, the clear wording of Article 91 of Dominican Republic's law is preferable.¹⁸⁷

The question of preference is not merely academic but of great importance due to the danger involved in the militarization of public aerodromes, which can happen easily if there is no distinction between civil and military aerodromes. Another concurrent danger is the possibility that a civil or military aerodrome could be confused with a mixed-type aerodrome.

Mixed-type aerodromes are those open to the public, but which also have some elements belonging to the Air Forces stationed on it. Guatemala is the only Latin American country whose legislation refers to the mixed-type aerodrome.¹⁸⁸

¹⁸⁵ Civil Aviation Law (Dominican Republic, 1969).

¹⁸⁶ Air Code, (Brazil, 1966).

¹⁸⁷ Civil Aviation Law, (Dominican Republic, 1969).

¹⁸⁸ Juárez, El Derecho Aéreo Guatemalteco en el Derecho Internacional, Edit. del Ejército, U. San Carlos, (Guatemala, 1957), p. 119.

Article 84 of Guatemala's law states:

"In mixed aerodromes, that is, those open to public service but which may have elements belonging to the Air Force located on them, the zones of influence of the military and civil authorities shall be specified so that a conflict of authority, contrary to good organization, will be avoided." 189

The law of Guatemala creates a problem, since it puts civil and military aircraft in the same airfield. This could have been avoided, by determining special precincts, beside the aerodrome, for the exclusive use of the Armed Forces. Thus the organic unity and the public character, founded in the liberty of air manoeuvres would not have been lost.¹⁹⁰

Section C. Public and Private Aerodromes

The classification of Aerodromes in private and public is the classification that has the greatest importance from the legal point of view.¹⁹¹

Although nowhere in the Chicago Convention is the classification mentioned, Article 15 provides that each contracting State shall accord the aircraft of other

189 Civil Aviation Law, (Guatemala, 1948).

190 Videla Escalada, 1 Derecho Aeronautico, (1969), p. 413.

191 Rodriguez Jurado, Derecho Aeronautico, (1963), p. 117.; Videla Escalada, Derecho Aeronautico, (1969), p. 414; Lena Paz, Compendio de Derecho Aeronautico, Endeaba, (Buenos Aires: 1970), p. 88.

contracting States the same treatment as accorded its own aircraft, concerning charges and facilities, in connection with the use of public airports.¹⁹²

The Paris Convention of 1919 and the Havana Convention of 1928 have similar provisions, and they are the basis of Chicago's Article 15. They also refer to non-discrimination in open aerodromes between national and foreign aircraft, and the payment of charges.¹⁹³

It is interesting to note that while Paris was drafted practically all aerodromes were under national control. The situation in United States in the period of 1920 was different, since a great number of the aerodromes were commercial, owned and operated by companies, also operating aircraft. The idea that airports can be developed and operated on commercial grounds came under the subject of charges and non-discrimination. There was a recognition in both Paris and Havana that States had to assume the obligation to oversee charges imposed at privately owned fields.¹⁹⁴

From Article 15 of Chicago one recognizes a distinction between public and private aerodromes. All Latin American legislation, with the sole exception of Bolivia, recognize this distinction. The analysis of public and private aerodromes leads us to distinguish four categories:

1) Those texts that accept the distinction explicitly are Argentina, Brazil, Chile, Colombia, Cuba, Dominican

¹⁹² Latchford, "Comparison of the Chicago Convention with the Paris and Havana Conventions", Vol. XII, U.S. Dept. of State Bulletin, No. 298, (March, 1945), p. 412.

¹⁹³ Article 24, Paris Convention: Articles 23 and 24 Havana Convention. Mandl, "Les aerodromes", 2 RGDA, (1933), p. 52.

¹⁹⁴ Warner, "Convention for air navigation", 3 ALR, (1932), p. 277.

Republic, Guatemala, Mexico, Panama, Paraguay, Uruguay
and Venezuela.¹⁹⁵

Argentina's Code in its Article 25 provides
that:¹⁹⁶

"Aerodromes are public or private.
Public aerodromes are those destined
for public use; all the others are
private. The condition of being
owner of the immovable does not
qualify an aerodrome as public or
private." ¹⁹⁷

Article 34 of Chile's law specifies in its
third paragraph:¹⁹⁸

"Public aerodromes are those construc-
ted by the State, the municipalities or
individuals, and placed at the disposal
of the public for air navigation, and
private aerodromes are those constructed
for their personal use." ¹⁹⁹

¹⁹⁵ Air Code, Article 46 (Brazil, 1966); Civil Aviation
Law, Article 89 (Dominican Republic, 1969); Air
Navigation Law, Article 34 (Chile, 1931); Book
Four, Article 327 (Mexico, 1950); Regulation
on Civil Aviation, Articles 41-47 (Panama, 1963);
Civil Aviation Law, Article 33 (Venezuela, 1955);
Regulation on Civil Aviation, Article 50 (Cuba,
1928); Law on Civil Aviation, Article 51 (Colo-
mbia, 1938); Aeronautical Code, Article 51
(Paraguay, 1957); Civil Aviation Law, Articles
81 and 82 (Guatemala, 1948); Code of Aeronauti-
cal Law, Article 41 (Uruguay, 1942); Aeronauti-
cal Code, Article 25 (Argentina, 1967).

¹⁹⁶ Aeronautical Code (Argentina, 1967).

¹⁹⁷ Lena Paz, Código Aeronautico de la Nacion, Abeledo-
Perrot, (Buenos Aires: 1971), p. 61.

¹⁹⁸ Air Navigation Law (Chile, 1931).

¹⁹⁹ Hamilton, Derecho Aéreo, (1960), p. 265.

Article 51 of the Aeronautical Code of Paraguay provides: "According to the Service offered aerodromes may be public or private."²⁰⁰

2) In the laws of Peru and Ecuador, the classification is derived from an interpretation.²⁰¹

Article 11 of the law of Air Traffic of Ecuador in its paragraph three states: "In particular circumstances private airports may be declared works of public use."²⁰²

3) Costa Rica's Article 49 provides that:

"National and Municipal airports shall be open to public service in accordance with the respective regulations, except when they are declared to be in temporary and exclusive use for military service. Likewise, private airports shall be placed at the disposal of public services if the general interest so requires, and their construction and operation shall then be subject to the same regulations, inspection and management as national or municipal airports." ²⁰³

²⁰⁰ Fuster, Derecho Aeronautico, (1958), p. 146.

²⁰¹ Law of Air Traffic, Article 11 (Ecuador, 1960);
Civil Aeronautics Law, Article 94 (Peru, 1965).

²⁰² Agreement No. 07 of the Ministry of Public Works mentions the following aerodromes: military, particular, customs, open and closed. The classification is deduced from the use given to such denominations by the Regulation. Carrera, El Derecho Aeronautico, Su presente y futuro en la legislacion Ecuatoriana, Anales Universidad de Guayaquil, (Guayaquil: 1958), p. 83.

²⁰³ Civil Aviation Law, (Costa Rica, 1949).

Clearly there is sufficient basis for accepting the distinction between public and private aerodrome, even though the text is confusing in its reference to three types of aerodromes, according to the service performed: public, military and private (the latter one if it is read in relation to Article 51).²⁰⁴

4) The texts of Nicaragua, El Salvador and Honduras²⁰⁵ recognize the distinction between public and private aerodromes, but they tarnish it by determining that all civil aerodromes are open to the public service.²⁰⁶

Article 60 of Nicaragua's Civil Aviation Code provides:

"All civil aerodromes of the country are open to public service in accordance with the specification of each category and at rates approved by the Ministry of Aviation."

204 Article 51 states that only Costa Ricans are given franchises for the establishment of private airports. Tolle, Air Law in Latin America, Appendix (1960), p. 29.

205 In Article 12 of Honduras Regulations, the classification is more clear, establishing that public aerodromes are those that have been authorized to operate a public service of aircraft by a government authorization. Private aerodromes are those built by natural persons or corporations exclusively for their own needs. Pino, Derecho Aéreo, (1974), p. 151.

206 Law on Civil Aviation, Article 84 (El Salvador, 1955); Civil Aviation Law, Article 65 (Honduras, 1950); Civil Aviation Code, Article 60 (Nicaragua, 1956).

Even though there is a general agreement on the importance of the distinction between public and private aerodromes, there is none regarding the criteria which influences it. There exists two positions, or basic currents, in legislation and in doctrine.²⁰⁷

1) The first position adopts as a distinction factor, the legal situation of the owner or operator creating the aerodrome.²⁰⁸ This tendency is not found in Latin America.

2) The second position takes into account for classification the aerodrome's purpose of public service.²⁰⁹ A private aerodrome is one that is not available to any user of aircraft. This position recognizes the interest and character of the holder, thus when it is the state, the rules of administrative law apply.²¹⁰

It points out that both state and private aerodromes can be for public or private use; the choice of classification, however, should reflect the nature of aerodrome operation.²¹¹

In Latin America the position of classifying the aerodrome according to its destination for public service is encountered in the laws of Argentina, Brazil, Dominican

²⁰⁷ Rodríguez Jurado, Derecho Aeronautico, (1963) p. 117; Videla Escalada, 1 Derecho Aeronautico, (1969), p. 414; Charlier, 2 Droit Aerien, (1955), p. 8; Lemoine, Droit Aerien, (1947), p. 119; Chauveau, Droit Aerien, (1951), p. 380; Guinchard, "Clasificación des Aerodromes", 12 RFDA, (1958), p. 1-17.

²⁰⁸ Le Goff, Droit Aérien, (1954), p. 360.

²⁰⁹ Hamilton, Derecho Aéreo, (1960), p. 266.

²¹⁰ Videla Escalada, 1 Derecho Aeronautico, (1969), p. 414.

²¹¹ Chauveau, Droit Aérien, (1951), p. 380.

Republic, Guatemala, Mexico, Paraguay and Venezuela.²¹²

Articles 81 and 82 of Guatemala's Civil Aviation Law clearly indicate this position. Article 81 provides:

"Aerodromes are divided into:

- a) those in service of the State;
- b) those in public service;
- c) those in private service." 213

Article 82 defines each type of aerodrome of this classification:

"Aerodromes of the State are those which are owned by it and for the exclusive use of its aircraft; public service aerodromes are those open to the free access of aerial traffic and they may be owned by the State or private persons, and in the latter case they may be authorized for corporations or individual enterprises. Private aerodromes may be authorized only for Guatemalans or national legal entities."

Article 327 of Mexico's law of General Means of Communications gives a clear view of this position in its 2nd paragraph²¹⁴ "Civil aerodromes shall be divided into aerodromes for public service and aerodromes for

²¹² Aeronautical Code, Article 25 (Argentina, 1967); Air Code, Article 46 (Brazil, 1966); Civil aviation law, Articles 89-91 (Dominican Republic, 1969); Aeronautical Code, Article 51 (Paraguay, 1957); Civil Aviation Law, Article 33 (Venezuela, 1955); Civil Aviation Law, Articles 81 and 82 (Guatemala, 1948).

²¹³ Juarez, Derecho Aéreo Guatemalteco, (1957), p. 119.

²¹⁴ Guinchard, "Classification des Aerodromes", 12 RFDA, (1958). p. 3.

private service."²¹⁵

The laws of several other states use similar eclectic criteria, and adopt the same positions as those already mentioned; those states are Colombia, Costa Rica, Cuba, Chile, Panama and Uruguay.

Article 41 of Uruguay's Code of Aeronautical Law applies its classification of aerodromes according to whether or not they are destined to public use:²¹⁶

"Aerodromes shall be considered public when they belong to the State, to Municipalities, Aviation Societies or individuals if they have been opened to public service and may be used by any aircraft. They shall be considered private when they belong to the State, Municipalities, Aviation Societies or individuals and are intended for their own exclusive use."

Chile's Air Navigation law, in its Article 34, also points out that the important element for the classification is the purpose either for military use, or to serve for air navigation in general, or for the personal use of those who establish it.²¹⁷ Paragraph 2 classifies aerodromes, and paragraph 3 states that:

"Public aerodromes are those constituted by the State, the Municipalities, or individuals and placed

²¹⁵ Law on Civil Aviation, Article 52 (Colombia, 1938); Law on Civil Aviation, Article 49 (Costa Rica, 1949); Regulation on Civil Aviation, Article 5 (Cuba, 1928); Air Navigation Decree, Article 34 (Chile, 1931); Regulation on Civil Aviation, Articles 41-47 (Panama, 1963); Code of Aeronautical Law, Article 41 (Uruguay, 1942).

²¹⁶ Tolle, "Direito Aeronautico no Uruguay", 3 Boletim-ITA, (1960), p. 22.

²¹⁷ Hamilton, Derecho Aéreo, (1960), p. 266.

at the disposal of the public for air navigation, and private aerodromes are those constructed by private individuals for their personal use."

The criteria used in differentiating the aerodromes of Peru and Ecuador is not known because the classification is done implicitly.²¹⁸

Finally the laws of El Salvador, Honduras and Nicaragua make the distinction by declaring all civil aerodromes for public use, without distinguishing between the nature of the aerodrome owner and the type of operations performed in the aerodrome.

We understand that public aerodromes must be in operating condition to receive every aircraft willing to use them (following the necessary regulations), since any distinction of aerodromes compromise in a much more intense way aviation safety and aeronautical development. Also if public aerodromes have an international character they are open to foreign aircraft traffic, according to the principle of equality of treatment.²¹⁹

However with respect to private aerodromes, that seem to be governed largely by laws resembling Common Law²²⁰ the role of the State is very important. The State keeps and interest in their existence in order to maintain order and national security, to coordinate operations with all

²¹⁸ In Ecuador the implicit classification is based upon the factor of who is in charge of the aerodrome. There is a link of dependence, and military aerodromes depend from the armed forces; civil aerodromes depend from the chief of the airport, and private aerodromes depend from the civil aviation authority who has jurisdiction in the region where the airport is located. Carrera, Derecho Aeronautico, (1958), p. 84.

²¹⁹ Loustau Ferran, La Aeronave y su régimen juridico, Instituto Francisco de Vitoria, (Madrid: 1958), p. 94.

²²⁰ Videla Escalada, 1 Derecho Aeronautico, (1969), p. 416.

other air navigation facilities and to assure that operations and installations meet minimum standards of aeronautic safety.

Section D. Other Aerodromes Classifications

The only specific classification of aerodromes in ICAO documents is found in Annex A, Appendix V of the Final Act of the Chicago Convention. It categorized aerodromes according to the dimensions of the runway and the capability of receiving specified aircraft.²²¹ The three classes mentioned are the following:

- 1) Transoceanic
- 2) Transcontinental;
- 3) Interstate.²²²

Civil Aerodromes have also been classified in a functional way. Although Latin American legislation does not consider this classification,²²³ we can mention the following Civil aerodromes:

- 1) Commercial;
- 2) Sport;
- 3) Technical;
- 4) Scientific.²²⁴

²²¹ de la Pradelle-Gallay, "La statut des Aerodromes en Droit Français", 9 RGA, (1946), p. 536.

²²² International Civil Aviation Conference. Final Act and Related Documents, U.S. Government Printing Office, (Washington: 1945), p. 100.

²²³ The one reason for this, is that if there is any need to regulate this type of aerodromes, it can be done through internal regulation.

²²⁴ Tapia Salinas, Derecho Aeronautico, (1944), p. 74.

Another distinction attends to the nature of the air services given from an airfield and distinguishes between long, medium and short distance services; instruction; sport; air tourist; and also fields for rotor crafts and oblique or vertical take-offs (heliports).²²⁵ Latin American texts do not regulate this classification either.

Finally two types of qualified aerodromes must be mentioned: airports and air cargo airports. Airports will be analyzed at a later point. Air Cargo airports, of which two examples are Stansted (U.K.) and New Jersey (U.S.), will not be considered because they are not found in Latin America.²²⁶

²²⁵ Cartou, Droit Aerien, (1963), p. 214.

²²⁶ For more information on the subject see, Le Goff, "Les Aerodromes on les parties d'aerodromes specialises pour l'expedition du fret aerien", 19 RFDA, (1965), p. 179.

CHAPTER 4. AIRPORTS AND RELATED CONCEPTS

Section A. Definition of Airport

ICAO's Lexicon. (1952) gave the following definition of airport:

"An aerodrome at which the facilities have, in the opinion of the State authorities, been sufficiently developed to be of importance to Civil Aviation." 227

Annex 4, "Aeronautical Charts", to the Chicago Convention, first edition (1949), gave the following definition of airport:

"Any aerodrome at which facilities available to the public are provided for the shelter, servicing or repair of aircraft and for receiving or discharging passengers or cargo." 228

Today neither of the above definitions is used,²²⁹ but they certainly influenced many Latin American laws. In Latin American laws today the element, which determines that an aerodrome can be called an "airport", is the possession of adequate installations for the various services required by air navigation.²³⁰

227 ICAO Doc. 7200, Lexicon. 1st Edition (1952), p. 12.

228 ICAO, Annex 4. Aeronautical Chart. Chapter I. Definitions, (1949), p. 11.

229 Today ICAO's Lexicon and Annex 4 do not contain the definition of airport. See, Amendment 29 to Annex 4. Chapter 1, Definitions, p. 5. The term "airport" and its definition was deleted. ICAO Doc. 9110, Lexicon, Vol. II, Definitions (1974) does not include the definition of airport.

230 Tapia Salinas, Derecho Aeronautico, (1944), p. 72; Videla Escalada, 1 Derecho Aeronautico, (1969), p. 410.

The ICAO pattern has been adopted by the following states in Latin America: Brazil, Colombia, Costa Rica, Mexico, Guatemala, Paraguay and Venezuela.²³¹

Article 327 of Mexico's²³² Law of General Means of Communications in its paragraph 4 provides:

"An airport shall be any civil aerodrome for public service having adequate facilities and installations for the operation of public service aircraft." 233

Article 52 of Paraguay's Aeronautical Code is somewhat more specific and provides in its paragraph 1:

"Any aerodrome equipped with installations for the shelter or repair of aircraft, for loading and unloading of passengers, baggage or cargo, and with services to aid air navigation, shall be known as airport or hydroport, depending on whether the area is onland or water." 234

231 Air Code, Article 48 (Brazil, 1966); Law on Civil Aviation, Article 49 (Colombia, 1938); Law on Civil Aviation, Article 142 a) (Costa Rica, 1949); Civil Aviation Law, Article 79 (Guatemala, 1948); Aeronautical Code, Article 52 (Paraguay, 1957); Civil Aviation Law, Article 33 (Venezuela, 1955).

232 Book Four, Law of General Means of Communications, (1950).

233 Diaz, Navegacion Aérea, (1950), p. 77.

234 Fuster, Derecho Aeronautico, (1950), p. 77.

Article 49 of Colombia's law on Civil Aviation uses the term "special services" instead of "installations":

"An airport shall be deemed any aerodrome equipped with special services for the landing, take off, parking and supplying of aircraft, for the embarkation and discharge of passengers and for the loading and unloading of goods." 235

Another group of Latin American legislation does neither define the term "airport", nor offers an alternative concept. These laws are those of Bolivia,²³⁶ Honduras,²³⁷ Cuba, Ecuador, El Salvador, Nicaragua and Panama.

A third position is taken by a group of legislation which considers the expression "airport" synonymous with what today is understood as an "international airport". It is followed by the texts of Chile, Dominican Republic, Peru and Uruguay.²³⁸

235 Cobo Cayon, Derecho Aéreo, (1966), p. 343.

236 The 1939 Air Traffic Regulation of Bolivia, Article 70, determines that an airport is the aerodrome that has the installations to give an auxiliary and necessary service for air navigation or military activity. Tolle, "Direito Aeronautico na Bolivia", 1 Boletin ITA, (1959), p. 7.

237 It has already been mentioned the existing confusion in the legislation of Honduras between Aerodromes and Airports. See Footnote 165.

238 Air Navigation Decree, Article 15 (Chile, 1931); Civil Aviation Law, Article 88 (Dominican Republic, 1969); Civil Aeronautics Law, Article 46 (Peru, 1965); Code of Aeronautical Law, Article 42 (Uruguay, 1942).

Article 88, paragraph 2 of Dominican's Republic Civil Aviation law provides:

"An airport is the aerodrome designated as the entry or leaving point of the national territory, where the formalities of custom, immigration, health and agriculture quarantine take place as well as similar procedures."

Article 46 of Peru's Civil Aviation law provides that those aerodromes that have authorities for control purposes will be called airports.²³⁹

The aforementioned legislations determine that there is no need to make a legal distinction between aerodrome and airport, if they are only distinguishable by technical factors, such as the greater or lesser endowment of installations and services in the airfield.

Argentina has an interesting position having added another qualifying element to the definition of airport, that of "the intensity of air movement".²⁴⁰ This added element is inserted in a more general framework, because the law already determines that the aerodrome should be public in order to be qualified as an airport.

Article 26, paragraph 1 of the Aeronautical Code states:

"Airports are those public aerodromes that have services or intensity of air movement which justifies such a denomination. Those public aerodromes or airports destined for the operation of aircraft coming or going abroad, where sanitary services, customs, immigration and others take place, will be called aerodromes or international airports."

²³⁹ Gildemaister, Elementos de Derecho Aeronautico, Universitario, (Lima: 1964), p. 106.

²⁴⁰ Videla Escalada, 1 Derecho Aeronautico, (1969), p. 411.

The two conditions of Article 26, the services given and its use for international or national flights, will determine when aerodromes or airports can be considered international.²⁴¹ Perhaps, Article 26, in its desire to define correctly what an airport is, enters, into the administrative and regulatory field. The matter is quite interesting from a legal point of view.²⁴²

Like Argentina's Aeronautical Code, the rules of Brazil, Mexico, Uruguay and Venezuela demand that the airport have the character of a public aerodrome, this being a very important element.²⁴³

Section B. International Airports

The expressions "custom airport", "border airport", "international airport", or "Airport for International Use"²⁴⁴ have long served to indicate those aerodromes or airports destined for aircraft coming or going abroad, and which carried out the formalities of customs, police, sanitary and immigration services.²⁴⁵

The Paris Convention of 1919 already mentioned both customs and international airports.²⁴⁶ Article 15, which ruled the means of admission to air navigation above foreign territory, referred to the customs airport.²⁴⁷

²⁴¹ Lena Paz, Codigo Aeronautico, (1971), p. 24.

²⁴² Guinchard, "Classification des Aerodromes", 12 RFDA (1958), p. 5.

²⁴³ Air Code, Article 48 (Brazil, 1966); Book Four, Law of General Means, Article 327 (Mexico, 1950); Code of Aeronautical Law, Article 42 (Uruguay, 1942); Civil Aviation Law, Article 33 (Venezuela, 1942).

²⁴⁴ Rodruiguez Jurado, Derecho Aeronautico, (1963), p. 117.

²⁴⁵ Videla Escalade, 1 Derecho Aeronautico, (1969), p. 419.

²⁴⁶ Guinchard, "Classification des Aerodromes", 12 RFDA, (1958), p. 4.

²⁴⁷ Roper, La Convention Internationale du 13 Octobre 1919, Sirey, (Paris: 1930), p. 142.

Clearly Annex H of Paris²⁴⁸ designated under the name of "International aerodrome" the aerodrome where joint customs services for two or more states were found.²⁴⁹ While "Customs Aerodromes" were those aerodromes specially designated by the Customs administration of each contracting State, where aircraft going abroad had to depart.²⁵⁰

Article 18, paragraph 1 of Havana Convention provided:

"Every aircraft engaged in international traffic which enters the airspace of a contracting State with the intention of landing in said state, shall do so in the corresponding customs aerodrome..."²⁵¹

The Chicago Convention also has a reference to Customs airport in its Article 10,²⁵² which provides that "except in a case where, under the terms of this Convention or a special authorization, aircraft are permitted to cross the territory of a contracting State without landing"; every contracting State may require aircraft entering and leaving its territory to land at, or depart from "an airport designated by that State for

²⁴⁸ Annex H, unlike all the other Paris Annexes, was not subject to amendment by simple vote of CINA, but had to be acted upon by all adherent states, in the same way as the articles of Paris itself.

²⁴⁹ Tapia Salinas, Derecho Aeronautico, (1944), p. 78.

²⁵⁰ Zollman, Law of the Air, Bruce Publishing Co., (Wisconsin: 1927), p. 189.

²⁵¹ It is important to note that the matter is related to the freedom of passage. Both Paris and Havana took into consideration, above all, the geographical scope of their Conventions. Warner, "Convention for Air Navigation", 3 ALR, (1932), p. 262-263.

²⁵² It is similar to the third paragraph of Article 15 of Paris. 2 Proceedings of the International Civil Aviation Conference, (1949), p. 1382.

the purposes of customs and other examination." All aircraft are bound to comply with such requirements.²⁵³

ICAO defines "International Airport" in two annexes: 9 (Facilitation) and 15 (Aeronautical Information Services).²⁵⁴ An International airport is:

"Any airport designated by the contracting State in whose territory it is situated, as an airport of entry and departure for international air traffic, where the formalities incident to customs, immigration, public health, animal and plant quarantine and similar procedures are carried out." ²⁵⁵

Through the legislations of Paris and Chicago, and Annexes 9 and 15 of Chicago, one can clearly see that a major development has occurred. The notion of customs airport was broadened into a new concept of international airports.

The concept of "international airport" is not found in the Aeronautical Regulations of Bolivia, Costa Rica and Cuba. It is only insinuated by the law of Peru.²⁵⁶ All other Latin American texts recognize it and regulate

²⁵³ Shawcross and Beaumont, Air Law, (1966), p. 205.

²⁵⁴ Rinaldi Baccelli, "International Cooperation for Airports", Unpublished lecture, McGill University, (Montreal: 1975), p. 6.

²⁵⁵ ICAO Doc. 9110. Lexicon, Vol. II. Definition 141, (1974), p. 61.

²⁵⁶ Civil Aeronautics Law, Article 46, (Peru, 1965).

it, following very close ICAO's definition.²⁵⁷

Several states include as a typical element of an international airport, its formal manifestation of the public authority, generally the Executive Power.

Article 67, 2nd paragraph of Brazil's Air Code, provides that only a qualified authority will give the list of international airports. This demonstrates the great power and importance vested in the authority.²⁵⁸

Article 88 of El Salvador's law on Civil Aviation, has a definite and precise position with regards to the importance of the authority. Under the title "International Airports" it provides the following:

"To have international character, an airport must be thus declared by the executive power after establishment of the respective international services of immigration, customs and health and it must fulfill all technical requirements specified in Annex 14 of the Convention on International Civil Aviation."

²⁵⁷ Aeronautical Code, Article 26 (Argentina, 1967); Air Code, Article 67 (Brazil, 1966); Law on Civil Aviation, Article 65 (Colombia, 1938); Air Navigation Decree, Article 15 (Chile, 1931); Civil Aviation Law, Article 97 (Dominican Republic, 1969); Law of Air Traffic, Article 21 (Ecuador, 1960); Law on Civil Aviation, Article 88 (El Salvador, 1955); Civil Aviation Law, Article 79 (Guatemala, 1948); Civil Aviation Law, Article 70 (Honduras, 1950); Book Four, Article 327 (Mexico, 1950); Civil Aviation Code, Article 65 (Nicaragua, 1956); Regulation on Civil Aviation, Article 48 (Panama, 1963); Aeronautical Code, Article 52 (Paraguay, 1957); Civil Aviation Law, Article 35 (Venezuela, 1955).

²⁵⁸ Valle, Código Brasileiro do Ar, (1967), p. 116.

Article 70 of the Civil Aviation Law of Honduras, expresses a similar idea, using a different wording:

"An airport shall be international when it has been declared so by the government and when it is equipped to provide international services in accordance with the recommended international rules."

The laws of Dominican Republic, Nicaragua, Panama and Venezuela also follow the trend of giving an important role to the government, due to the significance of International Airports.²⁵⁹

The Argentinian law²⁶⁰ introduces the concept that the status of International airport can be given to a simple public aerodrome. This modality has been justified because of the requirement imposed upon all aircraft entering or leaving a country, to do so from an international field.²⁶¹

The Brazilian law presents another particularity when defining an international airport, as those "airports destined for national or foreign aircraft doing scheduled or non-scheduled international services".²⁶² The drafting seems to suggest that the use of these airfields is limited only for international scheduled and non-scheduled services, even though this was not the intention.²⁶³

259 Civil Aviation Law, Article 97 (Dominican Republic, 1969); Civil Aviation Code, Article 65 (Nicaragua, 1956); Regulation on Civil Aviation, Article 48 (Panama, 1963); Civil Aviation Law, Article 35 (Venezuela, 1955).

260 Aeronautical Code, Article 26 (Argentina, 1967).

261 Lena Paz, Codigo Aeronautico, (1971), p. 24.

262 Air Code, Article 48, paragraph 2, (Brazil, 1966).

263 Valle, Codigo Brasileiro do Ar, (1967), p. 88.

Section C. Related Concepts with International Airports

Floating and multinational airports are related concepts, in connection with International Airports.

Floating airports have only academic interest today, especially since the idea of establishing artificial floating islands to help the landing on water of aircraft in the middle of the Ocean, has been dropped for a long while.²⁶⁴

Multinational International Airports are those that have a joint management system by two or more nations. Two examples of Multinational Airports are those of Basel-Mulhouse, in the French-Swiss border, and the Geneve-Cointrin Airport.²⁶⁵ In Latin America we do not find either type of International airports.

²⁶⁴ Many writers have commented on the subject of floating airports, such as Tapia Salinas, Cobo Cayon and Gay de Montella. ICAN in 1927 studies the matter, and the International Legal Aviation Committee did the same in 1930. Floating Airports are accepted, but they do present certain interesting juridical problems. A condition is settled in order for them to be allowed to exist and it is, that certain provisions must be taken to protect riparian States. The sovereignty of the State owner of these airports would be unquestionable as long as it does not violate the freedom of high seas and does not interfere with other nations' rights. For further reading on this matter, see: Cosentini, International Code of Aviation, Rivadeneyra, (Mexico: 1933), p. 76; Kroell, 1 Traité de Droit International Public Aerien, Editions Internationales, (Paris: 1934), p. 31.

²⁶⁵ For further reading see: Archinard, "Une importante convention Franco-Suisse de Droit International Public (amenagement de l'aéroport de Geneve-Cointrin)", 14 ASDA Bulletin, (1952-7), p. 14; Ladet, "Statut Juridique, Organisation et fonctionnement", 140 Revue du SGAC, (1970), p. 37-44. The whole issue of this review is dedicated to the International Airport Basel-Mulhouse.

CHAPTER 5. AERODROME AUTHORIZATION

Section A. Authorization in General

Air law has recognized for a long time that the qualifying element of an aerodrome, whatever be its class or category, is that of a previous authorization by the aeronautical authority.²⁶⁶ Something essential would be lacking without the authorization. Aerodrome authorization should not be confused with those authorizations given for material works, or for installations and services, contributing for a better airfield in the material and technical scope.

In legal terms the authorization is an administrative act that emanates from the aeronautical authority, and by which a determined surface is recognized as an aerodrome. It is identified and a location is settled, according to its geographic coordinates. In addition, by means of legal and statutory classifications, it is categorized, and certain air operations are authorized to be held in the aerodrome. The latter will depend upon the categorization and technical characteristics of the aerodrome.

The authorization requirement of every aerodrome is a positive formulation, which was expressed heretofore in legal texts as a prohibition to open and operate aerodromes without a previous authorization. Some Latin American Texts still maintain this position, such as those of Brazil, Chile, Dominican Republic and Panama.²⁶⁷

²⁶⁶ Rodriguez Jurado, Derecho Aeronautico, (1963), p. 117.

²⁶⁷ Air Code, Article 47 (Brazil, 1966); Air Navigation Decree, Article 36 (Chile, 1931); Aeronautical Code, Articles 53-54 (Paraguay, 1957); Civil Aviation Law, Article 93 (Dominican Republic, 1969).

Article 36 of Chile's Air Navigation Decree with force of law, provides:

"It should be prohibited to establish or operate aerodromes without authorization of the Aeronautics Board, which shall determine the standards for their design and operation. Such authorization shall be revoked in case an aerodrome fails to meet the necessary conditions, or when it fails to observe the regulations." 268

Article 53 of Paraguay's Aeronautical Code provides in this matter the following:

"No aerodrome may be constructed, or if constructed, may not be altered without advance authorization from the Board of Civil Aeronautics."

Article 54 of the same Code, goes on to provide that the operation and construction of an aerodrome must be in accordance with the requirements prescribed by the Board of Civil Aeronautics.²⁶⁹

Article 93 of Dominican Republic's Civil Aviation law, has a similar stand on the subject, but the authorization is only considered with regard to public aerodromes.

The requirement of authorization, permit, or certification is considered in the majority of the Latin

268 Hamilton, Derecho Aéreo, (1960), p. 266.

269 Fuster, Derecho Aeronautico, (1950), p. 146.

American texts.²⁷⁰

There are three exceptions, which do not refer to the authorization requirement: the laws of Bolivia, Ecuador and Peru.²⁷¹

The Argentinian Aeronautical Code explains the authorization requirement, stating that it would be desirable to have a perfect knowledge of the aerodrome in cases where it could be used for emergency reasons. Also there is an important interest in aeronautical charts, linked to the authorization requirement.²⁷²

Legal texts in Latin America extend the authorization requirement to the construction stage of an aerodrome.²⁷³

Article 48 of Peru's Civil Aeronautics Law provides: "For the construction of Aerodromes in Peru, an authorization from the Civil Aeronautics Board is required".

²⁷⁰ Aeronautical Code, Article 27 (Argentina, 1967); Law on Civil Aviation, Article 61 (Colombia, 1938); Law on Civil Aviation, Article 65 (Costa Rica, 1949); Regulation on Civil Aviation, Article 5 (Cuba, 1928); Law on Civil Aviation, Article 12 (El Salvador, 1955); Civil Aviation Law, Article 89 (Guatemala, 1948); Civil Aviation Law, Article 66 (Honduras, 1950); Book Four, Law of General Means of Communications, Article 328 (Mexico, 1950); Civil Aviation Code, Article 61 (Nicaragua, 1956); Regulation on Civil Aviation, Article 43 (Panama, 1963); Code of Aeronautical Law, Article 44 (Uruguay, 1942); Civil Aviation Law, Article 36 (Venezuela, 1955).

²⁷¹ The Peruvian Case is interesting. In the Regulation of Civil Aeronautics of 1964, the operation of aerodromes required an authorization (Article 95). The position has not been maintained by the 1965 Civil Aeronautics Law.

²⁷² Lena Paz, Codigo Aeronautico, (1971), p. 24.

²⁷³ Civil Aeronautics Law (Peru, 1965); Law of Air Traffic (Ecuador, 1960); Law on Civil Aviation (Colombia, 1938); Aeronautical Code (Paraguay, 1957).

The texts of Ecuador and Colombia go even further, since they already require permits for the project stage.

Article of Ecuador's Law on Air Traffic, provides:

"No one may lay out or construct an airport or an installation intended for aviation without the respective authorization from the Ministry of National Defense, which may not grant it without the consent of the general staff of the Armed Forces." 274

Article 54 of Colombia's law on Civil Aviation states:

"For the construction of aerodromes, and installations for Navigation, the following requirements must be fulfilled:

- a) Prior government authorization for the study and location of the aerodrome and installations;
- b) Presentation of plans and drafts for approval and review of the government." 275

Article 53 of the Aeronautical Code of Paraguay, has already shown us, that all subsequent modification of aerodromes requires an authorization.²⁷⁶

The laws of Brazil and Colombia require besides the authorization an Aerodrome Register.²⁷⁷

274 Carrera, Derecho Aeronautico, (1958), p. 83.

275 Cobo Cayon, Derecho Aéreo, (1966), p. 359.

276 Fuster, Derecho Aeronautico, (1958), p. 146.

277 Air Code, Article 47 (Brazil, 1966); Law on Civil Aviation, Article 50 (Colombia, 1938).

Article 50 of Colombia's law on Civil Aviation provides:²⁷⁸

"The government shall establish a National Register of Aerodromes in which all Aerodromes or airports a authorized to function as such, shall be recorded." 279

Article 36 of Chile's Air Navigation Law, and Article 44 of Uruguay's Code of Aeronautical law point out the essentially temporary nature of aerodromes and consider it a new qualifying element for authorization. The authorization for normal functioning is limited to a specific period so that the aerodrome is not compelled to maintain indefinitely the legal and technical circumstances, of the time when a permit was granted.

Article 44 of Uruguay's Code provides:

"Aerodromes may be declared temporary public, customs, private or emergency aerodromes by the executive power in accordance with the provisions of the respective regulations." 280

278 Cobo Cayon, Derecho Aéreo, (1966), p. 365.

279 It can be affirmed that the requirements called for in the laws of Perú, Ecuador, Colombia, Paraguay and Brazil correspond more to regulations, than to legislative texts.

280 Since the aerodrome characterization is formulated according to its various purposes, and these purposes can change, the executive power establishes a temporary basis for the different types of aerodromes. Tolle, "Direito Aeronautico no Uruguay", 3 Boletín ITA, (1960), p. 23.

El Salvador's law on Civil Aviation has a unique requirement, provided by Article 86. This article stipulates that the operator of the aerodrome shall be a national:

"Only Salvadorean national or legal persons may obtain permits to construct and operate aerodromes in this Country." 281

Section B. Authorization in relation to public and private aerodromes

The necessary character of authorization is maintained with respect to public as well as private - national or international aerodromes. This is so because of the Control the State must exercise to preserve its sovereignty, to execute its air policy and to guard the basic conditions of aeronautical safety. These three conditions take into account the public interest factor. Since the law demands in a peremptory way the landing or departure from public or private aerodromes, it's logical that through the authorization instrument, will be able to control the safety conditions of aerodromes.²⁸²

Because the aerodrome is public, the State must intervene and authorize them to function. Such a requirement is practical since they can be used by any aircraft and there are very important interests involved with which, clearly, the owners may be unfamiliar.

281 The nationality requirement seems unnecessary, since the authorization requirement constitutes a sufficient guarantee for any purpose or end.

282 Rodriguez Jurado, Derecho Aeronautico, (1963), p. 117.

State intervention in private aerodromes is justified, because of the need to control the fulfillment of the minimal safety requirements in the airfield. The State must also intervene to set air traffic policy, to prevent aerodrome use for crimes, such as smuggling, and to regulate traffic in relation to other private and public aerodromes.²⁸³

With all, the power of the administration to authorize an aerodrome to function or not must not be exercised arbitrarily, but rather prudently, to serve the communities interest.

²⁸³ Videla Escalada, 1 Derecho Aeronautico, (1969), p. 417 & 426.

CHAPTER 6. TUITION AND ADMINISTRATION OF AERODROMES

Section A. Control

From the authority given to private persons to open and operate aerodromes, derives the necessity to give to the state the power of tuition and control of all aerodromes. The public interest requires it, as a legal protection of safety in air navigation facilities, as a basis for air navigation. This is why, the state's function with respect to aerodromes does not stop in the simple authorization of the same by an administration act, but persists throughout the operational life of the air-field.²⁸⁴

The state controls those aerodromes which it operates and administers. Aerodromes operated by private persons create a different legal relationship, than that which exists with aerodromes operated by the state; the legal position of the state aerodromes will be a simple problem of subordination between administrative agencies.

The principle of control of aerodromes, and particularly of private aerodromes, is recognized by almost all the Latin American texts, with the exception of

²⁸⁴ It is convenient to clearly separate the concepts of technical control by the authority, from those of administration and economic operation of aerodromes. Delascio, Manual de Derecho de la Aviacion, Grafos, (Caracas: 1959), p. 107.

Bolivia and Uruguay.²⁸⁵

Article 64 of Colombia's law on Civil Aviation provides:

"Aerodrome or airport operators shall be liable to the government or to third persons for any violation of laws or official orders without prejudice to any right of recovery on their part against the persons committing such violation."

Article 48 of Costa Rica's law on Civil Aviation provides:

"Airports, whether national, municipal or private are subject to official inspection..."²⁸⁶

Article 82 of El Salvador's law on Civil Aviation under the title "Control of Aerodromes" provides:

²⁸⁵ Aeronautical Code, Article 202 (Argentina, 1967); Air Code, Article 50 (Brazil, 1966); Law 1964, Article 10C (Cuba, 1964); Law 16.752, Article 3a (Chile, 1950); Civil Aviation Law, Article 18b (Dominican Republic, 1969); Law of Air Traffic, Article 20 (Ecuador, 1960); Civil Aviation Law, Article 7, N°5 (Guatemala, 1948); Civil Aviation Law, Article 63 (Honduras, 1950); Book Four, Law of General Means of Communications, Article 327 (Mexico, 1950); Civil Aviation Code, Article 58 (Nicaragua, 1956); Aeronautical Code, Article 54 (Paraguay, 1957); Civil Aeronautics Law, Article 97 (Peru, 1965); Civil Aviation Law, Article 33 (Venezuela, 1955); Law on Civil Aviation, Article 64 (Colombia, 1938); Law on Civil Aviation, Article 48 (Costa Rica, 1949); Law on Civil Aviation, Article 82 (El Salvador, 1955); Regulations on Civil Aviation, Article 47 (Panama, 1963).

²⁸⁶ Tolle, Air Law in Latin America, Appendix (1960), p. 29.

"All Civil Aerodromes and airports in the country shall be subject to control, inspection and supervision by the Department of Aviation."

Article 47 of Panama's Regulation on Civil Aviation, under the title of "Competent Authority" provides:

"All civil aerodromes and airports of the Republic are subject to the control, inspection and supervision of the General Bureau of Civil Aeronautics."

Section B. Operation of Aerodromes

The options among different systems of aerodrome operations are linked to the economic policies of States. There has always been an interest in the subject by aviation lawyers, because the operation of aerodromes has an influence on the aeronautic liability regime. Damages in this field of activity are related to the quality of the airport operator and local services of air transit control.

Two relatively new civil aviation laws in Latin America, those of Cuba and Ecuador, follow system by which the state undertakes aerodrome operation.²⁸⁷ Consequently the operation solely relies on that particular state government.

²⁸⁷ An example of the aforementioned system is Law 1160, Article 1e) (Cuba, 1960); Law of Civil Aviation, Article 1 (Ecuador, 29th November, 1963).

Article 1 of Ecuador's Civil Aviation law provides:

"The control of Civil Air Navigation within Ecuadorian Territory, corresponds to the Government, and also the construction, operation and maintenance of aerodromes in the country, with its services and installations." 288

An opposite system, considered to be liberal, is followed by the laws of Argentina, Colombia, Dominican Republic, Paraguay, Uruguay and Venezuela. These states do not assume a legal obligation to administer aerodromes. There exists no legislation regarding aerodrome operation, and the state's role generally is limited to the technical control of the construction of the aerodrome.²⁸⁹

Colombia's law on Civil Aviation²⁹⁰ in its Article 70 provides:

"... (The Government) may also take over the administration and operation of aerodromes or airports". 91

288 Mapelli, Codigos y leyes de Aviacion Civil de Ibero-america, Instituto de Cultura Hispanica, (Madrid: 1970), p. 245.

289 The operators liability is also regulated by some legislation of the liberal system.

290 Ocho Cayon, Derecho Aéreo, (1966).

291 See also Articles 36 and 37 of Venezuela's Civil Aviation law. The public utility principle is considered in Venezuela to be related to the construction of aerodromes, this being the reason for the State's participation. Lares, Principios Generales de Derecho Aeronautico Venezolano, Ragon, (Caracas: 1954), p. 193.

The third system of aerodrome operation recognized in Latin America, is called mixed or eclectic. It is characterized by the fact that the State legally assumes, the operation and administration of public aerodromes, either directly or by means of a concession. In texts in which the technique of legislation is less advanced, the State assumes the operation of the so-called "national aerodromes", which usually coincide with the public ones.

The State administers all public aerodromes directly in Brazil and Costa Rica, although in Brazil the administration may be given to private persons through a concession.²⁹²

Article 53 of Costa Rica's law on Civil Aviation states:

"The Director is entrusted with the administration of all airports, with the exception of military and privately owned ones for private service."

Chile's Air Navigation law determines that the State will administer only the public aerodromes of government ownership, even though they generally coincide with all public aerodromes.²⁹³

A different system is used in Mexico and Nicaragua, whereby through the designation of the Chief or Commander of the Airport, the State administers them.

²⁹² Air Code, Article 50 (Brazil, 1966). The concession is given under certain conditions, such as compulsory observation of the administrative and technical instructions given by the Federal Authority. Valle, Codigo Brasileiro do Ar, (1967), p. 91.

²⁹³ Hamilton, Derecho Aéreo, (1960), p. 268.

Article 327, paragraph 7 of Mexico's law of General Means of Communication, provides:

"The Secretariat of Communications shall exercise authority over all airports, through the Commander appointed for the purpose...". 294

Article 66 of Nicaragua's Civil Aviation Code points out the following:

"At the domestic civil aerodromes and airports, the highest authority insofar as concerns the internal regulation of the aerodrome or airport, shall be exercised by the Administrator or Manager, who shall be appointed for this purpose by the Ministry of Aviation. At International Airports the administrator or Manager shall coordinate the administrative activities of immigration, customs, health and Police Authorities...".

In the laws of El Salvador, Guatemala, Honduras and Panama, the State assumes only the obligation to administer airports owned by the government, and "national airports" also.²⁹⁵

Article 6 of Honduras' Civil Aviation Law states in its paragraph V, that the General Direction of Civil Aeronautics will have "...to supervise national and pri-

294 Diaz, Navegacion Aérea, (1950), p. 78.

295. Law on Civil Aviation, Article 7, paragraph 1 (El Salvador, 1955); Civil Aviation Law, Article 85 (Guatemala, 1948); Civil Aviation Law, Article 6, paragraph V (Honduras, 1950); Regulation on Civil Aviation, Article 42, paragraph 1 (Panama, 1963).

vate aerodromes and administer the former." ²⁹⁶

Bolivian law ²⁹⁷ does not establish any rule regarding airport administration. Peru's Civil Aeronautics law states in its Article 47, that domestic regulation will determine the rules and procedures of operation and administration of airports and aerodromes, i.e. civil, national, municipal and private. ²⁹⁸

We must stress that the system of operation of aerodromes constitutes neither a legal problem, nor an air law problem. The State will choose whether or not to assume greater functions depending upon the political orientation which inspires the legislator.

With regards to the subject of liability, in those hypotheses where private subjects assume duties as operators of public aerodromes, we do not think that there should be any radical difference between them and the State administrators. In both cases, the administrative entity cannot evade its responsibilities for damages caused by its management. In fact, in the case of a private management there is the possibility of an additional responsibility to the government, that is, that they must also assume responsibilities to the administration in charge of controlling the entire aeronautic infrastructure.

²⁹⁶ This type of administration is done in order to assume the losses that generally "national" airports incur in their situation of being public utility services. Pino, Derecho Aéreo, (1974), p. 152.

²⁹⁷ Decree of October 24, 1930, Regulating Air Service in the Republic.

²⁹⁸ Mapelli, Leyes de Aviación Civil, (1970), p. 680.

Some Latin American legislations consider the possibility of granting concessions in aerodromes and other buildings in the complex. Concessionaires can occupy temporarily and under certain guarantees, specified areas of the aerodrome installations. The purpose will be to provide the necessary services of all aircraft, passengers and cargo movement.

Among the laws that regulate these concessions one should mention those of Costa Rica, Cuba, Chile, Guatemala and Honduras.²⁹⁹

Article 54 of Costa Rica's law on Civil Aviation states the following:

"Within the perimeter of airports or surrounding land, whether under public or private ownership, all kinds of official or private air services may be established based on proper franchises which shall be granted provided each licensee operates with due independence."

²⁹⁹ Law on Civil Aviation, Article 54 (Costa Rica, 1949); Regulation on Civil Aviation, Article 6 (Cuba, 1928); Law 16.752, Articles 3 and 8 (Chile, 1958); Civil Aviation Law, Article 93 (Guatemala, 1948); Civil Aviation Law, Articles 60 and 72 (Honduras, 1950).

CHAPTER 7. FLIGHT PROTECTION SERVICES

Section A. Characteristics and Classification

The technical services of aid and protection to air navigation complement the role of the aerodrome, either inside the aerodrome enclosure or in the usual aircraft routes.³⁰⁰ These services are a combination of installations and services operating jointly or independently, following particular directives, with a planned system and with the characteristic, of having a permanent vigilance. They operate from land, sea and nowadays even from the space, for the purpose of safety and regularity in air navigation.

Aids to Air Navigation are the various services giving to the pilot, in the form of instructions or information about changing conditions, the necessary assistance in order to attain navigational safety.³⁰¹

One must consider the fact that any condition of weather given before a flight, can change during the flight so it is necessary to assist the aircraft at every moment, in order for the aircraft to arrive at its destination without any inconvenience.³⁰² The assistance can

³⁰⁰ Hamilton, Derecho Aéreo, (1960), p. 271.

³⁰¹ Pepin, Geographie de la Circulation Aerienne, Gallimard, (Paris: 1956), p. 139.

³⁰² An aircraft flies through different regions, and the conditions of weather are continuously changing. Because of this change in time and space, there must be continuous information regarding traffic, since in those high density traffic areas, without assistance, a collision could easily occur.

be given before and during the flight, and the compulsory character of the instructions will vary according to the nature of the flight,³⁰³ and the overflow region.³⁰⁴

Annex 11 of the Chicago Convention indicates that the Air Traffic Services have the following objectives:³⁰⁵

- "1- To prevent collisions between aircraft;
- 2- To prevent collisions between aircraft on a manoeuvring area and obstructions on that area;
- 3- To expedite and maintain an orderly flow of air traffic;
- 4- To provide advice and information useful for the safe and efficient conduct of flights;
- 5- To notify appropriate organizations regarding aircraft in need of search and rescue aid, and assist such organizations as required." 306

ICAO's Annex 11 describes the establishment of airspace units and services, which will allow the promotion of a safe, orderly and expeditious flow of air traffic. Annex 11 and Annex 2, will ensure that flying on international air routes is carried out with uniform conditions which will improve not only air safety but also

303 The flight can be visual or with instruments.

304 Leclercq, Les aides a la Navigation Aerienne, LL.M. Thesis, McGill University, (Montreal: 1959), p. 7.

305 ICAO, Annex 11 "Air Traffic Services", 6th Edition (1970), Paragraph 2.2. "Objectives of the Air Traffic Services", p. 12.

306 Beaubois, Liability of public bodies providing assistance to Air Navigation, ITA Study, (Paris: 1967-8), p. 6.

the efficiency of air operations.³⁰⁷

Air Traffic Services, which we have also denominated Flight Protection Services, is defined as:

"A generic term meaning variously, flight information service, alerting service, air traffic advisory service, air traffic control service, area control service, approach control service or aerodrome control service."³⁰⁸

The system laid down by ICAO for Air Traffic services is based on the breakdown of the airspace into control regions, control zones and flight information regions, as well as provisions for the creation of controlled aerodromes.³⁰⁹

Three categories of Air Traffic Services are provided by Annex 11:³¹⁰ Air Traffic control service which performs area and approach control services for IFR flights, and airport control service for all flights; Flight Information; and in case of emergency an alerting service.³¹¹

307 Carroz, "International Legislation on Air Navigation over the High Seas", 26 JALC, (1959), p. 162.

308 ICAO Doc. 9110, Vol. II, Lexicon. Definitions (1974), p. 14. Definition No A85. The definition is found in Annex 2, Annex 11 and PANS "Rules of the Air and Air Traffic Services".

309 ICAO Doc. 8302-LC/150-2. Legal Committee, 14th Session, (1962), p. 161.

310 Annex 11, 6th Edition (1970), p. 12, para 2.3.

311 Larsen, "Liability of Air Traffic control agencies to foreign air carriers", 3 IDA, (1964), p. 116.

The Chicago Convention binds its members to provide Air Traffic Control. They must make ready, if feasible, radio, meteorological and other air navigation services needed in the performance of international air flights.³¹² Article 28 of Chicago Convention is the formal expression of such requirement.³¹³

Another two articles of Chicago which are closely related to this matter are Articles 37 and 38. Article 37 precisely defines the method for reaching a certain degree of required uniformity and points out the different standards and procedures. Article 38 refers to departures from those standards and procedures, due to the impossibility of complying with them.³¹⁴

It is within the power of contracting states to include in their national legislation some or all of the provisions of Annex 2 and 11, and PANS.³¹⁵ A note must be made, that when the rules of Annex 2, which are

³¹² Shawcross & Beaumont, Air Law, (1966), p. 634.

³¹³ Bosseler, "International Problems of Air Traffic Control and possible solutions", 34 JALC, (1968), p. 467.

³¹⁴ Leclercq, Aides à la Navigation Aérienne, (1959), p. 16.

³¹⁵ The contracting state will determine in the last resort the rules covered by Annex 11 which will be applied over the high seas. The discussion then arises whether the procedure is in conformity with Article 12 of Chicago, since some provisions of Annex 11 are related to the flight and manoeuvre of aircraft.

"rules relating to the flight and manoeuvre of aircraft", refers to rules of the air applicable over the high seas,³¹⁶ they have a binding character³¹⁷ over Contracting states.³¹⁸

The installations and services which we will refer to, are exclusively linked to the protection and aid of aircraft. However, it must be pointed out, that among those services and installations, the so-called "sovereignty services" should not be included.³¹⁹ The exclusion also applies to services such as maintenance and repair of aircraft, refuelling and aircraft lubricants.³²⁰

³¹⁶ Due to the non-binding effect of Annexes over States, it would be possible for states to adopt within their own territories regulations or practices differing in any particular respect from those established in the Convention. It was necessary in the interest of air navigation safety to ensure that the same rules would apply over a given area. In view of the absence of sovereignty over the high seas it proved indispensable to prescribe that the civil aircraft of all contracting states should, when flying over the high seas, abide by the same rules without any possible deviation.

³¹⁷ Article 12 of Chicago gives somewhat unobtrusively, in its third sentence, broad legislative powers on air navigation over the high seas to ICAO. This is in contrast with the generally non-binding character of the technical legislation adopted pursuant to the Convention. The rules applicable over the high seas are to be complied with by Civil Aircraft of Contracting States without possible deviation. Carroz, "Legislation on Air Navigation", 26 JALC, (1959) p. 260.

³¹⁸ ICAO Doc. 8302-LC/150-2 (1962), p. 161.

³¹⁹ "Sovereignty services" take place in International airports and they comprise customs, immigration and sanitary services.

³²⁰ Doctrine includes in its analysis some of these items. We have disregarded them, since in our understanding their function and purpose is somewhat different from that given by the aids to air navigation. See, Rodríguez Jurado, Derecho Aeronautico, (1963), p. 125; Gay de Montella, Derecho Aeronautico, (1950), p. 218.

() Installations and services can be classified into three groups: automatic and semi-automatic installations; services; and combination of services-installations.³²¹

a) Automatic or semi-automatic installations: those pertaining to the route followed in air navigation. It includes various types of radio beacons, marker beacons and the Instrument landing System (ILS). Also visual or ground traffic lights and signals (marking runways, heights, obstacles and aerodrome locations). ICAO regulates these installations in Annex 14, "Aerodromes", and sets forth the Standards and Recommended Practices.³²²

b) Auxiliary services: They are the following-

I- Information (aeronautic, in flight and aircraft dispatch);³²³

II- Emergency alerting service;³²⁴

III- Search and rescue coordination;³²⁵

IV- Air Traffic control (in routes, approach and aerodromes).

³²¹ One is not able to thoroughly analyze installations and services because it progresses and changes so rapidly. However for this study we have tried to give at least a general overview.

³²² Annex 14, Aerodromes, 6th Edition (September, 1971).

³²³ The function of this service is to give weather information and related statistics when demanded by the pilot, usually in controlled airspace. Larsen, Regulation of Air Traffic Control Liability by International Convention, LL.M. Thesis, McGill University, (Montreal: 1965), p. 52.

³²⁴ In the case of an emergency, the Air Traffic Control and Flight Information Center call alert, collect and disseminate information. Ibid, p. 53.

³²⁵ Annex 12 of Chicago Convention, "Search and Rescue", deals with the subject, implying that it is not related to Air Traffic Services. Ibid, p. 55.

ICAO regulates the auxiliary services through Annex 11, "Air Traffic Services".³²⁶ In spite of the high degree of subjective character of the air traffic services, they must support themselves with the radio communication system and radio direction finders (different types of radar).

c) In the category of service-installations, man and instrument work closely together. Distinction must be made between aeronautic telecommunication (land-land and land-air) and aeronautic meteorology. Both of them are regulated by Annexes to the Chicago Convention, establishing Standards and Recommended Practices to be followed by the Contracting States.³²⁷

The aforementioned classification³²⁸ leads us to point that services and installations are characteristically operated as a permanent public service which can by no means be paralyzed. Installations operate at all times, without depending on a determined flight. Furthermore, meteorological and air traffic services operate also before and after flights.

³²⁶ Annex 11, Air Traffic Services, 6th Edition, (September, 1970).

³²⁷ Annex 3, Meteorology, 7th Edition (September, 1970); Annex 10, Aeronautical Telecommunications, 2nd Edition of Volume I and II, (April, 1968).

³²⁸ The former systematic classification can be useful when looking at the legal problem created by the legal responsibility of the Aircraft Commander. The responsibility has been strongly influenced by the development of flight protection services and installations, which yield part of the technical faculties of the Commander. See on this matter, Larsen, "Liability of Air Traffic Control Agencies", 3 IDA, (1964), p. 115-144.

Within Latin American legislation,³²⁹ the Brazilian Air Code seems to be the most complete, when it approaches this matter and includes, in its Article 43,³³⁰ the following installations and services: air traffic, telecommunications; meteorology; search and rescue coordination; radio aid and visual installations.³³¹

The inclusion of all these services and installations is not uniform within Latin America, but generally the Brazilian pattern is followed.

Article 27 of Colombia's law on Civil Aviation provides the following:

"Signals or installations of any category, intended to insure the safety of air navigation, shall be considered as a service thereto, and, therefore, their establishment shall be deemed an important reason for the exercise of eminent domain." 332

329 Air Code, Article 43 (Brazil, 1966); Law on Civil Aviation, Article 27 (Colombia, 1938); Law on Civil Aviation, Articles 6 and 10 (Costa Rica, 1949); Law 16.752, Article 3c (Chile); Law of Air Traffic, Article 12 (Ecuador, 1960); Law on Civil Aviation, Article 78 (El Salvador, 1955); Civil Aviation Law, Article 92 (Guatemala, 1948); Civil Aviation Law, Article 6 and 60 (Honduras, 1950); Book Four, law of General Means of Communications, Article 326 (Mexico, 1950); Civil Aviation Code, Article 54 (Nicaragua, 1956); Regulation on Civil Aviation, Article 51 (Panama, 1963); Aeronautical Code, Article 57 (Paraguay, 1957); Civil Aviation Law, Article 31 (Venezuela, 1955).

330 Valle, Codigo Brasileiro do Ar, (1967), p. 85.

331 Among the visual installations we can mention obstacle lights and the electronic equipment of flight aid (including radio-direction finders).

332 Cobo Cayon, Derecho Aéreo, (1966), p. 378.

Article 92 of Guatemala's Civil Aviation Law is very simple and refers mainly to those who will have the control:

"Radio communication installations in general, in the airports of the Republic shall be under the control of the Directorate General of Civil Aeronautics..." 333

Article 59, Chapter VIII of Honduras' Civil Aviation law, which refers to "Services of aid to Navigation" provides:

"Services of aid to navigation shall be those that safeguard flight safety and regularity, such as flight control, aeronautical radio-communications, weather reports and day and night radio beacon services." 334

Article 326, paragraph I of Mexico's law of General Means of Communications regards Air Traffic Control, meteorological services, aeronautical telecommunications and aids to air navigation as "services performed by the Secretary of Communications..."

The air traffic services not only constitute a public service, but also strictly control the aircraft. The aforementioned rule is unfortunately observed in Latin America only by Mexico and Venezuela,³³⁵ whose laws consider

333 Juarez, Derecho Aéreo Guatemalteco, (1966), p. 378.

334 Pino, Derecho Aéreo, (1974), p. 153.

335 Law of General Means of Communication, Book Four, Article 326, No II (Mexico, 1950); Civil Aviation law, Article 31, para 2 (Venezuela, 1955).

the use of air traffic services as compulsory.

Article 326, No II of Mexico's Law of General Means of Communications provides:

"All aircraft must use, as an obligatory safety requirement the control services of Air Traffic, of aeronautical telecommunications; of meteorological information and of aid to air navigation...". 336

Article 31, paragraph 2 of Venezuela's Civil Aviation Law, referring to the same services states:

"The use of such services shall be compulsory for all aircraft in accordance with the respective rules, conditions and rates." 337

Section B. Tuition and Administration

In relation to the systems of aid and protection for air navigation, a distinction must be made between the tuition, vigilance or control and, on the other hand, the operation or administration.

There is no doubt whatsoever that the state must be in charge of the totality of the planning and control of the systems of aid and protection for air navigation.³³⁸ Through these systems of aid the State manifests

336 Tolle, 1 Air Law in Latin America, (1960), p. 197.

337 Lares, Derecho Aeronautico Venezolano, (1954), p. 196.

338 Loustau Ferran, La Aeronave, (1958), p. 87 & 88.

its sovereignty and fulfills its own functions.³³⁹

The principle of State Control in the systems of aid to air navigation is adopted by the laws of Argentina, Brazil, Colombia, Costa Rica, Cuba, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela.³⁴⁰

Article 13 of Argentina's Aeronautical Code reserves for the State all that relates to flight protection services.³⁴¹ The Code tries to anticipate future needs in the aviation field, many of which are impossible to foresee now. It allows the Aeronautic authority to arrange with private firms the realization of some aspects of aid to air navigation.³⁴²

339 Videla Escalada, 1 Derecho Aeronautico, (1969), p. 452.

340 Aeronautical Code, Article 13 (Argentina, 1967); Air Code, Articles 43 and 53 (Brazil, 1966); Law on Civil Aviation, Article 84 (Colombia, 1938); Law 16.752, Article 3 (Chile, 1958); Law on Civil Aviation, Articles 6-11 (Costa Rica, 1949); Regulation on Civil Aviation, Article 13, No 2 (Cuba, 1928); Civil Aviation Law, Article 18u (Dominican Republic, 1969); Law of Air Traffic, Article 10.No12 (Ecuador, 1960); Law on Civil Aviation, Article 78 (El Salvador, 1955); Book Four, Law of General Means of Communications, Article 326 (Mexico, 1950); Civil Aviation Law, Article 60 (Honduras, 1950); Civil Aviation Law, Article 92 (Guatemala, 1948); Civil Aviation Code, Article 55 (Nicaragua, 1956); Regulation on Civil Aviation, Article 52 (Panama, 1963); Civil Aviation Law, Article 31 (Venezuela, 1955).

341 Foglia-Mercado, Derecho Aeronautico, Abeledo-Perrot, (Buenos Aires: 1968), p. 78.

342 Public utility factors are important in this new trend. Cosentino, "Estructura legal basica de las Agencias de Control de Trafico Aéreo", 7th Interamerican Air Law Conference, (Miami: 1970), p. 4.

Articles 43 and 53 of Brazil's Air Code, give the definition of air navigation facilities and in addition determine a State Control for flight protection services.³⁴³

Article 78 of El Salvador's Law,³⁴⁴ under the title of "Control of Aid Services", presents a very clear view of the matter:

"The Ministry of Defense has jurisdiction as to control of Air Traffic, meteorological services, aviation communications and radio aids to air navigation. In the exercise of this jurisdiction it shall specify the means which are necessary for greater flight safety and efficiency, in order to protect human life and property..."

Article 81 of El Salvador's law on Civil Aviation refers to the State Control of Aviation Radio Communications.

Article 60 of Honduras' Civil Aviation Law, Chapter VIII, "Services of Aid to Navigation", reads:

"The State shall be responsible for the control and the establishment of services of aid to air navigation. In the exercise of this responsibility, rules shall be enacted that are convenient for insuring safety and efficiency of flight, for the purpose of protecting human life and property." ³⁴⁵

³⁴³ Valle, Codigo Brasileiro do Ar, (1967), p. 93.

³⁴⁴ Law on Civil Aviation (El Salvador, 1955).

³⁴⁵ The State can delegate its performance of auxiliary services of air navigation to specialized organizations. Tolle, 1 Air Law in Latin America, (1960), p. 162.

Article 92 of Guatemala's Civil Aviation Law establishes only the control of radio communications by the State; Article 92 is an example of State control in only a certain area of aids for air navigation.³⁴⁶

Four Latin American states lack rules regarding the State Control: Bolivia, Paraguay, Peru and Uruguay.

In the matter of operation and administration of installations and services of flight protection, Latin American laws have adopted one of three methods:

- a) State;
- b) liberal (the state does not assume obligations);
- c) Eclectic (state can assume the operation directly, or indirectly by means of concessions).

A recent tendency has been towards the regional integration of flight protection systems. It began with the Agreement on Oceanic Stations in the North Atlantic (1954).³⁴⁷ On the North Atlantic nine floating stations form a meteorological network between Europe and North America served continuously by 21 ships. Its operation is assumed by the NAOS Agreement and its administration is assumed by ICAO.³⁴⁸

346 Other auxiliary services can be operated either by the State or private persons. Juarez, Derecho Aéreo Guatemalteco, (1957), p. 121.

347 Mateesco Matte, Traité de Droit Aerien Aeronautique, Pedona, (Paris: 1964), p. 265. For text see, p. 756.

348 NAOS: North Atlantic Ocean Stations. The distribution of responsibilities are determined according to the number of actual flights across the North Atlantic by the Contracting States civil aircraft. Cheng, International Air Transport, (1962), p. 87.

In 1959 a Convention was signed for the creation of an Administrative Agency of Services and Installations to assure Air Navigation in Africa and Madagascar, which is called ASECNA.³⁴⁹ This public establishment consists of twelve African States, all former French dependencies, its purpose being to provide "regularity and safety" of air traffic in and over the participating States.³⁵⁰ ASECNA began operation January 1st, 1960.³⁵¹

Two Conventions were signed in 1960, one in Tegucigalpa, Honduras, which we shall discuss later, and the other in Brussels relating to "Co-operation for the safety of Air Navigation", "Eurocontrol". It establishes a "European Organization for the Safety of Air Navigation".³⁵² Europe constitutes one of the heaviest and most dense centers for air traffic. Because are impracticable nationally operated Air Traffic Controls, the European States decided to create Eurocontrol. This organization regulates air traffic in any lower airspace which a member country may agree to transfer, and in all upper air-

349 "Agence pour la securité de la Navigation Aerienne en Afrique et à Madagascar". Further reading, de Lanversin, "L'agence pour la securité de la Navigation aerienne en Afrique et à Madagascar", 23 RGA, (1960), p. 207 & 303; Tancelin, The Air Navigation Security Agency for Africa and Madagascar, LL.M. Thesis, McGill University, (Montreal: 1963); Monlau, La Transport Aerien en Afrique Noire Francophone et les Accords Bilateraux Franco Africains, LL.M. Thesis, McGill University, (Montreal: 1975), p. 58.

350 Larsen, Air Traffic Control Liability, (1965), p. 33.

351 See Text in Mateesco Matte, Droit Aerien-Aeronautique, (1964), p. 803.

352 Shawcross and Beaumont, Air Law, (1966), p. 635; Further reading: Bulin, "Eurocontrol: A European Organisation. Its Structure and future prospects", 69 JRAS, (1965), p. 160-162; Bulin, "Eurocontrol: A decade's achievements and future prospects", ITA Study, (1970-74). Text can be seen in Mateesco-Matte, Droit Aerien Aeronautique, (1964), p. 783.

space above the member states or other States which may ask for Eurocontrol Services.³⁵³

For our study the most important Convention is that of Tegucigalpa of February 1960, which created a Society of Services for Air Navigation in Central America, (COCESNA),³⁵⁴ signed by Costa Rica, Guatemala, Honduras, Nicaragua and El Salvador. The Society which started to work in December 1961 exercises a monopoly over air navigation services, aeronautics telecommunications and radio-aids for air navigation in the territories of the Contracting States.³⁵⁵

The integrationist tendency found in Latin America in the five Contracting States of COCESNA, is also seen in the Argentinian Air Code. Article 14 allows the executive power to permit co-ordination or connections of flight protection services with other countries.³⁵⁶

On the domestic level, the State administration system is applied by the laws of Costa Rica, Cuba, Dominican Republic, Guatemala and Ecuador.³⁵⁷

353 Larsen, Air Traffic Control Liability, (1965), p. 33.

354 Convenio para la creacion de una Sociedad de Servicios de Navegacion Aérea en la América Central. "Oficina de los Servicios de Navegacion Aérea de América Central".

355 Mateesco Matte, Droit Aérien-Aeronautique, (1964), p. 272. See text, 825; Litvine, Droit Aerien, (1970), p. 84.

356 Lena Paz, Derecho Aeronautico, (1969), p. 55.

357 Law on Civil Aviation, Articles 6-11 (Costa Rica, 1949); Regulation on Civil Aviation, Article 13, Nº 8 (Cuba, 1928); Civil Aviation Law, Article 96 (Dominican Republic, 1969); Law on Civil Aviation, Article 1 (Ecuador, 29th Nov. 1963); Civil Aviation Law, Article 92 (Guatemala, 1948).

Article 86 of Guatemala's Civil Aviation Law states:

"The Control Tower and its personnel shall apertain directly to the Directorate of Civil Aeronautics, which will select the operators and endeavor to provide them with instruction and training of the highest quality in all respects which their delicate task requiras."

The laws of Brazil, Colombia and Paraguay follow a liberal system.

Article 57 of Paraguay's Aeronautical Code provides for:

"Services for aviation control, meteorology, telecommunications and installations for ground assistance to give protection to air navigation must be established and maintained in operation in all national and international air routes authorized in the nation." 359

The texts of Argentina, Chile, El Salvador, Honduras, Mexico, Nicaragua, Panama and Venezuela welcome a

358 Air Code, Article 53 (Brazil, 1966); Law on Civil Aviation, Article 72 (Colombia, 1938); Aeronautical Code, Article 57 (Paraguay, 1957).

359 Fuster, Derecho Aeronautico, (1958), p. 147.

system of State Operation either directly or by means of concessions.³⁶⁰

Article 55 of Nicaragua's Civil Aviation Code states:

"Control of the auxiliary services to air navigation is a function of the Ministry of Aviation. In the exercise of this function, it shall adopt the measures it deems proper to the greatest safety and efficiency of the flights, for the purpose of protecting human life and property. Likewise, when it is in the public interest, it may contract directly for the rendering of these services with technically qualified enterprises or grant permission therefore to companies which do not perform them for profit..."

The operation of flight protection services has not been regulated in the laws of Bolivia, Peru and Uruguay.

³⁶⁰ Aeronautical Code, Article 13 (Argentina, 1966); Law 16.752, Article 3 (Chile, 1958); Law on Civil Aviation, Article 78 (El Salvador, 1955); Civil Aviation Law, Article 60 (Honduras, 1950); Book Four, Law of General Means of Communications, Article 326 (Mexico, 1950); Regulation on Civil Aviation, Article 52 (Panama, 1963); Civil Aviation Law, Article 31 (Venezuela, 1955); Civil Aviation Code, Article 55 (Nicaragua, 1956).

CHAPTER 8. TARIFFS FOR USE OF AIR NAVIGATION FACILITIES

Section A. Justification and Types

The problem of tariffs for use in air navigation facilities is essentially economic. According to government officers the tariff is justified because the financing of installations and services placed at the public's disposal is incumbent not on the public power, but rather on the direct users: passengers and carriers.³⁶¹ The State will then, taking into account national economic reasons, impose the collection of levies, taxes, rates, tariffs or airport rights to aircraft and other users of ground operation installations.³⁶²

The Paris Convention of 1919, took up this subject, when studying the principle of equality of treatment,³⁶³ in relation to the fact that charges must be the same for national or foreign aircraft.³⁶⁴

³⁶¹ Guinchard, Les principaux aspects juridiques de l'exploitation des Aeroports Commerciaux, Sirey, (Paris: 1961), p. 165.

³⁶² Loustau Ferran, La Aeronave, (1958), p. 89.

³⁶³ Paris Convention: Article 3 considers "Prohibited Zones"; Article 22 offers the same rights for emergency landings; Article 24 suggests the opening of aerodromes in the same conditions for foreign and national aircraft, Article 5 looks at the fulfillment of Annex D and Article 29 refers to restrictions in prohibited transports.

³⁶⁴ Article 24, paragraph 1 considered the payment of certain charges, under an equality principle. Matte, Droit Aérien-Aéronautique, (1964), p. 138.

Article 24, paragraph 2 provided that for every public aerodrome:

"there shall be a single tariff of charges for landing and length of stay applicable alike to national and foreign aircraft." 365

The Havana Convention in its Article 24, also referred to the subject in the following way:

"The aircraft of one Contracting State engaged in International Commerce with another Contracting State shall not be compelled to pay other or higher charges in airports or aerodromes open to the public, than would be paid by national aircraft of the State visited, likewise engaged in international commerce." 366

The Panamerican form seems to be clearer, considering that airports were to be developed and operated on commercial grounds. It also limits the equality of treatment to the aircraft engaged in international commerce. 367

The question about charges is dealt with by the Chicago Convention and the International Air Services Transit Agreement. 368 Both of them allow the imposition

365 Freeman, Air and Aviation Law, Pitman, (London: 1931), p. 7.

366 Gay de Montella, Las leyes de la Aeronautica, Bosch, (Barcelona: 1929), p. 209.

367 Warner, "Convention for Air Navigation", 3 ALR, (1932), p. 277.

368 Chicago Convention, Article 15; International Air Services Transit Agreement, Section 4, No 2.

of charges for use of airports and for air navigation facilities.

Article 15 of Chicago Convention³⁶⁹ establishes that all airports and air navigation facilities which are available for public use by the national aircraft of a contracting state must, in general, also be made available under uniform conditions, including, charges to the aircraft of all contracting states.³⁷⁰

Section 4, Number 2 of Article 1 of the International Air Services Transit Agreement provides that Contracting States may,

"Impose or permit to be imposed on any such service, just and reasonable charges for the use of such airports and other facilities..." 371

369 Article 15 of Chicago Convention, is one of the several articles which prohibits discrimination between national and foreign aircraft, and even between different foreign states' aircraft. The other articles of Chicago Convention on the same subject of non-discrimination are: Article 7, "Cabotage", Article 9 (a) and (b), "Prohibited Areas"; Article 11, "Application of laws and regulations"; Article 35 (b), "Cargo restrictions", Shawcross and Beaumont, Air Law, (1966), p. 212.

370 Article 15 of Chicago Convention should be related with Article 28 of Chicago. The latter article determines the establishment of airports and installations in aid for air navigation. By installing these services, they are allowed to impose charges or authorize the airport operators, or installation operators to impose them. This is regulated by the rule of Article 15. Cartou, Droit Aerien, (1963), p. 220.

371 Chicago Convention, Final Act, Appendix III, U.S. Government Printing Office, (Washington: 1945), p. 88.

Article 71 of Chicago Convention authorizes the ICAO Council to:

"...specify just and reasonable charges for the use of the facilities provided.",

directly by the Council in the territory of a member state. Article 74 also refers to "...revenues derived from the operation..." of air navigation facilities established by member States with the financial and technical assistance of ICAO.³⁷² The terms of Article 74 and Chapter XV also contain the implicit assumption that in return for the obligations undertaken in Article 28, states may derive revenue from the provision of route air navigation facilities and services in the same way as they derive revenues from airports.³⁷³

Due to the importance of the problem of charges, ICAO was asked to become involved and regulate this problem, and Conferences have been held in order to review the economic situation of air navigation facilities and services provided for international civil aviation.³⁷⁴

Whichever is the entity that gives the service or installation in the ground organization, the charges

³⁷² Larsen, "Air Traffic Control Agencies", 3 IDA, (1964), p. 124; Bin Cheng, International Air Transport, (1962), p. 90.

³⁷³ ICAO Doc. 7941-c/913. Route Facility Charges (1958), p. 3.

³⁷⁴ The last Conference on this matter was the "Conference on the Economics of Route Air Navigation Facilities and Airports", ICAO Doc. 9053., ERFA (1973), Montreal 6-23, February 1973.

can only be established by public authority.³⁷⁵

There are two other types of charges:

- 1) Those that derive from the use of aerodromes, among which we can mention those of landing, parking and hangar use.
- 2) Those that derive from those of installations and services for the aid and protection of air navigation, such as communications, meteorology, air traffic control services, radio aid use, runway lights, etc.

In our understanding charges imposed in the use of aerodromes should only affect public aerodromes, since the community in general is very much interested in the smooth functioning of this public utility service.

All Latin American texts concur with the above mentioned idea, with the only exception of Ecuador's Civil Aviation law. Article 20 provides the following:³⁷⁶

"The owners of private aerodromes, where the State does not operate, can also establish the collection of landing rights, with tariffs approved by the Directorate General of Civil Aviation. The tax will be used in the maintenance and operation of the same aerodromes...".³⁷⁷

³⁷⁵ Governments may entrust the provision of route facilities and services to non-governmental agencies and permit them to impose charges, but they must ensure that these charges are not discriminatory. ICAO Doc. 7941-C/913. Route Facility Charges (1958), p. 6.

³⁷⁶ Carrera, Derecho Aeronautico, (1958), p. 87.

³⁷⁷ Mapelli, Leyes de Aviacion Civil, (1970), p. 253.

The tax collection will correspond to the operator of the aerodrome, because any service or attention will depend on his work. Users cannot expect reductions in the collections for partial use of the services, inasmuch as the installations themselves give an integral service.³⁷⁸

The collection of rates for aerodrome use is authorized by most Latin American laws,³⁷⁹ with the exception of those of Bolivia, Cuba, Dominican Republic, Panama and Paraguay, where there are no references to this matter.

Article 51, paragraph 2 of Brazil's Air Code mentions that the rates for aerodrome use will be settled by the aeronautic authority and will be applicable to all the Brazilian territory.³⁸⁰

378 Videla Escalada, 1 Derecho Aeronautico, (1969), p. 431.

379 Aeronautical Code, Article 28 (Argentina, 1967); Air Code, Article 51 (Brazil, 1966); Law on Civil Aviation, Article 52 (Colombia, 1938); Law on Civil Aviation, Article 90 (Costa Rica, 1949); Law 16.752, Article 3.g) (Chile, 1958); Civil Aviation Law, Article 19 (Ecuador, 1963); Law on Civil Aviation, Article 84 (El Salvador, 1955); Civil Aviation Law, Article 95 (Guatemala, 1948); Civil Aviation Law, Article 65 (Honduras, 1950); Book Four, Law of General Means of Communications, Article 327 (Mexico, 1950); Civil Aviation Code, Article 68 (Nicaragua, 1956); Civil Aeronautics Law, Article 52 (Peru, 1965); Code of Aeronautical Law, Article 45 (Uruguay, 1942); Civil Aviation Law, Article 33 (Venezuela, 1955).

380 Decree Law 270 (1967), in its Article 6 provides that the rates applied will mean the retribution of air navigation facilities, and they are classified in five categories: a) embarking; b) landing; c) permanence; d) area leasing; e) storage. Valle, Codigo Brasileiro do Ar, (1967), p. 92.

Article 84, Law on Civil Aviation of El Salvador, under the title of "Public service" provides that:

"All civil aerodromes in the country shall be open to public service in accordance with the specification for each kind and on the basis of the rates approved by the competent authority."

Article 327 of Mexico's law,³⁸¹ paragraph 5 states:

"Airports shall be open to the public for their specified purposes, and services furnished there shall be charged for, in accordance with rates previously authorized by the secretariat of communications." 382

Article 45 of Uruguay's Code of Aeronautical Law, under the title of "Rates" states:

"The executive power shall establish the rates for use of public aerodromes by foreign public aircraft and for all private craft." 383

A law which has a special feature is that of Ecuador, which in its Civil Aviation Law (1963), Title VI regulates in detail the diverse tariffs, it seems to

381 Law of General Means of Communications (Mexico, 1950).

382 Tolle, 1 Air Law in Latin America, (1960), p. 197.

383 According to this article, Uruguayan Public Aircraft are exempted of paying tariffs for using aerodromes. Tolle, "Direito Aeronautico no Uruguay", 3 Boletin ITA, (1960), p. 23.

us that this would be more proper for rules of inferior rank, than a Civil Aviation law.³⁸⁴

On the subject of tariffs, rates or levies for the use of services and installations for aid and protection to air navigation, it can be seen that Latin American laws have been much more remiss in establishing them, which is not the same situation as those already mentioned, and which refer to the use of aerodromes.

Rates for the use of services and installations are only contemplated in the laws of Argentina, Chile, Costa Rica, Ecuador, El Salvador, Mexico, Panama, Peru and Venezuela.³⁸⁵

El Salvador's law on Civil Aviation, Article 140, under the title "Fees and Rates" states:

"Foreign aircraft in international service of air transportation shall pay the same amounts that are paid by Salvadorean Aircraft, according to the respective schedules, for landing weather service, air traffic controls, aeronautical communications and radio-aids to air navigation."

Mexico's law of General Means of Communications, in its Article 326, paragraph II, after establishing that it is obligatory to use air navigation facilities, pro-

384 Carrera, Derecho Aeronautico, (1958), p. 87.

385 Aeronautical Code, Article 13 (Argentina, 1967); Law 16,752, Article 3g) (Chile, 1958); Law on Civil Aviation, Article 90 (Costa Rica, 1949); Civil Aviation Law, Article 10, Number 17 (Ecuador, 1963); Law on Civil Aviation, Article 140 (El Salvador, 1955); Law of General Means of Communications, Article 326, paragraph II (Mexico, 1950); Regulation on Civil Aviation, Article 52, paragraph 2 (Panama, 1963); Civil Aeronautics Law, Article 52 (Peru, 1965); Civil Aviation Law, Article 31 (Venezuela, 1955).

vides:

"...Such services shall be put at the disposal of all operations of aircraft on the basis, conditions and rates approved by the Secretariat of Communications." 386

Article 52, paragraph 2 of Panama's Regulation on Civil Aviation, in referring to the competent authority in charge of the auxiliary services to navigation, states that:

"...the Executive shall fix the rates to be paid by persons using of such private services, until such time as the Government may assume them." 387

Lastly, there is a group of legislation that settles certain tariffs or rights which are not generated by the operation of aircraft, but rather by the use of ground organizations by passengers, baggages, use of premises, supply of fuel installations, etc.³⁸⁸ such a

386 Tolle, 1 Air Law in Latin America, (1960) p. 197.

387 This happens when individuals or entities, under national interest reasons, are authorized by the Executive to render auxiliary services to navigation.

388 ICAO Annex 9, "Facilitation", in its second edition (1953), used to read as follows "Contracting States should provide, at public expense, Space and facilities at International Airports for the public authorities concerned". ICAO Annex 9, paragraph 11.5., 2nd Edition (1953). In those days the taxes collected from passengers would have been in contradiction to the recommendation in Annex 9. The seventh edition of Annex 9 (1974), does not include such a reference.

position is taken by Chile, Ecuador, Guatemala and Costa Rica. These laws authorize the imposition of charges on passengers.³⁸⁹

The texts of Chile and Costa Rica permit the collection of fiscal rights for cargo carried, independently of customs collection.³⁹⁰

Article 90 of Costa Rica's law on Civil Aviation mentions as an income source those "(taxes)...which may be imposed on air transportation of passengers and cargo...".

The laws of Ecuador and Guatemala establish a collection of levies from users or leasers of buildings. Article 95 of Guatemala's Civil Aviation Law states:

"All income to the State derived from the rent of all classes or real property and installations used in Air Services, taxes on aerial traffic and landings shall form a special fund to be used exclusively for the construction, maintenance and improvement of aerodromes." 391

In Chile, tariffs can be collected for airport and aerodrome services by means of a concession or con-

389 Law 16.752, Article 9 (Chile, 1958); Civil Aviation Law, Article 25 (Ecuador, 1963); Civil Aviation Law, Article 90 (Guatemala, 1948); Law on Civil Aviation, Article 90 (Costa Rica, 1949).

390 Ibid.

391 Juarez, Derecho Aéreo Guatemalteco, (1957), p. 123.

tract system, and those rates do not include those collected for aircraft movement.³⁹²

³⁹² For a survey regarding user charges, as well airport facilities and services, from the American viewpoint, denouncing restricting practices used by foreign countries to favor their national air carriers, see, International Air Transportation Competition. Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, Ninety-Third Congress, U.S. Government Printing Office, (Washington: 1974), p. 38-83.

CHAPTER 9. LIMITATIONS TO PROPERTY IN BENEFIT OF
AIR NAVIGATION AND ITS FACILITIES

Section A. Property Limitations

There is a tendency for contemporary Air Law to impose certain limitations, restrictions or burdens on land owners for the benefit of air navigation and its installations.³⁹³

These legal limitations have various forms, among which the following could be mentioned:

- 1) Obligation to signal and light obstacles for air navigation;
- 2) Prohibition against planting or constructing over a certain height in determined zones;
- 3) Duty to suppress pre-existing obstacles, either totally or over a certain fixed height.³⁹⁴

In certain cases the limitations to property can be severe. For example, land may be expropriated solely because its utilization or its neutralization is deemed indispensable for the development of air navigation facilities.³⁹⁵

³⁹³ de Juglart, Droit Aerien, (1952), p. 174.

³⁹⁴ Goldstein, "The Over-All Problem", 24 JALC, (1957), p. 177.

³⁹⁵ Hansenne-Plumier, "L'expropriation pour cause d'utilité publique de l'espace aerien surplombant les propriétés privées", 5 Annales de la Faculté de Droit de Liege, (1960), p. 479-493.

We shall exclude from this study the subject of expropriation since we understand that this mode of acquiring property is proper for Administrative Law study only. For Air Law, the interest is in the fact that the system of expropriation makes viable both the progress and protection of air navigation facilities. This is the reason that leads juridical systems in each country to devise rules in the matter.³⁹⁶

Limitations upon property reflect the need to submit to the public interest. Restrictions are necessary not only to protect the area surrounding the airport, but also to insure that its use is compatible with an airport operation. In this way the airport will be more attractive to its neighbours, and at the same time the neighbours will be more attracted to the airport.³⁹⁷

There are three reasons for airport zoning:

- 1) To prevent the creation of physical hazards in the airspace adjacent to an airport. This means that no tall buildings, smoke stacks or radio towers would be allowed;

³⁹⁶ The subject of expropriation is regulated by the following Latin American Air Laws: Law on Civil Aviation, Articles 27, 69 and 80 (Colombia, 1938); Law on Civil Aviation, Article 50 (Costa Rica, 1949); Law 16.752, Article 13 (Chile, 1958); Civil Aviation Law, Articles 94 and 95 (Dominican Republic, 1969); Law on Civil Aviation, Article 85 (El Salvador, 1955); Civil Aviation Law, Article 88 (Guatemala, 1948); Civil Aviation Law, Article 68 (Honduras, 1950); Civil Aviation Code, Article 63 (Nicaragua, 1956); Regulation on Civil Aviation, Article 42 (Panama, 1963); Aeronautical Code, Article 60 (Paraguay, 1957); Civil Aeronautics Law, Article 50 (Peru, 1965); Code of Aeronautical Law, Articles 94 and 175 (Uruguay); Civil Aviation Law, Article 37 (Venezuela, 1955).

³⁹⁷ Gay de Montella, Derecho Aeronautico, (1950), p. 243; Videla Escalada, 1 Derecho Aeronautico, (1969), p. 456.

no heavy smoke-emitting industry would be permitted to use land around the airport due to visibility factors, advertising signs, billboards and any other lighting would be suppressed, manufacture or testing of radio, radar, T.V. and other products which can affect radio and other navigational aids, would not be allowed since they could undermine the safety of aircraft operation.

2) To assure the protection of the public investment in the airport.

3) To promote safety within the area affected by the airport, by insuring through proper land development uses, the best benefits to the community.³⁹⁸

Section B. Legal Nature of Property Limitations

The Argentinian author Videla Escalada suggests that there are three tendencies relating to the legal nature of the limitations:³⁹⁹

1) Assimilation of the subjects under study - marking, prohibition to construct and duty to suppress - with servitude.⁴⁰⁰

2) Identification of the subjects under study as restrictions or limitations to property.⁴⁰¹

398 Strunck, "Airport Zoning, and its future", 50 ABAJ, (1964), p. 346.

399 Videla Escalada, 1 Derecho Aeronautico, (1969), p. 469.

400 Carreno, "Servidumbres y expropiacion aeronautica", 4 RBDA, (1952), p. 89.

401 Chauveau, Droit Aerien, (1951), p. 397; Tapia Salinas, Derecho Aeronautico, (1944), p. 91; Delascio, Derecho de la Aviacion, (1959), p. 105; Rodriguez Jurado, Derecho Aeronautico, (1963), p. 126.

3) Consideration of the subjects as administrative servitudes.⁴⁰²

In order to better appreciate the different tendencies, we should distinguish between the marking and the removal:

a) It is our understanding that we can perceive the removal as the only servitude. Furthermore among those authors which agree with the removal being the only servitude,⁴⁰³ some make a further distinction between servitudes in favour of aerodromes and servitudes in favour of air navigation.⁴⁰⁴ The Chilean author Hamilton has pointed out that the special servitudes of Air Law, are not properly land property, but that they are established for the general benefit of air navigation, even in the case of Aerodromes.⁴⁰⁵

402 Videla Escalada, 1 Derecho Aeronautico, (1969), p. 469.

403 Hamilton, Derecho Aéreo, (1960), p. 282-296; Delascio, Derecho de la Aviacion, (1959), p. 105-107; Bauza Araujo, Servidumbres y limitaciones aeronauticas a la propiedad en el Derecho Positivo Uruguayo, Revista de Derecho Publico y Privado, (1959), p. 5-38; Fernandez de Maussion, "Las Servidumbres Aeronauticas y la Circulacion Aérea", 15 RIDA, (1960), p. 58.

404 Fernandez de Maussion and Juglart refer and qualify only those servitudes in favour of aerodromes. Those servitudes in favour of Air Navigation are considered to be real obligations. Fernandez de Maussion, "Servidumbres Aeronauticas", 15 RIDA, (1960), p. 58; de Juglart, Droit Aerien (1952), p. 175.

405 This is accurate because of the use given to Aerodromes. Once the aerodrome is not functioning anymore, the servitude ends, even if the land does not suffer any modification. Hamilton, Derecho Aéreo, (1960), p. 281.

This theory has been contested by other authors, such as Videla Escalada, Tapia Salinas and Rodriguez Jurado. They maintain that in the claimed aeronautical servitudes there is no dominant tenement because the limitation is not established in the interest of the aerodrome owner, but of air traffic.⁴⁰⁶

Videla Escalada adds another important argument, which contributes to showing the impossibility of assimilating these subjects with servitudes: the respective proprietary equity should figure in the patrimony of the individual, something which does not occur in this case.

Rodriguez Jurado also mentions that the public interest arising from the aeronautical activity cannot be assimilated with the concept of dominant tenement, because it constitutes a legal fiction that cannot be incorporated within the modern doctrinal conceptions of Common Law.⁴⁰⁷

b) The thesis of the limitations or restrictions affirms that the subjects under study are simple limitations, which determine the restrictions upon normal exercise of the property right.

The property right is not exclusive, but it can be determined by the law, for certain reasons related to

406 Tapia Salinas, Derecho Aeronautico, (1944), p. 91; Rodriguez Jurado, Derecho Aeronautico, (1953), p. 126; Videla Escalada, 1 Derecho Aeronautico, (1969), p. 470.

407 Videla Escalada, 1 Derecho Aeronautico, (1969), p. 473.

the public interest, which are of the essence in air navigation.⁴⁰⁸

We understand that this thesis has not considered the arguments of the doctrine of public domain with respect to the airspace.⁴⁰⁹ The doctrine converts the State in the holder and administrator of the patrimony, patrimony being the airspace. The result is that the existence of a legal person interested in air safety is completely assured.

The former thesis also does not consider the possibility of existence of servitudes other than those of land property, established in favour of a designated person or of communities. These servitudes were recognized in the Justinian law under the forms of usufruct, use and habitation, and it is accepted today by some legal systems.⁴¹⁰

408 Videla Escalada, *Ibid.* p. 470; Rodriguez Jurado, *Ibid.* p. 125.

409 The theory of public domain states that if the air space cannot be a property object of private persons, it can certainly be available to the territorial sovereignty and converted in a public domain, either national or of the State, as a politically organized Community. In Ming Jing, La delimitacion de la Soberania Vertical, Instituto Francisco de Vitoria, (Madrid: 1965), p. 41. See also, Matte, De la Mer territoriale a l'air territorial, Institut des Hautes Etudes Internationales, (Paris: 1963-1964), p. 58-59; Kroell, "La domainalite de l'air et sa police", *RGDA*, (1932), p. 61-73; Kroell, "La protection administrative du domaine public aerien", *RGDA*, (1932), p. 798-812.

410 The Spanish Legal System is one that accepts it. See Article 531, Civil Code.

c) The thesis of the administrative servitude⁴¹¹ would incorporate marking, prohibition to construct and duty to suppress, within the ample concept of administrative servitude. This servitude includes those relating to real obligations and other restrictions imposed, on the property for reasons of public interest.⁴¹²

The servitude is a genre into which fits any form of limited participation in the enjoyment or use of an object belonging to another.⁴¹³

Several types of servitudes, arising for personal, legal and public utility reasons are accepted by national laws. As there exists a titulary of the patrimony, the airspace, it is perfectly possible to conceive of a type of aeronautic servitude. Its characteristics might be: the prohibition of certain construction or the obligation to remove or mark obstacles.⁴¹⁴

411 This thesis has not been maintained by any Latin American Air Law Specialist.

412 Videla has criticized this position, maintaining that in civil legislation, the precision of terminology is much greater, and also that it does not create a disturbance as do those presented by the concept of administrative servitude. Videla, 1 Derecho Aeronautico, (1969), p. 473.

413 The aeronautical servitudes study can be seen within that of those legal servitudes caused by public utility. Bauza Araujo, Servidumbres y limitaciones aeronauticas, Revista de Derecho Publico y Privado, (1959), p. 20.

414 In the event that some civil systems do not have in their laws the principle of personal and legal servitude, Air Law could be a means of introducing these useful concepts into these systems.

Latin American Air Law texts when regulating this subject fall into five categories:

1) Theory of Restrictions and limitations: This theory is found in those texts of Argentina, El Salvador, Mexico, Brazil and Nicaragua.⁴¹⁵

Article 69 of Nicaragua's Civil Aviation Code states that:

"Constructions and Installations on lands adjacent to or near aerodromes, within the zone of protection and safety, shall be subject to the restrictions stipulated in the respective regulations on which may be enacted by the Ministry of Aviation for purposes of safety."

Article 328 of Mexico's law of General Means of Communications, provides in its paragraph 4:

"Structures and installations on land adjoining and adjacent to aerodromes, within their protective and safety zones, shall be subject to the restrictions specified in the protective regulations."

⁴¹⁵ Aeronautical Code, Title 3, Chapter 2 (Argentina, 1967); Air Code, Title 4, Chapter III, (Brazil, 1966); Book Four, Law of General Means of Communications, Article 328 (Mexico, 1950); Civil Aviation Code, Article 69 (Nicaragua, 1956); Law on Civil Aviation, Articles 92-93 (El Salvador, 1955).

2) Acceptance of the Servitude Criterion: The laws of Dominican Republic, Ecuador, Honduras, Panama, Colombia,⁴¹⁶ Uruguay and Peru accept the servitude criterion.⁴¹⁷

Article 49 of the Civil Aeronautics law of Peru indicates that those constructions or Installations in adjacent property or near to aerodromes and airports, as well as those obstacles that constitute a danger for air traffic, will be subject to restrictions and aeronautic servitudes fixed by regulation.⁴¹⁸

3) Protection or Safety Zones of Aerodromes: This is considered by the laws of Costa Rica and Paraguay, which merely mention these zones in their regulations,⁴¹⁹ with regards to this subject.

⁴¹⁶ Law 89 (Colombia, 1938), creates the servitude for airports, subject to rules expressed in mathematical formulas: one for distance and one for height. Perdomo-Escobar, "Aeronautic Servitudes: A Comparative Study", 44 Michigan Law Review, (1946), p. 1025.

⁴¹⁷ Law on Civil Aviation, Article 68 (Colombia, 1938); Civil Aviation Law, Chapter III (Dominican Republic, 1969); Civil Aviation Law, Article 6 and Chapter IV (Honduras, 1950); Regulation on Civil Aviation, Chapter III, Section III (Panama, 1963); Civil Aeronautics Law, Article 49 (Peru, 1965); Code of Aeronautical Law, Title VIII, Chapter III (Uruguay, 1942); Civil Aviation Law, Article 10, NO 23 (Ecuador, 1963).

⁴¹⁸ Civil Aeronautics Regulations legislates in its articles 102-108 the matter of servitudes. Gildemaister, Derecho Aeronautico, (1964), p. 38.

⁴¹⁹ Law on Civil Aviation, Article 56 (Costa Rica, 1949); Aeronautical Code, Article 62 (Paraguay, 1957).

Article 62 of Paraguay's Aeronautical Code gives to the aeronautical authority the power to establish safety zones, limiting or prohibiting obstacles and determining the marking of obstacles.⁴²⁰

Article 56 of Costa Rica's law on Civil Aviation provides the following:

"Landing fields used in public service shall have a protective zone whose extension shall be fixed on the regulations and within which no obstructions may be constructed or maintained which constitute a danger to the operation of aircraft."

4) The laws of Chile,⁴²¹ Guatemala, Venezuela⁴²² and Cuba⁴²³ do not follow any of the aforementioned positions.

⁴²⁰ Tolle, Air Law in Latin America, (1960), p. 221.

⁴²¹ Air Navigation Decree, Article 37 (Chile, 1931), recognizes a servitude in favour of aerodromes, which has a negative or prohibitive character, since it does not allow to build or plant over a certain height and within determined distances, according to the landing runway of the aerodrome. Hamilton, Derecho Aéreo, (1960), p. 283.

⁴²² Civil Aviation Law, Article 36 (Venezuela, 1955).

⁴²³ Law of Transport and Communication (Cuba, 1942), prohibits constructions and obstructions that extend above the level of the airport to a height greater than a fortieth part of the distance between the point of location of the obstacles and the nearest boundary of the airport. The law enumerates what are the obstructions contemplated. Perdomo Escobar, "Aeronautic Servitudes", 44 Michigan Law Review, (1946), p. 1027.

Article 80 of Guatemala's Civil Aviation Law, paragraph 2 states:

"The Directorate General of Civil Aeronautics shall require that no structures of any kind be enacted within 300 meters of either end of aerodrome runways, of such height that a straight line projected from the closest extremity of the runway and tangent to the highest part of the structure, forms a gradient greater than 3% with the horizontal of such runway ends."

5) Bolivia's Air Service Decree does not have any reference at all to this subject.

Section C. Obligation to mark obstacles

After having seen the legal nature and having laid the basis for property limitations and restrictions, which we have qualified as aeronautical servitudes, we will now examine these servitudes.

The obligation to mark obstacles can be defined as that obligation which is imposed to the owner of a land to mark in a visible way during daytime and to illuminate during the night any construction that exceeds the legislated height. The purpose is to allow pilots to identify and evade the obstacles, so as to avoid possible accidents.⁴²⁴

⁴²⁴ Carreno, "Servidumbres y Expropiacion Aeronautica", 4 RBDA, (1952), p. 95; Chauveau, Droit Aerien (1951), p. 400; Fernandez de Maussion, "Servidumbres Aeronauticas", 15 RIDA, (1960), p. 94; Riese et Lacour, Droit Aerien, (1951), p. 144.

Annex 14 of the Chicago Convention contains technical recommendations about obstruction restriction, removal, and marking, which must be observed by Contracting States.⁴²⁵ The marking of obstructions is intended to reduce hazards to aircraft operating under visual meteorological conditions.⁴²⁶

The marking of an obstruction imposes a burden on the land owner, an active or positive servitude, which obliges the owner to do: "servitus in faciendo". It is based in the principle "*ejus commoda ejus est incommoda*", since the owner that builds dangerous constructions for the community, in his own profit, must carry the burden of its consequences.⁴²⁷

By this servitude the owner is obliged at least to assume the expenses involved in keeping up markings for obstacles installed by the aeronautical authority. The result is greater effectiveness of the system and the servitude is justified by the precedence of the general and collective interest over individual interest.⁴²⁸

The owner who fails to fulfill his responsibility contravenes legal regulations.⁴²⁹

⁴²⁵ Annex 14, Part IV, Chapter III, "Obstruction Marking", describes the objects to be marked, day marking of obstructions and lighting of obstructions.

⁴²⁶ Annex 14, Part IV, Chapter III, 3.1 Note 2 (6th Edition, 1971).

⁴²⁷ Rodriguez Jurado, Derecho Aeronautico, (1963), p. 128.

⁴²⁸ Videla Escalada, 1 Derecho Aeronautico, (1969), p. 468.

⁴²⁹ Regarding legal liability to third parties. See case, Helicopair v. Montblanc Aviation, where the absence of marking was considered to be the cause of an accident. 16 RFDA, (1962), p. 405.

Only few States in Latin America consider in their legislation the servitude of marking obstacles: Argentina, Dominican Republic, Panama, Paraguay and Uruguay.⁴³⁰

Article 77 of Uruguay's Code of Aeronautical Law provides the following:

"Owners are under the duty to permit the marking of obstructions which the aviation authorities believe to be dangerous, anywhere in the national territory, and the establishment of installations necessary to the maintenance of these services."

The wording indicates that the owners are under an obligation of "not doing", and they only have to "permit" the marking of obstructions.⁴³¹

Article 63, paragraph 1 of the Aeronautical Code of Paraguay states:

"The marking of obstructions shall be compulsory throughout the territory of the Republic if they, in the opinion of the Board of Civil Aeronautics, constitute hazards to Air Navigation...".⁴³²

⁴³⁰ Aeronautical Code, Article 35 (Argentina, 1967); Civil Aviation Law, Articles 113-116 (Dominican Republic, 1969); Regulation on Civil Aviation, Article 45 (Panama, 1963); Aeronautical Code, Article 63 (Paraguay, 1957); Code of Aeronautical Law, Article 77 (Uruguay, 1942).

⁴³¹ Article 77 is based in the French law of Aeronautical Servitudes (1935), which referred to the obligation of marking obstacles. Bauza Araujo, "Servidumbres y limitaciones aeronauticas a la propiedad en el Derecho Positivo Uruguayo", Revista de Derecho Publico y Privado, (1959), p. 28. For a study of the French law of Aeronautical Servitudes, see, Lemoine, Des Servitudes Aériennes, Presses Universitaires de France, (Paris: 1937).

⁴³² Fuster, Derecho Aeronautico, (1958), p. 148.

Article 45 of Panama's Regulation on Civil Aviation, under the heading "Marking of Obstacles" provides:

"Objects or parts thereof within the boundaries of approach area and which project above the horizontal surface shall be considered obstacles and shall be marked." 433

Argentina's Aeronautical Code, Article 35 establishes a compulsory marking of those obstacles which are dangerous for air navigation.⁴³⁴

Regarding the territorial scope, that is, where the obligation of marking is applicable, the texts of Argentina, Uruguay and Paraguay have decreed that the obligation of marking be applied to any obstacle located in the national territory.⁴³⁵ The Civil Aviation Law

433 Article 45 follows the wording adopted by Annex 14, Part IV, Chapter III, 3.1.2.

434 Foglia-Mercado criticize Article 35, implying that the article is not only against the owners right, but also against the Constitutional Principles of the Law of Property and the Civil Code regulations. Foglia-Mercado, Derecho Aeronautico, (1968), p. 81.

435 It is interesting to note how ample the limitation to the right of the owners of the property regarding markings is, since it can be done over any obstacle and any part of the national territory, the sole element being, to consider how dangerous the effects of not having the markings can be to air navigation. Bauza Araujo, "Servidumbre y limitaciones aeronauticas", Revista de Derecho Publico y Privado, (1959), p. 29. See also, Annex 8 to the Chicago Convention, which complements the subject of markings with certain rules.

of Dominican Republic restricts the territorial scope of the law to those obstacles existing in the protection zones of aerodromes, air routes and isolated obstacles.⁴³⁶ In Panama, the marking servitude affects only those obstacles located in the protection zones of aerodromes.⁴³⁷

The subject of expenses incurred by the obligation of marking obstacles is regulated by the texts of Argentina, Dominican Republic, Paraguay and Uruguay.⁴³⁸ There is no distinction between expenses for installation or upkeep of markings.

The Aeronautical Code of Argentina places the burden of all the expenses on the owner,⁴³⁹ while the Paraguayan Aeronautical Code, Article 63, paragraph 1, states that:

"...the expenses for installation and operation of such signals will be to the account of the State." 440

436 Supra, No. 430, page 127.

437 Supra, No. 430, page 127.

438 Supra, No. 430, page 127.

439 Foglia and Mercado have strongly criticized Article 35 (Supra, No. 434, page 128), because the expenses should not be placed on the owner of the land, especially when the benefits are received by the airline company and the community. The authors put forward the example followed by maritime marking, where the expenses are paid by the State, such as in the case of buoys. Foglia-Mercado, Derecho Aeronautico, (1968), p. 81.

440 Fuster, Derecho Aeronautico, (1958), p. 148.

Article 77, of Uruguay's Code of Aeronautical Law, states in paragraph 2:

"The expenses incurred in such work, as well as in maintenance of lights and signals or of any other pertinent arrangements, shall be charged to the operators of the lines."

This paragraph is very confusing because it could lead one to the conclusion that airlines are those obliged to pay for the expenses, which is not an accurate interpretation.⁴⁴¹

Dominican Republic's Civil Aviation Law refers only to the expenses of obstacle markers, situated in the aerodrome servitude zones, and those expenses are charged to the owners' account.⁴⁴²

Our position in this matter derives from a combination of the ideas contained in Latin American laws. Marking obligation should affect any dangerous obstacle, in any place of the territory, and the installation expenses should be charged to the state, while those of upkeep should be charged to the owner of the dangerous obstacle.

Another form of active or positive servitude, analogous to that of marking, is regulated by Cuba's Air

⁴⁴¹ Bauza Araujo, "Servidumbres y limitaciones aeronauticas", Revista de Derecho Publico y Privado, (1959), p. 29.

⁴⁴² These obstacles should be exceptions in the territory, even though their removal would be expensive, they must not represent any danger for air navigation.

Navigation General Regulation, in Article 53:

"The government may order any individual or company to extinguish, cover or protect in a special manner any light, beacon or lantern so that it may not be confused with the light signals that serve as nocturnal navigational guides."

Section D. Prohibition to construct and duty to suppress obstacles

In relation to obstacles located in the surroundings of aerodromes we can distinguish two types of restrictions or servitudes that tax a land property:

- 1) No construction or planting, either absolutely or over a certain height (without the permission of the aeronautical authority).
- 2) The obligation to suppress wholly or reduce the altitude of pre-existing plantings or constructions, immediately after the construction or extension of an aerodrome.⁴⁴³

These restrictions, that would derive from the servitudes of "non edificandi" and from "altius non tollendi",⁴⁴⁴ require the creation of a zone, area or surface to which they belong. The peculiarity of the creation of a zone common to all, cannot induce us to believe that they constitute a unity. The indicated restrictions res-

⁴⁴³ Lenz Paz, Derecho Aeronautico, (1969), p. 136; Hamilton, Derecho Aéreo, (1960), p. 283; Videla Escalada, 1 Derecho Aeronautico, (1969), p. 141.

⁴⁴⁴ Le Goff, Droit Aerien, (1954), p. 355; Carreno, "Servidumbres y expropiaciones aeronauticas", 4 RBDA, (1952), p. 94; Milacic, "Les Servitudes aeronautiques de degagement en France", 17 RFDA, (1963), p. 148.

pond to different needs, and their consequences are different, and this is recognized by the Chicago Convention through its Annex 14.⁴⁴⁵

Recognition of the servitude or restriction of not constructing is regulated by the laws of Argentina, Brazil, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Panama, Paraguay, Cuba and Uruguay.⁴⁴⁶

The servitude of suppressing or the reduction of pre-existent obstacles is legislated by the texts of Argentina, Colombia, Costa Rica, Chile, Dominican Republic, El Salvador, Paraguay, Peru and Uruguay,⁴⁴⁷ and

445 Annex 14, Part IV, Chapter 2, "Removal and restriction of obstructions", Haguenau-Esperou, 2 Organisation de l'aviation Civile Internationale, SGAC, Ecole Nationale de l'Aviation Civile, (Paris: 1972), p. 22.

446 Aeronautical Code, Article 34 (Argentina, 1967); Air Code, Article 56 (Brazil, 1966); Law on Civil Aviation, Articles 26 and 68 (Colombia, 1938); Law on Civil Aviation, Article 56 (Costa Rica, 1949); Air Navigation Decree, Article 37 (Chile, 1931); Civil Aviation Law, Article 107 (Dominican Republic, 1969); Law of Air Traffic, Article 11 (Ecuador, 1960); Law on Civil Aviation, Articles 92-93 (El Salvador, 1955); Civil Aviation Law, Article 80 (Guatemala, 1948); Civil Aviation Law, Articles 6 and 72 (Honduras, 1950); Regulation on Civil Aviation, Article 46 (Panama, 1963); Aeronautical Code, Articles 61 (Paraguay, 1957); Code of Aeronautical Law, Article 84 (Uruguay, 1942); Law of Transport and Communications, Article 25 (Cuba, 1960).

447 Aeronautical Code, Articles 33-34 (Argentina, 1967); Law on Civil Aviation, Article 69 (Colombia, 1938); Law on Civil Aviation, Article 56 (Costa Rica, 1949); Air Navigation Decree, Article 37 (Chile, 1931); Civil Aviation Law, Article 112 (Dominican Republic, 1969); Law on Civil Aviation, Article 93 (El Salvador); Aeronautical Code, Article 62 (Paraguay, 1957); Civil Aeronautics Law, Article 49 (Peru, 1965); Code of Aeronautical Law, Article 91 (Uruguay, 1942).

is found by interpretation of the law in Brazil, and Honduras.⁴⁴⁸

Article 33 of Argentina's Aeronautical Code provides that before allowing the use of an aerodrome, all constructions, plantations or structures of any nature must be eliminated if they have a height exceeding that considered for a clear surface in the aerodrome. A comment made by the drafter, explaining this new article in the law states that the purpose of Article 33 is to avoid the opening of an aerodrome while there is any danger caused by those obstacles for air navigation.⁴⁴⁹ Article 34 of the Code regulates the punishments for any violation of the rules mentioned above.

Article 37 of Chile's Air Navigation Decree states:

"No walls, houses or apartment buildings may exist, and their construction is prohibited, as is also the erection of electric transmission lines or other obstacles, at a distance less than ten times their height, computed from the boundaries of the area destined for the landing field of any public or private aerodrome..."

The Chilean law has very precise limits, which are too fixed and mathematical to serve air navigation development.⁴⁵⁰

⁴⁴⁸ Air Code, Article 58 (Brazil, 1966); Civil Aviation Law, Article 74 (Honduras, 1950).

⁴⁴⁹ Lena Paz, Codigo Aeronautico, (1971), p. 64.

⁴⁵⁰ Hamilton, Derecho Aéreo, (1960), p. 283.

Article 11 of Ecuador's law of Air Traffic also follows a rigid structure in its paragraph 4:

"Except with the permission of the Director General of Civil Aviation, it shall be prohibited to construct walls, houses, chimneys, electric transmission lines or any other building or obstructions or to plant and keep trees at a distance less than 900 meters from a runway whose elevation above sea level is less than 2,000 meters or more." 451

Guatemala's Civil Aviation law provides only in its Article 80, paragraph 2⁴⁵² the subject of servitudes, which certainly shows a deficiency in the legislation.⁴⁵³

Article 46 of Panama's Regulation on Civil Aviation, under the title of "Restrictions" states:

"For construction within the restricted areas of water tanks, buildings, radio and television aerials, and other structures which may constitute obstacles to air navigation and are over 17 meters in height, shall require a special permit issued by the Civil Aeronautics Bureau, following consultation with the Municipal Engineer of the respective locality..."

Article 84 of Uruguay's Code of Aeronautical Law mentions safety zones and prescribes rules for each

451 Carrera, Derecho Aeronautico, (1958), p. 89.

452 Supra, p. 125.

453 Martinez-Sobral, Derecho Aeronautico, (1968), p. 42.

of the four categories of aerodromes or airports which are distinguished.⁴⁵⁴

Article 69 of Colombia's Law on Civil Aviation legislates the servitude of suppressing or reducing pre-existent obstacles.⁴⁵⁵ It provides the following:

"The removal of any obstruction to air navigation shall be considered an important reason for the exercise of eminent domain, if it consists of a planting, building, or any other permanent or temporary work located within the area defined in Article 68." ⁴⁵⁶

The Aeronautical Code of Paraguay in its Article 62 gives to the Board of Civil Aeronautics, which will pay a previous compensation, the authority to,

"...order or provide for the demolition or for total or partial destruction of the obstruction, of any construction, building, or other categories of works which impedes or might impede the operations of landing and departure of aircraft, if these exist within the safety zones at the time of establishment, extension or operation of a public airport."

Paragraph 2 adds that the Board can, in the event of violation, order the demolition or abolition of obstructions created within the safety zones referred to in Article 61.⁴⁵⁷

454 Bauza Araujo, "Servidumbres y limitaciones aeronauticas", Revista de Derecho Publico y Privado, (1959), p. 33.

455 Cobo Cayon, Derecho Aéreo, (1966), p. 382.

456 Supra, Footnotes 447, page 132, and 448, page 133.

457 Tolle, Air Law in Latin America, (1960), p. 221.

Article 74 of Honduras' Civil Aviation Law regulates the servitude of suppressing or reducing pre-existent obstacles, but the rule has to be understood through interpretation:

"Structures or installations or adjacent property or next to the aerodromes within the safety zones thereof shall be subject to the restrictions established by the regulations and within the limits established by the Ministry of development for reasons of safety."

Article 74, even if it is read with other related articles of the law,⁴⁵⁸ does not seem to determine clearly the authority of expropriation which the State holds.⁴⁵⁹

It is necessary to point out that the laws of Costa Rica, Honduras, Mexico, Nicaragua, Peru and Venezuela⁴⁶⁰ limit themselves to very general guidelines about the subject. They do not indicate the volumes or surfaces affected by servitudes or restrictions, nor do

⁴⁵⁸ There are three other articles related to Article 74. They are Article 6, No VI; Article 68 (determining aerodromes of public use and subject to expropriation) and Article 72 (servitude of not constructing). Article 31 of the Regulations, referring to Aerodromes and Civil Airports, allows eliminations, but its legality and constitutionality is under discussion. Pino, Derecho Aéreo, (1974), p. 155.

⁴⁵⁹ The Brazilian Air Code, through its Article 58, also has to be understood through interpretation. Brazil has regulated this matter by a special regulation in 1966. Valle, Codigo Brasileiro do Ar, (1967), p. 99.

⁴⁶⁰ Law on Civil Aviation, Article 56 (Costa Rica, 1949); Civil Aviation Law, Article 74 (Honduras, 1950); Law of General Means of Communications, Article 328 (Mexico, 1950); Civil Aviation Code, Article 69 (Nicaragua, 1956); Civil Aeronautics Law, Article 49 (Peru, 1965); Civil Aviation Law, Article 36 (Venezuela, 1955).

they indicate the procedure to make them effective. The effectiveness seems very difficult vis-a-vis the constitutional and civil guarantee of property.

Honduras' situation is delicate. They are not able to determine with clarity the servitude, even though they have four articles, pertaining to the subject, two located in the law and two located in the Regulation.⁴⁶¹

Article 56 of Costa Rica's Law on Civil Aviation states:

"Landing fields used in public service shall have a protective zone, whose extension shall be fixed in the regulations and within which no obstructions may be constructed or maintained which constitute a danger to the operation of aircraft."

Article 328, paragraph 4 of Mexico's Law of General Means of Communications states:

"Structures and installations on land adjoining and adjacent to aerodromes, within their protective and safety zones, shall be subject to the restrictions specified in the protective Regulations."

To the abovementioned laws, which do not contribute greatly to the effectiveness of the servitude, we must add Bolivia's Air Service Decree, which does not mention servitudes or property restrictions. In the future these laws should be more specific, in order to obtain better results.

⁴⁶¹ Civil Aviation Law, Articles 74, 6 NO VI and 68, plus Article 31 of the Regulations, Pino, Derecho Aéreo, (1974), p. 155.

Doctrine has participated actively in the discussion whether servitudes or restrictions to property will be applicable only to public aerodromes or if they will be extended for the benefit of private aerodromes.

Videla Escalada concludes that servitudes should only correspond to public aerodromes. The argument is based upon the concept that private aerodromes do not have the characteristics of general interest, assumed by public aerodromes.⁴⁶²

Hamilton shares Videla's opinion, and adds that in Chile a contrary solution would be unconstitutional.⁴⁶³

Lemoine recommends two conditions that should be met before private aerodromes can benefit from the servitudes we have mentioned: a) They should be open to public air traffic; b) They must belong to a community, associations or commercial societies.⁴⁶⁴

The Videla Doctrine, as it could be called, is accepted in Latin America by only three countries: Argentina, Costa Rica and Paraguay.⁴⁶⁵

⁴⁶² The hypothesis of existing obstacles in the surroundings of private aerodromes only determines a conflict of interests between the owners of surrounding rural property and the operator of the aerodrome. Videla Escalada, 1 Derecho Aeronautico, (1969), p. 462.

⁴⁶³ The reason being, that Article 10, No 10 of Chilean Constitution (1925) does not admit that expropriation is exclusively for the benefit of an individual. Hamilton, Derecho Aéreo, (1960), p. 286.

⁴⁶⁴ Lemoine, Des Servitudes Aeriennes, Les Presses Universitaires, (Paris: 1937), p. 47.

⁴⁶⁵ Aeronautical Code, Articles 31-34 (Argentina, 1967); Law on Civil Aviation, Article 56 (Costa Rica, 1949); Aeronautical Code, Article 61 (Paraguay, 1957).

Article 61, paragraph 1 of Paraguay's Aeronautical Code refers to servitudes, and to the authority of the Board of Civil Aeronautics in adopting measures for the,

"...creation of safety zones in the surrounding areas of public airports, in which the construction or maintenance of any type of obstructions shall be restricted or prohibited." 466

Article 37 of Chile's Air Navigation Decree has extended its restrictions to public and private aerodromes. 467

The majority of the laws do not distinguish among the obligations and therefore they benefit both private and public aerodromes. Such is the case in the laws of Brazil, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, Uruguay and Venezuela. 468

466 Fuster, Derecho Aeronautico, (1958), p. 148.

467 Hamilton, Derecho Aéreo, (1960), p. 282.

468 Air Code, Article 56 (Brazil, 1966); Law on Civil Aviation, Article 68 (Colombia, 1938); Civil Aviation Law, Articles 100-116 (Dominican Republic, 1969); Law of Air Traffic, Article 11 (Ecuador, 1960); Law on Civil Aviation, Article 92 (El Salvador, 1955); Civil Aviation Law, Article 80 (Guatemala, 1948); Civil Aviation Law, Article 74 (Honduras, 1950); Law of General Means of Communications, Article 328 (Mexico, 1950); Civil Aviation Code, Article 69 (Nicaragua, 1956); Regulation on Civil Aviation, Articles 44-45 (Panama, 1963); Civil Aeronautics Law, Article 49 (Peru, 1965); Code of Aeronautical Law, Article 82 (Uruguay, 1942); Civil Aviation Law, Article 36 (Venezuela, 1955).

Article 82, Chapter III of Uruguay's Code of Aeronautical Law, referring to restrictions states that:

"For the purpose of guaranteeing safety of air navigation, and especially to facilitate the landing and take-offs of aircraft, and in application of the principle of restrictions in the interest of air navigation, 'Safety zones' shall be created around aerodromes and airports, in which the construction or maintenance of all categories of obstructions are prohibited or restricted." 469

Section E. Servitude Areas or Zones

Different positions are taken by Latin American laws to determine how a servitude area or zone, for not building or for suppressing obstacles, is to be established:⁴⁷⁰

469 Bauza opines that according to the principle which says, that where the law does not distinguish, the interpreter must not distinguish either, it should be understood that both private and public aerodromes are included in Article 82. Bauza Araujo, "Servidumbres y limitaciones aeronauticas", Revista de Derecho Publico y Privado, (1969), p. 31.

470 It is interesting to consider the difference between limitations and restrictions. Limitations (among which are included administrative servitudes and expropriation), impose on the owner a particular sacrifice in favour of a correlated collective interest. Restrictions involve an inherent and generally imposed encumbrance on title. According to the limitation, if expropriation must occur, for reasons of public utility, compensation must be given. Restrictions do not give rise to compensation. Perdomo-Escobar, "Aeronautic Servitudes", 44 Michigan Law Review, (1946), p. 1020.

1) The first group of texts use a mathematical criterion, as well as a legal one for the zones, surfaces or volumes, where no obstacles can be found or where constructions are not permitted. As a consequence of what is stated in those laws, such zones are established automatically from the moment of the installation of the aerodrome.

This procedure has been followed by the laws of Colombia, Chile, Ecuador, Guatemala, Panama⁴⁷¹ and Uruguay.⁴⁷²

Chile's and Colombia's servitudes are established in relation to surfaces located in the imaginary extension of the extreme of the runways of an aerodrome. The laws of Ecuador, Uruguay⁴⁷³ and Colombia, consider for their establishment those zones marked in relation to the aerodrome's perimeter.

Each solution has a significant drawback: determinations that are valid today could be useless after

471 Only applicable to the prohibition of new constructions.

472 Law on Civil Aviation, Article 68 (Colombia, 1938); Air Navigation Decree, Article 37 (Chile, 1931); Law of Air Traffic, Article 11 (Ecuador, 1960); Civil Aviation Law, Article 80 (Guatemala, 1948); Regulation on Civil Aviation, Articles 44 and 46 (Panama, 1963); Code of Aeronautical Law, Articles 82-85, 89 and 91 (Uruguay, 1942).

473 In Uruguay the procedure followed for servitude areas is applicable only to security zones of aerodromes and high tension lines. It is important to note that the inclusion of the high tension lines is a result of the legislators' worry not only about the danger imposed on air navigation, due to lack of visibility, but also about the risks that can arise from electric energy conduction. Bauza Araujo, "Servidumbres y limitaciones aeronauticas", Revista de Derecho Publico y Privado, (1969), p. 34.

a period of time, because of aviation progress.⁴⁷⁴

2) Another group gives the delimitation of the protection zones of aerodromes to Regulations, especially decreed for this matter.

The procedure is followed by the laws of Dominican Republic (with a general rule), El Salvador, Panama and Paraguay.⁴⁷⁵

Article 93 of El Salvador's Law on Civil Aviation, under the title of "Structures and Aerodromes", in paragraph 1 provides:

"Within the limits of a civil aerodrome and within a distance of 5,000 meters, there may not be any structures or plantings whose height exceeds that established by the respective regulation." ⁴⁷⁶

Article 44 of Panama's Regulation on Civil Aviation states, under the title of "obstacles",

⁴⁷⁴ The criteria to suppress obstacles and forbid constructions in the same measure in all the aerodrome perimeter could be unreasonable in the situation of aerodromes with only one runway. In those aerodromes with intersected runways it could be indispensable. Chauveau, Droit Aerien, (1951), p. 398.

⁴⁷⁵ Civil Aviation Law, Article 106 (Dominican Republic, 1969); Law on Civil Aviation, Article 93 (El Salvador, 1955); Regulation on Civil Aviation, Articles 44-46 (Panama, 1963); Aeronautical Code, Article 61 (Paraguay, 1957).

⁴⁷⁶ This system of determining a distance around the perimeter of the aerodrome, and leaving to the regulation the height above which there cannot be any obstacles, is also followed by Dominican Republic's Civil Aviation Law.

"The constructions and installations on lands adjacent to or near aerodromes, within the restricted and safety zones thereof shall be subject to the restrictions prescribed in the respective regulations." 477

3) A third criterion, which we consider to be "flexible", is also applied by some Latin American texts. It is strongly related to the delivery of ample power to the administration, specifically to the Aeronautical authority, in order to determine the obligations or servitudes affecting property. As we shall see, the authority determines, the way to apply those limitations required by each particular aerodrome.

Uruguay's Code of Aeronautical Law besides imposing restrictions around the perimeter of every aerodrome, establishes an "approach zone" and grants the executive power the authority to determine in each case the necessary servitudes. Article 86 provides:

"Approach zones shall be trapezoid zones, with a base of 330 meters at the end of each runway and broadening until they reach 1.330 meters at a distance of 3,200 meters from the edge of the runway, its axis being the landing runway in this case."

Article 87, paragraph 1 states that:

"In the areas located between the approach zones, as defined in the preceding article, the conditions of

477 The Aeronautical Code of Paraguay also follows this system, by which regulation determines the concept and extension of surfaces where restrictions and servitudes are applied.

encumbrance to be applied shall be determined in each case by the Executive, when there is no profit or interest to the State in applying the maximum conditions defined in the preceding articles."

Paragraph 2 adds the following:

"The conditions to be applied shall be the subject of a special restrictions plan for each aerodrome or airport, which must be approved by the executive." 478

The Argentinian Aeronautical Code seems to have even more flexibility and limits itself to determining in general terms what is called "surfaces of obstacle removal"⁴⁷⁹ in whose vertical projection plantings or constructions are limited or restricted.⁴⁸⁰ The legal limitation of the obligation is formally fulfilled by the law and the aeronautical authority will determine in each case which are the "surfaces of obstacle removal". Consequently the limitations or restrictions will be applied to those surfaces located in the surroundings of aerodromes.⁴⁸¹

478 The "approach zones" seem to coincide with "safety zones" of ILS runways. Tolle, "Dereito Aeronautico no Uruguay", 3 Boletín ITA, (1960), p. 22.

479 Article 30 of Argentina's Aeronautical Code defines "surfaces of obstacle removal" as those "imaginary, oblique, and horizontal areas, which extend over each aerodrome and their immediate environs, and which tends to limit the height of obstacles to air navigation."

480 Aeronautical Code, Articles 30, 31 and 34 (Argentina, 1967). See Lena Paz, Derecho Aeronautico, (1969), p. 134.

481 Aeronautical Code, Articles 30 and 32 (Argentina, 1967). Lena Paz, Derecho Aeronautico, (1969), p. 136.

The most flexible of all the laws is the Brazilian Air Code. It gives to the aeronautical authorities the power to determine both the restrictions to property, as well as its application to each particular case, according to a protection plan of each aerodrome.⁴⁸²

Section F. Servitudes' Effects

The effects of the constitution of restrictions or aeronautical servitudes are diverse, depending upon whether they arise from the prohibition to build or from the imposition to suppress or reduce obstacles pre-existing before the aerodrome authorization to operate.

Article 102 of Dominican Republic's Civil Aviation Law provides that:

"Aeronautic Servitudes will tax the servient tenement from the same moment the authorization is given to establish an aerodrome."

Article 102 rules a prohibition to build near an aerodrome, since there is an obligation, a tax of the servient tenement, over the land. The owner that defies this prohibition is guilty of unlawful conduct, because before proceeding with the construction he had a restricted right, and he has operated against the law exceeding his property right.⁴⁸³ It is therefore logical to proceed to destroy that which has been built in contravention.

⁴⁸² Air Code, Articles 56 and 57 (Brazil, 1966).

⁴⁸³ Videla Escalada, 1 Derecho Aeronautico, (1969), p. 464.

The expenses will be on the part of the owner, and naturally there will be no right for indemnification for the destroyed construction. This right is expressly and integrally recognized by the laws of Argentina and Paraguay,⁴⁸⁴ even though the obligation of the transgressor to suffer the demolition expenses does not appear to be explicitly stated in those laws.

Article 33 of Argentina's Aeronautical Code states that the,

"authorization of any aerodrome will be subject to the previous elimination of constructions, plantings or structures of any nature that are built higher than the one limited by the surfaces of obstacle removal, determined for that aerodrome." ⁴⁸⁵

Other Latin American texts would arrive at similar solutions following rules of their own legal system. These texts are those of Colombia, Chile,⁴⁸⁶ Dominican Republic and Uruguay. Brazil's case shows that the effects seem contrary to the general rule, since according to the law an owner who wishes to construct in contravention to a restriction, would have the right to an indemnification, either accorded or fixed judicially.⁴⁸⁷

⁴⁸⁴ Aeronautical Code, Article 31 (Argentina, 1967); Aeronautical Code, Article 62, paragraph 2 (Paraguay, 1957).

⁴⁸⁵ Lena Paz, Derecho Aeronautico, (1969), p. 136.

⁴⁸⁶ In Chile, for example, this can be seen through Article 931 of the Civil Code and Article 565 of the Civil Procedure Code.

⁴⁸⁷ It relates to the Article 150 of the Constitution, that guarantees property rights and considers indemnification. Decree-law NO 32 (18 November, 1966) also regulates this subject. Valle, Codigo Brasileiro do Ar, (1967), p. 98.

An important matter is the method used to bring the legal sanction against the transgressor into effect. The lack of "imperium" that the owner or operator of the affected aerodromes has, compels him to resort to the judicial intervention. It is not considered oportune to follow the simple administrative procedure, because of the respect owed to the property rights, guaranteed constitutionally.

In our opinion the administrative procedure should not be wholly disregarded, especially in countries such as Argentina and Costa Rica, where there exists jurisdiction related to actions under Administrative Law. We consider this a sufficient guarantee for the public.

The thesis of the judicial way is stated expressly in Latin America, by the laws of Argentina and Brazil.⁴⁸⁸

Article 34 of Argentina's Aeronautical Code provides that if after the approval of the surface of obstacle removal in a public aerodrome, an infringement was encountered to the rule considered by Articles 30 and 31, the owner of the aerodrome will notify the violator to eliminate the obstacle. If this is not done, the owner will ask judicially its demolition or suppression, without indemnification right.

The administrative procedure is not accepted expressly by Latin American laws, but could arise from legal interpretation of the text of Article 62, Nº 2 of Paraguay's Aeronautical Code.⁴⁸⁹

⁴⁸⁸ Aeronautical Code, Article 34 (Argentina, 1966);
Air Code, Article 58 (Brazil, 1966).

⁴⁸⁹ Tolle, Air Law in Latin America, (1960), p. 221.

Another servitude or restriction to be considered imposes on the owner the suppression, demolition or reduction of plantations or other obstacles pre-existing at the time of the aerodrome authorization. Clearly the servitude shows a pressure over private property; consequently the procedure of indemnifying the owner for the damages shall be used.⁴⁹⁰ Another possibility is to proceed with the expropriation according to special rules of Air Law, if there are any, and if not, in defect of these rules, those of Common Law should be applied.

This servitude is recognized implicitly or explicitly by the laws of Argentina, Brazil, Colombia, Chile, Dominican Republic and Paraguay.⁴⁹¹

Article 69 of Colombia's law on Civil Aviation states that:

"The removal of any obstruction to air navigation shall be considered an important reason for the exercise of eminent domain if it consists of a planting, building or any other permanent or temporary work located within the area defined in the preceding article." 492

490 Videla Escalada, 1 Derecho Aeronautico, (1969), p. 463.

491 Aeronautical Code, Article 33 (Argentina, 1967); Air Code, Article 58 (Brazil, 1966); Law on Civil Aviation, Article 69 (Colombia, 1938); Air Navigation Decree, Article 37 (Chile, 1931); Civil Aviation Law, Articles 110 and 112 (Dominican Republic, 1969); Aeronautical Code, Article 62, N° 1 (Paraguay, 1957).

492 In this respect Resolution N° 751 (2nd Sept. 1964) regulates this matter in Colombia. Cobo Cayon, Derecho Aereo, (1966), p. 390.

Section G. Other Servitudes

Other legal figures also assume the character of property restriction. Among them we can mention: transitory servitudes: those that look for the elimination of radio-electric interference, and others related to landings and emergencies.

The Dominican Republic Civil Aviation law has determined the establishment of a transitory servitude, by which building is prohibited and obstacles are suppressed. The law considers the possibility of establishing these transitory servitudes in two instances: 1) When the construction of an aerodrome in a determined land is under study, the surrounding property will be subjected to the legal servitudes, until such time as the construction is definitively approved or disapproved. The preventive servitude cannot last more than one year.⁴⁹³

2) For the construction of the aerodrome, for a maximum of two years, from the moment the authorization to begin the construction is given.⁴⁹⁴

In order to bring these transitory servitudes into effect the law defines a system, through publications in newspapers, which notifies the owners of titles of the affected land, about the marking of the boundaries of the property where the aerodrome shall be built.⁴⁹⁵

⁴⁹³ Civil Aviation Law, Article 103 (Dominican Republic, 1969).

⁴⁹⁴ Civil Aviation Law, Article 102 (Dominican Republic, 1969).

⁴⁹⁵ The notification of the approval or disapproval of the study regarding the aerodrome construction is done in the same way. Civil Aviation Law, Article 105 (Dominican Republic, 1969).

Another servitude regulated in Latin America is one that regards the elimination of interferences in air communication systems, radio-electric equipment and radio-direction finders, used for the purpose of aiding air navigation. These systems, fulfilling a primary function in the actual stage of aviation, require a careful elimination of those sources of interference which can come from broadcasting equipment, conventional construction and even from the transit of motorized vehicles in its proximities.

Article 6 of Law 16.752 of Chile contemplates the prohibition of plantations or constructions in the surrounding land of those places where installations of aid for air navigation are located, without a previous authorization from the aeronautical authority, even when such installations are outside the perimeter of the aerodrome.⁴⁹⁶ The laws of Dominican Republic and Uruguay⁴⁹⁷ have certain fixed surfaces determined around aerodromes, in which no broadcasting station can be installed.

Article 92 of Uruguay's Code of Aeronautical Law states that:

"The installation of radio-broadcasting stations is prohibited in the safety zones referred to in Article 82, at a distance less than

⁴⁹⁶ The reason for this servitude is based on the avoidance of disorientation or perturbation of ILS and other manoeuvres which greatly depend upon a good communication with air traffic control. Hamilton, Derecho Aéreo, (1960), p. 282.

⁴⁹⁷ Civil Aviation Law, Article 108 (Dominican Republic, 1969); Code of Aeronautical Law, Article 92 (Uruguay, 1942).

2.5 kilometers from the boundary of the runways, or from the surrounding perimeter of each aerodrome or airport as fixed by the Executive." 498

Article 108 of Dominican Republic's Civil Aviation Law prohibits broadcasting stations and constructions, which could disturb or divert the radio-direction finder waves, in a zone of 10,000 meters, measured from the perimeter of every airport or military aerodrome, except those installations and constructions which are destined for their service. 499

Article 46 of Panama's Regulation on Civil Aviation, under the title of "restrictions", states that a special permit is needed for radio and television aeri-als, limiting their height, and if their height exceeds 17 meters, they are to be considered as obstacles to air navigation.

Besides the prohibition to construct, the Dominican and Uruguayan law contemplate the possibility of suppressing existent disturbing installations (prohibition to exist). Article 110 of the Civil Aviation law of Dominican Republic establishes that the disturbing installations and constructions will be removed or modified,

498 Bauza even criticizes this article for being so limited, adding that other radio-electric installations should also be included, due to the danger they could cause in air navigation. Bauza Araujo, "Servidumbres y limitaciones aeronauticas", Revista de Derecho Publico y Privado, (1969), p. 35.

499 The same principle is followed by Article 109 with the only difference being that it involves installations and constructions outside the zone referred to in Article 108. Therefore nothing that disturbs or diverts radio-direction finders is allowed in Dominican Republic.

with a right of indemnification for the owners according to the law.

Article 93 of Uruguay's Code of Aeronautical Law provides that the:

"...Executive, upon recommendation of the aviation authorities, may decree, with compensation in advance, for the transfer of radio broadcasting stations presently located within the radio fixed by Article 92. If there is no agreement reached with the interested party, the procedure provided in Article 175 shall be followed." 500

Finally there are certain servitudes or restrictions to the property of private people, which consist of allowing aircraft, in emergency cases, to continue their landing on their property (except if they have caused damages); to allow the entry of civil servants in charge of the rescue of the aircraft and the passengers and crew and the obligation of the owners of private aerodromes to accept freely the operation of public and military aircraft.

An important consideration must be given to the fact that a mere flight over the real State does not mean any servitude over it. The airspace is in it a public domain and rests with the State to oversee its adequate and prudent use.

500 Article 175, which refers to the elimination of obstructions existing in the "safety zones" states that the procedure is settled by Decree-law 1946 (30th April, 1942).

PART II. THE AIRCRAFT

CHAPTER I. DEFINITIONS

Section A. Generalities

Doctrine has had great difficulty in obtaining a clear legal definition of aircraft. Although aviation has a short history it has accomplished an incredible amount of technical development in the area of new transportation equipment. The diversity of machines is great: aerostat, supersonic aircraft, parachute, glider, hovercraft; they all present permanent problems to jurists who seek to determine a definition of aircraft.⁵⁰¹

The appearance of spacecraft is the last technical challenge to the law; a new type of law has been developed under the name of Space Law, with a legal system completely separated from Air Law.⁵⁰² Air Law does not study, nor become involved with, the legal regime of spacecraft.

The term aircraft must be considered as the genre, highlighting those crafts which are heavier than air called airplanes, aeroplanes or airships.⁵⁰³

Even though today there is a clear superiority of heavier-than-air crafts, we cannot accept the term

⁵⁰¹ Tapia Salinas, La Regulación Jurídica del Transporte Aéreo, Instituto Francisco de Vitoria, (Madrid: 1953), p. 132.

⁵⁰² It is important to note that not even when a spacecraft crosses the airspace towards outerspace, can it be considered as aircraft, since as will be seen, aircraft is destined to circulate in the airspace only. Therefore we must distinguish between spacecraft and aircraft.

⁵⁰³ Ibustau Ferran, La Aeronave, (1958), p. 12.

"airplane" designating the genre "aircraft", since Air Law by definition comprises all air navigation phenomena.⁵⁰⁴

Section B. Delimitation of the Definition

The history of the definition of aircraft in International Air Law starts with the 1919 Paris Convention, which gave the following definition of aircraft in Annex A: "Any machine that can derive support in the atmosphere from the reactions of the air".⁵⁰⁵ Annex D indicates which categories of machines must be classified as aircraft, by stating, "The word aircraft comprises all balloons, whether fixed or free, kites, airships and flying machines".⁵⁰⁶

The definition therefore covers lighter-than-air as well as heavier-than-air aircraft. The Iberoamerican Convention of Air Navigation (Madrid, 1926) and the Panamerican Convention of Commercial Aviation (Cuba, 1928) follow the definition settled in Paris.⁵⁰⁷

504 Venezuelan author Delascio, gives the title "Aviation law" to the study of Air Navigation; his idea is based on the title of the Convention on International Civil Aviation, (Chicago, 1944). Delascio, Derecho de la Aviacion, (1959.), p. 72.

505 Bodenschatz, "El Concepto de Aeronave en los umbrales de la era astronautica", 11 RIDA, (1958), p. 63.

506 Zollman, Law of the Air, (1927), p. 149.

507 Annex D of Madrid. Gay de Montella, Las leyes de la Aeronautica, Bosch, (Barcelona: 1929), p. 217; Francoz Rigalt, Principios de Derecho Aéreo, Talleres Graficos, (San Luis de Potosi: 1939), p. 84.

In dealing with the subject of aircraft definitions it is interesting to find other definitions in International texts, which certainly have historical importance.

The International Sanitary Convention (The Hague, 1933) in its Article 1 defines aircraft as: "Any machine which can derive support in the atmosphere from the reactions of the air and is intended for aerial navigation".~ The definition found in the Convention U.S.A. - other American Republics concerning the Pan-American Sanitary Code (Havana, 1924), in its Article 2, which could be considered exhaustive, provides:

"(Aircraft is) any vehicle which is capable of transporting persons or things through the air, including aeroplanes, seaplanes, gliders, helicopters, airships, balloons, and captive balloons". 508

Article XVI of the 1948 Geneva Convention on the International Recognition of Rights in Aircraft, establishes what the term aircraft includes, important when the aircraft is viewed as an object of law:

"For the purposes of this Convention the term 'aircraft' shall include the airframe, engines, propellers, radio apparatus and all other articles intended for use in the aircraft whether installed therein or temporarily separated therefrom". 509

508 ICAO Doc. 7200, Lexicon, (1952), p. 10.

509 Wilberforce, "The International Recognition of Rights in Aircraft", 2 International Law Quarterly, (1948-49), p. 456.

Both the Chicago Convention and the 1919 Paris Convention, do not include a definition of the term "aircraft" in the Convention itself.

The definition found in Chicago was the following:

"Aircraft: Any machine that can derive support in the atmosphere from the reactions of the air."

This definition was modified in 1967 (8th November, 1967, and entered into force 8th March, 1968) by the ICAO Council.⁵¹⁰ The reason for the modification was the decision to exclude air cushion vehicles from the aircraft category.⁵¹¹

The new definition of aircraft found in ICAO texts is the following:

"Any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface."⁵¹²

⁵¹⁰ The decision of the Council was the amendment NO 2 to Annex 7 (Aircraft Nationality and Registration Marks). This decision also meant further amendments to Annexes 2, 6, 8, 11 and 13, Procedures for Air Navigation Services, Rules of the Air and Air Traffic Services. It was also incorporated in its new form in Annexes 16 and 17. ICAO, Doc. 8743-C/978. Action of the Council, 62nd Session, (19/9-15/12, 1967), p. 10.

⁵¹¹ Marcoff, Traité de Droit International Public de l'espace, Editions Universitaires, (Fribourg: 1973), p. 400.

⁵¹² ICAO, Doc. 9116, Lexicon, Vol. II. Definition A56, (1974), p. 10.

Due to the wide variety of devices and machines, there are many definitions besides the one given by ICAO. For example USCA's interesting definition:

"...an aircraft is any contrivance, used or designed for navigation or flight in the air, except a parachute or other contrivance designed for such navigation, but used primarily as safety equipment." 513

Three criteria have been adopted by jurists and the law to give a definition of aircraft:

- 1) Purely enumerative, listing the various aircraft types.
- 2) Descriptive or conceptual, by which the main characteristics of the aircraft are enumerated, and which permits a differentiation with other crafts or vehicles.

It follows three formulas:

- a) wide;
 - b) intermediate;
 - c) restrictive.
- 3) Mixed or eclectic. 514

1) The criterion that purely enunciates is found mainly in Anglo-Saxon countries, where Common Law exists. These countries have the disadvantage of "numerus clausus": there will be an incapability of including in their legal catalogue new kinds of aircraft.⁵¹⁵ This criterion has

513 The definition includes balloons, airplanes and hydroplanes. 49 USCA. § 171-184. Blacks Law Dictionary, 4th Edition, (1968), p. 92.

514 Tapia Salinas, Regulacion juridica Transporte Aéreo, (1953), p. 137.

515 In Anglo-Saxon countries the criterion is more descriptive in the regulations than in the law, therefore one must refer to the regulations.

not been used by any Latin American legislation.⁵¹⁶

2) The legislative adoption of conceptual or descriptive criteria can assume wide, intermediate and restrictive formulas:

a) Adopting a wide formula means that the only distinctive quality of the aircraft must be the ability to stay in the air. The adoption of this formula arises as a concern of the legislator to include any type of device whose submission to the aeronautical legal regime could be of interest.⁵¹⁷

In this wide formula we must include captive balloons, which are fastened by wires and cables to the earth surface, without being able to displace itself on the airspace.

The wide formula is accepted in Latin America by the laws of Cuba, Chile, Colombia, Dominican Republic, Mexico and Panama.⁵¹⁸

Article 4 of Cuba's Regulation on Civil Aviation states:

"For the purpose of this Regulation 'aircraft' shall mean any contrivance of locomotion used for the transport

⁵¹⁶ Videla Escalada, 2 Derecho Aeronautico, (1969), p. 27.

⁵¹⁷ The reason being that this formula has an evident political interest. Loustau Ferran, La Aeronave, (1958), p. 19.

⁵¹⁸ Regulation on Civil Aviation, Article 4 (Cuba, 1928); Law on Civil Aviation, Article 3 (Colombia, 1938); Air Navigation Decree-law, Article 1 (Chile, 1931); Book Four, Law of General Means of Communications, Article 311 (Mexico, 1950); Civil Aviation Law, Article 61 (Dominican Republic, 1969); Regulation on Civil Aviation, Article 8 (Panama, 1963).

of persons, mail, merchandise and goods of any kind, capable of rising and circulating in the air".

Article 3 of Colombia's Law on Civil Aviation states:

"Aircraft shall be deemed any machine capable of deriving support in the atmosphere from the reaction of the air". 519

Article 1 of Chile's Air Navigation Decree Law provides:

"For the application of the present Decree-law, an aircraft shall be any contrivance capable of rising or circulating in the air." 520

Article 311 of Mexico's Law of General Means of Communication provides:

"For the purposes of this law 'aircraft' shall be any vehicle which is capable of supporting itself in the air." 521

519 Article 41.1.7. of Colombia's Manual of Regulations follows the same definition, even though the wording is different. An example of what usually happens between the law and its regulation in Latin America; Cobo Cayon, Derecho Aéreo, (1966), p. 224.

520 Hamilton is not satisfied with the definition, since a glider which can circulate, would fall into the aircraft category. Hamilton, Derecho Aéreo, (1960), p. 176.

521 Ortega, Nacionalidad, Registro y Matricula de las Aeronaves Civiles, UNAM, (Mexico: 1965), p. 45; Tolle, Air Law in Latin America, (1960), p. 193.

Article 8, Chapter I (Aircraft) of Panama's Regulation on Civil Aviation states:

"For the purposes of this law and the regulations issued thereunder, an aircraft shall be considered to be any machine lighter or heavier than air, which can support itself in the atmosphere by the reaction of the air."

Article 61 of Dominican Republic Civil Aviation Law, follows the new ICAO definition, but only refers to sustainment in the airspace and not to the ability to circulate in the airspace.⁵²²

b) The conceptual or descriptive criterion also contains an "intermediate" formula for a definition. According to this formula, it is not enough merely stay or rest in the air; an aircraft must also have the ability to move in space, and to circulate there.⁵²³ This concept implies "potentiality" for air activity and allows acceptance in the aircraft definition of those machines that because they are posed on earth, do not surrender their aircraft status.⁵²⁴ Our reference to aircraft's ability for circulation in the airspace is important, in distinguishing them from spacecraft which simply pass through the airspace en route to outer space. The ability for circulation is also useful because it excludes from the

⁵²² See, *Supra*, p. 156.

⁵²³ Lena Paz, *Derecho Aeronautico*, (1969), p. 139;
Loustau Ferran, *La Aeronave*, (1958), p. 17.

⁵²⁴ Rodriguez Jurado, *Derecho Aeronautico*, (1963), p. 84.

aircraft concept captive balloons, which do not move in the air, and parachutes, which do not circulate, but only allow a descent.⁵²⁵

On the other hand, hydroplanes and gliders, according to this formula are seen as aircraft. Hydroplanes are different only in that they land on take-off from water, and the gliders today can manoeuvre for hours in the air.

The "intermediate" formula is found in the laws of Costa Rica and Guatemala.⁵²⁶

Article 144d) of Costa Rica's law on Civil Aviation states:

"Aircraft or Airship: devices known or which may be invented in the future, lighter or heavier than air, used in navigation or intended for flight in the atmosphere."

Article 9 of Guatemala's Civil Aviation Law provides:

"For the purposes of this law, all devices capable of rising, sustain-

⁵²⁵ Both captive balloons and parachutes are considered as aircraft by only a small minority of authors. Le Goff Chauveau and Riese et Lacour mention captive balloons; and Riese et Lacour also include parachutes. Le Goff, Droit Aerien, (1954), p. 251; Chauveau, Droit Aerien, (1951), p. 292; Riese et Lacour, Droit Aerien, (1951), p. 116. See also, comments on this matter by Videla, 2 Derecho Aeronautico, (1969), p. 26.

⁵²⁶ Law on Civil Aviation, Article 144d) (Costa Rica, 1949); Civil Aviation Law, Article 9 (Guatemala, 1948).

ing themselves, and travelling in the air shall be considered aircraft". 527

An interesting legal problem has arisen from the appearance of the hovercraft. The hovercraft relies directly on the surface of the land for its support when on land, and directly on the surface of the water when over water. Therefore we prefer to consider it a land vehicle when on land, and a ship when over water.⁵²⁸

c) The third formula of the conceptual or descriptive criterion is called "restricted". It requires the aircraft, in addition to the ability to circulate and sustain itself in the airspace, to serve as an instrument for transporting people and things.⁵²⁹ We should clarify that the aircraft, while it must have the ability to transport, need not be effectively dedicated to the activity.⁵³⁰ Since the allusion to transport can be misleading, it is preferable to use other expressions that

527 Juarez indicates that Article 9 follows the French Text, and the Sanitary International Convention. The transferring element is missing from the application of the French text, so the definition is not complete. Juarez, Derecho Aéreo Guatemalteco, (1957), p. 55.

528 United Kingdom has the most up to date legislation regarding hovercraft. See The Hovercraft Act of 1968. 1 Shawcross and Beaumont, Air Law, (1966), p. 408. See also Noter-up to Volume I, Issue 7, (1975), p. 75. For further discussion of the problem see, Barrowclough, "The development of legislation for Hovercraft", 68 JRAS, (1964), p. 467-477.

529 Foglia-Mercado, Derecho Aeronautico, (1968), p. 86; Bauza Araujo, Principios de Derecho Aéreo, Facultad de Derecho y Ciencias Sociales, U. de Montevideo, (Montevideo: 1955), p. 144; Loustau Ferran, La Aeronave, (1958), p. 17.

530 For this reason, we must include those aircraft destined for sport and for airwork, since there should not be a confusion between Air Law and Air Transport Law.

imply an aptitude to transfer, carry and load persons and merchandise.

With the restrictive formula, the aircraft definition excludes fireworks, air toys, air models, toy balloons, projectiles and kites, which certainly are not capable of carrying persons or things, as well as balloon-sonde used mainly in meteorology and scientific investigations of the superior layers of the atmosphere.⁵³¹

Free-balloons without crew and radio-controlled aircraft are considered to be aircraft, but they must fulfill the requirements of aptitude to circulate in the airspace and as instruments to carry people or things. Gliders are also in this category, since they can make large trajectory flights and are able to carry people.

The helicopter is considered an aircraft as well, even though some authors seem to exclude it from the definition; they may subject it to completely different legal requirements or to a freedom of traffic according to its operating characteristics. The helicopter's air traffic rules (regarding routes, landings and take-offs) and air navigation facilities must be adequate for its performance.⁵³²

The restricted formula has been accepted by the legislations of Argentina, Brazil, Paraguay, Peru and Uruguay.⁵³³

⁵³¹ Videla Escalada, 2 Derecho Aeronautico, (1969), p. 25.

⁵³² Bauza Araujo, El Helicoptero y su Régimen Jurídico, Bianchi, (Montevideo: 1956), p. 92-93.

⁵³³ Aeronautical Code, Article 36 (Argentina, 1967); Air Code, Article 8 (Brazil, 1966); Aeronautical Code, Article 5 (Paraguay, 1957); Civil Aeronautics Law, Article 18 (Peru, 1965); Code of Aeronautical Law, Article 13 (Uruguay, 1942).

Article 36 of Argentina's Aeronautical Code considers as aircraft those devices or machines that can circulate in the airspace and that are able to transport persons or things.

Article 8 of Brazil's Air Code considers aircraft to be every machine manoeuvrable in flight, suitable for transportation, which circulates in the airspace by means of aerodynamic reactions, and is able to transport persons or things.⁵³⁴

Article 5 of Paraguay's Aeronautical Code states:

"An aircraft shall be any machine intended for carriage of persons or things by air."

Therefore, according to the definition it only considers as aircraft those: a) instruments capable of transit through the air; and b) the purpose of transport will characterize the aircraft.⁵³⁵

Article 18 of Peru's Civil Aeronautics Law follows the above mentioned definitions, but adds that the vehicle must be suitable for transporting not only

534 The Brazilian Code of 1937 had an interesting characteristic. It stated that an aircraft was any machine which could rise and "be flown in the airspace". This latter part has been replaced in the new version, by the wording "suitable to manoeuvre in flight". The Brazilian text was the only one in Latin America to refer to this requirement. Valle, Codigo Brasileiro do Ar, (1967), p. 31.

535 Article 67 of Paraguay's Aeronautical Code requires that there be a commander in aircraft used for transportation services. This means that there are other aircraft which are not assigned to transportation. Tolle, 1 Air Law in Latin America, (1960), p. 216.

persons or things, but animals as well.

Article 13 of Uruguay's Code of Aeronautical Law provides:

"An aircraft is any contrivance capable of transporting persons or things by air". 536

Author Gay de Montella has added another element to the definition of aircraft, which is the "mechanization of the machine", meaning that it must be equipped with propulsion engines, without which maintenance stops and the aircraft becomes useless for the transport objective.⁵³⁷ For us this criterion seems too restrictive, since the propulsion requirement could be required of certain aircraft (those effectively dedicated to the transport of persons and things), but not of every aircraft (for instance, gliders).

3) The mixed or eclectic criterion is characterized by the fact that it gives in addition to the definition of aircraft, a list of machines. This legislative criterion is followed by the text of Venezuela's Civil Aviation Law. Article 17 provides the following:

"For the purposes of this law there shall be considered aircraft all vehicles capable of rising into, and staying and traveling in the air, which are intended for transporta-

536 Bauza Araujo, Derecho Aéreo, (1955), p. 144.

537 Gay de Montella, Derecho Aeronautico, (1950), p. 80-81.

tion of persons or goods, for exhibitions, publicity, tourism, training, sports, or other commercial, agricultural, health or scientific purposes." 538

4) The laws of Bolivia, El Salvador, Ecuador, Honduras and Nicaragua do not define aircraft at all.

538 The spirit of the law is to give the greatest possible breadth to Air Law, so as to consider all the regulatory elements. Lares, Derecho Aeroaautico Venezolano, (1954), p. 39; Delascio, Derecho de la Aviacion, (1959), p. 73.

CHAPTER 2. LEGAL QUALIFICATION OF AIRCRAFT
ITS CONDITION AS STATE AIR RESERVE

Section A. Law Object

The aircraft constitutes the main object of the Air Law Research, since it is the entity by which the aeronautic activities are fulfilled.⁵³⁹

The question of whether the aircraft is a subject or object of law has always been a matter of discussion. Doctrine and legislation have attributed nationality, domicile, status and identification to the aircraft, and international texts have referred to rights and duties of aircrafts, all of which can lead to confusion.

The aircraft personality thesis has been maintained among others by Ambrosini and De Juglart,⁵⁴⁰ while Loustau Ferran and Videla Escalada have strongly criticized it.⁵⁴¹ The realistic theory considers that it is not possible to attribute personality to an aircraft. According to this theory only human beings possess personality. The formal theory assumes that the law can attribute personality to non-human entities (corporations, conventional persons), and that it can be given to things, as in the case of an aircraft.⁵⁴²

539 Videla Escalada, 2 Derecho Aeronautico, (1969), p. 12.

540 Ambrosini, Istituzioni di Diritto Aeronautico, Editoriale Aeronautico, (Roma: 1940), p. 129; de Juglart, Droit Aerien, (1952); p. 80.

541 Videla Escalada, 2 Derecho Aeronautico, (1969), p. 56-57; Loustau Ferran, La Aeronave, (1958), p. 62.

542 Loustau Ferran, La Aeronave, (1958), p. 63.

According to Loustau Ferran, the legal system, due to its own position as legal regulator of situations, can in many cases, spoil legal institutions in order to make room in them for atypical or unexpected cases. But, for that, the institution must be considered a utility, an advantage to the social complex, or a necessity. As it is neither necessary, nor useful to attribute personality to an aircraft, its existence must not be defended.⁵⁴³

The legal problems caused by the aircraft can be solved without resorting to the rupture of legal concepts, especially considering that these concepts are old, defined and recognized. The attribution of personality to the aircraft is only a result of the maritime law influence over Air Law. Ships were given extraterritoriality and a fictitious personality which resulted in the recognition of a "universitas", represented by the Captain. The ships had credits and could have debts, incurred in responsibility and could be left to the creditors. These situations do not occur to an aircraft in the air law field.⁵⁴⁴

According to what has been said, an aircraft is not equipped with personality, and is not a legal entity able to have rights and obligations. Its individuality only originates for reasons of public and private interest. An aircraft is an object of law, thing or asset, considering which subjects can exercise the actions or rights recognized by law. Some authors, such as

⁵⁴³ Loustau considers this exaggerated and unnecessary.
Ibid.

⁵⁴⁴ Videla Escalada, 2 Derecho Aeronautico, (1969), p. 57.

Cooper, have considered that the aircraft has a quality of legal quasi-personality in public international law.⁵⁴⁵

Section B. Aircraft Legal Qualification

An aircraft can have several uses: as a weapon, for communication, transport, work, tourism, as an air power instrument, for unlawful activities (such as smuggling, espionage, illegal traffic, etc.) and as an important economic tool. Therefore there is a need for the aircraft to be qualified under legal terms. Even though the aircraft is an object of private rights, its public importance in the national and international communities must always be taken into account from a legal point of view.⁵⁴⁶

Civil Law terminology considers the aircraft under the following terms:

- 1) Corporeal;
- 2) "In Commercio";
- 3) Non Fungible;
- 4) Specific;
- 5) Composed;
- 6) Movable;
- 7) Registrable.

⁵⁴⁵ Cooper, "A Study on the legal status of Aircraft", ed. Vlasic, Exporations in Aerospace Law, McGill University Press, (Montreal: 1968), p. 215.

⁵⁴⁶ Loustau Ferran, La Aeronave, (1958), p. 120-121.

⁵⁴⁷ Cosentino, "Derechos de Garantia en ralcion con la Aeronave", 27 IDAeI, Curso teorico y practico de Derecho Aeronautico y Espacial, (Buenos Aires: 1964), p. 3.

We shall describe the first four at present, while others will be analyzed later.

1) Corporeal - As a corporeal and tangible thing the aircraft is an object with a real existence in the world of nature. It must be distinguished from incorporeals or rights.⁵⁴⁸

2) "In Commercio" - As it is a "res in commercio", it is subject to appropriation and legal traffic by authorized persons.⁵⁴⁹

3) Non-Fungible - This character implies that the aircraft is an object whose normal use does not imply its consumption.

4) Specific - The obligation to deliver an aircraft implies the legal necessity to give the aircraft that was determined and not another. This leads us directly to cataloging the aircraft as a specific thing. It derives from the individuality that distinguishes the aircraft from another, being of great public and private interest.⁵⁵⁰

⁵⁴⁸ It can be included as a "Res quae tangi possunt."

⁵⁴⁹ The aircraft does not lose the "res in commercio" character, even though there are certain rules which regulate the legal traffic and establish requirements restricting the legal acts, with regards to the aircraft, due to public interest reasons. Loustau Ferran, La Aeronave, (1958), p. 123.

⁵⁵⁰ The specific character determines that the aircraft has a registration mark and a nationality.

The identification, together with the international character of Air Law, and the exceptional mobility of the air machine, creates the international or internal consecration of nationality as an attribute of aircraft.⁵⁵¹

An aircraft conserves its identity even with the successive and gradual changes of the elements that compose it. This is recognized by the laws of Chile and Dominican Republic.⁵⁵²

Article 4 of Chile's Air Navigation Decree provides:

"Aircraft shall preserve their identity even when the materials of which they are composed are successively replaced".

The laws of Chile and Dominican Republic establish that an aircraft which is destroyed, and rebuilt, with the same materials, will be viewed as a new and different aircraft.

Article 4 of Chile's Air Navigation Law continues to provide in this matter the following:

"An aircraft which has been dismantled and rebuilt, even with the same materials, shall be deemed new and different".

551 Loustau Ferran, La Aeronave, (1958), p. 122-123.

552 Air Navigation Decree, Article 4 (Chile, 1931); Civil Aviation Law, Article 255 (Dominican Republic, 1969).

The rule shows the existing public interest in order to assure the technical suitability of the aircraft for flight. It will be of importance when determining the aircraft's airworthiness.

Section C. The aircraft as a Composite thing

The qualification of the aircraft as a composite thing is not a unanimous affirmation of doctrine. There are those who have affirmed that the aircraft would constitute a "universitas facti".⁵⁵³ Others have thought it would constitute a "unit of legal property".⁵⁵⁴

According to the theory of "universitas facti",⁵⁵⁵ the aircraft constitutes a group of things which though physically separated are treated as a whole, single components not being taken in consideration. This concept has been rejected by the Spanish author Loustau because the aircraft does not constitute a combination of like things (as a flock or library), but rather a mechanical integration of different things of a specific nature, which grouped make a different thing than the goods which compose it.⁵⁵⁶

The thesis of the "unit of legal property" originates in Maritime law and regards the aircraft as a combination of goods in operation. Thus the thesis is

⁵⁵³ Plurality of corporeal things.

⁵⁵⁴ Rodriguez Jurado, Derecho Aeronautico, (1963), p. 113; Videla Escalada, 2 Derecho Aeronautico, (1969), p. 64-65; Loustau Ferran, La Aeronave, (1958), p. 124-129.

⁵⁵⁵ The theory was stated by Donnia Letterio, in its Natura giuridica dell aeromobile, (Milan: 1942); Rodriguez Jurado, Derecho Aeronautico, (1963), p. 113.

⁵⁵⁶ Loustau Ferran, La Aeronave, (1958), p. 124.

applicable to aircraft destined for transport. This doctrine distinguishes between parts and appurtenances of the aircraft, when referring to the relationship that links the accessory with the principal thing. The reference to a part indicates a link of material adhesion, meaning that between the accessory and principal thing there is a physical unity which results from an economic unity. The mention of appurtenances indicates the accessory object united to the principal, more by an economical link than by a physical one.⁵⁵⁷ Videla has criticized this theory as it restricts itself to those aircraft employed in commercial air navigation activities, and also for reflecting an apparent identification between the aircraft and the airline company, which is unfounded and possibly confusing.⁵⁵⁸

The aircraft is then "ut singuli",⁵⁵⁹ composite, integrated by a great number of things which are parts of a whole. These parts, originally independent and unequal,⁵⁶⁰ when united form part of a mechanism, which

557 Rodriguez Jurado, Derecho Aeronautico, (1963), p. 113-114.

558 Videla Escalada, 2 Derecho Aeronautico, (1969), p. 65.

559 "Ut Singuli" singular things (as opposed to Universal things) constitute a natural or artificial unity, either simple or complex, but with its real existence in the nature, such as a horse or a house. In modern law a composite thing can exist within a singular thing. The aircraft must be considered within this group. Biedma, "Propiedad de Aeronaves", 27 IDAeI, Curso Teorico y Practico de Derecho Aeronautico y Espacial, (Buenos Aires: 1964), p. 35.

560 Among those elements that compose the aircraft, which by themselves would have an independent legal value, are: hull; engines; wings; fuel tanks; ailerons; rudder; radio; radar; etc. These elements are united physically and legally, forming that "composite thing" called aircraft.

functions differently and which is a new thing.⁵⁶¹

The classification of the aircraft as a composite thing or as a unit of legal property is of great importance in determining the scope of guaranteed rights constituted over aircraft, the right over simple things that are not regarded as integral parts of the machine and the international recognition of aircraft rights.⁵⁶²

Since an aircraft is a composite thing and is formed by elements diverse in nature and function, it is necessary to distinguish between essential, constitutive, component or principal elements, and accessory, accidental or appurtenance elements. These elements are vital to determine what is included or excluded from the sale, lien or insurance of the aircraft.⁵⁶³ Lena Paz considers as synonymous the expressions "accessories" and "appurtenances",⁵⁶⁴ while Gay de Montella and Loustau distinguish between essential, non-essential or accessories and appurtenances. The essential parts do not have separate rights, but are considered only as a whole. The non-essential parts are taken together with the essential forming the idea of a thing as a whole, even though it is possible to conceive separate rights over them. Appurtenances are not components of a thing, but are things by themselves that, while preserving their individuality and autonomy, are put in a lasting relationship of subordination with respect to another principal, to serve the purposes of

⁵⁶¹ Lena Paz, Derecho Aeronautico, (1969), p. 141;
Videla Escalada, 2 Derecho Aeronautico, (1969),
p. 64; de Juglart, Droit Aerien, (1952), p. 79.

⁵⁶² Loustau Ferran, La Aeronave, (1958), p. 125.

⁵⁶³ Ibid., p. 126.

⁵⁶⁴ Lena Paz, Derecho Aeronautico, (1969), p. 141.

this thing.⁵⁶⁵ Consequently essential and non-essential component parts are always regarded as being within the aircraft complex, except if the non-essentials are excluded expressly from the sale, obligation or insurance. According to Loustau, the appurtenances normally should be included in the complex formed by the aircraft, except in the case of foreign things - belonging to another.⁵⁶⁶

Among the essential and non-essential component parts which make up the complex, which is the aircraft, we can mention the fuselage, wings, aileron, rudder, stabilizer, propulsion engines (if there are any), landing gear, fuel tanks, electric systems, lighting, communications, provisions, instrument flight (IFR), etc. In each case the essential and non-essential parts must be determined according to the function and type of aircraft. An important criterion is their significance for the technical qualification of the aircraft, and not their use in a flight.

In the definition of appurtenance we will find the group of spare parts or replacement, specific to an aircraft and the necessary gear for their surface service, if they can be separated from those specific to other aircraft of the same company.

There has been a question as to whether or not fuel is an appurtenance. It has been considered acceptable to include as an accessory the fuel that the aircraft has on board for consumption by its own propulsion engines. However it is inadmissible to extend this to fuel

⁵⁶⁵ Gay de Montella, Derecho Aeronautico, (1950), p. 83;
Loustau Ferran, La Aeronave, (1958), p. 124-125.

⁵⁶⁶ Loustau Ferran, La Aeronave, (1958), p. 126.

stored on land and ready for use by the aircraft, because that would confuse that fuel with that which is used for other purposes, by the company owner.⁵⁶⁷

Another discussion involves whether or not freight is an appurtenance of the aircraft. Author Gay de Montella concludes that by applying Maritime Law, it should be understood that the sale of the aircraft while in travel, comprises the accrued freight, from the moment the last shipment was received. Consequently it will be the duty of the buyer to collect that freight. The buyer will be obliged to pay the crew for the period corresponding to the last trip.⁵⁶⁸

The case of the engines is even more complex, and it is possible to pose two hypotheses: one in which the engine is a component part, essential and identified, even though it can be separated from the aircraft; and another, in which the engine is transitorily incorporated into the machine, conserving its identity and not legally uniting it to the machine. In both hypothesis, engines can be the object of independent obligations. In the first, the engine is separate from the machine and does not involve it in the obligation; in the second the engine incorporated into the aircraft can be its own or belong to another. In this hypothesis the engine itself can be the object of an independent mortgage as opposed to the mortgage of the aircraft. Engines can then be the object of special legal treatment, because of the technical and legal possibility of being individualized.⁵⁶⁹

⁵⁶⁷ Loustau Ferran, La Aeronave, (1958), p. 127.

⁵⁶⁸ Gay de Montella, Derecho Aeronautico, (1950), p. 85.

⁵⁶⁹ Loustau Ferran, La Aeronave, (1958), p. 128; Videla Escalada, 2 Derecho Aeronautico, (1969), p. 65-66; Riese et Lacour, Droit Aerien, (1951), p. 158.

Section D. The aircraft as a registrable movable

Latin American legislation that does not classify the aircraft as a corporeal, specific, and composite thing, regulates the aircraft as such through the rules of Civil and Mercantile Law, when feasible. Such legislation however does mention the movable character of the aircraft.

In spite of the fact that the public and private character of the aircraft has been progressively incorporated into the legal system of the immovables, doctrine and the law have considered it necessary to stress its character of personal property and submit the aircraft to certain peculiarities,⁵⁷⁰ that by tradition have been applied only to real property.⁵⁷¹

The movable nature of the aircraft is undisputed⁵⁷² since its specific purpose determines a constant transfer, and to deter from that principle could be self-defeating.⁵⁷³

Although both the obligation of registering aircraft and the lien constituted in it give them a certain similarity to immovables, they are not identi-

⁵⁷⁰ Among the peculiarities we should mention the possibility of the aircraft being mortgaged and the obligation to be registered.

⁵⁷¹ Hamilton, Derecho Aéreo, (1960), p. 392; Videla Escalada, 2 Derecho Aeronautico, (1969), p. 59; Lena Paz, Derecho Aeronautico, (1969), p. 141; Saint Alary, Le Droit Aerien, Armand Colin, (Paris: 1955), p. 131.

⁵⁷² In the case of the aircraft, the movable nature is double: not only it can be transported from one place to another, but also its function is to move itself from place to place.

⁵⁷³ Loustau Ferran, La Aeronave, (1958), p. 131.

cal.⁵⁷⁴

Some laws and authors have regarded aircraft as a "sui generis" movable,⁵⁷⁵ that is, that the aircraft would have a specified nature, but modern doctrine applies the requirement of registry to movables. The legal and economic interests involved make necessary registration of certain movables, and that the aircraft meet the traditional property requirement for registry.

It is absolutely necessary to innovate the registration system. In addition to legal and economic reasons of great importance, and to almost subjective characteristics that the aircraft assumes (i.e. a nationality and a registration which individualize the aircraft), there must be a note on the importance registration has within national security and order. In this way the aircraft justifiably qualifies as a registered movable, so it will be necessarily attached to a system of formal publicity which has special characteristics.⁵⁷⁶ It is important to indicate that the aircraft register has had from the beginnings of Air Law a primary value as a link between the public and private interests that meet in the

574 Jurisprudentially the most conservative, but a precise and effective approach was adopted in Peru. A simple reclassification of the aircraft from a movable to an immovable was undertaken by the Civil Code, Article 812 (Peru, 1936).

575 The laws of Netherlands and U.S.A. consider the aircraft a movable "sui generis". See, Section 501 and 503 of the 1958 Federal Aviation Act. It is important to note that the laws admit certain and determined registrations.

576 Rodriguez Jurado, Derecho Aeronautico, (1963), p. 114.

aircraft. 577

The Aeronautic Laws of Argentina, Chile, Dominican Republic, Honduras, Nicaragua, Panama, Paraguay, Uruguay and Venezuela affirm positively the movable character of aircraft. 578

Article 3 of Chile's Air Navigation Decree states:

"Aircraft shall be personal property. However, transfer of ownership therein must be made by written instrument, and it shall not be effective against

577 Two main types of registration have developed in the American hemisphere. In Common Law countries the registration has only the function of giving notice to third persons without affecting the instrument's intrinsic validity either as to parties or third persons. In Latin American law the registration can have substantive effects in two ways: as between the immediate parties to it, and in relation to third persons or both. Bayitch, Aircraft Mortgage in the Americas, University of Miami Press, (Coral Gables: 1960), p. 33.

578 Aeronautical Code, Article 49 (Argentina, 1966); Air Navigation Decree, Article 3 (Chile, 1931); Civil Aviation Law, Article 254 (Dominican Republic, 1969); Civil Aviation Law, Article 208 (Honduras, 1950); Civil Aviation Code, Article 201 (Nicaragua, 1956); Regulation on Civil Aviation, Article 23 (Panama, 1963); Aeronautical Code, Article 21 (Paraguay, 1957); Code of Aeronautical Law, Article 96 (Uruguay, 1942); Civil Aviation Law, Article 69 (Venezuela, 1955).

third persons unless recorded in the register." 579

Article 208 of Honduras Civil Aviation Law, provides:⁵⁸⁰

"Notwithstanding that they are personal property, civil aircraft shall be susceptible to mortgage." 581

Panama's Regulation on Civil Aviation, in its Article 23, under the title of "legal nature" provides:

"Aircraft, even though they are personal property by nature, constitute a special class of personal property governed by the rules of Civil and Commercial Law, except as amended by the provisions of this section."

Article 21 of Paraguay's Aeronautical Code

579 In relation with Article 83 of the Chilean Civil Code, Hamilton concludes that the reason of the existence of Article 3 of the Air Navigation Decree, was the desire to give the aircraft a greater stability, assimilating it in certain aspects to the regime of immovables, although the aircraft is considered to be a movable. Hamilton, Derecho Aeronautico, (1960), p. 391.

580 Pino, Derecho Aéreo, (1974), p. 132.

581 Nicaragua's Air Code, Article 201 follows the same wording of Honduras' law. This is due to the fact that both laws follow the same model, namely, a draft for an Aviation Code, adopted by the Third Conference of General Directors of Civil Aviation of Central America, (1954). Bayitch, Aircraft Mortgage, (1960), p. 25.

states:⁵⁸²

"The legal status of aircraft shall be that of personal property, with the exceptions noted in the present Code." ⁵⁸³

Argentina's Aeronautical Code in its Article 49 provides that aircraft are registrable personal property. The explanation given is that Article 49 defines the legal nature of the aircraft, creating a new category of things, i.e. that of a registrable movable, which conserves the essential character of a movable but is subject to certain rules of the legal regime of immovables. The object is that certain legal relationships which arise from the use of the aircraft according to its specific destination, will receive adequate protection.⁵⁸⁴

Article 10 of Brazil's Air Code, without making a qualification of movables or immovables, declares them registrables, but adds an interesting ending to the article by stating that "they can constitute an object of law".⁵⁸⁵

The registrable character of aircraft is made official in the laws of Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Chile, Dominican Republic,

⁵⁸² Bayitch, "The Aviation Code of Paraguay, A Comparative Study", 3 Inter American Law Review, (1961), p. 242.

⁵⁸³ A very similar wording is followed by Uruguay's Code of Aeronautical law, Article 96.

⁵⁸⁴ Lena Paz, Codigo Aeronautico, (1971), p. 73.

⁵⁸⁵ Valle, Codigo Brasileiro do Ar, (1967), p. 33-34.

Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Uruguay and Venezuela.⁵⁸⁶

Article 3 of Bolivia's Air Service Decree states:

"Aircraft presently in the country or to be brought in later either permanently or for a minimum period of four months, shall be deemed to belong in the national register, and the owners thereof must register them..." 587

Article 5 of Chile's Air Navigation Decree states that "every Chilean aircraft must be entered in

⁵⁸⁶ Aeronautical Code, Article 49 (Argentina, 1966); Decree of October 24, 1930, Regulating Air Service in the Republic, Article 3 (Bolivia) (hereinafter cited as Bolivia's Air Service Decree); Air Code, Article 10 (Brazil, 1966); Law on Civil Aviation, Article 11 (Colombia, 1938); Law on Civil Aviation, Article 59 (Costa Rica, 1949); Regulation on Civil Aviation, Article 16 (Cuba, 1928); Air Navigation Decree, Articles 3 and 5 (Chile, 1931); Civil Aviation Law, Article 69 (Dominican Republic, 1969); Law of Air Traffic, Article 7 (Ecuador, 1960); Law on Civil Aviation, Article 43 (El Salvador, 1955); Civil Aviation Law, Article 14 (Guatemala, 1948); Book Four, Law of General Means of Communications, Article 371 (Mexico, 1950); Regulation on Civil Aviation, Article 10 (Panama, 1963); Aeronautical Code, Article 8 (Paraguay, 1957); Code of Aeronautical Law, Article 20 (Uruguay, 1942); Civil Aviation Law, Article 62 (Venezuela, 1955).

⁵⁸⁷ The Bolivian Law for Civil Aeronautics, the Air Traffic Regulation, of January 10, 1939 regulates the matter of aircraft being movable goods in its Article 31, but states in Article 32 that they are subject to hypothecation. Tolle, Air Law in Latin America, Appendix (1960), p. 7.

the register...".⁵⁸⁸

Article 11 of Colombia's law on Civil Aviation provides:

"In order to be valid, acts which transfer ownership in an aircraft shall require a written instrument, and to make the transfer effective its registration in the National Aircraft Register...".⁵⁸⁹

Article 14 of Guatemala's Civil Aviation law refers to what can be the subject of mortgage, but relates it to the obligation of registration.⁵⁹⁰

Article 62 of Venezuela's Civil Aviation Law clearly presents the matter, stating the following:

"Aircraft shall be deemed personal property (chattels) of a special nature, susceptible of being mortgaged, which must be registered or recorded in the Air Registry..."⁵⁹¹

Honduras and Nicaragua's Aviation Laws limit themselves to requiring the register of the titles or legal acts which refer to the aircraft.⁵⁹² Peru's Civil Aeronautics Law only requires the register when considering the aircraft registration.⁵⁹³

⁵⁸⁸ Hamilton, Derecho Aéreo, (1960), p. 184.

⁵⁸⁹ Bayitch, Aircraft Mortgage, (1960), p. 24.

⁵⁹⁰ Ibid.

⁵⁹¹ Ibid., p. 26.

⁵⁹² Civil Aviation Law, Article 25 (Honduras, 1950); Civil Aviation Code, Article 18 (Nicaragua, 1956).

⁵⁹³ Civil Aeronautics Law, Article 26 (Peru, 1965).

Interest and concern about the registerability of aircraft led to its consideration as a study subject in the 1st Latin American Session of Air Law, held in Buenos Aires in 1960.⁵⁹⁴

Section E. The Aircraft as Air Reserve

The legal figure of the aircraft has still another element of great importance, which is its function as the State's air reserve.

Aviation has seen from its beginnings that the aircraft can be a dangerous element, but it is also an element which must be available in any military emergency. The certificate of registration and the register developed, not as a means of protecting private people, but mainly as a system for the State to know the number and quality of civil aircraft serving its territory. Eventually the state will have the right of requisition over them.⁵⁹⁵

The importance of Air Power relies not only on military aircraft, but also on commercial and civil aviation.

594 During the debates a Resolution was adopted, following a proposal by Dr. Ghizzoni. It recommended that in the draft of the Latin American Air Code the old classification of property, as personal or real state, should be replaced by the adoption of a modern classification of registrable and non-registrable property. Aircraft should be expressly declared registrable property. Ghizzoni, "La Aeronave es un bien registrable" in 1 Primeras Jornadas Latinoamericanas de Derecho Aeronautico, De Palma, (Buenos Aires: 1960), p. 422.

595 Henry-Couannier, Elementos creadores del Derecho Aéreo, Edit. Reus, (Madrid: 1929), p. 167.

United States has been one of the countries which has shown the most interest in civil aviation as an air reserve alternative. The Finletter Report⁵⁹⁶ refers to civil aviation crises and explains why the situation is significant: there would not only be a deterioration of airline service to the public, but aircraft as a potential military auxiliary must be kept strong and healthy.⁵⁹⁷

The National Aviation Policy, in its chapter "Concept of National Aviation Policy"⁵⁹⁸ for the U.S.A.", states:-

"...the domestic and foreign air commerce of the U.S. should be fostered and promoted by whatever means appear most practical until it reaches such stature in passenger and cargo capacity as to constitute in crisis an adequate logistical air arm of the National Defense Establishment." ⁵⁹⁹

Some Latin American laws deal with this subject when they consider and establish the right of the state in the requisition and seizure of aircraft, when

596 The Finletter report was the Report of the President's Air Policy Commission (1st January, 1948) named after its Chairman Thomas Finletter.

597 Emme, "Survival in the air age" in The Impact of Air Power, National Security and World Politics, Van Nostrand Co., (New York: 1959), p. 620.

598 Report of the Congressional Aviation Policy Board, entitled "National Aviation Policy", (Senate Report 949), March 1, 1948.

599 Emme, "National Aviation Policy" in The Impact of Air Power, (1959), p. 626.

national interest reasons so demand.⁶⁰⁰

The laws of Colombia, Chile, Dominican Republic, Ecuador, El Salvador, Honduras, Panama, Paraguay, Uruguay and Venezuela establish the right of requisition and seizure.⁶⁰¹

Article 66 of Colombia's law on Civil Aviation, which refers to airports and aerodromes, provides that they are liable of expropriation for purposes of national defense.

Article 3 of Chile's Air Navigation Decree states that in time of war or great national crisis, the Government may order the seizure of aircraft.

Article 107 of El Salvador's Law on Civil Aviation, provides under the title "Requisition of Aircraft" the following:

"In case of war, state of emergency or public calamity or when for some unusual reason the Government needs the air transport services of enterprises of Salvadorean Nationality, all aircraft may be requisitioned..."

⁶⁰⁰ The few laws which will be mentioned should not be a surprise, since other States in other legal texts also consider the matter, and give to the State such a right of requisition and seizure.

⁶⁰¹ Law on Civil Aviation, Article 66 (Colombia, 1938); Air Navigation Decree, Article 38 (Chile, 1931); Law of Air Traffic, Article 38 (Ecuador, 1960); Law on Civil Aviation, Article 107 (El Salvador, 1955); Civil Aviation Law, Article 66 (Honduras, 1950); Regulation on Civil Aviation, Article 101 (Panama, 1963); Aeronautical Code, Article 174 (Paraguay, 1957); Code of Aeronautical Law, Article 95 (Uruguay, 1942); Civil Aviation Law, Article 16 (Venezuela, 1955).

The right to seize and apply the requisition over an aircraft puts into practice the concept of air power. A consequence of the aircraft's having nationality, the right makes possible a potential exercise of the State's sovereignty.⁶⁰²

⁶⁰² Loustáu Ferran, La Aeronave, (1958), p. 83.

CHAPTER 3. NATIONALITY AND REGISTRATION OF AIRCRAFT

Section A. Generalities

Nationality of aircraft has been a discussion subject since the beginnings of aviation history. Two opposing views appeared: one that favoured the analogy with ships, and another that wanted aircraft to be treated as motor cars or automobiles.⁶⁰³

The supporters of the ship analogy felt that there should be a special relationship between an aircraft and its country of origin, which could be expressed by conferring that country's nationality upon the aircraft. Supporters of the second view, argued that it would be sufficient for the aircraft to be identified with a distinctive mark.

In 1901 Fauchille, in his work "Le Domaine Aerien et le regime juridique des aérostats"⁶⁰⁴ maintained that the aircraft as well as the ship, should have a nationality. Fauchille denied that any state had technical rights of sovereignty or property in airspace above its surface territories. However he did concede that the State had broad powers to control flight in such airspace, and this argument was based on the State's "right of self-preservation".⁶⁰⁵ Fauchille's idea

⁶⁰³ Honig, The Legal Status of Aircraft, Martinus Nijhoff, (Gravenhage: 1956), p. 41.

⁶⁰⁴ Fauchille, "Le domaine aerien et le regime juridique des aérostats", 8 RGDIP, (1901), p. 44.

⁶⁰⁵ Cooper, "Legal Status of Aircraft" in Vlasic, Aerospace Law, (1968), p. 217.

created a distinction between national and foreign aircraft, meaning that aircraft had to have national protection.

Many reasons have been put forth to justify linking public law to aircraft. The most important is the above mentioned idea of a necessity for the state to protect the aircraft by giving to it a nationality. This was due to national security motives and considerations of Air power, as well as economical and political reasons.⁶⁰⁶

After Fauchille, the first to discuss this subject, every author has given his own arguments.⁶⁰⁷ The importance of the principle, according to Bin Cheng is:

"...its recognition that aircraft possess legal personality under municipal law and are endowed with nationalities of their own." ⁶⁰⁸

According to Boczek it is a "pseudonationality"⁶⁰⁹ and Cooper thinks it is a "legal quasi-personality".⁶¹⁰ Schwarzenberger considers that "the attri-

⁶⁰⁶ de Planta, Principes de Droit International Privé, Droj, (Geneve: 1955), p. 110.

⁶⁰⁷ For a more detailed study on the historical development of the nationality of aircraft concept see: Cooper, Legal Status of Aircraft, (1968), p. 215-230; Honig, Legal Status of Aircraft, (1956), p. 42-47.

⁶⁰⁸ Cheng, International Air Transport, (1962), p. 128.

⁶⁰⁹ Boczek, Flags of Convenience, (1962), p. 121, quoted in Shawcross & Beaumont, Air Law, (1966), p. 220.

⁶¹⁰ Cooper, Legal Status of Aircraft, (1968), p. 217.

bution of nationality to aircraft arises because of the need to allocate them to particular states."⁶¹¹ Honig thinks that "the aircraft nationality is primarily of importance in connection with the sovereignty which the various states exercise in the airspace above their territory."⁶¹² Videla Escalada suggests that the type of operation the aircraft performs, flying over the high seas, "res nullius", demands the acceptance of aircraft nationality.⁶¹³ Chauveau maintains that due to a need for identification the aircraft has to have a nationality.⁶¹⁴

The aircraft has two important links: one with a particular state, by the fact it has its nationality, and other with its owner.

The nationality of an aircraft is a juridical qualification attributed by law to certain aircraft. There is a link therefore between the state and the owner of the aircraft, who must be responsible for the aircraft according to the law. The legal consequences that derive from the nationality of an object are the duty of its owner. In International law, the role of the owner of the aircraft, and any responsibility will be assumed by the State. The competence of control a State has over its aircraft, determines that the State will see that the aircraft fulfills its obligations while

⁶¹¹ Schwarzenberger, A Manual of International Law, Stevens & Sons, (London: 1967), p. 93.

⁶¹² Honig, Legal Status of Aircraft, (1956), p. 56.

⁶¹³ Videla Escalada, 2 Derecho Aeronautico, (1969), p. 70.

⁶¹⁴ Chauveau, Droit Aerien, (1951), p. 300.

in other states,⁶¹⁵ and will grant at the same time to that aircraft its protection.⁶¹⁶

Nationality plays a determinant role with respect to the international rules of air traffic. This can be linked to practical matters. The recognition of the sovereignty of a state over its airspace leads to the fact that the same state can admit or exclude the overflight of an aircraft over its territory. International air traffic has developed in such a way, that the position of the sovereign state is relevant. Commercial aviation depends in great length on bilateral agreements, stressing the relationship that exists between an aircraft and a certain state, achieved through nationality.⁶¹⁷

The acceptance of the principle that an aircraft must have a nationality is not unanimous.⁶¹⁸ Loustau follows the classical definition of nationality, understanding it as a political and legal link, which unites a person with a determined state. Loustau rejects such a relationship between a thing and a state when referring to the aircraft. He considers that what is understood as "nationality" it really is "the flag" of an aircraft. It should be pointed out that "flag"

⁶¹⁵ Kamminga, The Aircraft Commander in Commercial Air Transportation, Martinus Nijhoff, (The Hague: 1953), p. 30.

⁶¹⁶ de Planta, Droit International Privé, (1955), p. 121.

⁶¹⁷ Honig, J.P. The Legal Status of Aircraft, Martinus Nijhoff, (The Hague: 1956), p. 56.

⁶¹⁸ Some other authors are also against aircraft having a nationality. Among them we can mention Mandl, Lambie, Riese and Lacour. de Planta, Droit International Privé, (1955), p. 118.

and "nationality" are two different things.⁶¹⁹

Space Law specialist, Aldo Armando Cocca, has another argument against Aircraft Nationality. Cocca wishes to apply concepts used in Space Law to the Air Law field. Since in Space Law, no mention has been made of spacecraft having nationality,⁶²⁰ Cocca's proposal advocates the use of such words as "jurisdiction", "control" and "ownership", which were used in the 1967 Outer Space Treaty.⁶²¹

From what has been said, it can be concluded that an aircraft does have a nationality. It should be interpreted as a legal relationship, which gives to the aircraft the protection of the state; subjects the aircraft to its sovereignty and therefore makes that state its controller.⁶²² Nationality also makes the aircraft subject to the laws of the state whose nationality holds

619 Loustau Ferran, La Aeronave, (1958), p. 65.

620 Cocca, "La cuestion de la Nacionalidad de las Aeronaves a la luz de los progresos de la Ciencia Juridica" in Cuestiones Actuales de Derecho Aeronautico, Eudeba, (Buenos Aires: 1968), p. 153.

621 Treaty on principles governing the activities of states in the exploration and use of outer space, including the moon and other celestial bodies. Article VIII, "A State, Party to the Treaty, on whose registry an object launched into Outer Space is carried shall retain jurisdiction and control over such object, and over any personnel thereof...Ownership of objects launched into outer space..."

622 The state of nationality will be responsible for ensuring that its aircraft do not enter prohibited areas, do not carry munitions of war (unless there is a special permission) and they must follow the rules concerning use of radio and photographic equipment while flying over a state. McDougal, M., Lasswell, H. and Vlasic, I., Law and Public Order in Space, Yale University Press, (New Haven: 1963), p. 584.

in those places where there is no jurisdiction, such as over the high seas.⁶²³

The principle of nationality was formally incorporated into the body of international Air Law by the adoption of the Paris Convention of 1919.

John Cobb Cooper on this matter states:

"The principle was already accepted by State legislations and decrees, by the International Agreement between France and Germany, in doctrinal discussions prior to World War I and confirmed by the conduct of States during the war itself...".⁶²⁴

The fact that the Paris Convention recognized the sovereignty states had in the air space above their territory, meant that regulations regarding the nationality of aircraft had to be established.⁶²⁵ The Second Chapter of the Paris Convention was devoted to this subject.⁶²⁶

Article 6 stated that aircraft possessed the nationality of the state of registry. Thus "aircraft of other contracting states" meant aircraft which have been registered in another contracting State, and which there-

⁶²³ Videla adds that there is no need to resort to the notion of quasi-personality of the aircraft, since nationality can be regarded in broad terms, such as juridical persons and property, as long as it is not unreasonable. Videla Escalada, 2 Derecho Aeronautico, (1969), p. 76.

⁶²⁴ Cooper, A Study on The Legal Status of Aircraft, prepared for the Air Law Committee of ILA, (September, 1949), p. 22.

⁶²⁵ Honig, The Legal Status of Aircraft, (1956), p. 45.

⁶²⁶ The following Articles of the Paris Convention are related to the subject: 5, 6, 7, 8, 9, 10, 11, 15, 25, 30, 31, 32 and 33.

fore had the nationality of that State.⁶²⁷ Article 7 prescribed that an aircraft could not be entered on the nationality register unless it wholly belonged to subjects of the State in which the register was kept.⁶²⁸ Article 8 ruled that an aircraft could not be validly registered in more than one State.

The principle determining aircraft nationality and its registration was also incorporated into the Ibero-American Convention (Madrid, 1926) and the Panamerican Convention, (Havana, 1928).

Article 8 of the Havana Convention modified the important principle of the Paris Convention, which linked nationality to ownership. ICAN accepted the new principle in 1929, and amended Article 7 of the Paris Convention.⁶²⁹

Article 8 of Havana stated:

"The registration of aircraft referred to in the preceding article shall be made in accordance with the laws and special provisions of each contracting state." ⁶³⁰

⁶²⁷ Nemeth, The Nationality of Aircraft, LL.M. Thesis, IASL, McGill University, (Montreal: 1953), p. 50.

⁶²⁸ This article was amended in 1929 and followed the position taken by the Havana Convention on the subject, to provide that the nationality of the owner of the aircraft was no longer the deciding factor in aircraft registration. The law and special provisions of each State would determine the method of registration.

⁶²⁹ Protocol of June 15, 1929, entered into force on May 17, 1933.

⁶³⁰ Warner, "Convention for Air Navigation", 3 ALR, (1932), p. 239.

The Chicago Convention recognizes as one of its basic principles the internationally accepted position that aircraft have nationality.

The major provisions regarding nationality are found in Chapter III of Chicago and are the following:

- 1) Article 17. Aircraft have the nationality of the state in which they are registered.⁶³¹
- 2) Article 18. An aircraft cannot be validly registered in more than one state, but its registration may be changed from one state to another.⁶³²
- 3) Article 19. Both registration and transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations.⁶³³
- 4) Article 20. Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks.⁶³⁴

Chicago adopts a principle, that each state shall decide for itself the basis on which it will permit aircraft to be registered: The state is also committed to give such information as it has about the ownership of any aircraft thus registered.⁶³⁵

631 By following this criterion, Chicago is accepting the principles considered in Article 6 of the 1919 Paris Convention.

632 Cooper, J.C., "Backgrounds of International Public Air Law", 1 Yearbook of Air and Space Law, (1965), p. 35.

633 McNair, The Law of the Air, Stevens & Sons, (London: 1964), p. 308.

634 Goreish, I., The problem of registration and nationality of aircraft of international operating agencies and the ICAO Council's resolution on the problem, LL.M. Thesis, IASL, McGill University, (Montreal: 1970), p. 8.

635 Cooper, "Legal Status of Aircraft" in Vlasic, Aero-space Law, (1968), p. 240.

Other articles of the Chicago Convention that show the application of the principle of nationality and the relationship of an aircraft to the particular state where it is registered are the following; Article 7 of Chicago applies the principle of Cabotage,⁶³⁶ by which a contracting state has the right to perform its own internal carriage by air, but when granting cabotage rights to foreign aircraft, this should not be done in a discriminatory way.⁶³⁷ The principle of Cabotage permits the recognition of the different status of national and foreign aircraft.

Article 5 of the Chicago Convention, dealing with non-scheduled flights over the territory of contracting states, confers upon aircraft not engaged in scheduled international air services certain rights. Thus, aircraft must belong to a contracting state in order to enjoy the rights provided by Article 5. In order to belong to a contracting state the aircraft must have the nationality of that contracting state.⁶³⁸

Article 11 of Chicago prohibits discrimination based on nationality for admission and departure of aircraft engaged in International Air Navigation. The article is an evidence that in International Law the aircraft possesses real legal personality.⁶³⁹

⁶³⁶ Article 7 of the Chicago Convention defines Cabotage, and then tries to render illegal discriminatory grants of Cabotage rights to foreign aircraft. Cabotage should be understood as the carriage by air, for remuneration or hire, of passengers, mail and cargo, embarked in one point of the territory of a State and disembarked in another point within the same State.

⁶³⁷ Meyer, *Le Cabotage Aerien*, Editions Internationales, (Paris: 1948), p. 77.

⁶³⁸ de Boer, *Nationality and Interchange of Aircraft*, LL.M. Thesis, IASL, McGill University, (Montreal: 1969), p. 17.

⁶³⁹ Shawcross and Beaumont, *Air Law*, (1966), p. 212.

Article 12 of Chicago, imposing an important obligation on the states which ratified the Convention, determines that the state whose nationality an aircraft possesses should see that it will comply with the rules of the air laid down by other states. This responsibility is borne not only by the state flown over, but also by the state whose flag the aircraft carries.⁶⁴⁰

After reviewing the articles of the Chicago Convention,⁶⁴¹ we see that customary international air law accepted the concept of aircraft nationality in such a way that no doubts were expressed in the course of the Chicago Conference. However we must point out that registration does not denote nationality, but is only an evidence of it.⁶⁴²

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While over the high seas the aircraft will comply with rules set up by the Chicago Convention, and while flying over the territory of another state, with the rules which are applicable there.

641

Other Articles of the Chicago Convention showing that the principle of nationality is accepted are the following: Article 26, as to investigation of accidents; the provisions of Chapter V as to "Conditions to be Fulfilled with Respect to Aircraft".

642

In the United States the certificate of registration is a conclusive evidence of nationality for international purposes. 8 American Jurisprudence Aviation, Vol. 8, (1963), p. 639.

All Latin American legislations accept the principle that every aircraft has a nationality.⁶⁴³

Article 3, paragraph 3 of Bolivia's Decree on Air Service states:

"For legal purposes, the nationality of an aircraft shall be that of the country of registration." 644

Article 21 of El Salvador's law on Civil Aviation, under the title of Nationality states:

"Private aircraft shall have the nationality of the State in whose register they are recorded".

643 Aeronautical Code, Articles 38-39 (Argentina, 1967); Air Service Decree, Article 3 (Bolivia, 1930); Air Code, Article 11 (Brazil, 1966); Law on Civil Aviation, Article 7 (Colombia, 1938); Law on Civil Aviation, Article 62 (Costa Rica, 1949); Air Navigation Decree, Article 5 (Chile, 1931); Regulation on Civil Aviation, Article 15 (Cuba, 1928); Civil Aviation Law, Article 67 (Dominican Republic, 1969); Law of Air Traffic, Article 7 (Ecuador, 1960); Law on Civil Aviation, Article 21 (El Salvador, 1955); Civil Aviation Law, Article 13 (Guatemala, 1948); Civil Aviation Law, Article 14 (Honduras, 1950); Book Four, Law of General Means, Article 312 (Mexico, 1950); Civil Aviation Code, Article 8 (Nicaragua, 1956); Regulation on Civil Aviation, Article 10 (Panama, 1963); Aeronautical Code, Article 16 (Paraguay, 1957); Civil Aeronautics Law, Article 20 (Peru, 1965); Code of Aeronautical Law, Article 17 (Uruguay) and Civil Aviation Law, Article 19 (Venezuela, 1955).

644 This article is regulated by Article 13 of the Air Traffic Regulation (1939). It states that every aircraft registered in Bolivian Register has the Bolivian nationality. Tölle, "Direito Aeronautico na Bolivia", 1 Boletim ITA, (1959), p. 5.

It adds in its paragraph 2 the following:

"Recording of an aircraft in the Salvadorean Aircraft Register and the granting of its registration shall confer Salvadorean Nationality on it".

Article 14 of Honduras' Civil Aviation Law, besides stating that the nationality is determined according to the place of registration, adds that

"...(civil aircraft) shall carry distinguishing marks of nationality and registration". 645

Article 8 of the Civil Aviation Code of Nicaragua also refers to the registration element, but adds that "no aircraft may be validly registered in more than one state".

Section B. Criteria to determine Nationality

Doctrines have suggested various systems to determine aircraft nationality, and they can be divided in three groups:

- 1) Subjective: considers that the decisive element is the persons linked to the vehicle;
- 2) Objective: considers that the decisive element is the circumstances of the vehicle itself;
- 3) Eclectic: considers as decisive elements both the persons involved with the aircraft and the circumstances of the vehicle;

645 Tolle, "Direito Aeronautico na Honduras", 5 Boletim ITA, (1962), p. 3.

1) The Subjective criterion: it means that the nationality of the aircraft depends upon one of the following elements:

- I - Nationality of its commander;⁶⁴⁶
- II - Nationality of the owner;⁶⁴⁷
- III - Nationality of the domicile of the owner;⁶⁴⁸
- IV - Nationality of the owner and to a certain extent, that of the crew.⁶⁴⁹

The above-mentioned systems have been disregarded by doctrine and legislation because of too many complications.⁶⁵⁰

⁶⁴⁶ The idea was supported by Henry-Couannier. Henry-Couannier, Elementos creadores del Derecho Aéreo, Reus, (Madrid: 1929), p. 159.

⁶⁴⁷ The principle by which the owner determined the nationality of the aircraft was widely supported in the beginnings of Civil Aviation. Even the Paris Convention of 1919 followed it in its Article 7. Some early laws and Codes considered also that the nationality of the owner was giving the attribute of nationality to an aircraft, such as in France, Italy and England. Among the authors supporting this idea the most important one is Fauchille. de Planta, Droit International Privé, (1955), p. 109.

⁶⁴⁸ de Planta, Droit International Privé, (1955), p. 111.

⁶⁴⁹ Loustau Ferran, La Aeronave, (1958), p. 73-75.

⁶⁵⁰ Some problems which can arise are the following: with respect to the nationality of the aircraft commander, this element is very unstable because the aircraft can continuously change its commander; with respect to the domicile of the owner, this domicile is variable, and in this element also political considerations must be recognized; with respect to the nationality of the owner, it is sometimes difficult to ascertain it; with respect to the nationality of the owner together with the crew, besides the difficulty already mentioned for the owner, there is an additional one of requiring a common and same nationality to all the crew.

2) Objective criterion: bases aircraft nationality upon one of the following elements:

- I - Country of construction of the aircraft;⁶⁵¹
- II - Country of "residence" or usual location of the aircraft,⁶⁵²

The objective criterion of the country of residence of the aircraft is followed to determine the nationality of the craft in Latin America only by the Civil Aviation Law of Guatemala. The law in its Article 19, paragraph C provides, that in order for an aircraft to be registered and receive the corresponding certificate of registration, the aircraft must be permanently based in Guatemala.⁶⁵³

III - Country of Aircraft Registration. This criterion is followed by the Chicago Convention⁶⁵⁴ and seems to be effective for determining Aircraft Nationality, especially in the identification of the owner or operator of the aircraft.⁶⁵⁵ The system is also useful in those situa-

⁶⁵¹ This is a restrictive and very much reserved element. It would mean that aircraft throughout the world would be carrying the nationality of only those manufacturing countries, which certainly are a minority. Ruiz Moreno, Derecho Publico Aeronautico, Lajonane y Cia, (Buenos Aires: 1934), p. 82.

⁶⁵² The country of residence presents an inconvenience, in that such a place is often very difficult to determine.

⁶⁵³ Juarez, Derecho Aéreo Guatemalteco, (1957), p. 69.

⁶⁵⁴ Article 17 of Chicago determines the aircraft nationality according to where they are registered. Article 19 states that the registration of the aircraft in each contracting state shall be done according to its laws and regulations.

⁶⁵⁵ Certain authors opine that even though there are more advantages than disadvantages, some of the latter could arise from the fact that the owner can change the nationality of the aircraft by cancelling its registration. They also suggest that motives of air power and espionage can appear in relation to this system. Certainly these ideas are too remote from the main purpose of the object of the criterion, so we feel that they should be disregarded.

tions which could develop or originate responsibility actions, borne from the aircraft operation.⁶⁵⁶

3) Eclectic criteria: The system was proposed by von Bar⁶⁵⁷ and included objective and subjective elements at the same time. Accordingly the aircraft possesses the nationality of the Registration Country, but can only be registered by nationals of such state. The original version of the 1919 Paris Convention applied this criterion.⁶⁵⁸

The eclectic opinion is followed in Latin America by the regulations of Brazil, Colombia, Costa Rica, Cuba, Chile and Ecuador.⁶⁵⁹

Article 60 of the Law on Civil Aviation of Costa Rica states the following:

"Registration may only be granted to an aircraft not registered in another country, and always provided it is owned by a Costa Rican individual or corporation".

⁶⁵⁶ Rodriguez Jurado, Derecho Aeronautico, (1963), p. 92.

⁶⁵⁷ Von Bar, "Regime Juridique des Aerostates", 24 Annuaire de l'Institut de Droit International, (1911), p. 311.

⁶⁵⁸ The amendment of Article 7 of Paris, leading to a Protocol in 1933 is the basis for Article 19 of Chicago. The basis for Chicago's Article 17 is the Paris Convention, Article 6.

⁶⁵⁹ Air Code, Articles 11 and 14 (Brazil, 1966); Law on Civil Aviation, Article 14 (Colombia, 1938); Law on Civil Aviation, Articles 142f) and 60 (Costa Rica, 1949); Regulation on Civil Aviation, Articles 15 and 21 (Cuba, 1928); Air Navigation Decree, Articles 5 and 7 (Chile, 1931); Law of Air Traffic, Article 7 (Ecuador, 1960).

Article 60 is complemented by Article 142 f), which defines Costa Rican Aircraft, as follows:

"Aircraft registered in Costa Rica in accordance with this law and the regulations issued thereunder. An aircraft which does not possess these requirements is foreign". 660

Article 11 of the Brazilian Air Code provides that an aircraft has the nationality of the State where it is registered, and will not be able to fly over Brazilian Territory if it has not been registered or if it is registered in more than one State.

Article 14 of the Air Code indicates the registration rules. For an aircraft to be registered in the Brazilian Aeronautical Register, and therefore be Brazilian, it must fulfill the following requirements, depending upon its use:

- 1) When the aircraft is destined for the use of its owner, the aircraft must belong to a Brazilian person (natural or legal).
- 2) When the aircraft is destined for air traffic services, it must belong to a Brazilian legal person, with 4/5 or more of its stock-capital owned by Brazilians.⁶⁶¹

El Salvador's law on Civil Aviation applies the Eclectic Opinion, but allows foreigners legally residing in El Salvador to register tourist aircraft used exclusively

⁶⁶⁰ Tolle, Air Law in Latin America, Appendix, (1960), p. 30.

⁶⁶¹ The drafters gave the following reason for the inclusion of this measure: protection of national interests. Valle, Codigo Brasileiro do Ar, (1967), p. 37.

for private services without pay.⁶⁶²

Nicaragua, Honduras and Mexico air regulations follow the eclectic system only with respect to aircraft used for public transportation or for aerial work for remuneration.⁶⁶³

Article 313 of Mexico's Law of General Means of Communication provides:

"Only Mexican citizens or Mexican entities having legal status may register in the Mexican Aeronautical Register aircraft to be used for public service of transportation or private services for aerial photography, aerial topography and others of an analogous nature".⁶⁶⁴

Panama's Regulation on Civil Aviation, Article 10, No 1 b) follows the eclectic system but only with respect to civil aircraft for public transportation or air services.⁶⁶⁵ Venezuela's Civil Aviation Law, Article 20 applies the system also when referring to public air transportation services or for private aerial work.⁶⁶⁶

⁶⁶² Law on Civil Aviation, Article 29 (El Salvador, 1955).

⁶⁶³ Civil Aviation Code, Articles 8 and 13 (Nicaragua, 1956); Civil Aviation Law, Article 19 (Honduras, 1950); Law of General Means, Article 313 (Mexico, 1950).

⁶⁶⁴ Tolle, Air Law in Latin America, Vol. I (1960), p. 194.

⁶⁶⁵ See also, Regulation on Civil Aviation, Article 10, No 2 (Panama, 1963).

⁶⁶⁶ See also, Civil Aviation Law, Article 19 (Venezuela, 1955). Lares, Derecho Aeronautico Venezolano, (1954), p. 62.

The Civil Aeronautics Law of Peru generally provides for the determination of aircraft nationality according to the domicile of the owner. Article 20 states: "Civil Aircraft which have been legally registered in Peru will have the Peruvian Nationality", but prohibits foreign companies from registering aircraft, except those aircraft for "private service."⁶⁶⁷

Argentina's Aeronautical Code accepts the doctrine of determining nationality according to the Country of Registration, and it allows any person (legal or natural) who has his domicile in the Country to register an aircraft.⁶⁶⁸

The Argentinian stand is followed by the laws of Cuba, Dominican Republic, Paraguay and Uruguay.⁶⁶⁹ Peru takes a special position when following the Argentinian rules, as they do it only when it concerns physical or natural persons.⁶⁷⁰

Article 20 of Cuba's Regulation on Civil Aviation provides:

"In order to be registered in the Republic of Cuba, aircraft must belong to persons, companies, societies or institutions located in the national territory in conformity with, and subject to its laws".

⁶⁶⁷ For all other events the law follows the position taken by Panama, Nicaragua and Venezuela. See also, Civil Aeronautics Law, Article 26 and 27 (Peru, 1965).

⁶⁶⁸ Aeronautical Code, Articles 38 and 48 (Argentina, 1967); Foglia-Mercado, Derecho Aeronautico, (1968), p. 99.

⁶⁶⁹ Regulation on Civil Aviation, Article 20 (Cuba, 1928); Civil Aviation Law, Article 72 (Dominican Republic, 1969); Aeronautical Code, Articles 16-17 (Paraguay, 1957); Code of Aeronautical Law, Articles 17-26 (Uruguay, 1942).

⁶⁷⁰ Civil Aeronautics Law, Articles 20-25 (Peru, 1965).

The rule of the Argentinian Aeronautical Code is a response to arguments against limiting the registration of aircraft to nationals of a State.

The Argentinian author Videla Escalada points out that substantially political and military reasons are provided to favour the reservation for nationals. A State will then have successful control over the aircraft and will be able to use it for military purposes. However, such a limitation is not reasonable when transnational and international companies are allowed to intervene in the economy of a country.⁶⁷¹

The problem created by registration of aircraft to nationals can be easily recognized in small countries of Latin America, where many foreign citizens own airplanes, and use them for business and pleasure purposes. These small countries could see affected its possibilities of requisition in wartimes.⁶⁷² Here again, the transnational and international companies have something to say, since they are often involved in the economic life of those small countries.

Another argument used some years ago, judged that a State should have the control of its aircraft, so that it could present a claim for those acts done against an aircraft

671 Videla opines that national rules and laws regulating Company Law would participate in the matter of registration of aircraft. The domicile could be the element solving those problems, presented by the determination of nationality. Videla Escalada, 2 Derecho Aeronautico, (1969), p. 104.

672 In those small countries, where air navigation does not have a big development, it is very important for them to form their own air fleet, and to use it in the necessary circumstances. Those entities or persons which benefit from the air traffic, will also have to contribute when the State has the need for the aircraft. Ruiz Moreno, Derecho Publico Aeronautico, Lajonane y Cia, (Buenos Aires: 1934), p. 86.

owned by a citizen or a national of that State. This argument has no validity anymore, especially considering the present legal development, which is setting new rules on the matter.⁶⁷³

With reference to the system granting registration to any person domiciled in a country, economic motives must be considered. Through this system the national airspace could be conveyed to any person domiciled in the State. Difficulties arise when we refer to transnational and international companies, which could mean a negative step in the development of the air industry in those underdeveloped countries.⁶⁷⁴

We support a system giving to the nationals of a state a sole right to register aircraft. Our principal reason, is that the State can take care of its national interests.

The Brazilian law⁶⁷⁵ follows this procedure, it demands not only nationality, but also stock-capital, managers, personnel, a guarantee of economic and political loyalty, and the presence of the national element.⁶⁷⁶

⁶⁷³ There is only one case which we can think of, by which a State can make a claim, and that is one of a denial or refusal of justice. It is difficult to believe that a State today would sentence negatively against a party by the mere fact that the party involved is subject to the sovereignty of other nation.

⁶⁷⁴ The negative step means that transnational and international companies with their resources and facilities could operate the air industry in underdeveloped countries complying their own needs and interest, instead of those of the country.

⁶⁷⁵ Air Code; Article 14 (Brazil, 1966).

⁶⁷⁶ The only exception for this rule, are those aircraft registered by foreigners domiciled in Brazil, which operate the aircraft for their exclusive use. Vallé, Codigo Brasileiro do Ar, (1967), p. 38.

Reviewing our analysis, we reject the liberal doctrine of the Argentinian Aeronautical Code.⁶⁷⁷ The sole requirement of domicile could give to foreigners the operation of domestic traffic and aerial work, which has been done mainly by nationals since the origins of Air Law and Air Transportation.

The texts of El Salvador, Honduras, Mexico, Nicaragua, Panama and Venezuela do not apply strictly the principle of granting registration only to nationals, but it operates when it refers to aerial work and aircraft for public transportation.⁶⁷⁸ They are protecting in this way an economic patrimony, represented in this case by the operation of aircraft in the State's airspace only by their own nationals.

Article 13 of Nicaragua's Civil Aviation Code states in its paragraph 1:

"Aircraft used in public transport services, or aviation work for remuneration, may only be registered in the name and upon application of Nicaraguan natural or corporate persons".⁶⁷⁹

⁶⁷⁷ Supra, p. 205.

⁶⁷⁸ Law on Civil Aviation, Article 29 (El Salvador, 1955); Civil Aviation Law, Article 19 (Honduras, 1950); Law of General Means of Communication, Article 313 (Mexico, 1950); Civil Aviation Code, Article 13 (Nicaragua, 1956); Regulation on Civil Aviation, Article 10.1b) (Panama, 1963); Civil Aviation Law, Article 20 (Venezuela, 1955).

⁶⁷⁹ de Coronel, "Nacionalidad de las Aeronaves. Requisitos exigidos para ser propietarios de Aeronaves", in Primeras Jornadas Latinoamericanas de Derecho Aeronautico, De Palma, (Buenos Aires: 1962), p. 531.

Section C. Importance of Aircraft Nationality

The importance of aircraft nationality can be recognized in international texts and comparative law. The most important result of nationality is the establishment of different status for national and foreign aircraft.⁶⁸⁰ Doctrine has pointed out several topics which are related to the nationality situation, as it is applied to aircraft. Some of which follow:

- 1-Limitation of domestic traffic;
- 2-The lawful procedure for entering airspace by public aircraft;
- 3-The exercise of the right of seizure and requisition;
- 4-Regulation of registration requirements and the register system;
- 5-Concession of airworthiness certificates;
- 6-State protection of aircraft abroad;
- 7-Subsidies to air traffic;
- 8-Applicable law in determined conflicts of law;
- 9-International recognition of Aircraft rights;
- 10-Visible identification system (markings);
- 11-Freedom of the Air;
- 12-Crew licensing;
- 13-Exercise of jurisdiction in case of commitment of crimes on board aircraft, unlawful seizure or unlawful interference with air navigation;
- 14-Prestige Reasons;
- 15-Military Potential;
- 16-Actions arising from the 1952 Rome Convention on Damage caused by foreign aircraft to third parties on the surface.⁶⁸¹

⁶⁸⁰ Videla Escalada, 2 Derecho Aeronautico, (1969), p. 83-84.

⁶⁸¹ Loustau Ferran, La Aeronave, (1958), p. 80-96.

Doctrine and legislation accept a substantial intervention of the State in regard to registry requirements, since the register is indissolubly linked with aircraft nationality. All States organize a national registry, all use different criteria, but attribute fundamental importance to the registration of the air vehicle, for internal and international public interest, as well as for private persons.

The registration is the key factor which determines aircraft nationality. Requirements of each State for the granting of the registration of the aircraft, will take into account not only the aircraft's bond with a specific state, but also will indicate the effective aeronautical potential of that country.⁶⁸²

Section D. Justifications for an aircraft registry

Public and private interests come together in order for doctrine and aeronautic legislation to consider the necessary creation of a procedure for aircraft registration. Even though the aircraft is a movable, it is deemed reasonable to follow a system traditionally reserved to immovables and ships.⁶⁸³

Public order and national motives justify the registration of the aircraft. The aircraft has tremendous mobility, autonomy and operational range, so it is susceptible to use for different ends, some of which could be contrary to the State's interest. Consequently the State protects the aircraft by registering it.⁶⁸⁴

⁶⁸² Ortega, Nacionalidad de las aeronaves, (1965), p. 70.

⁶⁸³ Linares, La institucion del registro aeronautico, UNAM, (Mexico, D.F.: 1956), p. 110.

⁶⁸⁴ Delascio, Derecho de la Aviacion, (1959), p. 87.

Without a register, the rule of nationality might be ineffective.⁶⁸⁵

The aircraft registry also creates a requirement of guarantee.⁶⁸⁶ There is a need to make possible the aeronautic credit, which is structured over the base of an aircraft mortgage. Considering the high economic value of an aircraft, a register is desirable.⁶⁸⁷

The abovementioned fact is linked to the idea of protecting the interests of private persons, granting them security, with regard to the aircraft, an object of law. Thus the registry has the important legal function of regulating aircraft rights.⁶⁸⁸

The aeronautical registry, pursues the following public objectives:

- 1) The structuring of a system which gives nationality to an aircraft;
- 2) Permission for the State to control the fulfillment of the various rules which condition the life of an aircraft;
- 3) The determination of the number and quality of the national air fleet, as an air reserve.⁶⁸⁹

⁶⁸⁵ Gay de Montella, Derecho Aeronautico, (1950), p. 94-95.

⁶⁸⁶ Carneiro de Campos, "O registro aeronautico é declarativo de propriedade", 3 RBDA, (1952), p. 55.

⁶⁸⁷ Videla Escalada, 2 Derecho Aeronautico, (1969), p. 127.

⁶⁸⁸ da Rocha Guimaraes, "O Registro Aeronautico en Direito Comparado", 5 RBDA, (1952), p. 10.

⁶⁸⁹ Loustau Ferran, La Aeronave, (1958), p. 83 & 175;
Lena Paz, Derecho Aeronautico, (1969), p. 149.

The following are classified by the Registry as private objective purposes:

1) In order to make the legal traffic and the credit safe and expeditious it has been considered desirable to provide means for:

a) The protection of the interest of third parties, so they can know with certainty the legal position of the aircraft;⁶⁹⁰

b) The safety of the owners of the credits, which have as a guarantee the air vehicle.⁶⁹¹

2) There is a necessity to create an effective system for aeronautic liability. The aeronautical registry permits the determination of who is liable when under the obligation of indemnifying damages and prejudices arising from the aircraft operation.⁶⁹²

Section E. Peculiarities of Aircraft Nationality

Besides the subjective and objective requirements demanded for aircraft registration, the legal texts in force have pointed out certain basic principles which constitute the fundamental structure of registration and which are closely linked to aircraft nationality.

⁶⁹⁰ Attachment, lien, contracts and other rights which condition the legal life of every object of law.

⁶⁹¹ Such as the case of the mortgagee.

⁶⁹² Brazilian author da Rocha Guimaraes concludes that the registry will be an imperfect form of stating that the owner is responsible. This form does not have absolute character since the owner can prove to the contrary. da Rocha Guimaraes, "O Registro aeronautico, seu valor e seus efeitos no Direito Brasileiro", 3 RBDA, (1952), p. 69.

In effect, every aircraft must be registered and therefore must have a nationality.⁶⁹³ Even though the aircraft is regulated by law before it is registered, this is the requirement that validates its legal life, and consequently attributes to it a nationality.

In the event that an aircraft does not have a nationality due to legal difficulties, it is not considered to be legally an aircraft because it lacks legal aptitude to navigate in the airspace.⁶⁹⁴

Registration then is compulsory, and no aircraft can fly without it.⁶⁹⁵ An unregistered aircraft can be the object of private legal proceedings as any other law object, but it will be unlawful for it to fly, and also it will not be possible to mortgage it. In such a situation it is not an object of law regulated by Air Law, but rather by Common or Civil Law rules.

Another indispensable and universally accepted principle is that aircraft cannot have more than one nationality.⁶⁹⁶ The Chicago Convention clearly states that no aircraft can be registered in two States at the

⁶⁹³ York, "International Air Law", 3 JALC, (1932), p. 433.

⁶⁹⁴ Hamilton, Derecho Aéreo, (1960), p. 183.

⁶⁹⁵ Gay de Montella, Derecho Aeronautico, (1950), p. 103.

⁶⁹⁶ Cartou, Droit Aerien, (1963), p. 189; Lemoine, Droit Aérien, (1947), p. 163; Saint Alary, Droit Aerien, (1955), p. 47; Videla Escalada, 2 Derecho Aeronautico, (1969), p. 77.

same time,⁶⁹⁷ consequently they cannot have two nationalities simultaneously.⁶⁹⁸

The Paris Convention of 1919, in Article 8 declared that an aircraft could not be entered in more than one register.⁶⁹⁹ Article 7 of Havana Convention agrees completely with Paris to the extent of borrowing the exact wording.⁷⁰⁰

In those cases where an aircraft is registered in a foreign country (which consequently means that it has a nationality), the result is the cancellation of the former registration and the replacement of that nationality by another.⁷⁰¹

One of the bases of the extension of nationality to aircraft is the necessity of its identification; whenever there is registration of an aircraft in a foreign country that will mean the legal expression of its separation from the former country.⁷⁰²

⁶⁹⁷ The Supreme Court of Hong Kong has declared illegal the registration of 70 civil aircraft in China and in the United States, considering that this double registration is declared unlawful by Article 18 of the Chicago Convention. *Civil Air Transport Incorporated vs Central Air Transport Corporation*, Int. Law Reports, (1952), p. 86, in Matte, Droit Aerien-Aeronautique, (1964), p. 189.

⁶⁹⁸ Article 18, Chicago Convention (1944).

⁶⁹⁹ Nemeth, The Nationality of Aircraft, LL.M. Thesis, McGill University, (Montreal: 1953), p. 74.

⁷⁰⁰ Warner, "Convention for Air Navigation", 3 ALR, (1932), p. 238.

⁷⁰¹ Hamilton, Derecho Aéreo, (1960), p. 183.

⁷⁰² In this respect see Article 19, Chicago Convention, dealing with national laws governing registration.

The principle of unity of registration and nationality is recognized in one way or another by all the Latin American texts, with the exception of Ecuador, where this question is not considered.⁷⁰³

Bolivia's Air Service Decree, in Article 3, paragraph 2 states the following:

"The sole fact of belonging to the national register shall annul any previous registration in a foreign country, and registration in another country of aircraft belonging to the national register shall only be recognized when they leave the country to be transferred to persons or companies located abroad." 704

703 Aeronautical Code, Articles 38 & 39 (Argentina, 1967); Air Service Decree, Article 3 (Bolivia, 1930); Air Code, Article 11 (Brazil, 1966); Law on Civil Aviation, Article 7 (Colombia, 1938); Law on Civil Aviation, Article 62 (Costa Rica, 1949); Regulation on Civil Aviation, Articles 16 & 21 (Cuba, 1928); Air Navigation Decree, Article 8 (Chile, 1931); Civil Aviation Law, Article 67 (Dominican Republic, 1969); Law on Civil Aviation, Article 22 (El Salvador, 1955); Civil Aviation Law, Article 13 (Guatemala, 1948); Civil Aviation Law, Article 18 (Honduras, 1950); Law on General Means of Communications, Article 312 (Mexico, 1950); Civil Aviation Code, Article 8 (Nicaragua, 1956); Regulation on Civil Aviation, Article 13 (Panama, 1963); Aeronautical Code, Articles 11 and 17 (Paraguay, 1957); Civil Aeronautics Law, Article 24 (Peru, 1965); Code of Aeronautical Law, Article 25 (Uruguay, 1942); Civil Aviation Law, Article 19 (Venezuela, 1955),

704 According to Nemeth, Article 19 of Chicago must be read together with Article 18 of Chicago, and in this way those states parties to the Chicago Convention are bound by it, and must conform with the rules of the Convention. Therefore they cannot register an aircraft if the prior registration of that aircraft has not been cancelled. Hence, Bolivia's Air Service Decree is not in accordance with Article 18 of Chicago Convention. Nemeth, Nationality of Aircraft, (1966), p. 308.

Colombia's Law on Civil Aviation, Article 7, paragraph 3 provides:

"Two or more simultaneous registrations on the same aircraft shall not be permitted." 705

Chile's Air Navigation Decree, Article 8, gives two reasons for loss of nationality by an aircraft:

- 1) Failure to comply with the rules of Article 7,⁷⁰⁶ and,
- 2) When the owner registers it in a foreign country.⁷⁰⁷

Guatemala's Civil Aviation Law, Article 13, paragraph 2 states that:

"...the coexistence of two or more registrations for the same aircraft is not admissible." 708

Following a similar position as the one taken by Guatemala's Civil Aviation Law, Honduras Civil Aviation law, Article 18 states:

"No aircraft may be validly registered in more than one State". 709

Paraguay's Aeronautical Code, through two articles regulates the subject of registration. Article 11 provides:

705 Cobo Cayon, Derecho Aéreo, (1966), p. 308.

706 Article 7 regulates ownership of Chilean aircraft.

707 Hamilton, Derecho Aéreo, (1960), p. 194.

708 Juarez, Derecho Aéreo Guatemalteco, (1957), p. 65.

709 Pino, Derecho Aéreo, (1974), p. 87.

"Foreign aircraft may not be registered in the National Aircraft Register without a prior statement to the effect that its former registration has been cancelled, and an affidavit as to the conditions of title in the aircraft, issued by the country in which such cancellation of the registration was made."

Article 17 adds that if they fail to meet the conditions of Article 14, which mentions the requirements of the National Aircraft Register, or if they are registered in a foreign State they will lose their nationality.⁷¹⁰

Article 25 of Uruguay's Aeronautical Code, paragraph 1 provides:⁷¹¹

"Foreign aircraft may not be registered in the National Aircraft Register, without prior certification that the previous registration has been cancelled." ⁷¹²

Article 19 of Venezuela's Civil Aviation Law is a good example of how precise and clear the law can be, and it also follows the rule of Articles 17 and 18 of Chicago:

"Aircraft shall have the nationality of the state in which they are registered and may not have more than one registration." ⁷¹³

⁷¹⁰ Tolle, 1 Air Law in Latin America, (1960), p. 217.

⁷¹¹ According to Nemeth's position the Uruguayan Law would be in accordance with Articles 18 and 19 of Chicago Convention. *Supra*, p.215, footnote 704.

⁷¹² Bauza Araujo, Derecho Aéreo, (1955), p. 152.

⁷¹³ Rojas, Instituciones de Derecho Aeronautico, Talleres Garcia, (Caracas: 1968), p. 52.

Section F. Atypical Cases of Aircraft Nationality

There are two problems which will be discussed, which are special cases in the matter of aircraft nationality. These are:

- 1) Joint air transport operating organizations and pooled services;
- 2) International operating agencies.

The problem of nationality when dealing with these two cases has been a matter of lengthy discussion in ICAO,⁷¹⁴ and of concern for doctrine as well.

Article 77 of the Chicago Convention provides in its last sentence that the ICAO

"Council shall determine in what manners the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies."

Article 77 of Chicago determines that a State may participate in joint air transport operating organizations or in pooling arrangements. A third form permitted by the article is an international operating agency formed by two or more states.⁷¹⁵

⁷¹⁴ See ICAO Doc. LC/SC. Article 77/Working Draft No. 1 (28/12/64) in ICAO Doc. 8787. LC/156-2. (1968), p. 36.

⁷¹⁵ Richardson, "Nationality and Registration of Aircraft operated by International Operating Agencies", ed. McWhinney-Bradley, The Freedom of the Air, Sijthoff, (Leiden: 1968), p. 210.

Studies on the subject of nationality and registration of aircraft operated by such agencies began in ICAO as early as 1948 and discussions and meetings were conducted in bodies of ICAO such as the Council, the Air Transport Committee and also a panel of experts appointed by the Council.⁷¹⁶

In December, 1964 the Council referred the subject to the Legal Committee, which in 1967 submitted a report.⁷¹⁷ That same year the Council adopted a Resolution and the procedures with regards to specific plans for joint or international registration.⁷¹⁸

In the Resolution it was agreed that without any amendment to the Chicago Convention, the Council had the power, by a determination under Article 77, to make the Convention applicable to "joint registered" or "internationally registered" aircraft, with a binding effect on all ICAO member States.⁷¹⁹

The Resolution defines, in its Appendix 1, Joint Registration, as the system according to which the States constituting an international operating agency,⁷²⁰ would establish a register other than the national register by the agency.

⁷¹⁶ ICAO, Doc. 8722. C/976 (20/2/68), p. 1.

⁷¹⁷ ICAO, Doc. 8704, LC/155, Annex C.

⁷¹⁸ ICAO Doc. 8743-C/978. Action of the Council, 62nd Session, Attachment E (1968), p. 48.

⁷¹⁹ Bin Cheng, "Nationality and Registration of Aircraft Operated by International Operating Agencies", 53rd Conference, ILA Report, (Buenos Aires: 1968), p. 151.

⁷²⁰ International operating agencies are those inter-governmental agencies designed for the operation of international commercial air services. The archetype would be an agency established by ICAO itself.

International registration refers to those cases where the aircraft which shall be operated by an international operating agency would not be registered on a national basis but with an international organization having legal personality, whether or not such international organization is composed of the same States or have constituted the International Operating Agency.

Aircraft participating in joint operating organizations or in pooling arrangements do not have any trouble and the precedents for registration are numerous.⁷²¹ Also, no problem arises in the case of nationally registered aircraft operated by an international operating agency.

The effects of joint and international registration appear to be identical, aircraft of the international operating agency have both a "common mark", and the nationality of each of the States constituting the international operating agency. With respect to application of Articles 25 and 26 of Chicago Convention, the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft shall be considered to be the State in which the aircraft is registered.⁷²²

721 a) Scandinavian Airlines System (SAS). Consortium Agreement (8/2/51); b) Air Afrique. Traité-relatif aux transports aériens en Afrique Yaoundé, Cameroun. (19/3/61), signed by eleven states. Fitzgerald, "Nationality and registration of Aircraft operated by International Operating Agencies and Article 77 of Chicago Convention", 5 CYIL, (1967), p. 193.

722 This state will be that which will be issuing the certificate of registration, airworthiness certificate or licenses of crew.

The ICAO's Council Resolution has generated lengthy discussion and much criticism. Professor Bin Cheng concludes that the Resolution means a de facto amendment of the Chicago Convention, with questionable features and unresolved problems.⁷²³

In Latin America, Law 17.743 of 1968,⁷²⁴ of Argentina has been the innovator in this matter. It allows a provisory registration in the National Aircraft Register and also an Argentinian Registration for those aircraft whose owners are a Public International Organization. However, there are certain conditions: a) Argentina must be a member of the Organization, and b) those aircraft must be designated for the sole use of State, provincial or municipal organizations. These aircraft shall be considered to be public aircraft for whenever a classification of the aircraft is needed.⁷²⁵

Section G. Nationality and Registration Marks

The external efficacy of the identification of the aircraft is obtained through marks that attest to the formal registration of the aircraft in the Aeronautical National Register of a state, and consequently its nationality. These external marks are called nationality and registration marks,⁷²⁶ since they prove the individualization of the aircraft.⁷²⁷

⁷²³ Cheng, "Nationality and Registration of Aircraft", 53 ILA Report, (1968), p. 153.

⁷²⁴ Ley 17.743 (14th May, 1968).

⁷²⁵ Mapelli, Leyes de Aviacion Civil, (1970), p. 64.

⁷²⁶ Registration marks are to aircraft what a name is to a ship.

⁷²⁷ Lena Paz, Derecho Aeronautico, (1969), p. 144.

Aircraft, have the obligation to carry those registration and nationality marks, a rule considered as early as the Paris Convention of 1919.⁷²⁸ Article 10 provided the following:

"All aircraft engaged in international navigation shall bear their nationality and registration marks..."

as well as the name and residence of the owner in accordance with Annex A. Annex A, entitled "The marking of aircraft", described the signals called nationality and registration marks to be borne by civil aircraft (painted) in order to facilitate⁷²⁹ their identification during the flight.

These marks are formed by two groups of letters, the first denoting nationality and the second identifying them.⁷³⁰

⁷²⁸ Pinto Pessoa, "Das marcas de Nacionalidade e matricula das aeronaves en geral", 13 RBDA, (1963), p. 58.

⁷²⁹ Foglia-Mercado, Derecho Aeronautico, (1968), p. 99; Videla Escalada, 2 Derecho Aeronautico, (1969); p. 91.

⁷³⁰ Latin American countries had the following Nationality and Registration marks in Annex A of Paris Convention: Nicaragua, A & N (hereinafter the first letter corresponds to the nationality mark and the second to Registration mark); Chile, B & C; Bolivia, C & B; Cuba, C & C; Uruguay, C & U; Ecuador, E & E; Costa Rica, K & C; Guatemala L & G; Peru O & P; Brazil, P & B; Argentina, R & A; Panama, S & P; Honduras, X & H; El Salvador, Y & S. Zollman, Law of the Air, (1927), p. 147.

Article 9 of Havana Convention⁷³¹ has a similar wording to that adopted by Paris on the matter of registration. As Havana had no Annexes, the distinctive mark had to be mutually agreed upon by several contracting states.⁷³²

Henry-Couannier maintained that these marks should be visible and stable. Stability implies attachment in such a way that they cannot be changed during the flight. The visibility of the characters implies easy recognition from a distance, even from the surface of the earth.⁷³³ One reason for accepting Henry-Couannier's view is that states can definitely have much better control over the airspace and any activity of aircraft flying over its territory.⁷³⁴

Article 20 of the Chicago Convention, under the title "Display of Marks", indicates that:

"Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks."

The Standards and recommended practices with respect to aircraft nationality and Registration Marks

731 Iboustau Ferran, La Aeronave, (1958), p. 109.

732 Warner, "Convention for Air Navigation", 3 ALR, (1932), p. 245.

733 Henry-Couannier, Derecho Aéreo, (1929), p. 158.

734 Videla Escalada, 2 Derecho Aeronautico, (1969), p. 91.

are dealt with in Annex 7 to the Chicago Convention.⁷³⁵

Annex 7⁷³⁶ provides that the "Nationality or common mark and registration mark appearing on the aircraft shall consist of a group of characters".⁷³⁷ The nationality mark shall precede the registration mark. Nationality marks are selected from symbols allocated to the State of Registry by the International Telecommunication Union.⁷³⁸

Latin American texts also establish the compulsory character of nationality and registration marks for

735 Standards for Aircraft Nationality and Registration Marks were adopted by the Council in 1949 pursuant to the provisions of Article 37 f) of the Chicago Convention. Wijesinha, Legal Status of Annexes, (1960), p. 143.

736 Annex 7 indicates the location, easurements and type of characters for nationality and registration marks. Haguenau-Esperon, 2 Organisation de l'aviation civile internationale, (1972), p. 15.

737 Annex 7, 2.1.

738 Annex 7, 2.2 & 2.3. The following are the present Aircraft Nationality Marks of Latin American States: Argentina, LQ & LV; Bolivia, CP; Brazil, PP & PT; Chile, CC; Colombia HK; Costa Rica, TI; Cuba, CU; Dominican Republic, HI; Ecuador, HC; El Salvador YS; Guatemala, TG; Honduras, HR; Mexico, XA, XB, XC; Nicaragua, AN; Panama, HP; Paraguay, ZP; Peru, OB; Uruguay CX; Venezuela, YV.

aircraft,⁷³⁹ with the sole exception of Costa Rica's law on Civil Aviation, where there is no reference to this matter.

Article 21 of Chile's Air Navigation Decree reads as follows:

"Private aircraft shall carry markings painted on the outside and in visible form, according to the regulations showing nationality, registration, as well as the name and address of the owner in order to permit easy identification." 740

739 Aeronautical Code, Article 40 (Argentina, 1967); Air Service Decree, Article 3 (Bolivia, 1930); Air Code, Article 13 (Brazil, 1966); Law on Civil Aviation, Article 8 (Colombia, 1938); Regulation on Civil Aviation, Article 19 (Cuba, 1928); Air Navigation Decree, Article 21 (Chile, 1931); Civil Aviation Law, Articles 70-73 (Dominican Republic, 1969); Law of Air Traffic, Article 12 (Ecuador, 1960); Book Four, Law of General Means of Communications, Article 315 (Mexico, 1950); Civil Aviation Code, Article 11 (Nicaragua, 1956); Regulation on Civil Aviation, Article 16 (Panama, 1963); Aeronautical Code, Article 18 (Paraguay, 1957); Law on Civil Aviation, Article 27 (El Salvador, 1955); Civil Aviation Law, Articles 23-24 (Guatemala, 1948); Civil Aviation Law, Article 14 (Honduras, 1950); Civil Aeronautics Law, Article 28 (Peru, 1965); Code of Aeronautical Law, Article 27 (Uruguay, 1942); Civil Aviation Law, Article 21 (Venezuela, 1955).

740 Article 5, paragraph 2 of the Air Navigation Decree, adds that in the Register shall be entered the serial number and the distinctive markings. Hamilton, Derecho Aéreo, (1960), p. 204.

Article 8 of Colombia's Law on Civil Aviation states that:

"All aircraft registered in Colombia shall bear as nationality marks such symbols as established by the government." 741

Article 23, Civil Aviation Law of Guatemala, is very specific and detailed, providing the following:

"The registration mark of national aircraft will consist of the letter "T" assigned to Guatemala, as mark of nationality, and a capital "G" as countermark, both in capital letter, followed by a group of three capital letters of the alphabet, at least one of which should be a vowel." 742

Panama's Regulation on Civil Aviation, Article 16, under the title of "Nationality and Registration Marks" provides:

"The nationality marks for Panamanian Civil Aircraft shall be the letters "HP"; the registration mark shall consist of a group of numbers added to this nationality mark, as determined by the General Bureau of Civil Aeronautics".

741 This subject is regulated in Colombia by its Manual of Regulations, No. 37. Cobo Cayon, Derecho Aéreo, (1966), p. 294.

742 Juarez, Derecho Aéreo Guatemalteco, (1957), p. 79.

Uruguay's Code of Aeronautical Law, in its Article 27, Chapter V mentions that the purpose for public or private aircraft to carry distinctive markings is to permit identification in flight.⁷⁴³

An interesting position is taken by the texts of the Dominican Republic, Honduras, El Salvador and Mexico: in addition to the establishment of nationality and registration marks, the texts rule that public transport aircraft must carry the respective national colours.⁷⁴⁴

Article 30 of El Salvador's law on Civil Aviation, under the title "Use of National insignia" provides:

"Salvadorean commercial aircraft must show the national insignia in the regulation form." ⁷⁴⁵

Section H. The loss of Nationality

There are certain situations which result in the loss of nationality for the aircraft. These situations shall be now analyzed:

1) The material destruction of an aircraft after an accident. With the total destruction naturally the legal life of the aircraft ends, and with it the aircraft loses

⁷⁴³ Tolle, "Direito Aeronautico no Uruguay", 3 Boletin ITA, (1960), p. 15.

⁷⁴⁴ Law on Civil Aviation, Article 30 (El Salvador, 1955); Civil Aviation Law, Article 73 (Dominican Republic, 1969); Civil Aviation Law, Article 20 (Honduras, 1950); Book Four, Law of General Means of Communications, Article 315, paragraph 4 (Mexico, 1950).

⁷⁴⁵ Similar wording is used by the laws of Honduras, Mexico and Dominican Republic. Supra, footnote ⁷⁴⁴.

its nationality.⁷⁴⁶ In the same context are aircraft presumed lost or deemed useless.

The aircraft presumed lost must comply with certain legal requirements, after which, it loses its nationality if not found. The useless aircraft, if unable to perform air navigation, is in the same situation.

Both Latin American legislation and doctrine⁷⁴⁷ have studied and regulated this cause for loss of nationality. The Latin American states which have dealt with the material destruction of aircraft are: Argentina, Bolivia, Brazil, Colombia, Dominican Republic, El Salvador, Honduras, Nicaragua, Mexico, Panama, Peru and Venezuela.⁷⁴⁸

⁷⁴⁶ Most statutes, however, declare that only from the time of notification of destruction is nationality lost. Nemeth, Nationality of Aircraft, (1953), p. 70.

⁷⁴⁷ Videla Escalada, 2 Derecho Aeronautico, (1969), p. 99; Loustau Ferran, La Aeronave, (1958), p. 177.

⁷⁴⁸ Aeronautical Code, Article 45, No 5 (Argentina, 1967); Air Code, Article 17, No 4 (Brazil, 1966); Law on Civil Aviation, Articles 9, No 2 and 11 (Colombia, 1938); Civil Aviation Law, Articles 71 b) and 251 (Dominican Republic, 1969); Law on Civil Aviation, Articles 28 and 46 (El Salvador, 1955); Civil Aviation Law, Article 17 b) (Honduras, 1950); Civil Aviation Code, Articles 12 c) and 23 c) (Nicaragua, 1956); Regulation on Civil Aviation, Article 14 c) (Panama, 1963); Book Four, Law of General Means of Communications, Article 373 c) (Mexico, 1950); Civil Aeronautics Law, Article 36 (Peru, 1965); Civil Aviation Law, Article 60 (Venezuela, 1955).

Article 28 of El Salvador's Law on Civil Aviation states that there is a cancellation of registration and subsequent loss of nationality,

"...when the aircraft has been completely destroyed or presumed lost in conformity with the law".

Article 60 of Venezuela's Civil Aviation Law provides:

"An aircraft shall be considered lost when its destruction is proved, when it is declared unserviceable by the aviation authority, as the consequence of a disaster, or when three months have passed since the date on which the last news was received from it."

The laws of El Salvador, Dominican Republic, Honduras, Nicaragua and Venezuela mention and describe the case of material destruction and loss of an aircraft as a cause of losing its nationality, while the other laws refer to the case as one of cancellation of registration, which results in the loss of nationality.

Article 373, Book Four of Mexico's Law of General Means of Communications states that the registration of an aircraft may be cancelled "...when the aircraft is destroyed or lost".⁷⁴⁹

Brazil's Air Code in its Article 17, No 4 provides that the aircraft will be considered lost if not found in the term of 180 days, from the last time seen

⁷⁴⁹ Linares, Registro Aeronautico, (1956), p. 139.

or heard of officially, and when the impossibility of its recuperation has been verified,⁷⁵⁰

If the aircraft is later on found, its registration must be revalidated. Also the presumption of the aircraft's loss admits proof to the contrary.

The loss of an aircraft, as we have seen, is discussed in the majority of Latin American laws,⁷⁵¹ with the exception of the texts of Bolivia, Colombia, Costa Rica, Chile, Ecuador, Guatemala and Uruguay.

Article 27 of Cuba's Regulation on Civil Aviation states:

"In the case of loss, destruction, or disuse of an aircraft its owner shall notify the Ministry of National Defense within the shortest possible time, so that it may be taken off the respective registers."

Panama's Regulation on Civil Aviation, Article 14 c), states that there shall be a cancellation of registration,

⁷⁵⁰ Valle, Código Brasileiro do Ar, (1967), p. 41.

⁷⁵¹ Aeronautical Code, Article 46 (Argentina, 1967); Air Code, Article 17, No 4 (Brazil, 1966); Regulation on Civil Aviation, Article 27 (Cuba, 1928); Civil Aviation Law, Article 243 (Dominican Republic, 1969); Law on Civil Aviation, Article 46 (El Salvador, 1955); Civil Aviation Law, Article 151 (Honduras, 1950); Book Four, Law of General Means of Communications, Article 360 (Mexico, 1950); Civil Aviation Code, Article 146 (Nicaragua, 1956); Regulation on Civil Aviation, Article 14 (Panama, 1963); Aeronautical Code, Article 10 (Paraguay, 1957); Civil Aeronautics Law, Article 36 (Peru, 1965); Civil Aviation Law, Article 60 (Venezuela, 1955).

"...when the aircraft has been totally destroyed or presumed lost in accordance with the law, and when in cases of disappearance without justification 90 days have elapsed from the date of the last notice thereof." 752

2) Registration in a foreign country: The idea of unity between registration and nationality determines that an aircraft's registration in a foreign country, voids its former nationality.

Article 18 of Chicago's Convention deals with this matter. It states that,

"An aircraft cannot be validly registered in more than one State..."

The idea is explicitly recognized in the texts of Argentina, Bolivia, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, El Salvador, Honduras, Nicaragua, Panama, Paraguay and Uruguay.⁷⁵³ In the laws of Brazil,

752 The "90 days" rule is also followed by the laws of Honduras, Mexico, Nicaragua and Dominican Republic. Supra, Footnote 751.

753 Aeronautical Code, Article 39 (Argentina, 1967); Air Service Decree, Article 3 (Bolivia, 1930); Air Navigation Decree, Article 8 (Chile, 1931); Regulation on Civil Aviation, Article 13 (Panama, 1963); Aeronautical Code, Article 17 (Paraguay, 1957); Law on Civil Aviation, Article 9 (Colombia, 1938); Law on Civil Aviation, Article 62 (Costa Rica, 1949); Regulation on Civil Aviation, Article 21 (Cuba, 1928); Civil Aviation Law, Article 71 (Dominican Republic, 1969); Law on Civil Aviation, Article 28 (El Salvador, 1955); Civil Aviation Law, Article 17 (Honduras, 1950); Civil Aviation Code, Article 12 (Nicaragua, 1956); Code of Aeronautical Law, Article 19 (Uruguay, 1942).

Guatemala and Mexico it can also be found through interpretation.⁷⁵⁴ This rule is not included in the laws of Ecuador, Peru and Venezuela. This is a critical omission because the treaty obligation is not fulfilled.

Article 21, paragraph 1 of Cuba's Regulation on Civil Aviation states:

"An aircraft which is registered in a foreign country may not be registered in the Republic of Cuba until it is duly proven that the former registration has been cancelled."

Article 8 of Chile's Air Navigation Decree⁷⁵⁵ also mentions this argument, stating:

"An aircraft registered in Chile shall lose its Chilean nationality when the owner or owners register it in a foreign country." ⁷⁵⁶

The Panamanian Regulation on Civil Aviation, through its Article 13, approaches this matter, with a prohibition:

⁷⁵⁴ Air Code, Articles 13-14 (Brazil, 1966); Civil Aviation Law, Article 13 (Guatemala, 1948); Book Four, Law of General Means of Communications, Article 312 (Mexico, 1950).

⁷⁵⁵ Paraguay's Aeronautical Code has the same approach as Chile. Tolle, Air Law in Latin America, (1960), p. 217.

⁷⁵⁶ Hamilton, Derecho Aéreo, (1960), p. 194.

"No aircraft which has been registered in the Republic may do so in another country, as long as it has not cancelled its Panamanian Registration".

Guatemala assumes a similar position to those mentioned above, however the position is only ascertained in the legal interpretation of its Civil Aviation Law. Article 13, paragraph 1 states:

"The nationality of an aircraft shall be that of the last country in which it has been registered".

Paragraph 2 refers to the prohibition of dual registration, and paragraph 3 allows an aircraft registered in a foreign country to register in Guatemala, subject to cancellation of the previous registration.⁷⁵⁷

Some Latin American legislation has gone even further, in order to avoid dual registration of aircraft. They have successfully demanded as a previous requirement for registration, evidence that the former registration has been cancelled in the foreign country.

The laws of Guatemala, Honduras, Mexico, Nicaragua, Panama and Uruguay contain this ruling.⁷⁵⁸ Brazil,

⁷⁵⁷ Martinez-Sobral, Derecho Aeronautico, (1968), p. 32.

⁷⁵⁸ Civil Aviation Law, Article 13 (Guatemala, 1948); Civil Aviation Law, Article 18 (Honduras, 1950); Book Four, Law of General Means of Communications, Article 312 (Mexico, 1950); Civil Aviation Code, Article 10 (Nicaragua, 1956); Regulation on Civil Aviation, Article 11 (Panama, 1963); Code of Aeronautical Law, Article 25 (Uruguay, 1942).

Argentina, Cuba and Peru are even more strict, since they demand that the registration in their countries, will mean the immediate cancellation of the former registration.⁷⁵⁹

Article 18 of Honduras Civil Aviation Law, paragraph 2, provides:

"An aircraft registered in another State may acquire Honduran markings of nationality and registration, when the previous former registration is cancelled." ⁷⁶⁰

Article 24 of Peru's Civil Aeronautics Law states that the registration of an aircraft in the Aircraft Public Registry means the automatic cancellation of every former registration.

3) Failure to comply with legal requirements: Aircraft also lose their nationality, if once registered in The National Register, it fails to comply with the conditions required. These requirements are mainly demanded of physical or legal persons in order for them to be owners of national aircraft or for them to be able to register aircraft in the National Register.⁷⁶¹ This clause is

⁷⁵⁹ Aeronautical Code, Article 36 (Argentina, 1967); Air Code, Article 13 (Brazil, 1966); Regulation on Civil Aviation, Article 21 (Cuba, 1928); Civil Aeronautics Law, Article 24 (Peru, 1965).

⁷⁶⁰ Rino, Derecho Aéreo, (1974), p. 97.

⁷⁶¹ Loustau Ferran, La Aeronave, (1958), p. 107; Lena Paz, Derecho Aeronautico, (1969), p. 144.

found in the texts of Argentina, Chile, El Salvador, Nicaragua, Panama, Peru and Uruguay.⁷⁶²

Article 26 of Uruguay's Code of Aeronautical Law requires the following conditions for ownership:

- a) Aircraft must belong to persons domiciled in the Republic and that such persons own more than one half of the value of the aircraft; or,
- b) Aircraft must belong to a Corporation with headquarters in the Republic, the majority of whose members represent more than one-half of the value of the aircraft; or,
- c) Aircraft must belong to partnerships or corporations domiciled in the country, whose director and at least one over one-half of its administrators are domiciled on national territory.

Article 19 states that,⁷⁶³

"Aircraft registered in the Republic shall lose their nationality when they fail to fulfill the requirements established." ⁷⁶⁴

⁷⁶² Aeronautical Code, Article 46 (Argentina, 1967); Air Navigation Decree, Article 8 (Chile, 1931); Law on Civil Aviation, Article 28 (El Salvador, 1955); Civil Aviation Code, Article 12 (Nicaragua, 1956); Regulation on Civil Aviation, Article 14 (Panama, 1963); Civil Aeronautics Law, Article 29, No 2 (Peru, 1965); Code of Aeronautical Law, Articles 29 and 19 (Uruguay, 1942).

⁷⁶³ Tolle, "Dereito Aeronautico no Uruguay", 3 Boletim ITA, (1960), p. 11 & 14.

⁷⁶⁴ The requirements are established by Article 26, *Supra*, p. 235, footnote 762.

This requirement is in effect in Argentina at the government's initiative.⁷⁶⁵ Nicaragua's Civil Aviation Code, in its Article 12b), provides that the registration of an aircraft shall be cancelled, "...when the owner no longer possesses the necessary requirements to be the owner of the aircraft".

4) a) Transfer of an aircraft to a foreigner, in those countries where a nationality requirement must be met before registration; b) transfer of an aircraft to a non-domiciled foreigner, in those countries where only the domicile of the owner is required. A previous administrative act, that of the "cancellation of registration", will cause the aircraft in both cases to lose its nationality.⁷⁶⁶

5) Change of domicile or nationality. If the owner of an aircraft changes domicile, or even nationality, that will mean according to some legislations that the aircraft loses its nationality.⁷⁶⁷

⁷⁶⁵ Lena Paz, Derecho Aeronautico, (1969), p. 144.

⁷⁶⁶ Videla Escalada, 2 Derecho Aeronautico, (1969), p. 98; Saint-Alary, Droit Aerien, (1955), p. 49.

⁷⁶⁷ Loustau Ferran, La Aeronave, (1958), p. 108; Hamilton, Derecho Aéreo, (1960), p. 194-195.

CHAPTER 4. AIRCRAFT CLASSIFICATION

There are three important ways of classifying aircraft:⁷⁶⁸

- a) Technical and aeronautical;
- b) Functional;
- c) Legal.

We shall proceed to analyze these classifications.

Section A. Technical and Aeronautical Classification

This classification categorizes the aircraft by such elements as its aerodynamic lift, its flight characteristics, propeller characteristics, control of the aircraft, etc.

1) Annex 7 to Chicago Convention⁷⁶⁹ makes a distinction between non-power driven and power-driven aircraft. Both of them can be found in the heavier than air and lighter than air aircraft.⁷⁷⁰ The classification is based upon

⁷⁶⁸ Loustau Ferran, La Aeronave, (1958), p. 29.

⁷⁶⁹ Annex 7, Aircraft Nationality and Registration Marks, (1969), p. 8.

⁷⁷⁰ Heavier than air aircraft derive their lift from aerodynamic forces, while lighter than air are supported mainly by their buoyancy in the air.

the origin of the aircrafts power to fly. Latin American legislation nowadays does not follow this classification, but Dominican Republic's former law on Civil Air Navigation,⁷⁷¹ in its Article 14 contained the same chart of Aircraft Classification as that given by Annex 7.

2) The control of the aircraft gives rise to another classification - that between manned aircraft and pilotless aircraft. Article 8 of the Chicago Convention refers to pilotless aircraft, ruling that no aircraft capable of being flown without a pilot, shall be flown without a pilot over the territory of a contracting state without special authorization by that State, and in accordance with the terms of such authorization.⁷⁷²

3) Flight characteristics permits a distinction to be made between aeroplanes, rotorcrafts and ornithopters.⁷⁷³

4) For the propeller a distinction is made between piston and turbo prop powered aircraft.

5) The aircraft performance allows the differentiation between subsonic and supersonic aircraft.

Law has tried to avoid the technical-aeronautical classifications, since they appear and disappear very rapidly, being dependent mainly upon aeronautical

⁷⁷¹ Law 1915, Article 14 (Dominican Republic, 1949).

⁷⁷² Article 8 of Chicago Convention is similar to the Second paragraph of Article 15 of the Paris Convention. 2 Proceedings International Civil Aviation Conference (1949), p. 1382.

⁷⁷³ Aeroplane: a power driven, heavier than air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight. Rotorcraft: one supported in flight by the reactions of the air on one or more rotors. Ornithopter: supported in flight chiefly by the reactions of the air on planes to which a flapping motion is imparted.

development and manufacturing. The classifications have legal weight, only in matters proper to regulations, such as markings, licenses, airworthiness and especially air traffic.⁷⁷⁴

The legal importance of the technical classification can be determined mainly, in regard to air traffic rules, as there are different rules for different occasions depending upon the aircraft characteristics. Some of these rules pertain to signals or lights, priority in landings or crossings, etc.

Section B. Functional Classification

This classification divides aircraft according to their use or employment. The following functional classifications may be used:

1-Military

2-Transport: a) Cargo

b) Passengers

c) Mail

d) Mixed.

3-Aerial Work: a) Agriculture

b) Aerophotography

c) Meteorology

d) Sanitary

e) Fire-Fighting

f) Air Taxi

g) Mining and Fishing Services.

4-Sport, Touring or Recreation.

5-Police.

6-Customs.

7-Acrobaties.

8-Trial and Experimental.

⁷⁷⁴ Rodriguez Jurado, Derecho Aeronautico, (1963), p. 85; Lena Paz, Derecho Aeronautico, (1969), p. 139.

These classifications are useful for the Administration in regulating each of these activities, particularly in handling matters of air safety.⁷⁷⁵

Some laws refer to these distinctions for the purpose of regulating air activities. Most Latin American laws reserve aerial work for national aircraft or for "foreign countries" aircraft permitted to work under a strict concession.

In some instances the functional classification distinguishes between peace and war aircraft. This differentiation is based upon the fact that foreign state aircraft entering the airspace of another country in peacetime will obviously receive a different treatment than if it were to enter during a war.⁷⁷⁶

In Latin America the functional criteria is followed in the internal regulations, such as the case of Brazil, where this classification is considered within Ministerial Orders, which complement the Air Code.

One Ministerial Order adopted a classification of transport aircraft, which distinguished between passengers, cargo and mixed aircraft.⁷⁷⁷ Another order⁷⁷⁸ contained an extremely detailed classification, regarding the type of aircraft and its use. The types classified are the following:

⁷⁷⁵ Loustau Ferran, La Aeronave, (1958), p. 32.

⁷⁷⁶ de Rode Verschoor, "The Legal Status of State-Aircraft", 2 IDA, (1963), p. 131.

⁷⁷⁷ Portaria No 120 (6/6/1949, Brazil). Classifies aircraft according to their function.

⁷⁷⁸ Portaria No 222 (18/9/1950, Brazil). Establishes Civil Aircraft categories.

- a) Administrative aircraft;
- b) Public Transport aircraft;
- c) Private Transport aircraft;
- d) Specialized Services;
- e) Training and Instruction Aircraft;
- f) Recreation aircraft.⁷⁷⁹

Guatemala's Civil Aviation Law gives a detailed classification⁷⁸⁰ of aircraft in Article 11. Aircraft are classified in State and private, and among the latter one, following a functional criteria the law mentions public transport aircraft, aircraft for aerial work, touring and sport aircraft and trial and experimental aircraft.⁷⁸¹

Section C. Legal Classification

Among the legal classifications we must distinguish the following:

779 The aforementioned ministerial orders had the purpose of complementing the former Brazilian Air Code, which only distinguished between public and private aircraft. Ministerio de Aeronautica, Manual de legislacao Aeronautico, (Rio de Janeiro: 1951), p. 63 & 162.

780 Other Latin American laws which classify aircraft in a functional way are those of Colombia, Nicaragua, Cuba, El Salvador and Honduras. The laws usually mention one or two types of the functional classification and not in as much detail as that followed by Article 11 of Guatemala's Civil Aviation Law. Peru falls also in this group, because it has a complete classification of aircraft when it is defining special services aircraft, in its Regulation on Civil Aeronautics, Articles 27 & 29 (Peru, 1964).

781 Martinez-Sobral, Derecho Aeronautico, (1968), p. 32.

- 1) National and Foreign;
- 2) Civil and Commercial;
- 3) Civil and Military;
- 4) Public and Private.⁷⁸²

1) National and Foreign Aircraft: The importance of this classification arises from the attribute of nationality given to the aircraft, with all the implications of that attribute (already discussed in this work).⁷⁸³ We refer particularly to the problem of the admittance of an aircraft to the airspace of another country, as well as to those rules of international air traffic regulated by the Chicago Convention.⁷⁸⁴ The distinction means that national aircraft are those entered in the registry of their state, while those that are not entered in such a registry are foreign aircraft.

2) Civil and Commercial Aircraft: Legislation and doctrine apply the distinction between commercial and private or civil service aircraft. The criterion adopted to make a distinction is whether or not the aircraft is used for profit.⁷⁸⁵ Commercial aircraft operate in order to make a profit, while those of private service, provide transportation without earning money. The classification applies only to aircraft which do not have a public character.

⁷⁸² Among private aircraft, another distinction must be made between State and Civil Aircraft.

⁷⁸³ See, Part II, Chapter 3, Section A, p. 188.

⁷⁸⁴ Videla Escalada considers that this is not a scientific classification, since it is only a mere proof of the consequence of aircraft having a nationality. Videla Escalada, 2 Derecho Aeronautico, (1969), p. 37.

⁷⁸⁵ Delascio, Derecho de la Aviacion, (1959), p. 78.

The laws of Chile, Dominican Republic and Uruguay use this classification.⁷⁸⁶

Article 2 of Chile's Air Navigation Decree, states when referring to Civil aircraft, that "...they shall be divided into private and commercial aircraft."⁷⁸⁷

Articles 15 and 16 of Uruguay's Code of Aeronautical Law define Private and Commercial Aircraft. Article 15 states that,

"Private aircraft are those which are not used for a commercial purpose, directly or indirectly, regardless of the kind of the owner or owners."

Article 16 defines Commercial aircraft as,

"...those intended for the carriage of persons, mail, cargo or which are generally used in scheduled or non-scheduled service of profit to the owner." ⁷⁸⁸

The distinction is also recognized in some other Latin American laws, which use expressions, such as "public transport service" and "private service".

⁷⁸⁶ Air Navigation Decree, Article 2 (Chile, 1931); Civil Aviation Law, Articles 64-65 (Dominican Republic, 1969); Code of Aeronautical Law, Articles 15-16 (Uruguay, 1942).

⁷⁸⁷ Hamilton criticizes the Chilean Law, principally because he considers a possible confusion between the terms "civil" and "private", especially since the latter is not used in laws or regulations. Hamilton, Derecho Aéreo, (1960), p. 178;

⁷⁸⁸ Bauza Araujo, Derecho Aéreo, (1955), p. 147.

Such is the case with the laws of El Salvador, Guatemala, Honduras, Nicaragua and Venezuela.⁷⁸⁹

Article 44, Civil Aviation law of Venezuela, uses the expressions "commercial air service" and "private air service". The former are "...those used for aerial work other than transportation", while the private air service aircraft are "...those used for private purposes of their owners and those belonging to aviation schools or to other private aeronautical institutions."⁷⁹⁰

Nicaragua's Civil Aviation Code in its Article 6 provides that,

"Civil Aircraft are classified as public transportation aircraft and aircraft in private service."

Article 7 defines both of them: Public transportation aircraft are "those used in the transportation of persons, cargo or mail"; aircraft in private service are those used "in tourist traffic, aviation work, private services of corporations and private affairs of the owners, industrial activities, training and scientific application of aviation."⁷⁹¹ However, Nicaragua's Civil Aviation Code does not use the criterion of profit or non-profit purpose to distinguish civil and commercial

⁷⁸⁹ Law on Civil Aviation, Articles 19 & 20 (El Salvador, 1955); Civil Aviation Law, Article 12 (Guatemala, 1948); Civil Aviation Law, Articles 11-12 (Honduras, 1950); Civil Aviation Code, Articles 6-7 (Nicaragua, 1956); Civil Aviation Law, Article 44 (Venezuela, 1955).

⁷⁹⁰ Lares, Derecho Aeronautico Venezolano, (1954), p. 49.

⁷⁹¹ Tolle, Air Law in Latin America, Appendix (1960), p. 68.

aircraft.

Guatemala's Civil Aviation Law, in its Article 12 recognizes four types of private aircraft: public transport aircraft, touring and sport aircraft, aircraft for aerial work, and trial and experimental aircraft.⁷⁹² The distinction between civil and commercial aircraft is acknowledged between public transport aircraft, which receive a compensation for their service, and touring and sport aircraft, which do not receive any compensation for their performance.⁷⁹³

Videla Escalada while recognizing a valid base for the distinction, considers it to be more apparent than real, since it is very possible that an aircraft is used for more than one activity.⁷⁹⁴

3) Civil and military aircraft: This classification has provoked much discussion. In doctrine, a "consensus" exists that there should be a tertium genus, with State aircraft being owned by the state and not used for military service. Modern doctrine tends to distinguish between public or state aircraft and private aircraft. Military aircraft is considered to be a type within the public aircraft.

⁷⁹² Martinez-Sobral, Derecho Aeronautico, (1968), p. 32.

⁷⁹³ According to Article 12, of Guatemala's Civil Aviation law, public transport aircraft shall include those aircraft used for the public and paid transport of passengers, mail or merchandise. Touring and sport aircraft shall be those privately owned aircraft used for private purposes of their owners, or which are used for tourism and sport, provided that the owners of such aircraft receive no compensation of any nature in exchange for their flights.

⁷⁹⁴ Videla Escalada, 2 Derecho Aeronautico, (1969), p. 37.

Fauchille in 1902 distinguished between civil and state aircraft, including among the latter also military aircraft.⁷⁹⁵ The Air Navigation Conference of 1910, occupied itself with the status of state aircraft. Following Fauchille's example, the final draft of an International Convention of Air Navigation referred to state aircraft.⁷⁹⁶ Article 40 of this draft stated that public aircraft were deemed to be those employed in the service of a contracting state, and which were under the orders of a duly-commissioned official of that state. Article 41 stated that military aircraft were public aircraft in military service when they were under the orders of a commander in uniform, and had on board a certificate proving their military character.⁷⁹⁷

The 1919 Paris Convention refers to the status of State aircraft in its Articles 30 to 33. Article 30 considered as state aircraft⁷⁹⁸ both military aircraft as well as those exclusively employed in State service.⁷⁹⁹

Article 31 of Paris defined military aircraft in the following way:

⁷⁹⁵ Fauchille, "Le domaine aerien et le regime juridique des aerostates", 8 RGDIP, (1901), p. 446.

⁷⁹⁶ de Rode-Verschoor, "Legal Status of State-Aircraft", 2 IDA, (1963), p. 118.

⁷⁹⁷ Rippon, The Legal status of Military Air Transport, LL.M. Thesis, McGill University, (Montreal: 1957), p. 140.

⁷⁹⁸ Article 30 of the Paris Convention provided at the same time that "all state aircraft other than military, customs, and police aircraft shall be treated as private aircraft...". Therefore these aircraft are not deemed to be private aircraft, but merely treated as such. Bin Cheng, "State ships and state aircraft", 11 CLP, (1958), p. 233.

⁷⁹⁹ State service meant posts, customs and police. Zollman, Law of the Air, (1927), p. 140.

"Every aircraft commanded by a person in military service detailed for the purpose shall be deemed to be a military aircraft." 800

The criterion determining the definition of state aircraft in Paris is its destination for public service. It is then decisive the utilization the aircraft receives, in the criterion determination.

The distinction between civil and military aircraft was clearly discussed in The Peace Treaties which followed the First World War. The wording was similar in all of them and distinguished between military or naval aircraft and civil aircraft.⁸⁰¹

The Madrid Convention, (1926) contained, in its Chapter IV, identical provisions to those of Paris on the subject of state aircraft. The Havana Convention incorporated the same provisions in its Article 3, with one exception - using the term "military and naval aircraft", instead of "military aircraft".⁸⁰²

The Chicago Convention does not define in a precise manner what a military aircraft is. Article 3(b) indicates what should be understood for "state aircraft", providing that they would be those "used in military, customs and police services". Following Chicago's inter-

800 Thaher, International Law and The Legal Status of Aircraft in Peacetime, LL.M. Thesis, McGill University, (Montreal: 1969), p. 3.

801 The Peace Treaties which followed the first World War were the following: Versailles with Germany (1919); St. Germain with Austria (1919); Neuilly with Bulgaria (1919); Trianon with Hungary (1920) and Sevres with Turkey (1920).

802 Thaher, Legal Status of Military Aircraft, (1969), p. 8.

pretation, a military aircraft is an aircraft used in military services.⁸⁰³

Article 3(a) of Chicago indicates to which type of aircraft the Convention applies, and excludes state aircraft from the scope of Chicago.⁸⁰⁴

Other Conventions in the Air Law field which exclude military aircraft from their provisions are the following: Rome Convention (1933); Brussels Convention (1938); Geneva Convention (1948); Rome Convention (1952); Warsaw Convention (1929); Tokyo Convention (1963); Hague Convention (1970) and Montreal Convention (1971).⁸⁰⁵

803 Honig, Legal Status of Aircraft, (1956), p. 39.

804 It can be said that possibly the intention of the drafters of Chicago was to provide only that the categories of aircraft mentioned in Article 3(b) were to be excluded from the application of the Convention. Other state aircraft (owned or operated) should be treated as private aircraft in its relation to the Convention, as it can be seen in Article 79 of Chicago, which mentions specifically state-owned or partly state-owned air transport undertakings. Cheng, International Air Transport, (1962), p. 112.

805 Rome Convention on the Unification of Rules Covering Damage caused by Aircraft to third parties on the ground, Article 21 (29/5/1933); Rome Convention on the Unification of laws regarding the precautionary arrest of Aircraft, Article 3 (29/5/1933); Brussels Convention on Assistance and Salvage of and by Aircraft at sea, Article 16 (29/9/1938). Geneva Convention on International Recognition of Rights in Aircraft, Article 13 (June, 1948); Rome Convention on Damage Caused by Foreign Aircraft to third parties on the surface, Article 26 (October, 1952); Protocol to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air, Articles 1 & 2 (The Hague, September, 1955); Convention on offences and certain other acts committed on board aircraft, Article 1.4 (Tokyo, September, 1963); Convention for the Suppression of Unlawful Seizure of Aircraft, Article 3.2 (The Hague, December 1970); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Article 4.1 (Montreal, September 1971).

Public and Private air law development, from its origins, has indicated that there are different rules for State and civil aircraft; this difference is one of the most relevant principles of international air regulation. The military aircraft has received a different treatment from other types of aircraft due to its special nature.⁸⁰⁶

Doctrine and International Conferences have tried to adopt a clear definition of military aircraft.

Authors of definitions have generally maintained their views on the following bases:⁸⁰⁷

- a) The type of ownership of the aircraft, public or private;
- b) Distinguishing physical factors, such as a certificate of registration or national markings;
- c) Limitations on the mechanical construction of the aircraft;
- d) The legal status of the Aircraft commander, and its crew;
- e) The type of service for which the aircraft was designed or used;
- f) A combination of two or more of these factors.⁸⁰⁸

These bases can be clearly ascertained from the following definitions. Ming-Min Pen defines military aircraft as "those aircraft operated by the state

⁸⁰⁶ Ming-Min Peng, Le statut juridique de l'aeronaf militaire, LL.M. Thesis, McGill University, (Montreal: 1953), p. 40.

⁸⁰⁷ The same bases and conditions should be applicable to state aircraft.

⁸⁰⁸ Rippon, Military Air Transport, (1957), p. 156.

for military or hostile purposes".⁸⁰⁹ De Vlugt considers that

"military aircraft are those aircraft forming part of, or destined (according to the inscription file) to form part of an air force." ⁸¹⁰

The United Kingdom Air Navigation Order, 1974, provides that,

"Military aircraft includes the naval, military or air force aircraft of any country and...any aircraft in respect of which there is in force a certificate issued by the Secretary of State that the aircraft is to be treated for the purposes of this Order as a military aircraft." ⁸¹¹

The International lawyers who wrote the Harvard draft on Neutrality in Naval and Aerial Warfare (1939), defined military aircraft as that "aircraft used for military purpose". Although it is a clear-cut definition, no one has chosen to abide by it.⁸¹²

⁸⁰⁹ The definition points out that it does not matter whether the owner is or is not the state. Ming-Min Peng, "La définition de l'aéronaf militaire", 10 RFDA, (1956), p. 132.

⁸¹⁰ Rode-Verschoor, "Legal status of state-aircraft", 2 IDA, (1963), p. 123.

⁸¹¹ Air Navigation Order (1974), S.I. 1974 No 1114, Article 91. Shawcross & Beaumont, On Air Law, Appendix C, Issue 7 (1975), p. 1380.

⁸¹² De Saussure, International Law and Aerial Warfare, LL.M. Thesis, McGill University, (Montreal: 1953), p. 33.

In Latin America, Costa Rica is the only country whose classification includes civil, military and state aircraft. In Article 142, of its law on Civil Aviation, clauses e), g) and h) a "civil aircraft" is defined as that "which is not military or state aircraft", the military aircraft is described as that "used by the Armed Forces of the country, or placed at their service", the State aircraft is considered to be aircraft used "in the service of a state".

The distinction between civil and military aircraft in Latin America is only accepted by Brazil's Air Code, Article 9. Civil aircraft, includes public and private aircraft.⁸¹³ The former Brazilian Air Code of 1938, and the first drafting of the 1966 Code, placed military aircraft among public aircraft. This classification seems to be more logical, because the relationship between military and public aircraft is closer than the relationship between military and civil aircraft, especially in the international field.

A definition of military aircraft is provided by the laws of Brazil, Bolivia, Colombia, Chile, Costa Rica, Cuba, Dominican Republic and Ecuador.⁸¹⁴

⁸¹³ Da Silva Pacheco, "A exploração de Aeronave pelo transportador aéreo no Direito Interno e Internacional", 32 RBDA, (1973), p. 159; Valle, Código Brasileiro do Ar, (1967), p. 32.

⁸¹⁴ Air Code, Article 9 (Brazil, 1966); Law on Civil Aviation, Article 142 (Costa Rica, 1949); Air Service Decree, Article 4 (Bolivia, 1930); Law on Civil Aviation, Article 4 (Colombia, 1938); Regulation on Civil Aviation, Article 14 (Cuba, 1928); Air Navigation Decree, Article 2 (Chile, 1931); Civil Aviation Law, Article 66 (Dominican Republic, 1969); Law of Air Traffic, Article 3 (Ecuador, 1960).

The laws of Brazil and Costa Rica follow a functional criteria; the Brazilian law concludes that military aircraft are those destined for military missions, while Costa Rica's law determines that military aircraft are those used by the public force.

On the other hand the other texts⁸¹⁵ which define the military aircraft give priority to the crew factor, in order to qualify an aircraft as military.

Article 2a) of Chile's Air Navigation Decree determines that military aircraft are those "whose crew consists of military personnel commissioned for the purpose".⁸¹⁶

Article 4 of Bolivia's Regulations for Air Traffic⁸¹⁷ mentions that military aircraft are those commanded by an Air Force pilot commissioned for that purpose.⁸¹⁸ Bolivia's law is then more specific than the Chilean law, since it refers to only one of the military branches, the Air Force, to classify and determine when an aircraft is military.

Article 14 of Cuba's Regulation on Civil Aviation provides that aircraft are military,

815 The other texts which we refer to are those of Bolivia, Colombia, Chile, Dominican Republic and Ecuador. Supra, Footnote 814, p. 251.

816 Hamilton, Derecho Aéreo, (1960), p. 178.

817 Decree of January 10, 1939, adopts the text for Regulations for Air Traffic over National Territory in 216 Articles.

818 Tolle, "Direito Aeronautico na Bolivia", 1 Boletín ITA, (1959), p. 2.

"...when they belong to the Army or Navy, or when they are commanded by an officer of said forces in military or naval service."

Article 3 of Ecuador's Law of Air Traffic states,

"Military aircraft are those commanded by personnel in active military service or commissioned for that purpose by the competent authority."

Article 66 of Dominican Republic's Civil Aviation Law points out to different situations, considering who is in command of the aircraft:

"A civil aircraft commanded by military personnel, commissioned for that purpose will be considered military. However a military aircraft commanded, accidentally, by civil personnel, will not determine the loss of its military character."

The military aircraft, and its classification have enormous importance in Air Law, since they are manifestations of the sovereignty of any state. Military aircraft are also under state control and the responsibility of the state. For these reasons military aircraft are considered an exception.⁸¹⁹

⁸¹⁹ Videla Escalada, 2 Derecho Aeronautico, (1969), p. 45.

It has been mentioned already the exclusion from the scope of the Chicago Convention of State aircraft,⁸²⁰ and today no international treaty regulating state aircraft can be found, so it might appear that military aircraft lack an international statute. However the principle and practice of international law is to recognize in foreign military aircraft a condition of extraterritoriality, and whenever duly authorized they enter in the airspace of another state.⁸²¹

The Paris Convention (Article 32), the Ibero American Convention (Article 32) and Chicago (Article 36) regulated that no military aircraft of a determined state could fly over the territory of another state or land without the authorization by a special agreement.⁸²² This procedure for military aircraft is also followed by other state aircraft.

In Latin America this situation is regulated by the texts of Argentina, Bolivia, Costa Rica, Chile, Dominican Republic, Ecuador, Guatemala, Honduras, Panama,

⁸²⁰ Chicago Convention, Article 3a), states that the Convention only applies to Civil Aircraft and excludes state aircraft.

⁸²¹ In the absence of tacit acquiescence or express agreement, there is under International Customary law, no right of entry at all for the aircraft of another State, whether state or private aircraft. Bin Cheng, "State ships and state aircraft", 11 CLP, (1958), p. 237.

⁸²² Ming-Min Peng, Aeronef Militaire, (1953), p. 123.

Paraguay and Uruguay.⁸²³

Article 17 of Argentina's Aeronautical Code refers to the adoption of exceptions for the entry of foreign aircraft whenever there is a search, assistance or rescue, or sanitary or humanitarian reasons.⁸²⁴

Article 4 of Bolivia's Air Service Decree provides:

"No foreign military or civil aircraft whose pilots or crews are members of the armed forces or of any branch of the administration of a foreign country may land or set down on water within the borders of the country... without prior authorization from the executive power, requested through diplomatic channels."

Article 39 of Ecuador's Law of Air Traffic states:

"No foreign military aircraft may fly over the national territory or land thereon without authorization from the Ecuadorian Government, granted by the authority which, under the Consti-

⁸²³ Aeronautical Code, Article 17 (Argentina, 1967); Air Service Decree, Article 4 (Bolivia, 1930); Air Code, Article 66 (Brazil, 1966); Law on Civil Aviation, Articles 2 & 3 (Costa Rica, 1949); Air Navigation Decree, Articles 14 & 25 (Chile, 1931); Civil Aviation Law, Article 37 (Dominican Republic, 1969); Law of Air Traffic, Article 39 (Ecuador, 1960); Civil Aviation Law, Article 70 (Guatemala, 1948); Civil Aviation Law, Article 111e (Honduras, 1950); Regulation on Civil Aviation, Article 98 (Panama, 1963); Aeronautical Code, Article 40 (Paraguay, 1957); Code of Aeronautical Law, Article 7 (Uruguay, 1942).

⁸²⁴ Lena Paz, Codigo Aeronautico, (1971), p. 56.

tution may properly do so, except in case of a forced landing on the ground or on water."

Article 66 of Brazil's Air Code authorizes every civil aircraft, from a country with which Brazil has agreements, to fly over Brazilian territory, but all others (considering among them military aircraft) need an authorization from the aeronautical authority.⁸²⁵

Once the military aircraft is authorized to enter into the foreign airspace, it is not regulated legally with respect to registration certificates, or airworthiness certificates, markings and external signs. The military aircraft is compelled to follow only those regulations considered in the respective authorization.

Chile's Air Navigation Decree, Article 25, paragraph 2 states that

"...except as provided otherwise, such military aircraft shall enjoy the customary privileges granted to foreign warships."

Article 7 of Uruguay's Code of Aeronautical Law states that:

"Foreign military aircraft and their crews shall enjoy on national soil the same privileges and immunities granted by domestic law and principles of public international law to foreign war vessels and their crews stationed in the territorial waters of the Republic." 826

⁸²⁵ Valle, Codigo Brasileiro do Ar, (1967), p. 115.

⁸²⁶ Tolle, "Direito Aeronautico no Uruguay", 3 Boletim ITA, (1960), p. 5.

Military aircraft have still another important consideration, the immutability of their military character. However a civil aircraft may transitorily assume a military character, by such means as seizure, requisition, or by the mere fact that the crew commanding the plane are military personnel especially commissioned for such a flight (in those states where a subjective criterion is applied to qualify military aircraft). In these situations civil aircraft lose their civil character and are not bound by civil aircraft rules. On the other hand military aircraft cannot acquire a civil character, except in cases when they are absolutely divested of their military certification.⁸²⁷

A reverse position would put a given country in a position to misuse civil aviation, incompatible with the principle maintained by the Chicago Convention.⁸²⁸

Section D. Public and Private Aircraft

The most important classification is that followed by the Chicago Convention, which distinguishes between public and private aircraft, although it uses the expressions "state" and "civil" aircraft.⁸²⁹

There are three doctrinaire criteria to be followed when making the distinction:

1) Subjective criterion: according to which, the aircraft will be designated as private or public depending upon

⁸²⁷ Hamilton, Derecho Aéreo, (1960), p. 177.

⁸²⁸ Chicago Convention, Article 4, "Misuse of Civil Aviation".

⁸²⁹ Chicago Convention, Article 3, "Civil and State Aircraft".

who the owner is. It will be private if the owner is a private person, and public if the owner is the state.

- 2) Functional criterion: according to which, public aircraft is that destined to perform a public service, and private that which performs private service.

Chicago in its Article 3b) provides:

"Aircraft used in military, customs and police services shall be deemed to be state aircraft." 830

- 3) Mixed criterion: according to which both ownership and characteristics of utilization are taken into consideration for classifying aircraft.⁸³¹

Fauchille distinguished in 1902,⁸³² that aerostats could be either private or public, and that public aircraft could be in their turn military or civil.⁸³³ Since 1910 the distinction has prevailed in all major international texts.

In the 1910 Air Navigation Conference,⁸³⁴ Fauchille's classification was adhered to and public aircraft were defined as those assigned to the service of a

830 Fixel, The Law of Aviation, 4th Ed., The Michie Co., (Virginia: 1967), p. 44.

831 Loustau Ferran, La Aeronave, (1958), p. 33.

832 Before going in depth in the analysis of the three criteria used to distinguish public and private aircraft, we will reexamine Fauchille's distinction of aerostats, written in 1902.

833 Luchelli, "Clasificacion de las Aeronaves", in Primeras Jornadas Latino Americanas de Derecho Aeronautico, De Palma, (Buenos Aires: 1962), p. 517.

834 Supra, p. 246.

state, and under the command of a responsible person, commissioned by that state.⁸³⁵

The 1919 Paris Convention also made the distinction between State and Civil Aircraft in its Article 30.⁸³⁶ The criterion used in this classification was the intended use of the aircraft.⁸³⁷

The same distinction and approach is found in the Havana Convention,⁸³⁸ while CITEJA's Air Code (1925) chose another criterion to distinguish between public and private aircraft: "Public are those employed in the exercise of public power."⁸³⁹ The Code also mentioned within public aircraft the distinction between military and non-military aircraft, including in the latter customs and police. Postal aircraft, whether belonging to the State or private people, were to be considered private aircraft. A similar approach was followed by Cosentini in the drafting of his International Code of Aviation.⁸⁴⁰

The Chicago Convention follows CITEJA's air code idea of "exercise of public power". Article 3b)⁸⁴¹

⁸³⁵ Honig, Legal Status of Aircraft, (1956), p. 36.

⁸³⁶ Supra, p. 246.

⁸³⁷ Ruiz Moreno, Derecho Publico Aeronautico, (1934), p. 98.

⁸³⁸ Panamerican Convention, Article 3, Supra, p. 247.

⁸³⁹ Air Code, Article 33.

⁸⁴⁰ Cosentini, International Code of Aviation, American Institute of Comparative Law and Legislation, Rivadeneyra, (Mexico: 1933), p. 71 & 72.

⁸⁴¹ Supra, p. 247.

determines which are state aircraft, and excludes postal aircraft from that classification.⁸⁴²

Three criteria have already been mentioned,⁸⁴³ subjective, objective and mixed: we shall discuss the pro's and con's of each:

1) The Subjective criterion: considers who the owner is, this can create much confusion mainly because today the state also operates commercial aircraft, and even owns airline companies.⁸⁴⁴ The State participates as a private and commercial enterprise; it would be wrong to classify the aircraft as public, solely because its owner is the state or a state organization.⁸⁴⁵ Many international airlines are state-owned, and to give to them public status would restrict or eliminate their international traffic options.⁸⁴⁶

2) Functional criterion: The distinction operates according to the type of service: public or private. The concept of public service could be confused with the concept of "public utility service", creating ambiguity because

⁸⁴² Videla Escalada, 2 Derecho Aeronautico, (1969), p. 32.

⁸⁴³ Supra, p. 257 & 258.

⁸⁴⁴ Gildemaister, Derecho Aeronautico, (1964), p. 23.

⁸⁴⁵ Videla Escalada, 2 Derecho Aeronautico, (1969), p. 35.

⁸⁴⁶ For a survey on ownership of airlines see: ICAO Doc. 4954-AT/633 "Survey on ownership of airlines", (Montreal: 1948); For survey on ownership of the members of the International Air Transport Association see: Chuang, The International Air Transport Association, Sijthoff, (Leiden: 1972), p. 161; Haanappel, The Scheduled International Airlines and The Aviation Consumer. LL.M. Thesis, McGill University, (Montreal: 1974), p. 175.

of their different legal meanings.⁸⁴⁷ The distinction ascertains that military, customs and police aircraft perform public services, while aircraft carrying passengers, cargo and mail perform public utility services. The differentiation arises in the classical Roman distinction of Private and Public law, but a difficulty still remains in determining public service and private interest.⁸⁴⁸

3) Mixed criterion: Requires both public property and public service in order to qualify an aircraft as public. Although criticisms have been few, the criterion has not been supported by doctrine. Possibly certain problems arise upon state requisition of an aircraft but the principal problem is the vagueness of its concepts.⁸⁴⁹

In Latin America the subjective criterion, based upon the ownership of the aircraft, is followed only by the Cuban Regulation on Civil Aviation. Article 14 classifies aircraft as official and private. Official shall be

"those which belong to the state, to the provinces or to the municipalities..." and private airplanes shall be those which belong to any person, company, or any private civil or commercial institution or company..."

⁸⁴⁷ Loustau Ferran, La Aeronave, (1958), p. 35.

⁸⁴⁸ Ibid., p. 34.

⁸⁴⁹ Ibid., p. 35.

The functional criterion has been followed by the laws of Argentina, Brazil, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Nicaragua, Panama and Peru.⁸⁵⁰

Article 4 of Colombia's law on Civil Aviation provides:

"State aircraft shall be deemed military aircraft and others exclusively used in the service of the state; all others shall be deemed private aircraft".⁸⁵¹

Paraguay's Aeronautical Code, in its Article 6, paragraph 2, states:

"State aircraft shall be those used for military, customs or police service."⁸⁵²

Among those Latin American laws following the functional criterion, the concept is much more precise

⁸⁵⁰ Aeronautical Code, Article 37 (Argentina, 1967); Air Code, Article 9 (Brazil, 1966); Law on Civil Aviation, Article 4 (Colombia, 1938); Law on Civil Aviation, Article 142 (Costa Rica); Air Navigation Decree, Article 2 (Chile, 1931); Civil Aviation Law, Article 62 (Dominican Republic, 1969); Law of Air Traffic, Article 3 (Ecuador, 1960); Law on Civil Aviation, Article 17 (El Salvador, 1955); Civil Aviation Law, Article 11 (Guatemala, 1948); Civil Aviation Code, Article 5 (Nicaragua, 1956); Aeronautical Code, Article 6 (Paraguay, 1957); Civil Aeronautics Law, Article 19 (Peru, 1965).

⁸⁵¹ Cobo Cayon, Derecho Aéreo, (1966), p. 241.

⁸⁵² Tolle, Air Law in Latin America, (1960), p. 217.

when reference is made to a "service by the public power", as in the laws of Argentina, El Salvador, Nicaragua and Peru.

Article 17 of El Salvador's Law on Civil Aviation, after making the distinction between state and private aircraft, determines that state aircraft are

"those intended for service of the public power, such as the military, police and customs. All others are private aircraft".

Article 37 of Argentina's Aeronautical Code, provides that aircraft can be public or private. Public aircraft are those intended for the service of the public power. All the other aircraft are private, even if they belong to the state. The drafters of the Argentinian Law explain that only military, customs and police aircraft are public, and no others. The destined purpose of the aircraft is the element determining the Argentinian classification.⁸⁵³

The mixed criterion are followed by the laws of Uruguay and Venezuela.⁸⁵⁴

Article 18 of Venezuela's Civil Aviation Law provides, after classifying aircraft in state and civil, that state aircraft,

⁸⁵³ Lena Paz, Código Aeronautico, (1966), p. 66.

⁸⁵⁴ Code of Aeronautical Law, Article 14 (Uruguay, 1942); Civil Aviation Law, Article 18 (Venezuela, 1955).

"...shall be deemed aircraft which are the property of the state and for official exclusive use of the Nation, of the states, municipalities and other public organizations. All others shall be considered civil aircraft for public or private service." 855

Article 14 of Uruguay's Code of Aeronautical Law clearly adheres to the mixed criterion. It classifies aircraft as public and private, considering as public the following:

- a) Military aircraft;
- b) State aircraft in public service;
- c) "aircraft not owned by the State, but temporarily allocated to one of the mentioned services." 856

Contradictions seem to arise with reference to the laws of Mexico and Panama. 857

Article 311 of Mexico's Law of General Means of Communications, classifies aircraft as state and civil, and then determines that state aircraft,

"...shall be those owned by the Federal or state governments and Municipalities or by local public organizations. All other aircraft shall be considered civil aircraft whether engaged in public or private service."

855 Rueda, La legislación Venezolana ante los Convenios Aéreos Internacionales, Unpublished Thesis, Universidad de Carabobo, (Carabobo: 1962), p. 109.

856 Bauza Araujo, Derecho Aéreo, (1955), p. 146.

857 Book Four, Law of General Means of Communications, Article 311 (Mexico, 1950); Regulation on Civil Aviation, Article 9 (Panama, 1963).

Paragraph 3 adds,

"Civil aircraft used permanently in the service of the state shall be considered state aircraft".

The two preceeding paragraph's are not very clear and cause confusion.⁸⁵⁸ The same disordered construction can be found in Panama's Regulation on Civil Aviation.⁸⁵⁹

Latin American laws tend first to define the term "public aircraft", including military aircraft, and then point out that "the others" will enter in the category of private, civil or particular aircraft. The only exception to this trend is Cuba's Regulation on Civil Aviation, which in its Article 14, paragraph 3 attempts a definition of "private airplanes" as those that "belong to any person, company, or any private civil or commercial institution or company...".

In certain laws there is a preference for the term "state aircraft", rather than "public aircraft", and to include in the state category, military and other public aircraft. Such is the case in the laws of Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and

⁸⁵⁸ Tolle, Air Law in Latin America, (1960), p. 193.

⁸⁵⁹ Regulation on Civil Aviation, Article 9 (Panama, 1963).

Venezuela.⁸⁶⁰

Article 3 of Ecuador's Law of Air Traffic provides:

"Aircraft shall be classified as state aircraft and Civil aircraft. State aircraft shall be deemed: a) military aircraft which are commanded by personnel in active military service or commissioned for that purpose by the competent authority and b) Aircraft used exclusively in the service of the State such as mail, customs and police."⁸⁶¹

The importance of the distinction, between state and public aircraft, rests mainly on the fact that the Chicago Convention is not applicable to public aircraft. However, Chicago considers a restricted definition of what must be understood as such: military, customs and police.⁸⁶² Therefore for Chicago all other public air-

⁸⁶⁰ Air Navigation Decree, Article 2 (Chile, 1931); Civil Aviation Law, Article 62 (Dominican Republic, 1969); Law of Air Traffic, Article 3 (Ecuador, 1960); Law on Civil Aviation, Article 17 (El Salvador, 1955); Civil Aviation Law, Article 11 (Guatemala, 1948); Civil Aviation Law, Articles 11 & 12 (Honduras, 1950); Law of General Means of Communications, Article 311 (Mexico, 1950); Civil Aviation Code, Article 5 (Nicaragua, 1956); Regulation on Civil Aviation, Article 9 (Panama, 1963); Aeronautical Code, Article 6 (Paraguay, 1957); Civil Aeronautics Law, Article 19 (Peru, 1965); Civil Aviation Law, Article 18 (Venezuela, 1955).

⁸⁶¹ The Aeronautical Code of Paraguay, in Article 6 classifies aircraft as state and civil. Paragraph 2 mentions that "state aircraft shall be those used for military, customs or police service." Fuster, Derecho Aeronautico, (1958), p. 138.

⁸⁶² See, Chicago Convention, Article 3. *Supra*, p. 248.

craft, such as aircraft used in the transport of mail and performing other public services would be included in the category of civil aircraft, and would be bound by its regulation.⁸⁶³

We have just mentioned Article 3 of Ecuador's Law of Air Traffic,⁸⁶⁴ which regards mail aircraft in the state aircraft category. Thus, Ecuador's method of classification is not in accord with Chicago.⁸⁶⁵

We feel that two existing Latin American laws express with great clarity the fact that every aircraft, not classified as military, customs or police, is considered private, even if it belongs to the state.⁸⁶⁶ Hence, the laws of Nicaragua and Dominican Republic,⁸⁶⁷ are in perfect accord with Chicago.

Article 5 of Nicaragua's Civil Aviation Code states:

"National aircraft are classified as state aircraft and civil aircraft. State aircraft are intended for the

⁸⁶³ Cheng, "State ships and state aircraft", 11 CLP, (1958), p. 233.

⁸⁶⁴ Supra, p. 266.

⁸⁶⁵ Chile's Air Navigation Decree and Peru's Civil Aeronautics law follow the example of Ecuador's law of Air Traffic. None of these laws are in agreement with the Chicago Convention principles on the matter.

⁸⁶⁶ Luchelli, Clasificacion de las Aeronaves, (1962), p. 523.

⁸⁶⁷ Civil Aviation Law, Article 62 (Dominican Republic, 1969); Civil Aviation Code, Article 5 (Nicaragua, 1956).

service of the public power, such as military, police and customs. Other aircraft are civil, even when they belong to the state." 868

The important and relevant interest arising from the classification of aircraft as public or private is based on the fact that they are subject to different legal rules, according to their categorization.

Public aircraft do not follow the rules settled by ordinary air law,⁸⁶⁹ as shown by the following important examples:⁸⁷⁰

- a) Public aircraft are required in most countries to be placed in a civil register;⁸⁷¹
- b) State aircraft cannot fly over another state without a prior authorization;⁸⁷²
- c) Public aircraft are not obliged to carry conventional markings, nor conventional documentation;
- d) State aircraft enjoy an extraterritoriality right, attributed only to those aircraft carrying their country's sovereignty;⁸⁷³
- e) None of the International Air Law Conventions applies to public aircraft.⁸⁷⁴

868 Tolle, Air Law in Latin America, Appendix, (1960), p. 74.

869 Cartou, Droit Aerien, (1963), p. 187.

870 Supra, p. 249.

871 Videla Escalada, 2 Derecho Aeronautico, (1969), p. 36.

872 See, Chicago Convention, Article 3c).

873 French Courts decided on this matter, in a case involving a Basque aircraft during the Spanish Civil War. Cited by Le Goff, Civil Court of Oleron, (16th Nov. 1937), Le Goff, Droit Aerien, (1954), p. 256.

874 Among the most important Air Law Conventions, we can mention Warsaw (1929); Rome (1933); Geneva (1948); Rome (1952); Tokyo (1963); Hague (1970) and Montreal (1971). Supra, p. 248, footnote 805.

CHAPTER 5. THE SUITABILITY OF AN AIRCRAFT FOR FLIGHT, AND ITS INSPECTION

Section A. Generalities

In a somewhat scattered way doctrine has analysed the navigation ability of an aircraft. Sometimes the study refers to maintenance and airworthiness, putting the emphasis on the certificates. In other instances the analysis is about the legal transcendancy of the registration certificate given by the authority.

The ability of the aircraft to be used in air navigation originates in related technical and legal requirements which must be studied together.

From the legal viewpoint an aircraft is only fit for flight when there exist the technical conditions and aerodynamic reaction allowing it, to rise and circulate in the airspace, and also when it fulfills in addition related regulations.⁸⁷⁵

The legal and regulatory rules require assurance of authenticity by means of certificates the technical aptitude for air navigation, and also the fulfillment of those rules imposed for reasons of public interest, and for protection of private persons. Thus an aircraft must show its markings; and must have both a registration certificate and certificate stating that all necessary documents are on board.

⁸⁷⁵ Loustau Ferran, La Aeronave, (1958), p. 111.

The state through its aeronautical authority, is the body charged with overseeing fulfillment of legal requirements as well as those relating with technical and aeronautical safety. In order to meet demands of this large task, the authority is vested with the power of inspection over every aircraft.⁸⁷⁶

A distinction must be made between the aeronautical and technical ability or capability for flight, and the legal capacity for air navigation. Even if an aircraft meets all the necessary technical requirements to fly, it must also comply with those requirements of the law, in order to circulate in the airspace.⁸⁷⁷

Section B. Technical Capability for flight

The technical safety of aircraft has been legally regulated since the beginnings of aviation. The reason for it, was that all countries desired to make air traffic as safe as possible.⁸⁷⁸

⁸⁷⁶ The right of the state to inspect aircraft, obligates it to see that aircraft are used lawfully and in accordance with national laws and international public order. The state will even have the power to order an aircraft to land.

⁸⁷⁷ Rodriguez Jurado, Derecho Aeronautico, (1963), p. 96; Hamilton, Derecho Aéreo, (1960), p. 206.

⁸⁷⁸ Oppikofer, "International Commercial Aviation and National Administration", in League of Nations, Organisation for Communications and Transit, Enquiries into the economic, administrative and legal situation of international air navigation, (Geneva: 1930), p. 100.

Article 13 of the Paris Convention (1919) referred to this subject, mentioning the following:

"Certificates of airworthiness and of competency and licenses issued or rendered valid by the state whose nationality the aircraft possesses in accordance with the regulations established by Annex B and Annex E and hereafter by the International Commission for Air Navigation, shall be recognized as valid by the other states." 879

The International Commission for Air Navigation prepared the regulations for the minimum required conditions of an aircraft for receipt of an airworthiness certificate. 880

The Panamerican Convention, in its Article 12 followed the idea of Paris Convention. Article 12 stated the following:

"Every aircraft engaged in international navigation (between the several contracting states) shall be provided with a certificate of airworthiness, issued by the state whose nationality it possesses."

The Panamerican Convention leaves to the individual states the matter of formulating their own regulations for airworthiness and the determination thereof. Hence, no uni-

879 Zollman, Law of the Air, (1927), p. 137.

880 Roper, Convention Internationale, (1930), p. 139.

formity on this subject is required.⁸⁸¹

Article 10b) of Havana mentioned the airworthiness certificate when referring to the documents that an aircraft must carry on board.⁸⁸²

The Chicago Convention (1944), in its Article 31, under the title "Certificate of Airworthiness" states that every aircraft engaged in international navigation must be provided with a certificate of airworthiness, issued or rendered valid by the state in which it is registered.⁸⁸³ Article 29 of the Chicago Convention, which refers to the documents carried by the aircraft, mentions in its clause b), the certificate of airworthiness. Article 33, entitled "Recognition of Certificates and Licenses" provides that,

"certificates of airworthiness issued by the contracting state in which an aircraft is registered are to be recognized as valid by the other contracting states, so long as they comply with any minimum standards established

⁸⁸¹ In Article 12 of the Havana Convention one can appreciate the difficulties resulting from the absence of technical annexes in the Convention. What the Paris Convention regulates through its annexes, Havana must state in a very detailed article. Warner, "Convention for Air Navigation", 3 ALR, (1932), p. 247.

⁸⁸² Meyer, Compendio de Derecho Aeronautico, Editorial Atalaya, (Buenos Aires: 1947), p. 230.

⁸⁸³ Bauza Araujo, Derecho Aéreo, (1955), p. 163; Shawcross and Beaumont, Air Law, (1966), p. 223.

pursuant to the Convention." 884

Article 37 of Chicago, when considering the adoption of international standards, "takes up the subject of airworthiness of aircraft."

Chicago's Convention intent on the subject was the establishment of a detailed, comprehensive international airworthiness Code.⁸⁸⁵ The aim is recognized through the Chicago's Convention drafting and the work done by the Sub-Committee on Airworthiness of Aircraft, which produced draft G.⁸⁸⁶

The concern about airworthiness is related to Chicago's aim of achieving maximum safety in air navigation, which could be obtained by imposing over all aircraft flying in international air navigation and commerce, the obligation to conform with agreed international standards of airworthiness.⁸⁸⁷

884 The Sub-Committee on Airworthiness considered that the subject was fundamental in character, and that any error in doctrine could jeopardise the products of "one of the world's great manufacturing industries". It was proposed that machinery should be established which could operate "rapidly". UNIO, "Report of the Chicago Conference", (1944), p. 26.

885 The Code was found to be impracticable, because a wide international administrative machinery would have to be set up; which would keep under continuous review all aspects of aeronautical progress, with a bearing on air safety. Harris, "Airworthiness regulations - National and International", 79 JRAS, (1969), p. 453.

886 Draft G later became Annex 8 to the Chicago Convention, "Airworthiness of Aircraft".

887 See, Chicago Convention, Article 33.

Linked with airworthiness is the problem of sovereignty over the airspace. Contracting states to Chicago assumed an obligation to protect their property, their nationals, and also other aircraft. Since airworthiness is a contributory factor to safety, Article 33 of Chicago, exists to facilitate the flight of aircraft over the territory of other states, by requiring the recognition of airworthiness certificates.⁸⁸⁸

Annex 8 to the Chicago Convention is entitled "Airworthiness of Aircraft". In the first editions of Annex 8 the purposes underlying the establishment of the airworthiness certificate were:

"1) To ensure that all aircraft engaged in international air navigation were certificated and inspected according to uniform procedures;

2) To establish airworthiness categories for aircraft, which will define a minimum level of airworthiness for each such category and shall be exclusive in that no contracting state will classify an aircraft in an ICAO airworthiness category, unless the aircraft meets the airworthiness standards governing that ICAO category." ⁸⁸⁹

⁸⁸⁸ The states desire to make air traffic as safe as possible, and therefore have adopted certain regulations forbidding aircraft to fly without the authorisation of the state. The state reserves the right to test the aircraft in order to see if it fulfills the necessary technical conditions, and the machine must in no case be used before it has been officially recognised as airworthy. Oppikofer, International Commercial Aviation, (1930), p. 100.

⁸⁸⁹ ICAO, Annex 8, 1st Edition (1949), p. 14.

From 1957, 4th Edition of Annex 8, the principle of certification was abandoned. Today the airworthiness standards define completely the minimum international basis for the recognition by states of certificates of airworthiness, for the purpose of flight of aircraft of other states into or over their territories, and thus achieve the protection of other aircraft, third persons and property. Competent national authorities will apply the standards.⁸⁹⁰

ICAO recognizes that national codes of airworthiness shall be necessary as a basis for certifying individual aircraft. The level of airworthiness which has to be defined by the national codes, is indicated by the standards, and supplemented when it is necessary by the Acceptable Means of Compliance.⁸⁹¹

Each type of aircraft will undergo tests with a view toward determining its flight characteristics, which will be used in the preparation of a handbook. This handbook will give the operator an idea of the performance he can expect from his aircraft, considering weather conditions and locality.⁸⁹² The results of those tests will

⁸⁹⁰ ICAO, Annex 8, 5th Edition (1962), p. 7.

⁸⁹¹ Acceptable means of compliance differ from the standards, in that each state is quite free to differ either in detail or in method from the relevant acceptable means, provided that the aircraft has a level of airworthiness substantially similar to or higher than the one illustrated by the relevant acceptable means of compliance. Annex 8, 5th Edition, (1962), p. 8.

⁸⁹² Institut Française de Transport Aerien, "Interpretation of ICAO debates and results on airworthiness requirements for transport aircraft", IFTA Research Papers 162-163, (1949), p. 2.

determine whether the airworthiness certificate is to be granted.⁸⁹³

The inspection of aircraft will be done in two stages:

- 1) During the construction, in order to check that construction is satisfactory, and in accordance with characteristics of the approved project.
- 2) After construction, the state will submit it to the necessary flight tests, in order to verify its airworthiness.⁸⁹⁴

Airworthiness is not simply an initial condition of the life of an aircraft, but rather must be maintained continuously; hence, periodic inspections will take place.⁸⁹⁵ Airworthiness is not permanent, because after time and usage the aircraft naturally begins to wear out. This is the reason why the airworthiness certificate is limited to a certain period of time.⁸⁹⁶

⁸⁹³ The airworthiness certificate is issued after the authorities have certified and are satisfied in respect of the following items concerning aircraft: a) design; b) construction, including workmanship and materials; c) instruments and equipment; d) weighing; e) flying trials and other tests; f) if engine fitted, authorised type of engine. See the following case regarding the design of the aircraft: Fairflight Ltd. v. Handford (1951), 2 W.R. 321. Hene, The Law of Sea and Air Traffic, Shaw and Sons, (London: 1955), p. 229.

⁸⁹⁴ Loustau Ferran, La Aeronave, (1958), p. 113.

⁸⁹⁵ de Juglart, Droit Aerien, (1952), p. 82; Hene, The Law of Sea and Air Traffic, (1955), p. 229.

⁸⁹⁶ Loustau Ferran, La Aeronave (1958), p. 133; Oppikofer, International Commercial Aviation, (1930), p. 100.

Therefore two types of regulations should be considered on this matter of airworthiness:

- 1) Airworthiness regulations applicable to the aircraft, specifying the tests to be undergone, and indicating according to the results of these tests the method of computing its basic performances.
- 2) Operating regulations, indicating the limits of utilization of the aircraft according to the various conditions of operation.⁸⁹⁷

Once the aircraft complies with the appropriate airworthiness requirements, the contracting state issues the certificate of airworthiness, which means an approval of the aircraft condition.⁸⁹⁸

ICAO gives the following definition of what should be understood as "to certify as airworthy", in its Annex 1, "Personnel Licensing":

"To certify that an aircraft or parts thereof comply with current airworthiness requirements after being overhauled, repaired, modified or installed." ⁸⁹⁹

Spain's Air Navigation Law⁹⁰⁰ gives a very good

⁸⁹⁷ IFTA, ICAO Debates on Airworthiness Requirements, IFTA Research Papers 162-163, (1949), p. 2.

⁸⁹⁸ Annex 8, Part II, 3.1.

⁸⁹⁹ Annex 1, 5th Edition, (1962), Chapter 1.

⁹⁰⁰ Instituto Francisco de Vitoria, Sección de Derecho Aeronáutico, Comentarios a la ley Española de Navegación Aérea, (Madrid: 1960), p. 49.

definition of what an airworthiness certificate is.

Article 36 states the following:

"By airworthiness certificate shall be meant the document that serves to identify the aircraft from the technical point of view, that defines its characteristics and expresses its qualifications for flights as obtained from the aircraft inspection on the ground and from its test flights." 901

Another important condition regarding the airworthiness certificates is that accidents, damages, modifications or flaws in an aircraft will demand a renewal of the certificate.⁹⁰²

There is an important link between the aircraft in construction, or just constructed, and the certificate. Besides the inspection, and the consequent approval needed on behalf of the state, the aircraft is also under certain additional requirements in relation to the origin of the project, prototype, tests, engine tests, and also those tests each aircraft in the Series has to render.⁹⁰³ Experts will be able then to determine whether regulations

901 Law No. 48/1960, (21 July, 1960, Spain) concerning Air Navigation.

902 Hamilton concludes that an aircraft can have a valid airworthiness certificate, and not be in an "actual" state of air navigation due to some sort of problem. Hamilton, Derecho Aéreo, (1960), p. 207.

903 Gay de Montella, Derecho Aeronautico, (1950), p. 181; Videla Escalada, 2 Derecho Aeronautico, (1969), p. 548. See also, Fair flight Ltd. v. Handford (1951), 2 Ll.R. 321. On appeal from a decision by Justices that the centre of gravity of an aircraft involved in an accident had been outside the permitted limits, held: the owners of the aircraft had not complied with the airworthiness conditions. Appeal dismissed. In Hene, The Law of Sea and Air Traffic, (1955), p. 229.

have been followed, if the aircraft has been conceived and constructed according to the proposal, and whether the aircraft is airworthy for navigation in normal conditions.⁹⁰⁴

The airworthiness assures only that the aircraft is airworthy for a flight, and that it can perform a determined type of air operations. The certificate is not an insurance against accidents or technical defects, since they can manifest themselves even with a certificate granted. Generally the certificate should be considered as a favourable presumption of the airworthiness of the aircraft.⁹⁰⁵


The international recognition of the validity of airworthiness certificates is very important. It has a relevant relationship with the freedom of air traffic, which could be seriously affected if a state had the power to argue and not recognize in a reciprocal way, the airworthiness certificate of another state, taking into account that the certificate is one of the documents required to operate an aircraft.⁹⁰⁶

All Latin American laws regulate the subject of airworthiness certificates. Some laws go into exhaustive details; others just give the basic elements. There is a third group which mentions it as one of the documents required to operate over their airspace, and a fourth group refers to the certificate only in its Manual of Regulations.

904 Delascio, Derecho de la Aviacion, (1959), p. 81;
Lemoine, Droit Aerien, (1947), p. 154.

905 Hamilton, Derecho Aéreo, (1960), p. 207.

906 Videla Escalada, 2 Derecho Aeronautico, (1969),
p. 533.



The majority of the laws go into detail when referring to the certificate, and mention the competent authorities who issue the certificate, the inspection of the aircraft, the contents, suspension or cancellation of the certificate and other related provisions. In this group we should mention the laws of El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Dominican Republic.⁹⁰⁷

Article 18 of Guatemala's Civil Aviation Law states that the,

"Certificate of airworthiness testifies that the aircraft has passed the tests and technical control prescribed by the Directorate General of Civil Aeronautics or, if the Aircraft is foreign, by the competent authority of the country of its nationality, so that it may engage in flights."

Paragraph 2 adds that,

"Every aircraft must be provided with a certificate of airworthiness which must be carried at all times aboard the aircraft and be accessible for easy inspection." ⁹⁰⁸

⁹⁰⁷ Law on Civil Aviation, Articles 31-41 (El Salvador, 1955); Civil Aviation Law, Articles 18, 25-32 (Guatemala, 1948); Civil Aviation Law, Articles 21-23 (Honduras, 1950); Law of General Means of Communications, Articles 316-318 (Mexico, 1950); Civil Aviation Code, Articles 15-17 (Nicaragua, 1956); Regulation on Civil Aviation, Articles 18-21 (Panama, 1963); Civil Aeronautics Law, Articles 30-32 (Peru, 1965); Civil Aviation Law, Articles 31-34 (Dominican Republic, 1969).

⁹⁰⁸ Juárez, Derecho Aéreo Guatemalteco, (1957), p. 80.

Article 34 of El Salvador's Law on Civil Aviation, when referring to the contents provides that,

"The certificate of airworthiness shall consist of two parts: in the first shall be noted the characteristics of the aircraft and the letters and number of its registration, and in the second shall be indicated the number of hours for which it is authorized to fly and any change in vital parts or pieces, or major repairs to the aircraft."

Each state, or the representative of the state, has the following functions with regard to airworthiness certificates: to grant them; to renew when the validity period has ended; to cancel or suspend them in situations arising from damages to the aircraft which require repairs; also to ratify or confirm those certificates granted by another country, with the condition that they will adjust to their own requirements.⁹⁰⁹

Article 22 of Honduras' Civil Aviation Law, is an example of how the state's function operate with respect to airworthiness certificates:

"It shall be the exclusive jurisdiction of the General Direction of Civil Aeronautics to grant, validate, suspend or cancel airworthiness certificates of civil aircraft, as provided by the regulation."

⁹⁰⁹ The following Latin American Regulations legislate these functions: Law 16.752, Article 3 (Chile, 1958); Civil Aviation Law, Article 18k) (Dominican Republic, 1969); Law on Civil Aviation, Article 32 (El Salvador, 1955); Civil Aviation Law, Article 7, No 4 (Guatemala, 1948); Civil Aviation Law, Articles 22-23 (Honduras, 1950); Civil Aviation Code, Articles 16-17 (Nicaragua, 1956); Regulation on Civil Aviation, Articles 18, 19-21 (Panama, 1963); Civil Aeronautics Law, Articles 31-32 (Peru, 1965).

Article 23 adds the following:

"Certificate of airworthiness granted in a foreign country shall be recognized or validated in Honduras in accordance with the treaties in force, and, in their absence, with the recognized international rules." 910

Generally the airworthiness certificate must be considered as a favourable presumption of the airworthiness of the aircraft.⁹¹¹ The laws of Mexico and Venezuela establish a presumption, which admits proof to the contrary, in the sense that those aircraft which are flying with a valid airworthiness certificate, are doing it in flight conditions considered technically satisfactory.⁹¹²

Article 317 of Mexico's Law of General Means of Communications states:

"Unless there be proof to the contrary, it shall be presumed that aircraft with a valid certificate of airworthiness has taken off under flight conditions which are technically satisfactory." 913

A second group of Latin American laws give general guide lines about the airworthiness certificate without entering into exhaustive details. Such is the case

910 Pino, Derecho Aéreo, (1974), p. 102.

911 Stora, p. 279.

912 Law of General Means of Communications, Article 317 (Mexico, 1950); Civil Aviation Law, Article 22 (Venezuela, 1955).

913 Tolle, Air Law in Latin America, (1960), p. 195.

in Chile, Costa Rica, Cuba and Venezuela.⁹¹⁴

Article 32 of Cuba's Regulation on Civil Aviation states:

3 "Periodically and by the agency or official designated by the Ministry of National Defense, all registered or recorded aircraft shall be inspected and the airworthiness certificates shall be either renewed or cancelled. The ~~cancellation of this certificate~~ shall entail that of the registration or listing."

Article 22 of Venezuela's Civil Aviation Law provides:

0 "All aircraft must be provided with a certificate of airworthiness, in order to show that they have passed the tests for conditions of flight safety." 915

A third group of legislation mentions the airworthiness certificate only as an element of the rule that regulates flight over another territory or as one of the documents an aircraft used for international navigation must carry. This is the case in Ecuador, Paraguay, Uru-

914 Air Navigation Decree, Article 11 (Chile, 1931); Law on Civil Aviation, Article 68 (Costa Rica, 1949); Regulation on Civil Aviation, Articles 28, 31-32 (Cuba, 1928); Civil Aviation Law, Article 22 (Venezuela, 1955).

915 Tolle, Air Law in Latin America, Appendix, (1960), p. 133.

guay, Argentina, Brazil and Bolivia.⁹¹⁶

Article 24 of Bolivia's Regulations for Air Traffic, which concerns the recording of foreign aircraft, requires them to present a certificate of airworthiness of the "state to which they belong".⁹¹⁷

Article 19 of Paraguay's Aeronautical Code states:

"Aircraft flying over Paraguayan territory shall carry certificates of registration and airworthiness, and all books and documents prescribed in the respective regulations." 918

Finally, Colombia's law on Civil Aviation does not mention the certificate, but it is considered in its Manual of Regulations.⁹¹⁹

A small group of laws restricts the validity of the airworthiness certificate to a certain length of time in an explicit and categorical way. It is mentioned in the laws of Argentina, Brazil, Costa Rica, Cuba, El

⁹¹⁶ Aeronautical Code, Article 10 (Argentina, 1967); Air Code, Article 12 (Brazil, 1966); Regulations for Air Traffic, Article 24 (Bolivia, 1939); Law of Air Traffic, Article 7 (Ecuador, 1960); Aeronautical Code, Articles 19-20 (Paraguay, 1957); Code of Aeronautical Law, Article 47 (Uruguay, 1942).

⁹¹⁷ Tolle, Air Law in Latin America, Appendix (1960), p. 7.

⁹¹⁸ The airworthiness certificate is regulated by Resolution No 13/52. DG-AT, Fuster, Derecho Aeronautico, (1958), p. 65.

⁹¹⁹ Regulations Manual, Article 39, regulating airworthiness certificates. Cobo Cayon, Derecho Aéreo, (1966), p. 333.

Salvador and Guatemala.⁹²⁰

Article 31 of Guatemala's Civil Aviation Law, provides:

"The certificate of airworthiness shall be valid for 6 months unless it be suspended, or cancelled; but it may be renewed for equal periods, subject to inspection by the Technical Inspectorate." ⁹²¹

The Latin American countries which do not regulate to any great extent in their laws airworthiness certificate, will refer to them instead in their regulations.

It is very important to point out, the role of the state in the matter of airworthiness certificates. Certainly there should be strict control by specialized personnel, in issuing a certificate that will guarantee greater safety in air transportation.⁹²²

This has been the reason why four Central American states considered it necessary to include in their laws, certain rules on the matter of aircraft main-

⁹²⁰ Aeronautical Code, Article 10 (Argentina, 1967); Air Code, Article 12 (Brazil, 1966); Law on Civil Aviation, Article 68 (Costa Rica, 1949); Regulation on Civil Aviation, Article 32 (Cuba, 1928); Law on Civil Aviation, Article 34 (El Salvador, 1955); Civil Aviation Law, Article 31 (Guatemala, 1948).

⁹²¹ Juárez, Derecho Aéreo Guatemalteco, (1957), p. 80.

⁹²² de Juglart, Droit Aerien, (1952), p. 139; Williams, The operation of airliners, Hutchinson, (London: 1964), p. 54.

tenance.⁹²³ This is the case in Costa Rica, El Salvador, Honduras and Panama.⁹²⁴

Article 125 of Panama's Regulation on Civil Aviation under the title "Maintenance of Aircraft" establishes that,

"Every operator must have an organization comprising specialized personnel, workshops, and other equipment and installations to maintain his aircraft in conditions of airworthiness."

Article 69 of Costa Rica's Law on Civil Aviation provides:

"Air Transport companies and other entities and persons operating aviation equipment in civil activities must have inspection, maintenance and repair service for their equipment in accordance with the air regulations and the provisions of the Board issued pursuant to this law."

923 Aircraft Maintenance: The schedule of maintenance, overhaul and inspection, requires approval by the regulating agency. The work may be undertaken by engineers who are licensed to do it as individuals or by an approved organization. Detailed records of all work on aircraft have to be kept and made available for inspection by the regulatory agency. In practice, all work other than line maintenance is undertaken by an approved organization. Williams, The Operation of Airliners, (1964), p. 51.

924 Law on Civil Aviation, Article 69 (Costa Rica, 1949); Law on Civil Aviation, Article 12c) (El Salvador, 1955); Civil Aviation Law, Article 6c) (Honduras, 1950); Regulation on Civil Aviation, Article 125 (Panama, 1963).

The aforementioned laws refer to the practical aspect of aircraft airworthiness. They regulate maintenance and conservation of the aircraft, and obligate the operator to obey those regulations.

A group of laws expressly provides that all maintenance centers for aircraft are under the control of the aeronautic authority. The provision is included in the laws of Chile, Dominican Republic, Ecuador, Honduras, Mexico, Panama, Peru and Venezuela.⁹²⁵

Article 160 of Panama's Regulation on Civil Aviation when referring to the Aeronautical Workshops and their requirements, states:

"Any person or enterprise presenting an application for a license to establish a workshop for aircraft maintenance, must prove his competency and technical capacity to the satisfaction of the General Bureau of Civil Aeronautics."

Article 66 of Venezuela's Civil Aviation Law states:

"Aviation manufacturing plants and repair shops shall be established in accordance with the respective permits."

⁹²⁵ Law 16.752, Article 3 (Chile, 1958); Civil Aviation Law, Article 208 (Dominican Republic, 1969); Law of Air Traffic, Article 23 (Ecuador, 1960); Civil Aviation Law, Article 6c (Honduras, 1950); Law of General Means of Communications, Article 318 (Mexico, 1950); Regulation on Civil Aviation, Article 160 (Panama, 1963); Civil Aeronautics Law, Articles 82-83 (Peru, 1965); Civil Aviation Law, Article 66 (Venezuela, 1955).

Aircraft repairs are regulated in an interesting way by the laws, of Argentina, Uruguay and Venezuela:⁹²⁶ repairs must be inspected and approved by the aeronautical authority before an aircraft may return to service.

Article 32, paragraph 2 of Uruguay's Code of Aeronautical Law states:

"In cases of dismantling because of accident, general repair or overhauling aircraft may not fly again until they have been inspected." ⁹²⁷

Article 23 of Venezuela's Civil Aviation Law states: "Aircraft, engines and accesories which are built or modified may be placed into service only with the approval of the aviation authority."

Article 125 of Panama's Regulation on Civil Aviation⁹²⁸ requires that the operator of public air service must have an organization with personnel and specialized equipment, in order to maintain aircraft in airworthy conditions. We think that the rule, even though somewhat strict, derives from the assumption that there is an unavoidable obligation by the operator, which will have to put the greatest attention in order to keep the aircraft in optimum conditions.

El Salvador's Law on Civil Aviation, foreseeing the possibility of misuses in maintenance centres, states:

⁹²⁶ Aeronautical Code, Article 10 (Argentina, 1967); Code of Aeronautical Law, Article 32 (Uruguay, 1942); Civil Aviation Law, Article 23 (Venezuela, 1955).

⁹²⁷ Bauza Araujo, Derecho Aéreo, (1955), p. 163.

⁹²⁸ Supra, p. 286.

"When used parts or pieces may be approved for the rebuilding or repair of an aircraft, their use must in all cases be approved by the inspector or technical official of the Department of Aviation of the Ministry of Defense." 929

Article 38, paragraph 2, on the same subject provides:

"...in order to utilize used parts or pieces it must also be technically proved that there is sufficient safety margin for the aircraft."

There is not much more on the subject on Latin American laws, but certainly we can see a legal interest in regulating as much as possible the maintenance of aircraft, in order to keep them technically in adequate conditions for flight.

The latest international development in the matter of airworthiness certificates is the "Multilateral Agreement relating to Certificates of Airworthiness for Imported Aircraft", signed at Paris in 1960, and which entered into force in 1961.⁹³⁰ The agreement provides for the issue and validation of certificates of airworthiness for aircraft imported from one contracting state to another, and makes provision for the exchange of information concerning national laws, regulations and requirements relating to airworthiness. The agreement is

929 Law on Civil Aviation, Article 39 (El Salvador, 1955).

930 ICAO, Doc. 8056. The agreement entered into force on 24 August, 1961, the thirtieth day after the date of deposit of the second instrument of ratification.

open for signature by those states members of ECAC,⁹³¹ as well as non-signatory member states of ECAC and contracting states of ICAO.

Section C. Communication Devices

The law in its relationship with the aircraft and its technical conditions has seen that it is necessary to add certain rules in regard to aircraft devices, **deemed relevant for safe aircraft operation,**

Among these devices, the aircraft radio equipment is of utmost importance. Today it would be inconceivable to find any aircraft without radio equipment, and without which the flight would be unsafe, and the aircraft potentially dangerous for other aircraft.⁹³²

Article 14 of the Paris Convention of 1919 regulated this matter and provided:

"No wireless apparatus shall be carried without a special license issued by the state whose nationality the aircraft possesses." 933

The only persons allowed to use the apparatus were the crew, and they required a special license for operating it. A further obligation was imposed by paragraph 2, which stated:

931 The following states are parties to the Paris Agreement (1960): Austria, Belgium, Denmark, Finland, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and United Kingdom. The status is as of 1st December, 1974.

932 Videla Escalada, Derecho Aeronautico, (1969), p. 538.

933 Wingfield and Sparkes, The Law in Relation to Aircraft, Longmans, Green & Co. (London: 1928), p. 71.

"Every aircraft used in the public transport and capable of carrying 10 or more persons shall be equipped with sending and receiving wireless apparatus when the methods of employing such apparatus shall have been determined by the International Commission for Air Navigation." 934

Later, the Commission changed the amount of persons an aircraft could carry,⁹³⁵ and this amount would be designated in the airworthiness certificate, always taking into account the safety factor.⁹³⁶

The regulations relating to radio equipment, which not only restricted, but in some instances prohibited it, are anachronisms born of the excessive military concerns of the post-war period in Europe. These regulations offered guidelines for legislations after the Paris Convention. The radio equipment was considered more as an espionage element than an indispensable air navigation device in order to secure air safety.

The Panamerican Convention did not say very much on the subject of radio-telegraphy, and that which was to be covered was taken up by other conventions, such as the General Convention of Radio-Telegraphy (Washington, 1927), which was the most important. A reference to the

934 Zollman, Law of the Air, (1927), p. 138.

935 ICAN Resolution No. 237. Decided to adopt the following interpretation for the words "capable of carrying" of Article 14. Paragraph 2: "Having normal seating accommodation for a certain number of persons, which number is indicated in paragraph 12 of the Aircraft's Certificate of Airworthiness. ICAN Official Bulletin, No. 8, (1925), p. 36.

936 Roper, Convention Internationale, (1930), p. 140.

matter is made in Article 31, but it actually relates to the desirability of cooperation in the development of communications under the rules of the existing Conventions.⁹³⁷

The Chicago Convention does regulate the subject of communication devices, and in Article 29, Clause e), mentions among the documents an aircraft must carry,

"if it is equipped with radio apparatus, the aircraft radio station license." 938

Article 30 of the Chicago Convention regulates the Aircraft Radio Equipment, by stating in its paragraph a) that,

"aircraft of each contracting state may, in or over the territory of another contracting states, carry radio transmitting apparatus only if a license to install and operate such apparatus has been issued by the appropriate authorities of the state in which the aircraft is registered."

The paragraph adds that the use of the equipment when flying over a state must conform to regulations prescribed by that state. Paragraph (b) follows Paris Convention rules, in that only the crew is authorized to use the Radio equipment, which has a special license given by the state where the aircraft is registered.⁹³⁹

⁹³⁷ Warner, "Convention for Air Navigation", 3 AIR, (1932), p. 259.

⁹³⁸ Cheng, International Air Transport, (1962), p. 137;
Matte, Droit Aérien-Aéronautique, (1964), p. 193.

⁹³⁹ Hamilton, Derecho Aéreo, (1960), p. 248; Matte, Droit Aérien-Aéronautique, (1964), p. 193.

Chicago Convention has recognized the importance of the radio equipment,⁹⁴⁰ and even though Article 35 mentions that no munitions or implements of war may be carried in or above the territory of a state without permission by aircraft engaged in International Navigation,⁹⁴¹ paragraph (b) provides that,

"no restriction shall be imposed which may interfere with the carriage and use on aircraft of apparatus necessary for the operation or navigation of the aircraft or the safety of the personnel or passengers."

This reference is made to what a state can prohibit or regulate, imposing then a limitation or restriction on necessary devices among which is radio equipment.

Another service of radio equipment today is the support for an aircraft from ground organizations during the flight, especially since the airspace is strictly controlled, and the pilot must follow ground instructions via radio-communications. A good example is the ADIZ and CADIZ zones which demand from aircraft special identification signals from long distances over the high seas be-

940 The radio equipment is important for communication. Communication with the ground is required for operational control, traffic control, exchange of information on weather and navigational hazards and assistance to aircraft in distress. Williams, The Operation of Airlines, (1964), p. 182.

941 The article points out that each state will determine what constitutes implements or munitions of war.

fore reaching sovereign airspace.⁹⁴²

The use of radio-communications equipment is compulsory by the laws of Argentina, Dominican Republic, El Salvador, Honduras, Mexico, Nicaragua and Peru.⁹⁴³

Article 11 of Argentina's Aeronautical Code provides that aircraft must have for communication radio-equipment that is licensed by a competent authority.⁹⁴⁴

Article 71 of El Salvador's law on Civil Aviation states:

942 The United States and Canada have established certain zones extending out to sea for the identification and control of aircraft outside their national territories and extending in some cases to quite considerable distances over the high seas. An aircraft within these contiguous zones subject to certain conditions, is required generally, when approaching or within certain specified areas over the high seas, to identify itself, and subject itself to the appropriate air traffic controller on the surface. These zones are known officially as the Canadian Air Defence Identification Zone (CADIZ) and the American zone is known as the Air Defence Identification Zone (ADIZ). Murchison, The Contiguous Air Space Zone in International Law, Department of National Defence, (Ottawa: 1955), p. 7.

943 Aeronautical Code, Article 11 (Argentina, 1967); Civil Aviation Law, Article 28 (Dominican Republic, 1969); Law on Civil Aviation, Article 21 (El Salvador, 1955); Civil Aviation Law, Article 54 (Honduras, 1950); Law of General Means of Communications, Article 323, No. 6 (Mexico, 1950); Civil Aviation Code, Article 49 (Nicaragua, 1956); Civil Aeronautics Law, Article 60 (Peru, 1965).

944 The competent authority can also decide which aircraft can be excepted from this rule. Lena Paz, Codigo Aeronautico, (1971), p. 54.

"Any aircraft intended for a public service of transporting passengers or cargo must be provided with a radio-receiver and a radio-transmitter approved by the competent authority and any failure of such equipment shall be a compelling reason to interrupt or cancel the flight."

Article 60 of Peru's Civil Aeronautics Law provides that all aircraft must be equipped with operation and safety devices, but does not name specific devices.⁹⁴⁵

The principle of prohibiting radio-equipment without a previous authorization is regulated by the laws of Bolivia, Ecuador and Uruguay.⁹⁴⁶

Article 15 of Ecuador's Law of Air Traffic states:

"No equipment of radiotelegraphy or radio telephone may be carried aboard an aircraft without a special license issued by the authority of jurisdiction of the state to which the aircraft belongs." 947

Uruguay's Code of Aeronautical Law, Article 72 provides:

"Use of Radio on private aircraft is prohibited if they have not obtained the respective authorization." 948

945 Gildemaister, Derecho Aeronautico, (1964), p. 32.

946 Air Service Decree, Article 12a) (Bolivia, 1930); Law of Air Traffic, Article 15 (Ecuador, 1960); Code of Aeronautical Law, Article 72 (Uruguay, 1942).

947 Carrera, Derecho Aeronautico, (1958), p. 126.

948 Tolle, "Direito Aeronautico no Uruguay", 3 Boletin ITA, (1960), p. 31.

The compulsory use of radio in aircraft which carry passengers is regulated by the laws of Cuba, Chile and Panama, although the last two limit the obligation to those aircraft which carry more than 5 or 10 passengers.⁹⁴⁹

Article 28 of Cuba's Regulation on Civil Aviation states that,

"Aircraft authorized to transport passengers which must have radio receiving and transmitting equipment may be exempted from such prohibition."

The prohibition being that no aircraft may have radio or telephone equipment without legal authorization. The authorization will state the use to be made of such equipment.

Chile's Air Navigation Decree, in Article 13, provides:

"Any aircraft used in public service and capable of transporting at least 10 persons shall carry radio-equipment (sending and receiving)." ⁹⁵⁰

Panama's Regulation on Civil Aviation in Article 61 states:

"All aircraft used in public air transport service with capacity for 5 or more passengers, and any other aircraft

⁹⁴⁹ Regulation on Civil Aviation, Article 28 (Cuba, 1928); Air Navigation Decree, Article 13 (Chile, 1931); Regulation on Civil Aviation, Article 61 (Panama, 1963).

⁹⁵⁰ Hamilton, Derecho Aéreo, (1960), p. 248.

used in public or private service which, in the judgement of the Civil Aeronautics Board, so requires it, must be provided with the necessary radio equipment."

Radio communication equipment is provided by a certificate or special license, which is different from the airworthiness certificate and is issued by the state in which the aircraft is registered.⁹⁵¹ This certificate or license is regulated in the laws of Argentina, Chile, Dominican Republic, Ecuador and Panama.⁹⁵²

The Argentinian Aeronautical Code states in Article 11, that aircraft must be equipped with radios, which require a license issued by a competent authority.⁹⁵³

In addition to the required license for the equipment, regulations in Chile, Dominican Republic, Ecuador and Panama, provide that such equipment can only be used by personnel who have a special license for it.⁹⁵⁴

Article 15, paragraph 2 of Ecuador's Law of Air Traffic, when referring to the equipment provides that it "shall be operated only by persons who have a special license therefor."

⁹⁵¹ Chicago Convention (1944), Article 30b). See also, Cheng, International Air Transport, (1962), p. 137.

⁹⁵² Aeronautical Code, Article 11 (Argentina, 1967); Air Navigation Decree, Article 13 (Chile, 1931); Civil Aviation Law, Article 30 (Dominican Republic, 1969); Law of Air Traffic, Article 15 (Ecuador, 1960); Regulation on Civil Aviation, Article 61 (Panama, 1963).

⁹⁵³ Leña Paz, Codigo Aeronautico, (1971), p. 54.

⁹⁵⁴ Supra, Footnote No. 952.

Article 13 of Chile's Air Navigation Decree states that the equipment can only be used "by members of the crew holding special licenses therefor."⁹⁵⁵

The Dominican Republic's Civil Aviation Law has added a requirement for equipment to aid air navigation, i.e. devices to permit the flight by instruments.⁹⁵⁶

Section D. Legal Capability for Flight. Documentation on Board.

An aircraft's capability of flight is as already pointed out, indicated by the issuance of an airworthiness certificate, which implies technical approval only. However an aircraft also needs the legal capability, which means having on board the required documentation, which allows the aircraft to operate in the air-space.⁹⁵⁷

Article 19 of the 1919 Paris Convention stated:

"Every aircraft engaged in international navigation shall be provided with:

- a) A certificate of registration in accordance with Annex A;
- b) A certificate of airworthiness in accordance with Annex B;
- c) Certificates and licenses of the Commanding Officer, pilots and crew, in accordance with Annex E.

⁹⁵⁵ Hamilton, Derecho Aéreo, (1960), p. 248.

⁹⁵⁶ Civil Aviation Law, Article 28 (Dominican Republic, 1969).

⁹⁵⁷ Cheng, International Air Transport, (1962), p. 138;
Fixel, The Law of Aviation, (1967), p. 46.

- d) If it carries passengers, a list of their names;
- e) If it carries freight, bills of lading and manifest;
- f) Log books in accordance with Annex C;
- g) If equipped with wireless the special license prescribed by Article 14." 958

Article 10 of the Panamerican Convention is almost identical, the only difference being those necessitated by the absence of technical annexes in Havana.⁹⁵⁹

Article 29 of Chicago Convention is similar to the Paris Convention, and under the title "Documents carried in aircraft" provides that the following documents must be carried by aircraft of a contracting state engaged in international navigation:

- a) Certificate of registration;
- b) Certificate of airworthiness;⁹⁶⁰
- c) Appropriate licenses for each member of the crew;
- d) Journey log book;
- e) Aircraft radio station license;⁹⁶¹
- f) A list of passengers names and places of embarkation and disembarkation;⁹⁶²
- g) A manifest and detailed declarations of car-

⁹⁵⁸ Roper, Convention Internationale, (1930), p. 152.

⁹⁵⁹ Warner, "Convention for Air Navigation", 3 ALR, (1932), p. 273.

⁹⁶⁰ See, *Supra*, Part II, Chapter 5, Section B, p. 270.

⁹⁶¹ See, *Supra*, Part II, Chapter 5, Section C, p. 290.

⁹⁶² Cheng, International Air Transport, (1962), p. 139.

go it carries.⁹⁶³

The documentation has been generally thought necessary to create a presumption of and establish the bona fides of air traffic.⁹⁶⁴

Among those documents required on board, perhaps the most important is the certificate of registration.⁹⁶⁵ The certificate determines the aircraft nationality⁹⁶⁶ as

⁹⁶³ Documentation has gone through a great development in international air transport, and today there is a need to amend Article 29 of the Chicago Convention, especially in what relates to its clauses f) and g). Annex 9 to the Chicago Convention, "Facilitation", has been amended twice, in order to comply with the necessary changes with regards to documentation. Today, contracting states are not required to present a Passenger Manifest, and should not require more than a notation on the General Declaration of "the number of passengers embarking or disembarking, as the case may be, and the number going through the airport on the same flight". (Annex 9, para 2.6 and 2.6.1). Also Contracting States should dispense with the requirement for information concerning the nature of goods in the Cargo Manifest (Annex 9, para 2.7.1). ICAO, Doc. 8900, Repertory-Guide to the Convention on International Civil Aviation (1971), Article 29.3.

⁹⁶⁴ Puente, "Survey of Commercial Aerial Navigation Law in Latin America", 1 JAL, (1930), p. 131.

⁹⁶⁵ Nys, "Etude sur la nationalité des Aeronefs", 18 RFDA, (1964), p. 164.

⁹⁶⁶ For purposes of international claims by states on behalf of aircraft, between parties to Chicago, the registration is conclusive on the question of aircraft nationality, but between non-contracting parties registration does not necessarily settle the matter. Cheng, International Air Transport, (1962), p. 131.

well as the country which must issue the corresponding airworthiness certificate, and which assumes responsibility for the aircraft.⁹⁶⁷ From the private law viewpoint the certificate is important because it indicates the owner of the aircraft.

The registration certificate as a requirement to circulate in the airspace is demanded by all Latin American texts, with the exceptions of Colombia and Venezuela.⁹⁶⁸

Article 17 of Cuba's Regulation on Civil Aviation states:

"In order to circulate in the air over the national territory and the jurisdictional waters, all private aircraft must be registered with the Ministry of National Defense and possess the authorization issued by that Ministry as well as a certificate of airworthiness for the aircraft..."

⁹⁶⁷ Meyer, Compendio de Derecho Aeronautico, (1947), p. 230.

⁹⁶⁸ Aeronautical Code, Article 10 (Argentina, 1967); Air Service Decree, Article 3 (Bolivia, 1930); Air Code, Article 12 (Brazil, 1966); Law on Civil Aviation, Article 59 (Costa Rica, 1949); Regulation on Civil Aviation, Article 17 (Cuba, 1928); Air Navigation Decree, Article 17 (Chile, 1931); Civil Aviation Law, Article 27 (Dominican Republic, 1969); Law of Air Traffic, Article 8 (Ecuador, 1960); Law on Civil Aviation, Article 57 (El Salvador, 1955); Civil Aviation Law, Article 32 (Guatemala, 1948); Civil Aviation Law, Article 40 (Honduras, 1950); Law Means of Communications, Article 323, No. 3 (Mexico, 1950); Civil Aviation Code, Article 35 (Nicaragua, 1956); Regulation on Civil Aviation, Article 59 (Panama, 1963); Aeronautical Code, Article 20 (Paraguay, 1957); Civil Aeronautics Law, Article 12 (Peru, 1965); Code of Aeronautical Law, Article 47 (Uruguay, 1942).

Mexico's Book Four, Law of General Means of Communications, Article 323, No. 3 provides:

"In order to conduct operations in Mexican territory, the owners, possessors or operators of civil aircraft must hold the certifications of registration required..." 969

The Uruguayan Code of Aeronautical Law, in Article 47 provides:

"National or foreign private aircraft flying over the national territory or territorial waters shall carry the certificate of registration." 970

Crew licenses are essential, for an aircraft which gives the best assurances of safety by meeting high technical standards is useless if not commanded by experts.⁹⁷¹ Today, when an aircraft's complexity creates a greater potential risk, personnel must be able and knowledgeable. Licenses are not all the same and the requirements for each aircraft are different, but the objective is uniform: to hand over the aircraft to somebody who knows how to fly it.

Article 19c) of the Paris Convention of 1919 determined that every aircraft engaged in international navigation had to carry among the documents required, certificates and licenses of the Commanding Officer, pilots and crew.⁹⁷² A very detailed regulation of the subject

969 Linares, Registro Aeronautico, (1956), p. 52.

970 Tolle, "Direito Aeronautico no Uruguay", 3 Boletin ITA, (1960), p. 24.

971 Videla Escalada, 2 Derecho Aeronautico, (1969), p. 535.

972 Meyer, Compendio de Derecho Aeronautico, (1947), p. 234.

was included in Annex E, in order to determine the minimum qualifications necessary for obtaining certificates and licenses as pilots and navigators.⁹⁷³ Article 12 of the Convention provided the following:

"The Commanding Officer, pilots, engineers and other members of the operating crew shall, in accordance with the conditions laid down in Annex E, be provided with certificates of competency and licenses issued or rendered valid by the state whose nationality the aircraft possesses." 974

The Panamerican Convention also referred to the certificates of competency of the Commander, pilots, engineers and crew in Articles 10c) and 13. Article 10c) included the certificates as the documents that had to be carried in every aircraft, and Article 13 referred to the qualifications of the crews, and regulated in detail what the Paris Convention did in its Annex E. One observable difference is that while the Havana Convention only asks for one document for each member of the crew, the Paris Convention demanded two.⁹⁷⁵

The experience of the Paris Convention lead the drafters of the Chicago Convention, to put into the text only the fundamental rules, while Annex 1 to the Convention, "Personnel Licensing", was to regulate in detail the

⁹⁷³ Zollman, Law of the Air, (1927), p. 155.

⁹⁷⁴ Roper, Convention Internationale, (1930), p. 138.

⁹⁷⁵ Warner, "Convention for Air Navigation", 3 ALR, (1932), p. 255.

subject.⁹⁷⁶

The term licensing has the same meaning as the terms "certificates of competency", "license" or "certificate" used in the Chicago Convention.⁹⁷⁷

Chicago establishes that those aircraft engaged in international navigation must carry on board the "appropriate licenses for each member of the crew",⁹⁷⁸ and it also decrees as a fundamental principle⁹⁷⁹ that,

"the pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licenses issued or rendered valid by the state in which the aircraft is registered." ⁹⁸⁰

Article 33 of Chicago refers to the recognition of certificates of competency and licenses by other contracting states, other than the state issuing the certificates, provided that the requirements demanded are equal

⁹⁷⁶ Standards and Recommended Practices were first adopted by the ICAO Council in 1948, and designated as Annex 1 to the Convention. These Standards and Recommended Practices were based on recommendations of the Personnel Licensing Division at its Second Session (January, 1947), relating to the licensing of flight crew members and also of key personnel responsible for providing and maintaining air navigation services. Annex 1, "Personnel Licensing", 6th Edition (April, 1943), p. 5.

⁹⁷⁷ Le Goff, Droit Aerien, (1954), p. 311.

⁹⁷⁸ Chicago Convention, (1944), Article 29c).

⁹⁷⁹ See, Chicago Convention (1944), Article 32.

⁹⁸⁰ Saint Alary, Droit Aerien, (1955), p. 106.

or above the minimum standards set by Chicago.⁹⁸¹

The certificate of competency as a requirement among the aircraft documentation is mentioned by the laws of Argentina, Cuba, Chile, Dominican Republic, El Salvador, Honduras, Mexico, Nicaragua, Panama, Paraguay and Peru.⁹⁸²

Article 12 of Chile's Air Navigation Decree provides:

"The Commander, pilots, mechanics, and other crew members on board an aircraft must hold aptitude certificates and licenses granted under conditions fixed by the state which originally issued the license to be validated." ⁹⁸³

Article 19 of Argentina's Aeronautical Code states:

"Persons that carry out aeronautical functions on board foreign aircraft must have, for the exercise of the functions, competency certificates accepted by the Argentinian aeronautical authority

⁹⁸¹ Shawcross and Beaumont, Air Law, (1966), p. 224.

⁹⁸² Aeronautical Code, Article 19 (Argentina, 1967); Regulation on Civil Aviation, Article 17 (Cuba, 1928); Air Navigation Decree, Article 12 (Chile, 1931); Civil Aviation Law, Article 27 (Dominican Republic, 1969); Law on Civil Aviation, Article 57 (El Salvador, 1955); Civil Aviation Law, Article 40 (Honduras, 1950); Book Four, Law of General Means of Communications, Article 323, No. 3 (Mexico, 1950); Civil Aviation Code, Article 35 (Nicaragua, 1956); Regulation on Civil Aviation, Article 59 (Panama, 1963); Aeronautical Code, Article 20 (Paraguay, 1957); Civil Aeronautics Law, Article 12 (Peru, 1965).

⁹⁸³ Hamilton, Derecho Aéreo, (1960), p. 220.

or issued according to international agreements in which the Nation is a contracting party." 984

According to Article 19f) of the Paris Convention, Log Books should be carried by every aircraft engaged in international navigation.⁹⁸⁵ Annex C to the Convention determined that the following Log Books should be found in the aircraft:

- a) Journey log;
- b) Aircraft log;
- c) Engine log;
- d) Signal log.⁹⁸⁶

Section I of Annex C stated that the Journey Log Book had to be kept in every aircraft and had to contain the following particulars:

- "a) Category to which the aircraft belongs; its nationality and registration marks; the full name, nationality and residence of the owner; name of maker and the carrying capacity of the aircraft;
- b) In addition for each journey:
 - I- The names, nationality and residence of the pilot and of each of the members of the crew;
 - II- The place, date, and hour of departure, the route followed, and all incidents en route, including landings." 987

984 Lena Paz, Codigo Aeronautico, (1971), p. 57.

985 Gay de Montella, Derecho Aeronautico, (1950), p. 185.

986 Zollman, Law of the Air, (1927), p. 148.

987 Wingfield and Sparkes, Law in Relation to Aircraft, (1928), p. 94.

The Log Books were also mentioned by the Madrid Convention of 1926 and the Panamerican Convention.⁹⁸⁸

The importance of the Journey Log Book is based on the fact that the aircraft is an element related to very important interests. These interests can be affected by acts which take place in relation to the aircraft or which occur on board the aircraft. It is therefore absolutely essential for the aircraft to have documentation of its legal situation, as well as the legal situation of persons charged with performing certain acts on board. Thus anyone who has the interest or the need of knowledge about occurrences on board, can see, the information on the Journey Log Book. Of course, both private, and public interests will be considered among the information recorded.⁹⁸⁹

The importance the Log Book has been assessed at Chicago, and in addition to the provisions of Article 29d), Article 34 regulates Journey Log Books⁹⁹⁰, by stating that they,

988 Havana Convention, Article 10f). Meyer, Compendio de Derecho Aeronautico, (1947), p. 232.

989 Videla Escalada, 2 Derecho Aeronautico, (1969), p. 536; Shawcross and Beaumont, Air Law, (1966), p. 222.

990 Resolution A10-36 of the Tenth Session of the Assembly (1956) stated that the General Declaration when prepared so as to contain all the information required by Article 34 of Chicago with respect to the Journey Log Book, may be considered by Contracting States to be an acceptable form of Journey Log Book. ICAO, Doc. 8900, Repertory-Guide to the Convention on International Civil Aviation, (1971), Article 34-3.

"...shall be maintained in respect of every aircraft engaged in international navigation..."

and in,

"...which shall be entered particulars of the aircraft, its crew and of each journey, in such form as may be prescribed from time to time pursuant to this Convention." 991

The Log Book is a record of relevant occurrences on board an aircraft during a flight, especially regarding passengers, and crew, such as births, deaths, crimes or other unlawful acts against civil aviation, disciplinary measures taken by the Aircraft Commander. The facts annotated in the Log Book do not have an official purpose, they only fulfill a role as a means of proof.⁹⁹² The Log Book links the Aircraft Commander, as a public official or representative of the authority, and those acts happening during a flight.

As proof of occurrences during navigation Log Books must be well guarded by the persons to whom they are confided. It has been said that the entries on the book assume the value of public acts, and that they certify and are an evidence, even though they can be attacked by the allegation of falsehood with respect to the public performance of aircraft commanders. Those entries that reflect

991 Matte, Droit Aerien-Aeronautique, (1964), p. 194.

992 Bravo Navarro, El Comandante de Aeronave Condicion y regimen Juridico, Instituto Francisco de Vitoria, (Madrid: 1966), p. 22; Kamminga, The Aircraft Commander in Commercial Air Transportation, Martinus Nijhoff, (The Hague: 1953), p. 19.

the private interest only have the value given by the law of the nationality of the aircraft, or those of the "lex fori".⁹⁹³

Dr. Matte, on this matter, opines that the aircraft commander should record or draw up the necessary certificates and summon witnesses to sign the papers when necessary. The documents should be of a probative nature and should serve to facilitate legal registration after landing or to assist the establishment of legal rights by judicial or administrative courts of law.⁹⁹⁴

ICAO on the subject of the Log Book has determined certain rules in Annex 6, by providing that the aircraft commander is responsible for keeping the Journey Log Book and the declarations he makes therein, up to date.⁹⁹⁵

Annex 6 of ICAO recommends also that the Journey Log Book should have the following items:

- I - Aeroplane nationality and registration;
- II - Date;
- III - Names of Crew members,
- IV - Duty assignments of Crew members;
- V - Place of departure;
- VI - Place of arrival;
- VII - Time of departure;

⁹⁹³ Gay de Montella, Derecho Aeronautico, (1950), p. 323-324.

⁹⁹⁴ Matte, The International Legal Status of the Aircraft Commander, Carlswell Company, (Toronto: 1975), p. 64.

⁹⁹⁵ Annex 6, "Operation of Aircraft", Part I, International Commercial Air Transport, Second Edition of Part I (September 1970), para. 4.5.5.

- VIII - Time of arrival;
- IX - Hours of flight;
- X - Nature of flight;
- XI - Incidents, observations, if any;
- XII - Signature of person in charge.⁹⁹⁶

In Latin America the laws of Argentina, Cuba, Chile, Ecuador, El Salvador, Honduras, Nicaragua, and Peru⁹⁹⁷ generally require that the aircraft have the Log Book on board.

Ecuador's Law of Air Traffic, in Article 13 states:

"In order to fly, all private aircraft must have the board documents prescribed by the regulations." ⁹⁹⁸

The laws of Bolivia, Dominican Republic, Guate-

⁹⁹⁶ Annex 6, "Operation of Aircraft", Part I, International Commercial Air Transport, Second Edition of Part I (September, 1970), para 11.4.1.

⁹⁹⁷ Aeronautical Code, Article 10 (Argentina, 1967); Regulation on Civil Aviation, Article 31 (Cuba, 1928); Air Navigation Decree, Articles 17-18 (Chile, 1931); Law of Air Traffic, Article 13 (Ecuador, 1960); Law on Civil Aviation, Article 57 (El Salvador, 1955); Civil Aviation Law, Article 40 (Honduras, 1950); Civil Aviation Code, Article 35 (Nicaragua, 1956); Civil Aeronautics Law, Article 12 (Peru, 1965).

⁹⁹⁸ Carrera, Derecho Aeronautico, (1958), p. 127.

mala, Panama, Paraguay and Venezuela⁹⁹⁹ require definitely a Log Book or "aircraft book".¹⁰⁰⁰

Article 32 of Guatemala's Civil Aviation Law provides that every aircraft engaged in national or international flight must carry the following documents on board:

- "...
c) A flight plan;
d) An Engine Log Book;
e) An Aircraft Log Book."

Article 33 of Guatemala's Civil Aviation Law states that when the aircraft mentioned in Article 32 are "engaged in the transportation of passengers, merchandise or mail, they must carry", in addition to the already mentioned documents, a permit, a passenger manifest, a cargo manifest and a crew list.¹⁰⁰¹

999 Venezuela's Civil Aviation Law mentions in its Article 28, the "libro de bitacora" and it seems to be a mistake. The "libro de bitacora" is a technical book of navigation course. All the activities which take place on board should be registered in the "Log Book" ("Diario de Navegacion"), carried by the aircraft commander, but which is not mentioned in the law. Obviously there is a confusion in wording. Delascio, "Comentarios referentes a la posible revision de la ley de aviacion civil vigente", 4 Revista Sovedae, (1971), p. 155.

1000 Air Service Decree, Articles 3 & 11 (Bolivia, 1930); Civil Aviation Law, Articles 32-34 (Guatemala, 1948); Regulation on Civil Aviation, Articles 60 (Panama, 1963); Aeronautical Code, Articles 20 & 76 (Paraguay, 1957); Civil Aviation Law, Article 27 (Dominican Republic, 1969); Civil Aviation Law, Article 28 (Venezuela, 1955).

1001 Juarez, Derecho Aéreo Guatemalteco, (1957), p. 83.

Panama's Regulation on Civil Aviation, Article 60, in a very detailed manner provides:

"In addition to listing the marks of nationality and registration and the name of the owner, the flight log of an aircraft must indicate for each flight: the date, nature of the flight (private, aerial services, scheduled or non-scheduled air transportation), the names of the crew, the place and hour of departure, the place and hour of arrival, any incidents or observations, the signature of the chief pilot, and where pertinent, the visas of the competent authorities."

Paragraph 2 of Article 60 adds:

"The Chief pilot shall be responsible for entering these facts in the flight log".

Paraguay's Aeronautical Code, Article 76 states:

"The Commander of an aircraft shall record in the log book the marriages, births and deaths occurring during the trip, and shall send a certified copy of said entries to the competent authorities..." 1002

There is an additional requirement in the laws of Chile, Ecuador and El Salvador.¹⁰⁰³ They provide that the books must be kept for a period of time, not less than

1002 Tolle, Air Law in Latin America, (1960), p. 222.

1003 Air Navigation Decree, Article 18 (Chile, 1931); Law of Air Traffic, Article 13 (Ecuador, 1960); Law on Civil Aviation, Article 70 (El Salvador, 1955).

two years.

Article 18 of Chile's Air Navigation Decree states:

"Log Books must be preserved for two years, computed from the date of the last entry verified therein." 1004

Article 70 of El Salvador's Law on Civil Aviation entitled "Preserving Books" states:

"Air transport enterprises must keep the books relating to operations of their aircraft at the disposal of the Department of Aviation of the Ministry of Defense for a term of two years from the last entry or annotation made therein."

Article 29f) of the Chicago Convention requires that aircraft carrying passengers must have a list of their names and places of embarkation and destination. A general declaration which has to be completed by air transport operators in order to meet public authorities requirements is prescribed by Annex 9 to the Chicago Convention, "Facilitation".¹⁰⁰⁵

The list of passengers is required for reasons related to police motives, as well as identification purposes in case of an accident, by the laws of Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Panama and Paraguay. The invoice and manifest of cargo is also demanded by the abovementioned countries for

1004 Hamilton, Derecho Aéreo, (1960), p. 211.

1005 Shawcross & Beaumont, Air Law, (1966), p. 223.

custom inspection purposes.¹⁰⁰⁶

Article 20 of Paraguay's Aeronautical Code is a good example, because all the states aforementioned, follow an identical system. Clauses f) and g) provide that if the aircraft, "carries passengers, a list of their names, indicating points of departure and destination" will be needed, and also "if it carries freight, a manifest and detailed declarations as to the cargo."¹⁰⁰⁷

We shall briefly review other requirements by certain states which are not considered by the majority of Latin American laws:

- 1) Health Permit: Required for International operations by Chile,¹⁰⁰⁸ El Salvador, Honduras and Nicaragua.¹⁰⁰⁹
- 2) Mail Manual: Mentioned by the laws of Honduras, El

¹⁰⁰⁶ Air Navigation Decree, Article 17 (Chile, 1931); Civil Aviation Law, Article 27 (Dominican Republic, 1969); Law on Civil Aviation, Article 57 (El Salvador, 1955); Civil Aviation Law, Article 33 (Guatemala, 1948); Civil Aviation Law, Article 40 (Honduras, 1950); Civil Aviation Code, Article 35 (Nicaragua, 1956); Regulation on Civil Aviation, Article 59 (Panama, 1963); Aeronautical Code, Article 20 (Paraguay, 1957).

¹⁰⁰⁷ Fuster, Derecho Aeronautico, (1958), p. 140.

¹⁰⁰⁸ Chile's Air Navigation Decree, Article 17 is the strictest of them all, and provides that "Upon entry into the country aircraft shall carry a bill of health viséed by the respective consul in accordance with the Consular Law in force or to be adopted". Passengers should present the documents required by health regulations.

¹⁰⁰⁹ Air Navigation Decree, Article 17 (Chile, 1931); Law on Civil Aviation, Article 144 (El Salvador, 1955); Civil Aviation Law, Article 120 (Honduras, 1950); Civil Aviation Code, Article 115 (Nicaragua, 1956).

Salvador and Nicaragua.¹⁰¹⁰

3) Clearance and exit permit: mentioned by the laws of El Salvador, Honduras, Nicaragua,¹⁰¹¹ and Guatemala.¹⁰¹²

4) Flight plan: mentioned by Guatemala, Honduras and Nicaragua.¹⁰¹³

Regarding the flight plan presented by the Aircraft Commander in the operations office of the departure airport is defined by ICAO's Lexicon as:

"Specified information provided to Air Traffic services units relative to an intended flight or portion of a flight of an aircraft." ¹⁰¹⁴

The flight plan is drafted by the Aircraft Commander, who specifies whether he will use visual or instrument flight rules. The plan is optional for VFR flights, but mandatory for IFR flights. The flight plan affirms that the crew members are qualified, the aircraft possesses all necessary equipment and that the aircraft commander agrees to follow the rules therein.¹⁰¹⁵

1010 Ibid.

1011 Ibid.

1012 Civil Aviation Law, Article 33 (Guatemala, 1948).

1013 See, Footnote 1009 and Footnote 1012.

1014 ICAO Lexicon, Doc. 9110, Vol. II, (1974), p. 46.
See also, Annex 2, Rules of the Air, Chapter 1, Definitions.

1015 Matte, International Legal Status of the Aircraft Commander, (1975), p. 38.

5) Engine Log Book: Mentioned only by Guatemala's Civil Aviation Law.¹⁰¹⁶

However we must bear in mind, that all the documents required or demanded by the states, with the exception of those considered by Article 29 of the Chicago Convention,¹⁰¹⁷ can only be demanded by the states within their jurisdictional limits or with respect to those aircraft in their register, according to the rules established by the Chicago Convention.¹⁰¹⁸

Section E. Aircraft Inspection

Article 16 of the Chicago Convention determines that "The appropriate authorities of each of the contracting states shall have the right...to inspect the certificates and other documents prescribed by this Convention."¹⁰¹⁸

The reasons for an inspection are based on the international public interest, as well as internal public order. The inspection permits verification, according to the airworthiness certificate, of the nationality, registration and safety of the aircraft as well as the type of merchandise carried on board, the capability of the crew, control of the passengers and other details.

The right to inspect, search and control is based on Article 21 of the Paris Convention. The Article referred to the rules for departure, in flight-time and landing, Article 21 stated the following:

"Upon departure or landing of an aircraft, the authorities of the country shall have, in all cases, the right to

¹⁰¹⁶ Civil Aviation Law, Article 32 (Guatemala, 1948).

¹⁰¹⁷ The documents required by the Chicago Convention (1944) in Article 29, are compulsory for every aircraft of a contracting state engaged in international navigation.

¹⁰¹⁸ Cheng, International Air Transport, (1962), p. 128.

visit the aircraft and verify all the documents with which it must be provided." 1019

The inspection right¹⁰²⁰ can be exercised during any stop in the territory of a contracting state. An aircraft can, in certain qualified cases be obliged to land for search and inspection.¹⁰²¹

The right of inspecting the aircraft is recognized explicitly by the laws of Argentina, Bolivia, Brazil, Costa Rica, Colombia, Chile, Guatemala, Peru and Uruguay.¹⁰²²

Article 13 of Bolivia's Air Service decree states:

"On International flights (national or foreign), at leaving or entering the country, the customs, health, police, or military authorities, as applicable, shall in all cases, inspect aircraft inside and outside and ascertain compliance with applicable provisions."

1019 Zollman, Law of the Air, (1927), p. 139.

1020 No specific decision relating to search of aircraft has been taken by any organ of ICAO. Annex 9 (Facilitation) para 2.2. states in general terms: "Contracting states shall make provision whereby procedures for the clearance of aircraft will be applied and carried out in such a manner as to retain the advantage of speed inherent in air transport."

1021 An interesting feature of the right each contracting state has to inspect and search aircraft of the other contracting states on landing or departure, is that the appropriate authorities shall do so "without unreasonable delay". Cheng, International Air Transport, (1962), p. 166.

1022. Aeronautical Code, Article 13 (Bolivia, 1930); Air Code, Article 77 (Brazil, 1966); Law on Civil Aviation, Articles 39, 40 & 57 (Costa Rica, 1949); Law on Civil Aviation, Article 84 (Colombia, 1938); Air Navigation Decree, Article 40 (Chile, 1931); Civil Aviation Law, Article 5 (Guatemala, 1948); Civil Aeronautics Law, Article 10 (Peru, 1965); Code of Aeronautical Law, Article 32 (Uruguay, 1942).

The Chilean Air Navigation Decree, in its Article 40 provides:

"The aviation authorities may undertake all types of investigation before take-off, landing and during the stay at the airport concerning aircraft, their crews, goods, and persons present or shipped." 1023

Article 77 of Brazil's Air Code states that it grants to the Aeronautical Authority the control over all activities involved with air services. 1024

The inspection right is followed by Latin American laws in order to assure that rules are not violated, such as those that prohibit the aircraft from having photographic instruments or similar devices with potential use in espionage. This prohibition is regulated by the laws of Bolivia, Brazil, Cuba, Chile, Dominican Republic, Honduras, Nicaragua, Peru, Uruguay and Venezuela. 1025

Cuba's Regulation on Civil Aviation, Article 30 states:

1023 Hamilton, Derecho Aéreo, (1960), p. 238.

1024 Valle, Codigo Brasileiro do Ar, (1967), p. 129.

1025 Air Service Decree, Article 12 (Bolivia, 1930); Air Code, Article 68 (Brazil, 1966); Regulation on Civil Aviation, Article 30 (Cuba, 1928); Air Navigation Decree, Article 28 (Chile, 1931); Civil Aviation Law, Article 49 (Dominican Republic, 1969); Civil Aviation Law, Article 46 (Honduras, 1950); Civil Aviation Code, Article 41 (Nicaragua, 1956); Civil Aeronautics Law, Article 13 (Peru, 1965); Code of Aeronautical Law, Article 69 (Uruguay, 1942); Civil Aviation Law, Article 12 (Venezuela, 1955).

"No aircraft of any nationality, may carry photographic or topographic apparatus or instruments for its use without especial permission from the Ministry of National Defense."

There are other reasons for which a state may inspect the aircraft:

1) Safety purposes prohibit the transport of arms, ammunition, explosives, inflammable material on board commercial aircraft.¹⁰²⁶ This is regulated by the laws of Argentina, Brazil, Colombia, Cuba, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.¹⁰²⁷

Article 68 of Uruguay's Code of Aeronautical Law provides:

¹⁰²⁶ Hyzer, "Pan American Air Regulation", 4 JALC, (1933), p. 531.

¹⁰²⁷ Aeronautical Code, Article 9 (Argentina, 1967); Air Code, Article 68 (Brazil, 1966); Law on Civil Aviation, Article 83 (Colombia, 1938); Regulation on Civil Aviation, Article 36 (Cuba, 1928); Air Navigation Decree, Article 28 (Chile, 1931); Civil Aviation Law, Article 51 (Dominican Republic, 1969); Law of Air Traffic, Article 16 (Ecuador, 1960); Law on Civil Aviation, Article 74 (El Salvador, 1955); Civil Aviation Law, Article 65 (Guatemala, 1948); Civil Aviation Law, Article 57 (Honduras, 1950); Law of General Means of Communications, Article 324 (Mexico, 1950); Civil Aviation Code, Article 52 (Nicaragua, 1956); Regulation on Civil Aviation, Article 66 (Panama, 1963); Aeronautical Code, Article 41 (Paraguay, 1957); Civil Aeronautics Law, Article 57 (Peru, 1965); Code of Aeronautical Law, Article 68 (Uruguay, 1942); Civil Aviation Law, Article 13 (Venezuela, 1955).

"It is prohibited for private aircraft to transport carrier pigeons, explosives, arms, munitions of war, and generally any war material." 1028

2) In order to avoid the traffic of prohibited drugs, narcotics, or any other similar elements, the state may inspect the aircraft at will. This is regulated by the laws of Colombia, Cuba, El Salvador, Honduras, Nicaragua and Panama. 1029

Article 72 of El Salvador's law on Civil Aviation provides:

"The international transportation by air of articles which are not in free commerce under treaties or conventions signed and ratified by the Government of El Salvador in accordance with the Constitution shall be prohibited."

3) For safety precautions and for conformity with health and sanitary provisions, it is forbidden to carry people in a state of intoxication, people suffering from the effects of drugs, bodies of dead people, people suffering from contagious diseases or mental cases. Some of these

1028 Tolle, "Direito Aeronautico no Uruguay", 3 Boletin ITA, (1960), p. 30.

1029 Law on Civil Aviation, Article 83 (Colombia, 1938); Regulation on Civil Aviation, Article 36 (Cuba, 1928); Law on Civil Aviation, Article 72 (El Salvador, 1955); Civil Aviation Law, Article 55 (Honduras, 1950); Civil Aviation Code, Article 51 (Nicaragua, 1956); Regulation on Civil Aviation, Article 66 (Panama, 1963).

cases require a permit, while others are not allowed at all. This rule is followed by the laws of El Salvador, Guatemala, Honduras, Dominican Republic, Mexico, Panama, Peru and Venezuela.¹⁰³⁰

Honduras' Civil Aviation Law provides in Article 56:

"Aircraft for public transportation may not transport persons in an intoxicated state or under the effect of narcotics. The transportation of corpses or of mental patients or of persons suffering from a contagious disease may only be made with the permission of the health authorities." ¹⁰³¹

All the above mentioned cases are prohibitions, requiring permits in order to be overturned; furthermore, exceptional cases need to be inspected by the competent authorities.

¹⁰³⁰ Law on Civil Aviation, Article 73 (El Salvador, 1955); Civil Aviation Law, Article 65 (Guatemala, 1948); Civil Aviation Law, Article 56 (Honduras, 1950); Civil Aviation Law, Articles 51 & 52 (Dominican Republic, 1969); Law of General Means of Communications, Article 324 (Mexico, 1950); Regulation on Civil Aviation, Article 66 (Panama, 1963); Civil Aeronautics Law, Article 57 (Peru, 1965); Civil Aviation Law, Article 12 (Venezuela, 1955).

¹⁰³¹ Tolle, "Direito Aeronautico no Honduras", 5 Boletim ITA, (1962), p. 5.

CONCLUSIONS

Section A - Generalities

This work has dealt with two major areas regulated by Governmental Aviation laws in the Latin American states: Air Navigation Facilities and Aircraft. We have compared the provisions of the Chicago Convention with Latin American legislation. Certain aspects of the legislative texts lead to a better understanding of the reasons underlying each state's regulations and to important conclusions useful for further development of Air Law in Latin America. Our purpose is to study the following aspects in order to make a critical examination.

- 1) Legislative unity.
- 2) Principal legislative differences.
- 3) Omission of certain types of legislation.
- 4) Central American legislative communion.
- 5) State intervention in air navigation facilities and aircraft regulation.

1) Legislative unity.

The first similarity considered by Latin American legislation is the basis for the distinction between public and private aerodromes. Another topic considered is the authorization requirement, an indispensable and necessary condition for opening and operating aerodromes. In our estimation, this requirement is justified, since the aerodrome seems to be the most suitable place for the State to exercise aircraft control and the corresponding inspection.

Legislation in almost every Latin American state deals with state control of all the installations used in aid of air navigation. It is also recognized that the State has the right to determine the taxes and all other collections paid by users of air navigation facilities.

Unanimously Latin American legislation accepts the principle by which aircraft have a nationality, according to the Chicago Convention. The nationality principle leads to the rule that aircraft have only one registration. A related matter considered in the legislative texts is the obligation of aircraft to have external and visible markings, denoting nationality, registration and individualization of aircraft.

The classification of aircraft into private and public found in Latin American legislation, also has a common base. Laws generally refer to public aircraft, defining and classifying them; consequently, those not mentioned in the classification are considered private aircraft. The only exception is the Cuban Law, which gives a definition of private aircraft.

In our study, aircraft registration was considered only as it relates to public laws, with no research conducted in the field of private law. From the study we conclude that the most important effect of registration is the public law, found in the legislation of all Latin American states, governing the admission of an aircraft to air traffic in the airspace.

2) Principal legislative differences.

The first major difference noted in the state's legislation occurs in the legal definition of aerodrome. Depending upon the criteria followed by the legislative

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text - technical, functional or legislative - the definition has different characteristics. The last two criteria seem to be more frequently used and more practical at this time.

The aerodrome classification, whether they are classified as public or private, also follows a double tendency, taking into consideration the ownership or the use the airfield has.

Another important difference is found in the definition of the term airport. Many texts do not have any definition at all; others define the term in varying forms. For example, some laws refer to the airport's installations as a factor in qualifying it as an international airport. Argentina requires not only installations but also a certain traffic intensity in order to justify the designation of international airport.

Management systems of aerodromes also vary. Three have been discussed: a government monopoly management, a liberal system in which the State assumes no responsibility, and an eclectic system under which the State manages only the public aerodromes that it owns.

Significant differences can be noted too in the legislative approach to the liens imposed upon the land located in the vicinity of the aerodrome. There are two tendencies: to consider such liens as limitations or restrictions on the property or to return to the traditional concept of servitude. Differences are also seen in the areas or zones to which the servitudes of no construction and suppression of obstacles apply. Some texts contain mathematical criteria for legal settlement of such areas; other texts dictate the management of it in other internal

regulations. The method of management determines greater or lesser flexibility or adaptability of servitude.

The definitions of aircraft in Latin America are conceptual; but they fall into three categories: far-reaching or wide, intermediate and restricted. Also important is the difference in criteria applied to grant an aircraft nationality. A great majority of the laws use eclectic criteria, the nationality being regulated through an objective fact, which is the registration in a determined state that accords it only to its own nationals. Other legal texts apply eclectic criteria with modifications by allowing the state to grant a registration to aircraft to any person domiciled in that state. Still other texts will grant registration to foreigners domiciled in the State but will prohibit such registration to aircraft used for public transport.

Those texts which apply eclectic criteria to grant nationality to an aircraft use one of two modalities: the first group demands the nationality as a requirement in order "to acquire the ownership of the aircraft"; the second group will require it as a condition preceding registration of the aircraft. From this difference in Latin American legislation emerge interesting problems. In practice, application of the first criterion causes an incapacity when deciding ownership of property. Application of the second implies the possibility of acquiring property which cannot be used if it does not meet all the nationality requirements at the time of registration, since without this procedure the aircraft cannot be admitted to air navigation.

The distinction between public and private aircraft is yet another area of differences. Some texts apply a subjective criterion (the nature of the owner), which due to the range of the State's commercial activities, is imprecise. Other laws establish a functional criterion (a public aircraft is one used for a public service); these are more precise because the definition of "public service" in administrative law has a fixed scope.

With regard to required documents on board the aircraft, Latin American laws omit some and demand others which are not recognized internationally. Certificates of registration and airworthiness are, however required.

3) Omissions in Latin American legislation.

Latin American legislation lacks definitions of air navigation facilities and ground organization with the exceptions of the Air Code of Brazil, containing enumerative definitions, and Costa Rica's law on Civil Aviation.

Aside from the laws of Mexico and Venezuela, Latin American laws have not established the principle of compulsory use of air navigation facilities services. It would be advisable to apply this principle to some air navigation aids. It could apply, for example, to the obligation to fly with instruments.

No Latin American legislation has yet solved those cases which require registration on a non-national basis, such as those for international operating agencies, which could follow ICAO's Council resolutions on the matter. Argentinian law accepts the registration of an aircraft of international operating agencies, on a pro-

visional basis, considering them in the same category of public aircraft.

4) Central American legislative Communion.

Two interesting rules indicate that generally the same approach is used by Central American texts when regulating Air Law. The first is the exclusive regulation of civil aerodromes, through which emerges indirect recognition of the distinction between civil and military aerodromes, excluding the military ones from this legal regime.

The prelix regulation of certain prohibitions, which are related to the State's right to conduct a total inspection, is also governed by Central American laws when they prohibit air transportation of sick persons with contagious diseases, drunkards or narcotics.

5) State Intervention in Air Navigation Facilities and Aircraft.

The state's intervention has been constantly acknowledged in our work and can be explained by the fact that airspace is considered to be under public or national dominion. Consequently the net worth, which is the use of the airspace must be administrated by the State.

National security and economic considerations determine the intervention of the State in the infrastructure of air navigation facilities. The State will be the administrator of the facilities and, in some legislation, of the aerodromes as well.

The state also intervenes in the aircraft register, which determines identification and nationality, and in ensuring the airworthiness of aircraft. The State checks fulfillment of the requirements setting "legal capability" for flight, such as certificates, documentation

on board, crew certification and the like. Related to these rights of intervention is the State's power to conduct integral inspection of aircraft.

Section B - Particular conclusions

1) Air Navigation Facilities.

These facilities share with the airspace the environment where the aeronautical activity takes place. The existence of an infrastructure, with its installations and services, (physical and non-physical elements respectively) imposes certain conditions upon air navigation. Ground organization limits air operations. The flight itself is subject to tight air transit rules and to directives of those services which control air transit rules.

It is also possible to conclude that the taxes imposed upon property in the vicinity of aerodromes, as well as other property limitations, constitute legal and personal servitudes. Since the airspace is public property, it is the State that exercises these servitudes and that represents the collective interest of society over the airspace.

2) Aircraft.

We think that the theory of "unit of legal property" can be useful when establishing mortgages over the aircraft. In this way there is a delimitation of the content of what will be pledged, sold or mortgaged in relation to the essential parts, non-essential parts and appurtenances, according to the criteria used by the law.

Legally the aircraft is a registrable movable. The attributes of mobility and nationality - in addition to the fact that it is a property which can be mortgaged - put the aircraft in a situation permitting registration. Registration of aircraft should not result in total or complete assimilation of the aircraft into the immovable category. An exception is Peruvian legislation, where this assimilation does happen.

Aircraft nationality is recognized by all Latin American legislation as an essential attribute of aircraft. Some Space Law specialists are critical, suggesting that nationality be replaced by concepts such as "jurisdiction", "control", and "property". These concepts should, however, be disregarded for the time being.

Registration is considered to be the precedent of nationality. In addition, registration is a basic requirement for the aircraft's use in aviation activity. An unregistered aircraft has no legal value and cannot be mortgaged. In such a condition, it is not an object regulated by Air Law.

The suitability of an aircraft for flight must be understood as a combination of technical and legal requirements. The aircraft can be taken out of service if it does not meet these requirements. The state is entrusted with the supervision and inspection of the aircraft. The passing of an inspection will mean that the airworthiness certificates, registration certificate and all necessary documentation is in order and on board the aircraft.

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