THE LAW OF AVIATION IN EGYPT

A REVIEW OF THE BASIC CONCEPTS AND FUTURE POSSIBILITIES

A Thesis

Presented to

The Faculty of Graduate Studies and Research

McGill University

In Partial Fulfillment

of the Requirements for the Degree

Master of Laws

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by

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August 1953

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FOREWORD

1) Comparative aviation law has evolved from the world wide development of aviation during the past three decades. Aviation, the youngest and speediest of the transportation media has gained the foremost position in the category of carriers. Its primary social and economic function as a carrier of persons and property has been achieved as a result of a rigid regulatory regime.

Aviation transcends all political boundaries. Hence effective aviation regulation must be closely coordinated and rigidly enforced on all political fronts and levels. That is, regulation must be international, national and local in scope, and synchronized.

2) There are some international rulings on aviation in operation, but there is still much to be achieved, One of the purposes of this study will be to investigate the pertinence of international rules on Egyptian aviation law. International law merely states general principles, details fall within the province of national legislation. Consequently, mere knowledge of the principles of international law are insufficient for persons such as pilots, etc. who through their occupation may come into contact with Egyptian aviation law.

3) The aim of this work is to expose the present status of aviation law in Egypt. This law is but poorly known by many experts in

aviation law. However, the limits of this study do not permit the treatment of certain subjects such as the law dealing with military aviation, conflict of laws, criminal law and the law of insurance insofar as the latter affect aviation.

4) This survey is an attempt at a systematic and comprehensive account of the development of aviation law in Egypt from the 24th of March 1920, up to the 28th of May 1953. The subject has been considered in its relationship to the general development of international law. In view of the importance of the subject, it is hoped that this survey will furnish useful material to foreign students of the Egyptian legal system.
Emphasis has been laid on those institutions which are of contemporary interest.

5) This survey has been designed also to fill certain gaps that are to be found in that part of Egyptian legal literature which is concerned with aviation. So far as may be ascertained, no thorough going study of the law of aviation in Egypt has been made. For this reason the main purpose of this work is to give a general outline of the subject as a guide for future studies.

6) Preliminary study of the question has convinced us that Egyptian aviation law is largely deficient. For quite some time the necessity of some synthesis of the rules relating to civil aviation has been felt. During the last ten years, Egypt has attained a remarkable

debelopment in domestic and international aviation. Cairo and Alexandria have become metropolitan centres of aviation served by many of the great international airlines. In order that civil aviation may operate efficiently, it requires a uniform code.
Most of our laws relating to aviation are antiquated and must be redrafted in the light of modern developments.

7) I hope that this study has been conceived in a progressive spirit. I definitely propose to indicate the influence of political and economic factors on the development of law, notably of aviation law. I do not share the views of some writers who claim that they are above politics. I think that it may be demonstrated that it is impossible for a jurist not to take political and economic aspects into consideration. It would be senseless to deny that economic and political development have a bearing on the evolution of a legal system. It is my aim to point out some of the pertinent economic, political and social factors and to propose suggestions which may affect future legislation.

8) Finally, it may be said that my task has been of a threefold character. I have tried, first of all, to expose the existing legislation. In the second place, I have endeavoured to describe the various international conventions which have materially conditioned the rules of Egyptian aviation law. Finally, I have attempted to outline various proposals, conceived in the light of the international law of aviation and foreign legislations, on the subject. This may

contribute something of value towards the elaboration of a new Egyptian code of civil aviation.

PART I.

INTRODUCTORY

CHAPTER I.

Definitions and Main Characteristics of Aviation Law

Section 1- Definition of Aviation Law:

9) To begin, we must define what is meant by aviation law. Every jurist who publishes a legal work on aeronautics provides his personal definition of aviation law. It is somewhat difficult to advance a general definition of this new branch of law in its special legal aspects. We do not propose to give a new definition, but simply to cite the best.

10) A question of terminology must be discussed first. Some authors have asked whether the term "air law" is not too comprehensive whether it would not be better to speak of "aviation law". Ambrosini, gives preference to the term "diritto aeronautico" over "diritto aero". Others have said that the term "aviation law" is too narrow and that the term "air law" is to be preferred. In this connection they pointed out that the latter term which is generally accepted in the English-speaking countries is likewise favoured in France, "droit aérien", and in Germany "luftrecht". 1/ Some writers use also such expressions as "air navigation law" or "air transport law". 2/

11) The latter expression, however, would indicate that one is dealing with legal provisions restricted to transport alone. Aviation

may have as its main objective the transportation of a person or thing. It may be used also to spray insecticide on crops. It is also used in curing various diseases such as whooping-cough, etc. At some future time, hunters may use aircraft to hunt whales, seals, etc.

In each one of these cases the aircraft is not used primarily as a means of transport. In our opinion, due to failure to accept these facts, many jurists have defended unacceptable points of view on the capital question of the right of a State with regard to the air-space over its territory.

By way of example, it is interesting to note that the draftsmen of both the Paris and Chicago Conventions in dealing with the article on Cabotage, reserve the right to each Contracting State to refuse permission to the aircraft of other States to take on in its territory passengers, mail and cargo carried for remuneration and destined for another point within its territory. One would ask whether a State has the right to prevent the aircraft of other Contracting State to do surveying or to spray insecticide on crops.

In Egypt, these difficulties would have been raised by a newly established company which applied for permission to spray insecticide on cotton if the concession granted to the old Egyptian air carrier "Misr Airlines" had not covered this case expressly. 3/

12) In 1902, Professor Ernest Nys of the University of Brussels, first gave a definite name, "droit aérien" to the new expanding branch of the law. Nys agreed that the real legal problem to be met by jurists involved the status of the space occupied by the air and not the legal

status of the gaseons air itself. It is certain from the writings of Nys that his thinking was necessarily limited by the theory that flight could not occur beyond the atmosphere. 4/

A careful analysis of the writings of the principal early jurists indicates that the term "air law" was intended to include all human flight deemed physically possible in the areas of space deemed usable. As this usable space around the earth was identified by the presence of the gaseous substance called "air" and was thus separated from all universal space beyond, the body of legal rules to be applied to flight was quite logically termed "droit aérien" or "air law". 5/

13) The use of the term "air law" has at times caused confusion by the inclusion within its regime, the legal rules applicable to wireless telegraphy, radio and telephony.

Inasmuch as law is generally considered to be the regulations of human relationships, it could be said rightly that air law should include all the rules governing human activity in that space, where there is air. To state with any accuracy the present subject matter of air law, no matter what may have been the situation in the past or recent years, requires one to say that air law would be understood as the law governing aviation, wireless, broadcasting, etc., all human activities in the air.

In other words, aviation law is a branch of air law.

14) But the term "droit aérien" was repeatedly used as applicable only to air navigation, excluding from its scope the regulation of

wireless telegraphy and other forms of man-made radiation in space. The majority of the American and European writers had severely limited its field to the regulation of those forms of human activity relating to flight. One would say that custom has dictated the use of the term "air law". The answer would be that the custom would be followed if it is well-founded. We could add, that in the past and in recent times that custom has not been always followed.

Juglart, the eminent author of the book "Traité de droit aérien" recently stated that in his opinion the term air law must be considered in its widest connotation. The term he adds, comprises the ensemble of regulations which govern the juridical relations arising from the use of the air, that is to say that in the study of "air law" one should consider both the air domain itself and different uses which may be made of the atmosphere: radio transmission, transmission of light signals, etc. 6/

15) Air law, as used now, is not concerned with some situations occuring in the atmosphere. The shot of an awkward hunter which kills an innocent passer-by goes through the atmosphere as does an aircraft, and yet common law governs the consequences of the event. Air law disclaims all competence.

Air law did not arise with the utilisation of the atmosphere. The prescriptions which in most legal systems, regulate the height of buildings or trees and which state in what measures one may use the atmosphere in the construction of a building or in landscaping does not constitute air law. Similarily, it is impossible to apply air law

to the juridical provisions which fix the conditions under which hunters may make use of firearms. One more argument could be employed against the use of the term "air law" : the law as it is used now, is also concerned with situations occurring on the ground. The aircraft which rolls along the concrete runway of an aerodrome before taking off comes within the province of aviation law.

16) Aviation law came into being when aircraft were produced in sufficient numbers to create new problems which could not be solved by the traditional legal system. Then, and then only this new legal system appeared. The theatre of aviation would be in the near future not only in the atmosphere, that is to say, the gaseous layers which is composed principally of air, but it will be in other areas of space beyond the areas where gaseous air is present. To contend that the term "air law" would still be in use, would be an erroneous contention. The term "aviation law" is preferable and is in general use in Egypt.

17) There exist both a broad and restricted definition. The broad definition is that given by Ch. de Visscher who defined air law, as the ensemble of rules which govern the air and its use. 7/

In a broad sense too, air law is according to M. Coquoz the totality of rules which govern the air medium and its utilization. 8/

These definitions comprise not only aerial navigation but also the human use of the various waves in space i.e. wireless, transmission of electrical impulses.

Of this opinion too is Juglart as we stated before. Air law is not usually understood in this sense. It is usually limited to aerial navigation. This is the restricted definition. Thus M. Ambrosini in his work "Corso di diritto aeronautico" defines air law as that branch of law which studies relationships arising from air navigation and which determines their judicial regulation. 9/

M. Lemoine in his book "Traité de droit aérien" gives the following definition : "It is that branch of law which determines and studies the laws regulating the circulation and use of aircraft as well as the relationships which result therefrom. He added that the term "circulation" must be taken in its current meaning and according to the sense given by economists when they refer to circulation of goods. 10/ The word utilization should be taken in its broad sense. One could say that this definition is not centered on aerial navigation but on aircraft. The merit of this definition scarcely differs from that given by M. Ambrosini, which is founded on the aircraft and not on aerial navigation. It is more comprehensive because it includes problems arising from aircraft such as their acquisition, mortagage, nationality, etc.

We could say that by aviation law, it is understood that "the whole rules of judicial norm which apply to air navigation, to aeroplanes and to airspace in its role as a necessary element for air navigation".

Like maritime law, air law is a 'droit de milieu'. It comprises the whole of the rules which govern the airspace and its utilisation for the purpose of aviation.

18) The restricted definition of aviation law is in no sense narrow. The field which it covers is extremely vast. It includes, as M. Lemoine shows, all those problems related to the circulation of aircraft on the one hand, and on the other to their utilisation. It does not, in other words, refer to one special set of laws, but comprises all the rules of public and private law alike, which relate to the airspace and to aviation.

19) The difficulty with these definitions to-day is that technical progress now requires that we consider both airspace and certain parts of space beyond, as scientifically usable mediums of flight. Nor can we limit the means of flight with which air law must deal to such instrumentalities as the normal types of aircraft usually operated in the 'airspace'. Rockets are now being propelled seventy miles and more into space above the surface of the earth, far outside of what we ordinarily refer to as 'airspace' and its 'atmosphere'. It is suggested that the term 'flight-space' might better be used in place of airspace to indicate all that space above the earth's surface used or usable as a medium of or controlled flight. Perhaps the definition of aviation law might then be restated as "comprising the whole of the rules governing flight-space and its utilisation as a medium of flight for aircraft or other self-propelled and man-controlled devices." 11/

Such a definition has the advantage of directing attention to the two basic problems of aviation law. It concerned with the legal status of space and the legal regulation of flight and with the instrumentalities employed to carry on such flight.

Section 2.- Main Characteristics of Aviation Law:

20) Aviation law, like the other branches of law, owes its specific character to its object.

The first and most striking characteristics of this branch of law is its novelty. When confronted with a new department of law, it is necessary to seek its constituent principles. Where are they to be found ? There might be some tendency to seek precendents in land transport and maritime law. Which should serve as a basis ?

The jurists debated the problem, and were unable to agree. However, to the present time, the influence of maritime law, has been preponderated because the problems raised by air navigation are similar to those arising in maritime navigation. It was natural that maritime law should furnish precedents. Further, it is questioned to-day whether the influence of maritime on aviation law should be maintained. There are certainly many points of resemblance, but there is however one essential difference, the speed and infancy of air transport gives it a specific character. One would say also that air law applies to air as a medium, one can not equate sea and air. Finally, aviation law is not developed in the same way as maritime law. The latter is a form of customary law with custom following progress in navigation. However, in the contemporary world each new industry becomes the object of written or codified law. The legislator intervenes directly and his intervention is continous because progress itself is uncessing.

21) The second characteristic of aviation law, deduced from the first

characteristic is its autonomy :-

Italy after twenty years of practice revoked the autonomy of aviation law and recodified it on the 30th of March 1942 with maritime law. 12/ To use the expression of Professor Knauth, it was a marriage of air and maritime law. 13/

In Italy many writers, in a period between the two wars, had advocated vigourously the autonomy of aviation law. For instance, such a writer as M. Ambrosini states that there are many points of resemblance between the laws relating to sea transport and aerial transportation. But this does not justify including the two legal branches under a single system of navigation law. 14/

At the same period Coquoz stated that in spite of the obvious judicial analogy, between ship and aircraft, the law of aerial navigation has attained to-day a complete development and autonomous existence. 15/

Many jurists felt that air law should be erected on an entirely new juridical basis and that it would require new juridical norms. Of this opinion is M. Kaftal who writes, "Air law is an entirely extraordinary phenomenon in the juridical domain; it has no link with the past. 16/ If we first consider the problem on the international level we see that air law constitutes a distinct branch of legal science." 17/

22) In the opinion of some jurists, aviation law is neither a new juridical institution nor are its divisions new categories in the corpus juris. They are simply new chapters in the old divisions of

law. International Aviation Law is a new chapter added to the body of International Public Law. Public National Aviation Law is a new branch of administrative, financial and criminal law. Private Aviation Law forms a part of civil and commercial law. These new chapters really do not create new rules. 18/

In this connection it could be said that aviation law in its relation to civil law, touches on property, contracts, torts, insurance and liens. Practically every branch of civil law is concerned with the law of aviation. The manufacture, operation and use of aircraft for transportation purposes, the insuring of it, the damage it may incur all bring aviation into close connection with civil law. The experts charged with elaboration of international aviation law, are frequently inspired by the texts of the Berne, Brussels and Geneva conventions. In spite of the technical characteristics of air transport and its specific risks, air transport is but one type of transportation. Article 23 of the Paris Convention 1919, is particularly notable in this regard. It specifies, that the salvage of aircraft lost at sea is to be governed by the principles of maritime law.

23) The problem is raised therefore of determining what is the part to be played by general and traditional legal principles, in the development of aviation law, and the method of interpretation of this new law.

24) Development of Aviation Law: In order to resolve this point a distinction must be made between the small groups of fundamental

juridical principles and human logic common to legal systems of countries having a similar culture; and the other general principles which derive from the diversity of national cultures and customs.

If the application of the first imposes itself in every juridical activity without exeeption, the second should be disregarded wherever they do not correspond to the situation obtaining in aerial navigation. They were developed, for the most part, at a time when aerial flight was unforeseen. Therefore, they are really unappropriate.

Laws apply to phenomena and not phenomena to laws. Rules of law have their reason for existence in their conformity to circumstances: 'ex facto jus'. To a new fact a new law and consequently new principles.

25) Interpretation of Aviation Law: What attitude should jurisprudence adopt in the case of a lacuna in aviation law ? It would be difficult to refuse to the judge called to interpret a national law, the power to fill a deficiency by recourse to the general principles of national common law. But to allow this power in the application of an International Convention of Aviation Law would be against the aim forwarded by the draftsmen of the system of unification. It is true that these conventions draw their binding force from the agreement of the Contracting States and do not involve international legislative power. Nonetheless, their provisions form a truly international legislation completely liberated from the different national systems.

The judge should therefore, in a case of deficiency of private or public aviation law, have recourse to the general principles recognized by the majority of the nations of similar legal traditions.

Failing these, he will resort to the general principles of justice and equity. Moreover even if this opinion obtained unanimous assent, the legislator and the judges could not wholly free themselves from general and traditional legal principles. There is psychological factor which disposes them to sustain and to propagate the principles which they know, which they apply, and which they see applied in their own country. This is an instance of the resistance which the man of action encounters in every activity of life.

The jurists who are of the opinion that aviation law is not autonomous have no difficulty as to its interpretation. The judge, in case of lacunae, would have recourse to the rules of common law. This interpretation by analogy demands a certain caution.

26) If we seek to engage in a discussion on the national level, we should ask what is the spirit of Egyptian positive law in this regard. We may note, that the particularism of aviation law results first from the fact that the decree issued on the 27th of May 1935, considers that aerial navigation is hazardous; aircraft may not be flown without prior permission, the crew of the aircraft should have certificates of competency and Egyptian nationality should not be granted except to aircrafts wholly owned by Egyptian nationals, etc. The particularism of Egyptian aviation law could not be felt except in the field of public law. There are no specific rules governing aviation in the private domain. The rules of common law are to be applied in such cases.

In short, we may say that the law of aviation as it stands now

in Egypt is not autonomous. To a certain degree the particularism of aviation law should be maintained.

27) The third characteristic of aviation law is that it is international. Positive law is national. If formerly, maritime law was international, this was due to the fact that it was not a written law. It was a customary law of the sea, applied to all countries. But when maritime law was codified, it became a national law. Now, as regards air navigation a national law is rather difficult to conceive, and seems somewhat meaningless. It is obvious that a need for internationalisation of aviation law was felt from the inception of flying. In aviation law diplomatic conventions preceded internal law for air transport was from its beginning an international means of transportation. This was fortunate; it is much easier to erect an international system of law, on an entirely new basis, than to adapt an existing legal system. This international character gives rise to a progressive suppression of nationalistic elements in the problems arising from aviation. There is a tendency to alienate from States their power to legislate. It is now difficult for an individual State to promulgate its own aviation laws without comprising the welfare of its aviation, by opposing the legislation of other States. The international character of air traffic necessitates an international co-operation and regulation.

> "Civil aviation, when it shall have reached its full development, will be one of the most important means of bringing the peoples of the world together; distances will be reduced more and more, so that civil aviation by enabling the different nations to maintain

> "ever-closer mutual relations will contribute largely toward the maintenance of good international relations and the preservation of world peace."

Such was the statement in 1927 of the "Committee of Experts on Civil Aviation" (Sub-Committee B. of the Preparatory Commission for the Disarmament Conference).

Therefore, this international co-operation and regulation should be directed in the first place to as free a development as possible. 19/

28) This international character should not wholly disguise the influence of national sovereignty on aviation law. This is the fourth characteristic.

If air navigation is international, nonetheless it has considerable national interest from a military standpoint and in view of the opportunities which it offers for invasion of the country. The State has policing powers over its territory, the power to repress crime, customs supervision, and military defence etc. From this arises a constant conflict, between the national law, laws relating to defence etc. and international law. The conflict is more acute than that with maritime law.

29) One last characteristic should be mentioned, that is the political character of aviation law. Inasmuch as aviation in peacetime is an instrument of commerce, it is in wartime the most dangerous and destructive agency and instrument of war. From this it results that the State in its legislation on aviation matters will take into account these problems and will initiate measures for national security.

By way of example, the Treaty of Versailles influenced by this latter characteristic of aviation law, deprived Germany of military aviation. To this security consideration, are added the commercial interests of States. Nations live in a competitive world. Air transport owing to its intrinsic qualities - speed and relative independence of natural barriers - lends itself in a peculiar degree to use as a tool or weapon in the international struggle for survival and power. 20/ By way of proof the economic rivalry which was observed during the Chicago Conference opposed the reaching of a wholly satisfactory agreement. The distinction between economic, political and military factors, while convenient, has always been artificial. The sum-total of nation's power, however hard to define is never restricted to any one or two of these factors to the exclusion of the others. Military power may be used for the promotion of commercial interests, and, in turn, economic power may be used for diplomatic and military ends. 21/

Such are the main characteristics of aviation law. It is a new law, of political economical and international character yet remaining under the influence of national sovereignty.

These latter characteristics have much influence on the law of aviation in Egypt. They must be taken into account in drafting the new Egyptian Code of Aviation.

30) Classification of Aviation Law: The major division of aviation law is that which distinguishes aviation law in time of peace and aviation law in time of war. In spite of the role played by military aviation law in Egypt, this will not be the subject of the present study, which deals only with civil aviation. Egypt has few articles devoted to military aviation in its legislation of civil aviation. 22/

For the purpose of this study, aviation law is classified as :-

1.- International aviation law: the rules having effect between States. So far as aviation law is concerned, these rules are contained almost exclusively in conventions or bilateral agreements. International aviation law is to some extent both "public and private". It is public in so far as it contains rules which govern the mutual relations of States. It is private in so far as it determines the limits of jurisdiction, and the choice of law to be applied by Egyptian tribunals in particular cases concerning individuals.

2.- National law: the rules applied by the courts of a particular State to questions arising from aviation. The national law dealt with in this survey is primarily Egyptian law.

CHAPTER II.

Sources of Aviation Law

Introduction:

31) For the sake of convenience, we shall divide the study of the sources of aviation law into two periods:-

The first goes from the beginning to the Chicago Conference of 1944; and the second extends from the Chicago Conference to the present.

The principle of division and the choice of these two periods are justified by the fact that the Chicago Conference marks a change in the Egyptian stand on aviation. Until that time Egypt had not participated in international aviation conferences, dealing particularly with Public Law.

Due to this fact, she had remained outside the international air regulations. Egypt embarked on the way of international collaboration, through participation in the Chicago Conference and through ratification of the Convention and the Transit Agreement drawn up at this Conference.

Egypt has concluded bilateral agreements on aviation with many countries. In the field of private international aviation law, she recently signed the Rome Convention. My understanding is that she will soon ratify it. As to the Warsaw Convention, she has signed but not ratified it.

In the national domain much legislation has been promulgated. This legislation is now under revision, in order to bring it up to

date. Egypt assumes the position which is dictated by her geographic situation and her economic and national interests.

32) In brief, the sources of national aviation law may be ranged in four categories :-

i. Statutory law: Statute law is created through acts of Parliament. It is supreme because it can alter or supersed earlier statute law. Egyptian aviation law is largely statutory because many aspects of aviation are thought to be of such importance to the public weal as to require general regulation by Parliament.

As to conventions, the method which was followed to give effect to this rules was to re-enact the convention word for word in a statute.

ii. Decrees: There is a second source of law called decree. This is law made by the (crown) President of the Republic, this decree is only enacted on the advice of the responsible minister, who in matters of aviation is normally the minister of War and Marine, and through the approval of the Council of the Cabinet, "Conseil des Ministres".

In theory, it is nearly always a statute law, being made under the authority and for the purposes of a particular act of Parliament.

iii. Orders: These are made directly by a minister, and powers to legislate by means of them are derived from a statute or a decree.

iv. Regulations: The power to make regulations may be derived either:

a) Directly from a statute or a decree, or

b) From a Ministerial Order, which itself was made under a power derived from a Statute.

SECTION 1.- First Period: To The Chicago Conference

I. In the International Domain

A. Public International Aviation law:

1. Customary law:

33) In distinction to International Public Maritime law, International Public Aviation Law is almost entirely statutory. Customary rules are comparatively few due to the comparative newness of aviation law. Truly, we can recall but one: that which provides that each State has the sovereignty over the airspace above its territory. Conventional law, as we shall see in other part of this survey recognizes this as a principle. What is stressed here is that conventional law did not creat the principle of sovereignty, but simply declared it.

2. Conventional law:

34) On the eve of the second World War, States were divided into four categories :-

The first category of States were parties to the Paris Convention of 1919; the second were parties to the Ibero-American Convention known as the Madrid Convention of 1926; the third were parties to the Havana Convention dated February 20, 1928; the fourth were not parties to the said conventions but operated through bilateral

agreements as well as special agreements with foreign air carriers. Egypt, Germany and the U.S.S.R. were among the latter category.

35) The most significant statements of the law of aviation came after World War I, when the convention for the regulation of aerial navigation was adopted at Paris, October 13, 1919. This convention had a world-wide sanction and was the basis of international law on the subject of aerial navigation. It is beyond dispute that ICAN is a veritable legal landmark. Assembled within seven months, the result of close collaboration between military men and lawyers, it provided aerial navigation with a true statute not only directly, but indirectly, for it served as model for those states which did not adhere to it. We will see later, how positive Egyptian law was inspired by the rules of the Paris Convention especially by its Annexes, though Egypt had not signed or ratified it.

36) What was the effect of this charter, which dominated the period between the two wars ?

ICAN adopted the principles of complete and exclusive sovereignty of the State to the airspace above its territory. Thus, it resolved the celebrated legal debate on the freedom of the air.

ICAN regulated aerial navigation in 43 articles divided into seven chapters of which the following were the headings: General Principles, nationality of aircraft, airworthiness and competency certificates, passage over foreign territory, rules of departure, flight and landing, prohibited transport, State aircraft, the

International Commission, and final provisions. By art. 34 a permanent International Commission (known as I.C.A.N.) was set up under the auspices of the League of Nations which had fulfilled an important function. Eight Annexes which bore the letters A to H, which constituted subsidary conventions, completed the convention on many points. This agreement on the technical rules annexed to the convention were regulated by the I.C.A.N. through majority vote. 23/

The Ibero-American Convention followed the general pattern of the Paris Convention, although no provisions were made as to map and ground markings, meteorology and customs. 24/

The Havana Convention also followed the pattern of the Paris Convention. Although certain of its basic principles, as for example airspace sovereignty, were the same as those of the Paris Convention , the Havana Convention did not follow the general arrangement or language of the Paris Convention as did the Madrid Convention, and particularly there was no such organization as ICAN set up under the Havana Convention. 25/

3. Bilateral Agreements:

37) Before the Second World War, some countries had entered into a number of bilateral agreements providing for properly certificated international air transport services, within routes as specified.

Others, among them Egypt, entered directly into agreements with the foreign air carriers up to the end of the Second World War, the Egyptian practice was based on a temporary permission granted to foreign air carriers to operate to or through the Egyptian territory.

B. Private International Aviation Law

1. The Warsaw Convention

38) The Warsaw Convention, signed October 12, 1929, was ratified by many States. Egypt signed, but did not ratify the convention. The main purpose of the convention was to unify certain rules relating to international carriage of persons and property by air and to fix the damages for losses or injuries sustained. 26/

2. Rome Convention:

39) Rome Convention for the unification of certain rules relating to damages caused by aircraft to third parties on the ground. This convention was dated May 29, 1933 made at Rome, signed and ratified by many States. Egypt is not a party to the said convention.

3. The Rome Convention as to Precautionary Attachment of Aircraft:

40) This convention dated May 29, 1933, was signed at Rome, and signatories are the same as to the Rome Convention relating to damages. It prescribed the procedure required for attachment of aircraft to satisfy a creditor for a lien holder where the attaching creditor cannot invoke a judgment and execution in the ordinary course beforehand; created exemptions, damages for wrongful attachment and provided for giving a bond for immediate release of the aircraft. 27/

II.- In the National Domain

A. Public Aviation Law:

41) By way of national sources, there is little else but the law. No custom has become established in view of the comparative newness of aviation. The first law was passed on the 14th of March 1920, regulating the establishment of aerodromes in Egypt. A ministerial Order was issued on the 13th of September 1932 relative to the conditions under which licences may be issued to pilots of aeroplanes and hydroplanes not employed in public transport. A law was issued on the 23rd of May 1935 enunciating the principle of State's complete and exclusive sovereignty above its territory. It provides that air navigation would be regulated by decree. A decree regulating aerial navigation dated 27th of May 1935, contained 18 articles, which specify the conditions governing flight over Egyptian territory. Pursuant to the first six articles of the latter decree, a ministerial Order was issued on the 2nd January 1939 relative to the flight of gliders.

There exists a decree promulgated on the 5th of May 1941 which contained 14 articles regulating the conditions of flight and the rules of air to be followed in Egypt. It stipulates that military aircraft is not permitted to fly over or within Egyptian territory except by a prior permission. There exists also the law No. 27 issued on the 2nd of June 1942, concerning the establishment of prohibited zones around the aerodromes. A ministerial Order was issued on the 26th of May 1942, relative to the regulations which must be followed in the registration of aircraft. Another ministerial order was issued on the same date establishing the conditions to be fulfilled for flight over or within Egyptian territory. There are also three

ministerial Orders concerning the regulation of aerial navigation which will be dealt with in the following chapters. These are, in chronological order, the principle texts of Egyptian national law which regulate aerial navigation. The Egyptian legislators realizing the rapidity of change in the field of aviation, both from the technical and juridical standpoint felt that it is premature to elaborate a law which would be soon out of date. For this reason, Egyptian legislation is designed to furnish the most essential elements of aviation law, leaving to the Council of Ministers, to the Minister of War and Marine or the Director General of Civil Aviation the task of elaborating the details. 28/ All the above-mentioned legislations are still in force, except the Ministerial Order which was issued on the 13th of September 1932, mentioned before.

B. Private Aviation Law:

42) Latter legislation is not concerned with questions of private law. Common law only is applied. The most important codifications which would serve as a basis in this connection are :-

1. The national code of commerce of 1883.
2. The new civil code which has been in force since 1949.

SECTION 2.- Second Period: From the Chicago Conference of 1944 To The Present Time:

I. In the International Domain

A. Public International Aviation Law:

1. Conventional Law:

43) The Second World War was fatal to ICAN, but not to its general principles, nor to the idea of international organization pioneered by it.

The Government of the United States conducted exploratory discussions with other allied nations during the early months of 1944. On the basis of the talks, invitations were sent to fifty-five States to meet in Chicago in November 1944. Of these fifty-five States, fifty-two attended among them Egypt.

For seven weeks, delegates of the fifty-two nations considered the problems of International Civil Aviation. The outcome was the Convention on International Civil Aviation as well as several other suplementary agreements. The Convention established an organization designed to foster and to guide International Civil Aviation. Its purpose is set forth in the Preamble to the Convention. The permanent body charged with the administration of these principles is the International Civil Aviation Organization. Its administration and legislative organs include an Assembly of member States (a majority constituting a quorum) and a Council composed of 21 States elected by the Assembly for a three-year term. Egypt has been elected and represented at the Council since the beginning.

44) The International Civil Aviation Organization itself was to come into existence thirty days after twenty-six nations had ratified the Convention on International Civil Aviation and had deposited their ratifications with the State Department of the United States of America.

Ratification required, in many countries among them Egypt, legislative action on the part of the various parliaments concerned. Knowing that such action was likely to take a considerable length of time, the Chicago Conference drew up an Interim Agreement on International Civil Aviation which established a temporary body known as the Provisional International Civil Aviation Organization (P.I.C.A.O.) with advisory powers only, to remain in existence until the permanent organization was created, its life in any case restricted to three years.

The twenty-sixth ratification of the Convention on International Civil Aviation was received by the State Department of the United States of America on 5th March 1947. The date of deposit of ratification by Egypt was on the 13th of March 1947.

According to the term of the Convention, the International Civil Aviation Organization, therefore, came into being on 4th of April 1947, thirty days after. 29/

45) The Chicago Conference dealt with problems arising from the exchange of commercial rights in international civil aviation. The delegates of the fifty-two nations present were unable to reach a conclusion satisfactory to all, but agreed upon certain fundamental principles.

In the main, the largest area of controversy was the question of controlling the right of one nation's airlines to carry traffic between the aerodromes of two other nations the so-called "fifth freedom". As a compromise, the Conference drew up two separate

agreements which were left open for signature. These were the International Air Services Transit Agreement and the International Air Transport Agreement. The former agreement was signed and ratified by Egypt. 30/ The date of receipt of note of Egypt's acceptance to that agreement was on the 13th of March 1947.

46) According to article 37 of the Convention, each Contracting State undertakes to collaborate to secure the highest practicable degree of uniformity in regulations and standards, procedures and organization relating to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity would be likely to facilitate and improve air navigation. With the object of furthering this undertaking, I.C.A.O. establishes and revises International Standards and Recommended Practices dealing with the various aspects of air navigation. During the limited time at the disposal of the International Civil Aviation Conference, various sub-committees on technical standards and procedures drew up a number of Annexes which were designed to serve as a foundation for the work of I.C.A.O. in the standardization of those requirements essential to the safe and efficient operation of International Air transportation Services.

47) Development of Standards and Recommended Practices:

The development of a technical Annex to the Convention is a cooperative undertaking requiring coordination of effort at every stage among the several deliberative bodies of the Organization, appropriately assisted by the Secretariat.

At the present time recommendations for Standards and Recommended Practices are drawn up by the ICAO technical divisions, considered by the Air Navigation Commission, then adopted by the Council and submitted to the Contracting States. If a majority of the States does not register disapproval of these Standards and Recommended Practices, they become effective and each ICAO Contracting State is bound under the terms of the Convention either to put them into practice in accordance with the Council resolution of adoption, or to notify ICAO of any difference between any of its own practices and those established by the International Standard.

Adoption of these Standards by the Council according to the terms of the Convention on International Civil Aviation gives them status as Annexes to this Convention. 31/

48) The procedures to be followed by the different bodies of the Organization in discharge of their functions, in so far as the latter refer to the work of the Divisions and the development of Standards and Recommended Practices, are set forth in the following paragraphs in which the subject is treated chronologically, commencing with the planning of a Division's work by the Air Navigation Commission and terminating with the adoption of an Annex by Council and its transmission to States. The said procedures are :-

(a) Work program
(b) Program of meetings
(c) Establishment of agenda
(d) Documentation
(e) Organization of Division Session.
(f) Conduct of meetings
(g) Report of the Division

(h) Review of Division recommendations by the Air Navigation Commission.

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(i) Preparatory work by Secretariat
(ii) Preliminary review by the Air Navigation Commission and reference to States
(iii) Final review by the Air Navigation Commission
(iv) Report of Air Navigation Commission to Council

(i) Adoption of Annex by Council
(j) Transmission of Annexes to States. 32/

49) Legal Status of ICAO Annexes:

The volumes of Annexes contain, in their latest format various categories of material, which do not have the same legal status.

1. The text of the Annex itself, as adopted by Council, contains three categories of provisions:-

(a) and (b) - International Standards and Recommended Practices which, pursuant to the definitions promulgated by the Council, are both "specifications for physical characteristic, configuration, material, performance or procedure". But the uniform application of these is recognized in different ways, thus in the case of international standards - "as necessary for the safety or regularity of international air navigation", and - in the case of recommended practices - "as desirable in the interest of safety, regularity or efficiency of international air navigation".

(c) Notes which do not alter the meaning of the Standards and recommended Practices (and are included wherever it is necessary to clarify an intention, to stress a particular point or to indicate that a particular question is under study.

(2) To that text are added Attachments, printed on green sheets, which are recommendations of Council which "do not form part of the Annex, are included for guidance and clarification purposes, and are not to be considered as standards or recommended practices".

(3) Under a red cover is a Supplement entitled "Differences between the national regulations and practices of States and the corresponding standards contained in the Annex ..... as notified to ICAO in accordance with article 38 of the Convention". 33/

50) It might be well to mention here the method followed by Egypt in introducing the provisions of the Annexes to the Convention, into her national usages.

By way of example, we will discuss the methods which were followed in that concern the FAL Annex (9).

Standards and Recommended Practices on Facilitation of International Air Transport were adopted by Council on 25th March 1949 and designated as Annex 9 to the Convention. The Annex was submitted forthwith to all Contracting States among them Egypt. The said Annex was the subject of study and examination by the FAL Coordinating Committee which was established by a Ministerial Order on December 22nd, 1947, for the purpose of considering problems related to the Facilitation of International Air Transport in Egypt. The administration of civil aviation, Health, Immigration and Customs as well as Representatives of International Air Lines (as Consultative members) are represented on the Committee. After a series of meetings, discussing the provisions of the said Annex, there were no disapprovals of the

Annex as a whole, and only a relatively small deviations. The said deviations were notified by the Egyptian Civil Aviation to ICAO before the final date set by the Council for the notification by States; 1st September 1949. The Director of Civil Aviation issued an order in a form of NOTAM putting the said Annex into force in Egypt save the deviations forwarded to ICAO. 34/

51) Status of ICAO Standards and Recommended Practices on June 30, 1952.

Title	Effective Date
Annex 1 - Personnel Licensing	Sept. 15, 1948
Amendments Nos. 1-123	Sept. 1, 1950
Amendments Nos. 124-129	Nov. 1, 1950
Annex 2 - Rules of the Air	Sept. 15, 1948
Amendment No. 1	Apr. 1, 1952
Annex 3 - Meteorological codes	Sept. 15, 1948
Amendments Nos. 1-21	Dec. 23, 1948
Amendments Nos. 22-37	Oct. 1, 1951
Annex 4 - Aeronautical Charts	Nov. 1, 1948
Amendment No. 1	Mar. 1, 1949
Amendments Nos. 2-22	June 1, 1950
Amendments Nos. 23-28	Nov. 1, 1951
Amendment No. 29	Dec. 1, 1952
Annex 5 - Dimensional Units to be Used in Air Ground Communications	Sept. 15, 1948
Amendments Nos. 1-11	May 1, 1952
Annex 6 - Operation of Aircraft Scheduled International Air Services	July 15, 1949
Amendments Nos. 1-127	June 1, 1951
Amendments Nos. 128-131	May 1, 1952
Annex 7 - Aircraft Nationality and Registration Marks.	July 1, 1949
Annex 8 - Airworthiness of Aircraft	Sept. 1, 1949
Amendments Nos. 1-63	Jan. 1, 1951
Amendments Nos. 64-83	Apr. 15, 1952
Annex 9 - Facilitation of International Air Transport	Sept. 1, 1949
Annex 10 - Aeronautical Telecommunications	Mar. 1, 1950
Amendments Nos. 1-15	Oct. 1, 1951
Amendment No. 6	July 4, 1952
Amendments Nos. 7-11	Nov. 17, 1952
Annex 11 -Air Traffic Services	Oct. 1, 1950
Amendments Nos. 1-6	Apr. 1, 1952

Title	Effective Date
Annex 12 - Search and Rescue	Dec. 1, 1950
Amendment No. 1	Sept. 1, 1952
Annex 13 - Aircraft Accident Inquiry	Sept. 1, 1951
Annex 14, - Aerodromes	Nov. 1, 1951

The foregoing Annexes have been introduced by Egypt into her national usages, through regulations passed by Civil Aviation Department in form of NOTAM. 35/

2.- Bilateral Agreements

52) These are agreements made between two nations for their mutual convenience. They affect, and are designed only to effect, agreement between two States upon rules which shall apply reciprocally to each.

The most important types of bilateral treaties in aviation are treaties relating to the mutual establishment of commercial air services between the territories of the Contracting States. These agreements are mainly a result of article 6 of the Chicago Convention.

Egypt has concluded many bilateral agreements with foreign countries hereunder mentioned, for the establishment of Scheduled air services between and beyond their respective territories.

Name of States	Signature Initial	Signature Minister of Foreign Affairs	Agreement in Force
Australia		14/6/1952	
Belgium		19/9/1949	
Ceylon		26/9/1950	
Denmark		14/3/1950	30/9/1950 Amendment of Annex 15/7/1952
Ethiopia		19/3/1952	
France		6/8/1950	25/10/1951.

Name of States	Signature Initial	Signature Minister of Foreign Affairs	Agreement in Force
Greece		24/4/1950	12/4/1952
Hashemites Kingdom of the Jordan		2/1/1952	
India		14/6/1952	
Iran	Negotiation		
Italy		25/5/1950	
Iraq	16/9/1950		
Lebanon	Negotiation		
Norway		11/3/1950	30/9/1950 Amendment of Annex 12/10/1952
Netherlands		6/12/1949	20/9/1950 Amendment of Annex 22/5/1951
Pakistan	19/5/1952		
Syria	20/10/1952		
Switzerland		15/5/1950	1/2/1951
Sweden		12/12/1949	1/4/1951 Amendment of Annex 15/7/1952
Turkey		12/4/1950	2/4/1951
United Kingdom	1/3/1951		
United States		15/6/1946	8/8/1947

B. Private International Aviation Law:

53) The first product of ICAO's work in private aviation law was the completion of a Convention on the International Recognition of Rights in Aircraft, adopted by the Assembly in 1948. Unfortunately, the convention is as yet bringing no one any substantial benefit, since it has been ratified by only four States and by two of those with reservations. Egypt has not signed the said convention. The instrument of ratification of Pakistan was deposited with ICAO on 19 June 1953 and the convention will thus come into force between the United States of America and Pakistan on 17 September 1953.

The next step towards completion of the body of private aviation law is the completion of the convention of Rome on damage done by aircraft to third parties on the ground. Egypt has signed but not ratified this convention. The said convention is now opened for signature but not yet in force.

The third step toward the completion of the body of private aviation law will be the completion of a convention on liabilities of the air carriers for passengers and cargo. A conference to be convened on the 25th of August 1953, in Riode Janero, is expected to complete such convention.

II. In the National Domain

A. Public Aviation Law:

54) On the second of March 1947, Law No. 15 of 1947 was passed putting into effect the Convention on International Civil Aviation signed at Chicago, on the 7th of December 1944. On the same date Law No. 16 of 1947 was passed putting into effect the International Air Services Transit Agreement signed at Chicago on the 7th of December 1944. A Ministerial Order was issued on December 22nd, 1947 establishing the Facilitation Co-ordinating Committee. On the 28th of February 1948, the Council of Ministers "Conseil des Ministres" issued an Order exempting all foreign aircraft which are operating to or through the Egyptian territory on an scheduled basis, from the taxes on fuel and lubricating oils. On March 1950, the Council of Ministers issued an Order exempting foreign aircraft operating to or through the Egyptian territory from taxes on fuel and

lubricating oils. Such exemptions were granted on reciprocity basis. On the 25th of December 1952, Decree No. 359 of 1952 was issued creating the Supreme Board of Civil Aviation. Different regulations were issued by the Civil Aviation Department on different occasions, mostly of technical nature dealing with various subjects e.g. putting into force in the national usage the rules of the Annexes to the Convention on International Civil Aviation. We shall mention only the Orders which are in force up to the 28th of May 1953.

55) In 1948 NOTAM No. 6-A was issued concerning the rules of Air Traffic Control Service which are to be followed in Egypt. In the same year NOTAM No. 9-A was issued concerning restrictions on entry of aircraft into Egypt. NOTAM No. 24-A/1948 was issued concerning data of Alexandria aerodrome .

In 1949, NOTAM No. 22-A was issued giving instructions concerning the use of Alexandria Land Aerodrome. In the same year, Notice to Airmen No. 23-A was issued concerning the conversion to new Personnel licences.

In 1950, the following NOTAMS were issued:-
NOTAM No. 7-A concerning meteorological services. 2) NOTAM No. 8-A concerning the application of Annex 9 to the Convention on International Civil Aviation in Egypt. 3) NOTAM No. 11-A concerning light Beacons operating in Egypt. 4) NOTAM No. 15-A concerning night flying without navigation lights. 5) NOTAM No. 20-A concerning the necessity of complying the provisions of Egyptian regulations, in particular with the rules contained in Annex 11, para. 3, 218 and

of the PANS-ATC DOC. 4444 para. 2.2.5. (6) NOTAM No. 26-A concerning the issuance of syllabuses of new licences.

In 1951, the following NOTAMS were issued:- (1) NOTAM No. 5-A concerning instructions to be followed in the event of "Flight Accidents". (2) NOTAM No. 6-A concerning elevation of civil aerodromes in Egypt. (3) NOTAM No. 10-A fixing air exercise areas by the Egyptian Air Force. (4) NOTAM No. 16-A concerning Altimeter Setting Procedures.

In 1952, the following NOTAMS were issued:- (1) NOTAM No. 1-A concerning Air to Ground firing and bombing exercises area to be avoided by civil aircrafts. (2) NOTAM No. 4-A concerning Alexandria water aerodrome. (3) NOTAM No. 5-A concerning information about the civil aerodromes in Egypt. (4) NOTAM No. 8-A fixing prohibited areas in Egypt. (5) NOTAM No. 9-A concerning information about AL TOR aerodrome which is designated for use by aircraft during the Moslems Piligrimage season. (6) NOTAM No. 10-A concerning Cairo Area & Approach Control Visual & Instrument Approach Procedures. (7) NOTAM No. 11-A concerning Names & Callsigns of Aerodromes in Egypt and Boundries of Cairo Approach Control. (8) NOTAM No. 14-A concerning the Annexes to the Convention on International Civil Aviation which are in force in Egypt. (9) NOTAM No. 1-B fixing the maximum hours to be flown by the Egyptian pilots engaged in public transport.

In 1953, NOTAM No. 1-A was issued cancelling some of Danger Areas and giving some information about Port Said and Luxor Aerodromes. NOTAM No. 3-10A/1953 was issued on the 28th of May dealing mainly with the NOTAMS which are still in force in Egypt. 36/

CHAPTER III .

NATIONAL AVIATION POLICY

Introduction:

56) The national government dominates Egyptian air transportation policy. It determines when, where, and under what conditions air transportation enterprises may be engaged in internal or international traffic. It provides large sums of money for the construction and maintenance of transportation facilities and for the support of transport operations. In view of the magnitude of transportation requirements, the role of the Egyptian government must be clearly defined and the relative importance of projects objectively assessed.

To my way of thinking, government policy toward commercial aviation will have great significance for the future growth of the Egyptian aviation industry. Defects in national transportation policy stem from the failure of the government to modernize its laws, rules and regulations. Sound theory requires above all that there should be a revision of the existing rulings to adapt them to the new and vast development of the new means of transportation. Sound theory requires also that there should be classification of agencies dealing with civil aviation. The third question of importance is the settlement of the controversies on government versus private operation of air lines and the problems of a single company versus a series of companies. The fourth prerequisite for the sound growth of aviation in Egypt is the adoption of a well-conceived national program for the extension of financial aid to air transportation.

57) A word of caution has to be said here. Specific prophecy is fool-hardy, but it is possible without leaving firm ground to sketch the immediate and long-term problems which confront the international and local air transport services, and to suggest what appear to be the most promising solutions.

The determination of the basic national policy is a very complex matter and an adequate treatment of the issues involved is beyond the scope of this study. Nevertheless, a brief comment on the relative merits of the questions involved from the Egyptian standpoint may be desirable.

58) To this end, the approach used in the study of the problems involved will be two-fold:-

First: analysis of the present position in Egypt.

Second: criticism with suggestions for changes.

We would indicate here that the purpose of the criticism and analysis of the existing situation is done in order to appreciate the consequences of the adoption of the proposed solutions.

The analysis proceeds on the theory that national policy must be clarified and made consistent before an acceptable prescription can be made for the organization and administration of transportation programs. Emphasis is placed on basic issues of public policy rather than on details of administration. The resulting proposals call for fundamental revisions in national transportation policy as the first step. These in turn have led to recommendations for extensive changes in the present legal set-up.

59) Plan: The extensive range and complex character of present government action in the field of air transport promotion and regulation are set forth in section 1 of this chapter. Section 2 deals with the critical defects of the national transportation system. Section 3 is devoted to an evaluation of national transportation policy and to specific recommendations for the necessary changes required in the existing law of aviation in Egypt.

SECTION 1.- The Current Situation: Activity of the Egyptian Government as a Regulator and Promoter of Air Transport.

A.- Regulation:

60) In Egypt, air transport like other types of transportation is subject to governmental restrictions upon the freedom of action of the enterprise.

Broadly speaking, civil aviation is entrusted to one of the ministers of State. The minister in charge of civil aviation not only administers safety regulations but also controls, in varying degrees, the development of regularly scheduled and non-scheduled air transport through the power to pass upon applications for operating permissions. This special requirement is merely an application of the general practice of making the operation of any business utilizing the public domain or engaged in a public service, subject to the

prior consent of the State. Such permission may be conditional upon the observance of certain requirements. The administrative authority under which civil aviation is placed is symptomatic of the main political influences at work.

61) In Egypt, before the Second World War questions affecting aviation were dealt with by the Ministry of Communications. Since 1939, civil aviation has been the responsibility of the Ministry of War and Marine. The administration of civil aviation was originally lodged in the Civil Aviation Department of the latter Ministry. There are now two principal agencies concerned with civil aviation: (1) The Civil Aviation Department. (2) The Supreme Board of Civil Aviation. These two agencies are public agencies, responsible to the Minister of War and Marine. We will try hereinafter to state the functions and powers of these two agencies.

The Department of Civil Aviation: Its functions and organization:

62) The functions of the said department are generally the following:-

(1) The preparation of rules and regulations designed to promote the safety of civil aviation.

(2) The licensing of air service operations.

(3) The licensing of pilots, navigators, radio operators, flight engineers and aircraft maintenance engineers and the supervision of the work of licenced personnel.

(4) The issue of airworthiness certificates for aircraft and the supervision of operations of airline operators.

(5) The provision, operation and maintenance of air-radio stations, of radio aids to navigation and radio communication between aircraft in flight and the ground and from point to point.

(6) The promotion of training of pilots and ground staff for civil air transport. The licensing and supervision of flying schools.

(7) The promotion of training of control officers.

(8) The keeping of statistics relating to civil aviation.

(9) Liaison with international civil aviation organizations and representation thereon.

(10) Study of the proposed Annexes to the Chicago Convention and notification of any deviations from these Annexes. Putting into effect the Annexes which have come in force.

(11) The negotiation and administration of international air transport agreements with foreign countries.

(12) Seeing to the execution of the provisions of the bilateral agreements.

(13) Designation of the Egyptian air carriers to operate international traffic.

(14) Granting permits for foreign air carriers, both operating on a scheduled and non-scheduled basis, to fly to or through the Egyptian territory.

(15) Registration of aircraft applying for Egyptian nationality and registration of foreign aircraft to fly within the Egyptian territory, (the latter aircraft, as we shall see in the other part of this survey would have registration marks but not nationality marks).

(16) Revocation or suspension of certificates of airworthiness

and competency.

(17) Establishment and management of public aerodromes. Licensing of private aerodromes.

63) The permanent head of the Department is the Director General and he is assisted by one Deputy Director General. The Director General is responsible to the Secretary of State for Air who is responsible in turn to the Minister of War and Marine.

Supreme Board of Civil Aviation:

64) On the 25th of December 1952, a law was passed establishing a body known as Supreme Board of Civil Aviation. The Board is purely a creature of Statute and has only such jurisdiction as the Statute gives it either in express terms or by implication.

Broadly speaking, the functions of the Board are to encourage and foster the development of civil aviation and air transport, and to set the main lines to be followed by the Egyptian negotiator with the foreign countries in concluding bilateral agreements. It could be said that the primary objective of the Board is planning.

It will be useful to reproduce here the nature, jurisdiction and powers of the Board which are set out in the Statute creating it.

(1) The Board is the body responsible for the supervision of the execution of government policy in matters pertaining to civil aviation.

(2) The Board is the competent authority on the following matters:-

(a) Drawing up of long range policy in matters of civil aviation particularly in what affects:

i. aerodromes, their equipment and their sites;
ii. safety equipment for air traffic control;
iii. the promotion of the training of technical personnel needed for civil aviation.

(b) Drawing up of policy for air transport. The supervision of aviation establishments and of the public aid forwarded to them by the government.

(c) The supervision of flying schools and aero clubs and the framing of policies to encourage aviation trainees.

(d) To ensure that activities of civil aviation are in harmony and co-ordination with the activities of other departments involved.

(e) Seeing to the setting up of appropriate aviation legislation and to its amendment, should this be necessary.

(f) Approve the project of the annual budget of the Civil Aviation Department before its presentation to the competent authority.

(g) To define the external relationship of Egypt in matters pertaining to civil aviation particularly in the following matters:-

i. adopt the principles which should be followed by Egypt in concluding bilateral agreements with foreign countries.
ii. the choice of the representative of the Egyptian government to the Council of I.C.A.O.

Article 4 of the law creating the Board provides that the resolutions of the Board will be final, save those which normally would require for their execution, enactment by law or decree or an order of the Council of the Cabinet.

65) With the Minister of War and Marine as its chairman, the members

of the Board are:-

1) Secretary of State for Air.
2) Secretary of State for Commerce and Industry.
3) Secretary of State for Finance and Economics.
4) Director General of Civil Aviation.
5) Director General of the Tourist Department.
6) Director of the Air Force.
7) Three persons connected with civil aviation. They are to be designated by the Minister of War and Marine in a Ministerial Order.
8) Judiciary officer of the Ministry of War and Marine.

The Board has the right to invite to its meetings those whose experience and knowledge might be helpful.

The resolutions of the Board will not be valid unless its meeting is attended by a quorum of eight members. The resolutions are passed by the majority vote of the members present. 37/

B.- Government Participation:

66) General: Government participation in the management of air transport enterprises could be in different forms, which may be outlined as follows:-

(1) Government participation in the management of otherwise privately-controlled enterprises, through the appointment, or a voice in the appointment of one or more directors or officers.

(2) Government ownership, direct or indirect of capital stock in enterprises having the form of a company or corporation. The government may own a minority, a majority, or all of the stock. Such ownership is usually accompanied by the right to appoint some or all of the directors and officers.

(3) Government aid to the company may take the form of direct subsidy, mail payments, special favours like granting the company

the privilege or the monopoly of operating internal traffic. Such favours are also usually accompanied by a right to appoint some or all of the directors and gives the government the right to intervene in the policy of the company.

67) The first Egyptian air carrier "Misr Air Lines", was set up in 1932. It is a societé anonyme. The Government is not a stock holder. The Government nominates one of its employees to the Board of Directors of the Company, the "Conseil d'Administration".

The company was the chosen instrument of the government up to 1948, inasmuch as it was granted a monopoly for fifteen years as to internal traffic. At the end of the said period which started from its establishment, it enjoyed the privilege of internal traffic for five years. By this privilege, it had the priority as to internal traffic over the other Egyptian air carriers.

Another Egyptian air carrier "Saide" was established in 1948. The government has no share in the ownership of this company but is represented by one of its employees on the Board of Directors of the said company.

Both companies received direct and indirect subsidies from the government in various forms and on different bases. By way of example, the Egyptian air lines are exempted of the entire amount of the tax on aviation fuel used inside or outside the Egyptian territory. The Egyptian air lines also enjoy preferential treatment in the awarding of contracts for services to the government, e.g. the personnel of the government should be transported by the said carriers.

The Egyptian air carriers have benefited by the employment of some graduates, including pilots, navigators, engineers of the civil aviation training schools which received financial assistance from the government. The said companies have been able to benefit by the persons trained in the military service. Such favours give the government the right to intervene in the policy of the above-mentioned companies.

68) Moreover, these companies were required by the existing legislation to have a special authorization to operate internal or international traffic. By this requirement, the government indirectly c controls the activities of these companies. Article 5 of the law No. 58 issued on the 23rd May 1935, reads as follows:-

> "Indépendamment de l'autorisation prévue aux articles précédents, une autorisation spéciale est nécessaire pour utiliser en Egypte un aéronef aux fins suivantes:
>
> Le transport contre rémunération des personnes ou marchandises;
>
> 2. Les vols d'instruction;
>
> 3. Toutes autres entreprises aériennes contre rémunération."

Article 10 of the above-mentioned law reads as follows:-

> "Les aéronefs inscrits sur le registre matricule égyptien ne pourront circuler en dehors des limites du territoire égyptien sans une autorisation préalable du Ministre des Communications a cet effet. Les dispositions du présent décret et des décrets et arretés pris pour son exécution leur demeureront applicables en tant que leur application n'est pas en conflit avec les lois et reglements de l'Etat étranger."

69) As to the policy with respect to the inauguration of new services the civil aviation was obliged in 1949 to set up certain rules governing its decisions on new route application in order to avoid competition

between the two Egyptian air lines. These rules are as follows:-

1). Whether the new service will serve a useful public purpose, responsive to a public need;

2). Whether this purpose can and will be served as well by existing lines or carriers;

3). Whether it can be served by the applicant without impairing the operations of existing carriers contrary to the public interest; and

4) Whether the cost of the proposed service to the carrier will be outweighed by the benefit which will accrue to the public from the new service; and,

5) Whether the applicant has got the means to operate the new service successfully and efficiently.

The purpose of such requirements is to guarantee that service once instituted will not be arbitrarily withdrawn from the communities and industries that have become dependent upon it, provided that it would avoid wasteful competition.

The above-mentioned rules were drawn up by the Civil Aviation Department due to the lack of clear-cut legislation on such points. The legal basis for such rules is the provisions of the law issued on the 23rd May 1935 mentioned before. 38/

SECTION 2.- Criticism: An Account of the Shortcomings of the Air Transportation Policy.

70) Lack of a firm policy on the part of the government is undoubtedly the besetting sin of the civil aviation industry in Egypt. The fact that the Egyptian government has for many years carried on promotional and regulatory activity affecting all forms of transportation would seem to suggest that the government has adopted a national transportation policy. Actually we have neither a single transportation policy nor a series of policies that are mutually consistent.

71) The conflicts and inconsistencies stem primarily from the non co-ordination and non-integration of all forms of transport under one authority which led naturally to uneven treatment of the several forms of transportation.

To-day, there are separate bodies each charged with the control of Egypt's transportation system. Manifestly, surface transportation and airlines compete directly for a limited volume of traffic, particularily in the passenger field. Since the government is subsidizing both agencies, failure to co-ordinate the two programs results inevitably in one branch of the government competing with another for the expenditure of the taxpayer's pound. Moreover, when separate agencies are given responsibility for the promotion of individual forms of transportation, there is a natural tendency to resist physical or service co-ordination between the two enterprises. Such

an outcome is directly opposed to the co-ordination and integration objectives of the national interest of the country.

Agencies have been shifted and redhifted without any apparent consideration of the nature of their functions and generally without regard for the facts of interagency relationships.

72) Clearly the creation of the Supreme Board of Civil Aviation is a deliberately promotional approach to the treatment of air transportation. In effect, the government has taken the position that development of commercial aviation is so vital to the nation's commerce and security, that preferential standards of public treatment are required for this new medium of transportation. Moreover, the representation by members of the Ministry of Finance, Ministry of Commerce and Air Force on the Board, would facilitate the achievement of its functions, since most of the difficulties in the past stem primarily from those departments.

However, criticism concerning the Board are many and varied, but may be briefly stated as follows:-

(a) As to its composition: the number of members (eleven) is excessive. This will lead to prolonged discussions and disagreements and less work will be accomplished.

(b) There is nothing in the Statute creating the Board specifying that its members should have the highest possible qualifications in matters pertaining to civil aviation.

(c) There is no provision to the effect that no member of the Board is permitted to have any pecuniary interest in any civil

aeronautics enterprise.

(d) It has a negative attitude towards economic conditions.

(e) The relation of the Board with the Civil Aviation Department is not clearly defined.

(f) The last criticism is that the functions of the Board are too broad, inasmuch as it is deemed competent to deal with matters which are not essential to civil aviation, e.g. the appointment of the Egyptian Representative to I.C.A.O.

73) Many defects stem primarily from the lack of clear-cut legislation on such points as eligibility of the air carrier to engage in transportation activities. We started in 1932 with a clean slate, with the opportunity to utilize the accumulated experience of transportation in developing our route pattern and forming basis for a strong system of air transportation. We have not made full utilization of that opportunity till the present time.

On at least one of the routes there was at the beginning one carrier, then two carriers. 39/ There is a need for reasonable competition, but there is a limit to it and there is such a thing as wasteful competition. When we pass the limit of reasonable traffic potentiality we reach the realm of wasteful competition and I am not sure that we are not already in that realm on some of the routes.

74) The second departure from logical principle was at least partial abandonment of the requirement that possession of adequate capital should be basic in recognizing aspiring air carriers. Some of the

early bidders did not have capital sufficient for their initial aircraft and equipment. The hope of some bidders was that they would secure the necessary authorization and then raise capital on future prospects. Some. who began with capital deficiencies later repaired them, others began with a lack of capital and are still not solvent. It is evident that some of the financial problems of to-day go back to the first day of operation, some years ago.

75) The third departure from logical principles was the lack of insistence that the air routes of a carrier should, together, form a logical transportation system, and that illogical systems should neither be created nor permitted.

If we will critically examine the route pattern of the air carriers of to-day we will see in some the result of deficiencies in planning. Some of the airlines form an interesting assembly of diverse air routes, but in formation they depart far from the principle that routes grouped together should be inter-related. This result is partially the fault of the air carriers and the civil aviation authorities. It is easy to create too many illogical air routes, too many duplicating routes, perhaps with the belief that mistakes are more easily repaired in air transportation than other forms of transportation. The relative ease of starting new air routes deceived and continues to deceive, many, including operators, potential operators, and agencies of the government. We would stress here, that experience indicates that a large air line with many marginal or illogical air routes will lose money and position much more rapidly than a smaller air line with a lesser number of marginal routes.

SECTION 3.- Recommendations: Basic Principles of a Strong Egyptian Air Transport System.

76) It would be well to conclude that we have had enough of this transportation ideology and that we should return to administration permised upon sound transportation principles. It is probable that the civil aviation authorities will want to take another look at the policy which has developed such destructive competition.

I believe that we would be ill-advised to permit our air carriers to go into bankruptcy. It is obvious that it is contrary to the national interest to do so. The aeroplane is the symbol of Egyptian power and Egyptian prestige. To illustrate, the reasons for foreign States' interest in air transport would be mentioned below.

77) Fundamentally, the reasons for the interest of States in air transport are not different from those explaining their interest in other forms of transport. They want to use the new means of communication and transportation not only to promote national progress but also for more specific and probable more potent reasons.

Air transport is useful in emergencies when other means of communication are suspended. 40/ Air transport has a distinguishing characteristic which makes it of even greater concern to governments than any other means of transportation and communication. Aircraft are not merely carriers of goods or passengers or mail. They are weapons of war, a means of sudden attack. Every commercial pilot acquires experience in flying certain routes along which death -

dealing squadrons may come some day under his guidance. 41/

78) The possibilities for the development of air transport as a source of national income, or of credits in the balance of international payments, have not attracted much notice, but in countries like the Netherlands they may help to explain governmental interest in aviation. 42/

79) The possession of a well-developed system of air transport, is a factor enchancing the prestige of a nation at home and abroad. On the other hand, the failure of a nation to develop air transport, specially in the presence of successful foreign enterprises, is likely to do damage to national prestige. The importance of prestige as a consideration in the national aviation policy is freely admitted by government spokesmen. In this connection it is interesting to mention the following remarks by some of the British spokesmen:-

> "I hate the word 'prestige', but I like to bring it in, for the reason that every English aircraft which travels from one side of the world to the other is a little bit of England. England will be judged by that little bit by those for whom that is the only thing they know of England. 43/
>
> .... we are losing prestige in the Argentine. They see German and French machines coming regularly across the Atlantic but no British machines. So the Argentines naturally judge us by what they hear over the wireless and what they see, and they think we are a decadent nation if we do not send aircraft to the Argentine. 44/
>
> It makes my blood boil when I find that on the run to Singapore we are being defeated all along the line by the Dutch air liners." 45/

80) Closely allied with prestige are propaganda and cultural influence.

In this connection, we would mention that the suspension of the negotiation between the Egyptian government and the French government for concluding a bilateral agreement in 1949, was due to the refusal of the French government to permit the Egyptian air lines to operate through or to the so-called French territories in North Africa. After an exchange of notes between the two governments for a year, an agreement was reached on the basis that Egyptian air lines may operate to and / or through the said territories on the condition that the Egyptian air lines would not handle their own traffic in the so-called French territories : in other words the French would handle the traffic for the Egyptian air lines. Those restrictions were obviously for political reasons.

81) The French have emphasized the cultural aspects of national prestige in the role of air transport in maintaining cultural ties. The influence of France in the world, according to one French writer, is not measured solely by production or population, but includes elements of intellectual affinity and political solidarity. French air lines help to protect an "intellectual empire which is menaced by merchant empires". Air transport is also a sign of national vitality, preventing France from appearing as a nation of lesser stature. 46/

82) We may conclude that considerations of national prestige, propaganda, cultural influence, as facilities for official and non-official intercourse with foreign nations, and of imperial and domestic unity, have played no mean part in awakening governmental interest in

air transport.

Those considerations should be kept in mind in framing the national aviation policy of Egypt.

83) The enumeration of the defects in transportation policy makes it clear that basic policy revision will be necessary if the goals of maximum achievement and economy are to be attained. Changes in policy, however, cannot be effected without the necessary organizational tools. Once the desired policy is determined, accompanying changes in government organization not only help to make the goal possible but tend also to promote the realization of policy objectives by creating an environment favourable to them. The transportation situation has become so complex and is changing so rapidly that it demands, we believe, the continued attention of a single executive agency : the Ministry of Transport.

84) The control of all forms of transport in a central authority would bring together the various bodies, re-organized, united and devoted henceforth to the pursuit of a well planned policy for the co-ordination and regulation of transportation. Such policy would achieve maximum efficiency and economy to the several individual forms of transportation. The purpose of such policy is to prevent the establishment of more transport enterprises than can be supported by available or anticipated traffic. The single authority would be in a position to eliminate destructive competition not only within each form but also between or among the different forms of

transportation. The proposed authority should be empowered to set the over-all pattern of transport competition, determine when and where new transport facilities are needed and the conditions under which the concerns occupying the field may operate for traffic.

It would be the responsibility of this authority to select the essential routes to be operated within the country and abroad. Generally speaking, it would be the task of this authority to draw up sound policy of the nation as to transportation and to see that it is applied intelligently. Moreover, such consolidation would supply a going organization capable of assuming immediate responsibility for administering a wartime transportation program. It would also provide a continuing and authoritative source of information for the legislative and executive branches of government concerning the financial and operating position of the several transport agencies and the adequacy of the total transportation plant to meet the needs of commerce and national security. There would be placed in the new body only those responsibilities and functions that have an affirmative bearing on the maintenance of an adequate national transportation system. Authority and responsibility would be delegated to four Deputy Ministers: in charge of water transportation, highway transportation, railroad transportation and civil aviation.

85) As to the instrument for the control of civil aviation, distinction first should be made clearly between economic and promotional regulation on the one hand and technical and administrative activities on the other. To this end, we propose the creation of a board which

would be the responsible body for the economic and promotional regulation pertaining to civil aviation. Technical and administrative activities would be left to the Civil Aviation Department.

The Composition and Functions of the Proposed Civil Aviation Board:

86) Importance of the composition of the Board: As this question impresses itself upon my mind the character, the capacity, the wisdom and the selection of the men is everything. Unless the government can provide the Board with men of the right stamp, men of independence, of character, of firmness and of fairness, men who have experience in business, experience and knowledge of the economics of air transportation, experience in aviation law; unless the government can provide the Board with such members, we cannot look with any hope toward successful operation of the Board.

The government has to give to these men such tenure as will invite the men that we want to come and take the seats upon this Board. The government has to give them a tenure long enough to induce them to give up any business in which they may be engaged and which may be profitable.

In this connection we may say that the most efficient work would be obtained from the Board if the members were appointed on the same tenure as judges. A life tenure would mean a continuity of regulative tradition. It would also mean that the dignity and security attaching to the life tenure would permit the Board to obtain a high order of ability which could not be obtained in the case of a short tenure.

Thus, it is clear that the Board should have an efficient and commanding personnel, that the tenure of office of the Board should be sufficient to attract men of the highest calibre, and that the selection of the men is everything inasmuch as the jurisdiction of the Board would cover a wide field.

The next point of importance is how many members should constitute the Board. Should they be eleven as on the existing Board, or should they be less? In answering this question, we should be guided by the experience of other countries in this field. The experience of the United States of America points to the conclusion that the existence of a board equiped with four or five members is able to perform its work efficiently. We could add that if the Board were composed of members well paid by the government, it would be to its advantage that the Board be composed of four or five members.

87) We may conclude that the Board should be composed of :-

(a) Five members, who have experience in business, experience in economics in air transportation, experience in aviation law.

(b) Each member should have Egyptian citizenship, and should have no pecuniary interest in or own any stock of any civil aviation enterprise.

(c) No member of the Board shall engage in any other business, vocation or employment.

(d) The members of the Board should be appointed by decree. Each of them shall receive a salary at the rate of £ 1800 per annum.

(e) The Board should be strengthened administratively and be

supplied with an adequate staff of advisors and experts.

88) Functions of the Proposed Board:-

(a) The Board should be the chief instrument for the control of civil aviation with respect to all matters relating to economic regulation and certain other activities, e.g. drafting of rules. This will eliminate the confusion of responsibilities existing under the Supreme Board of Civil Aviation Act and provide a more clear-cut and effective plan of organization for the agencies.

(b) It should be the function of the Board to examine the efficiency of air carriers. Issue of convenience and necessity certificates to air carriers which are fit and able to perform such transportation properly. The Board should be empowered to modify, suspend or revoke such certificates.

(c) Permits to foreign air carriers should be issued by the Board.

(d) The Board should maintain closer regulation over the question of rates.

(e) The Board should have the responsibility of making a survey of the existing system of airports and should present to the Civil Aviation Department definite recommendations as to the construction, improvement, development, operation or maintenance of a national system of airports.

(f) The direct and indirect financial aid given to air lines should be under the constant control of the Board, and subject at all times to revision as technical improvement, changes in operating conditions, or the needs of the particular territory served may require.

The formulas under which aid is extended should be such as to encourage good management and technical progress, and to stimulate rapid evolution towards complete self-support and independence of public aid.

(g) It should be the duty of the Board to require periodic financial and operating reports from all air lines, to examine their status at suitable intervals, and to make public record of such reports.

(h) Adoption of the principles which should be followed by Egypt in concluding bilateral agreements with foreign countries. Moreover, the Board should be empowered to see that the provision of such agreements, are diligently carried out.

Proposed Air Carrier Economic Regulation:

89) No air carrier may engage in any air transportation unless there is in force a certificate issued by the Board authorizing such carriers to engage in such transportation.

The Board should be the competent authority to issue the certificate of public convenience and necessity to the air carriers, if it finds that the applicant is fit, willing and able to perform such transportation properly, and to conform to the provisions of the laws, rules and regulations of the country, and requirements of the C.A.B., and that the transportation is required for public convenience and through nedessity, otherwise such application will be denied. 47/

90) An applicant for a certificate of public necessity and convenience must assume the burden of proving to the Board that he is "fit", willing, and able properly according to the provisions of aviation

legislation. He must also satisfy the Board that "the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity."

91) An applicant for a permit to conduct contract carrier operations must also demonstrate fitness, willingness, and ability to perform the contract services proposed, and that the operation "to the extent authorized by the permit, will be consistent with the public interest, and the national transportation policy declared by the laws of aviation.

92) The policy with respect to the inauguration of new services, would be whether the new operation or service will provide a useful public service, responsive to a public demand or need, whether this purpose can and will be served by the applicant in a specific operation without endangering or impairing the operations of existing carriers, contrary to the public interest.

93) Each certificate shall be effective from the date specified therein, and shall continue in effect until suspended or revoked as hereinafter provided, or until the Board shall certify that operation thereunder has ceased, or if issued for a limited period of time shall continue in effect until the expiration thereof. If any service authorized by a certificate is not inaugurated within such period, not less than ninety days, after the date of the authorization as shall be fixed by the Board, the Board may by order direct that such certificate shall thereupon cease to be effective

to the extent of such service. 48/

94) The Board, upon petition or complaint or upon its own initiative, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with the provisions of the laws, rules and regulations in force in Egypt. 49/

95) The policy of the government should be to support and assist Egyptian air lines in their relations with foreign governments. It should be considered as in the public interest to regulate and control foreign air lines entering Egypt with the purpose of securing for Egyptian air lines equality of opportunity in foreign countries. No foreign air carrier shall operate to or through the Egyptian territory unless there is in force a permit for such operation issued by the Board.

96) The most critical question confronting the government and the aviation industry is whether our international aviation shall be conducted by a single company or by a series of companies. In other words, should the government allow any person whomsoever to conduct a regular line of aircraft for commercial transport.

Both economic and political considerations must be weighed in deciding where the national interest lies between the monopolistic and the competitive paths. The economic arguments used for the

competitive development of our international air lines are those which competition develops generally:

(1) Competing lines are impelled to conduct their operations with maximum efficiency, both with respect to costs and to regularity and adequacy of service.

(2) In a branch of transportation where the public must be persuaded to adopt new travel habits, competition is said to be the most successful builder of traffic; with the larger volume of traffic unit costs decline and rates can be lowered. Of course, the lower the rates, the more successful competition can be in developing a large volume of traffic.

(3) The competitive development of international air lines, either as alternative routes or as parallel operations, gives the country an element of insurance against the loss of its international operation should economic misfortune require one company to suspend its operations.

In short, we could say that the fundamental argument for the extension of competition is that ultimately it is the most effective stimulus to improvement in service and lower operating costs.

97) In answer to these arguments, we could say that there will be sufficient foreign competition to provide such stimulus. A larger and stronger air line which would result from concentrating the operation in a single company, would be less likely to have to suspend operations as a result of accidents or other misfortunes. Moreover the cost of supporting international air operations has been used as an argument for having one chosen instrument. Inasmuch as most

international operations have in the past been supported by public funds and will for a time continue to be dependent upon grants from the public treasury, it is argued that the taxpayers' money will be saved if international air operations are conducted by a single company. In any comparison between the relative economics of monopoly and competition, it must be remembered that the costs (the so-called wastes) of competition are apparent and readily identified, whereas the wastes of monopoly are concealed. The higher costs of maintaining two overhead staffs and duplicating traffic offices can be readily measured and are an obvious target for criticism.

The attraction of capital is another argument advanced for the concentration of international operations in a single organization. If Egyptian international aviation must meet the competition of subsidized government-owned foreign air lines, it will be difficult to persuade investors to invest their funds in what must inevitably be a risky enterprise. Thus, it is argued that the risk can be minimized by avoiding competition between Egyptian air lines.

Inasmuch as Egypt is forced to compete with strong nation blocs, it will probably be to its best advantage to maintain a policy of allowing its foreign air transportation to be carried out by a single organization. Such policy could not be achieved except by an express provision in the new Code as the legislative policy of Egypt is one of competition.

98) There should be a specific provisions to the effect of creating a body corporate with the name "Misr Overseas Aviation Company".

The purpose of the corporation shall be to operate as an air carrier in foreign air transportation and to provide transportation by air throughout the world, under the Egyptian flag, for persons, cargo and mail. No air carrier except "Misr Overseas Aviation Company" shall be authorized by any certificate to operate in foreign air transport. The Proposed Civil Aviation Board may by order require the corporation to make any extensions of its services, or to establish and provide any new service if it sees that this is in the public interest. If the Board requires the corporation so to extend its service or to provide new service, it shall issue its order making such requirement only under such conditions as will guarantee to the corporation a reasonable compensation for the service it is so required to perform. 50/

99) If Egypt should choose to concentrate its international air operations in a single company, a second series of problems would arise. Shall the single company be financed by private or public capital ? Shall the government participate in the management of the corporation ? Shall other transportation interests be permitted to participate in the ownership and control of the international air line ?

While there has been a definite trend toward government ownership of railroads, the evidence nevertheless still points to the greater efficiency of private ownership and management in air transport. Contemporary opinion, both within and without the government, does not suggest that the Egyptian government will deliberately adopt a policy of government ownership of its international operations.

Yet public ownership and operation may come as the unforeseen consequence of other aspects of national aviation policy. Heavy and increasing government financial support to international air lines would lead successively to government ownership of air line securities and to active participation in the management and operation of air lines.

The question of private or government ownership like other questions relating to international aviation, cannot be settled once and for all at the present stage of the industry's development. Unforeseen circumstances may make government ownership the only form of organization consistent with the public interest in adequate international air transport.

100) Many proposals have been forthcoming as to the interests which should be invited to participate in the ownership of the single company. One of these proposals is to invite all forms of transportation, the railroads and steamship companies as well as the domestic air lines, to invest in the international operation. The first argument that might be advanced for such a community company is that adequate capital would be assured to promote the development of international operation.

The entrance of shipping companies into air transportation raises urgent questions of policy in Egypt nowadays as they are exerting themselves to be allowed to operate air lines. In our case, it is doubtless true that the air lines require the financial backing which shipping capital can supply. The opening of air transportation

to the shipping interests would, in the short run, result in the investment of more capital and the development of more air service than could otherwise be expected. The fundamental arguments against this system are concerned with the long-run consequences of shipping control of air transport. It is argued that any dominance of international air transport by shipping interests is viewed with grave misgivings by those who realize that the new air transport industry requires immagination and vision to deal with new problems which are scarcely analogous to those in which shipping management is experienced. Furthermore, it is rightly submitted that shipping industry in Egypt has not reached the stage of endowing other industries, it is still in need of attracting more capital to help it to carry its own business efficiently.

It would be unwise to open the air transport industry to the shipping companies. The new Code should contain a provision to the effect that the ownership of a stock in air lines by corporations engaged in other activities of transportation should be prohibited.

101) What policies should the country follow regarding subsidies to aviation enterprises ? What measure of financial assistance will be necessary to enable the Egyptian air lines to carry on their activities successfully. What use of subsidies will serve to support an economic framework within which competition may stimulate progress, assure safe and adequate service, guarantee efficient operations, promote low costs for air services, and encourage the widest possible use of this newest form of transportation? The Egyptian government cannot

look with indifference upon the subsidy policies adopted by foreign countries, if it wishes to influence the legal and economic frameworks within which our international and national aviation shall operate.

Three principles should guide the Egyptian government in giving financial assistance to our air carriers. First, the government should avoid starting subsidy wars by refraining from using those forms of financial assistance which may provoke retaliatory subsidies. All subsidies should be specific and open, for hidden subsidies inevitably give rise to international friction and distrust. The second principle to be observed in giving financial assistance to air lines is that such support should take the form of relieving the air lines of a part of their fixed or overhead costs. Third, if it should be necessary for the government to give financial assistance to international air lines to offset differences in the level of operating costs, such financial assistance should be as a specific as the conditions of the industry permit.

Similarly, the government may give financial grants to research institutions and help the establishment of aircraft manufacturers.

102) We may conclude that it should be the policy of the Egyptian government to maintain a position of world leadership in air transport, and to lend such aid as may be necessary to insure that the most modern and efficient equipment and methods shall be applied on Egyptian domestic and foreign air lines. Moreover, the policy of Egypt should be to support and assist Egyptian air lines in its relations with foreign governments.

It should be provided by legislation that:- (1) Direct government aid should not as a matter of course be extended to all air lines having certificates of convenience and necessity, but only to such air lines as are deserving of such aid in the public interest. (2) The direct financial aid given to air lines should be under the constant control of the Board, and subject at all times to revision as technical improvement, changes in operating conditions, or the needs of the particular territory served may require. The formulas under which aid is extended should be such as to encourage good management and technical progress, and to stimulate rapid evolution towards complete self-support and independence of direct governmental aid. (3) Air lines should be made eligible as railroads now are, for loans from the government.

PART II.

PUBLIC AVIATION LAW

CHAPTER I.-

The Legal Regime of the Egyptian Flight Space

Introduction:

103) Are States to have sovereignty over the space above their territories in the same way as they have sovereignty over the territories themselves ? Are they to be able to regulate or forbid the user of that space as they will, subject only to such reciprocal obligations as they may bind themselves to perform by agreement ? Or to take the opposite contention, is the air space to be free to all like the high seas : subject at the most to a control restricted to certain specified purposes and exercisable only within defined limits.

The answer to these questions will be the subject matter of this chapter. Section 1 will deal with the problems involved as were treated by the International jurists. Section 2 will treat these problems as stated in existing positive law.

Section 1.- Doctrinal Discussions on the Legal Regime of Flight Space.

104) A nation independent of direct or indirect control of any other nation is, in international law a sovereign State. "In International Law sovereignty is generally held to be an essential qualification for full membership in the family of nations. In other words, the subjects in whom inhere the rights and obligations defined by International Law are States; and a community is not a State

"unless it is independent of legal control by any other community and is legally free to determine the nature of its relations with all other communities, except in so far as it limits its freedom contractually or voluntarily." 51/

The sphere in which a sovereign State enforces its laws and otherwise exercises exclusive control against all other States in the community of nations is its domain or territory. Territory is firstly land. The limits of sovereignty of the States over territory are given historically and recognized by the States in relation to each other. Today, the question of how to increase or decrease the sovereignty of a State in the territorial sense must be decided by International Law. Territory can also consist of water-territory. Here a distinction must be made between inland waters, coastal waters and the open sea. It is equally certain that the inland waters, such as inland lakes, rivers, canals, harbours and coves, share the legal status of the country to which they belong in space; in other words, they are under the territorial sovereignty of the country in which they are situated.

105) The control of this territory, as against foreign States, has been called an exercise of "external sovereignty". In International relations, this appears to be practically synonymous with national sovereignty.

The distinction between external and internal sovereignty has been stated as follows :-

> "Sovereignty is the supreme power by which any State is governed. This supreme power may be exercised either internally or

"externally. Internal sovereignty is that which is inherent in the people in any State, or vested in its ruler by its municipal constitution or fundamental laws.... External sovereignty consists in the independence of one political society, in respect to all other political societies... The internal sovereignty of a State does not, in any degree, depend upon its recognition by other States... The external sovereignty of any State, on the other hand, may require recognition by other States in order to render it perfect and complete." 52/

106) The problem of the legal status of the air space over national territory and over the high seas has been, particularly since the beginning of controlled flight, the subject of great controversy among international jurists.

The three views which had formed the basis of the conflict on the question whether air space is free for navigation or subject to the right of property in the subjacent owner, are stated as follows:

(a) That the air is free to the circulation of all, except that subjacent States are entitled to make regulations safeguarding their territory.

(b) That the subjacent State has sovereignty restricted by a 'servitude' of free passage for foreign aircraft.

(c) That each State possesses the same rights of sovereignty over the air space above its territory as it possesses over the land itself. By virtue of this sovereignty, States are entitled to take such measures as they may deem necessary to prevent any visitation by foreign aircraft.

107) One of the earliest and still one of the soundest statements of these early disputes was prepared by the writer Sir H. Erle

Richards in 1912. Speaking of the last principle, he said:

> "I hold the view that these rights are already fixed and determined by admitted principles of international law, and that if convention be necessary it is necessary only to give effect to those principles in the regulation of Aerial Traffic from State to State. If that be so the position is a simple one, for all States are bound by the principles of International Law and all must comply with them." 53/

108) The reasons given by that writer to support his theory could be summarized as follows:-

(a) Sovereign States are entitled to all rights which are necessary for the preservation and protection of their territories; it is obvious that the right of control over the air space is essential for these purposes. He added that this principle is admitted beyond challenge.

(b) If the air space were free, the defensive works and military dispositions of every State would be exposed to the view of any air vessel above it; they would become common knowledge to the world. In other words, the control of the air is absolutely essential for the preservation of the subjacent State.

(c) Sovereignty over the land can never be made effective if the air be beyond the jurisdiction of the sovereign power. The bedrock fact is that the user of the air cannot be treated as a thing distinct from the user of the territory beneath it. The two are inseparably connected, and can never be dissociated.
If that be so, it follows inevitably from the admitted principles of international law that States are entitled to absolute sovereignty in the air space above their territories. 54/

109) As to the theory that the air space is free, we could say that it has never been accepted as a principle of international law, and it would appear that it would be put forward rather as an expression of a mere hope than as a statement of any rule which can be derived from existing law.

Professor Cooper in 1948 made the following statement:-

> "In a careful re-examination of practically all of the available material beginning with the invention of the balloon in 1783 and continuing until world War I, I have been able to find no occasion in which a sovereign State disclaimed sovereignty in its air space. Such sovereignty has always existed." 55/

He further stated that the surface of the earth and the air space above cannot be separately treated. Together they must be considered as a single political unit. Entry into the surface areas under the control of a State or into the air space over such surface areas constitute equally entry into the territory of the State. 56/

SECTION 2.- The Legal Regime of Flight Space in Positive Law.

A.- In the International Domain

110) The Paris Convention of 1919 : "Relating to the regulation of aerial navigation", referred to before 57/ contained the following as its first article.

> "The High Contracting Parties recognize that every Power has complete and exclusive sovereignty over the airspace above its territory. For the purpose of the present Convention the territory of a State shall be understood as including the national territory, both that of the mother

"country and of the colonies, and the territorial waters adjacent thereto."

This is now accepted as the statement of existing international law.

111) The Chicago Convention of 1944, is now in force between most of the nations of the world, with the notable exception of the Soviet Union. Article 1 of the Convention states that:-

"The Contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory."

Article 2 provides that:-

"For the purpose of this convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State."

112) The articles of the Paris and Chicago Convention state existing international law and do not legislatively create such law.

The basis principle of international aviation law is that the air space has the same legal status as the surface of the earth beneath it. Air space over land areas, inland waters, canals, bays or gulfs under national sovereignty and territorial waters of any State is part of the national air space of such a State.

113) The Convention is normally applicable to civil aircraft and not to State aircraft. All aircraft used in military, customs and police services shall be deemed to be State aircraft.

However, the Convention does provide that:-

"No State aircraft of a contracting State shall fly over the territory of another State or land thereon without

> "authorization by special agreement or otherwise, and in accordance with the terms thereof." 58/

This means that no aircraft used in the military service may be flown into or over the territory or territorial waters of another State without special permission having been received, even though as between the two States concerned an agreement may exist granting reciprocal flight privileges to non-military aircraft.

114) The Chicago Convention, in art. 5, gives certain limited rights of transit to the aircraft not engaged in scheduled international air services.

The same Convention, however, restates, in art. 6, in the strongest terms, the rights of each State as to scheduled services.

115) As an application to the principle of sovereignty, art. 7 of the Convention provides that:

> "Each Contracting State shall have the right to refuse permission to the aircraft of other Contracting States to take on its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each Contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an air line of any other State, and not to obtain any such exclusive privilege from any other State."

116) In accordance with the principle of sovereignty, each Contracting State, for reasons of military necessity or public safety, has the right to restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State

whose territory is involved, engaged in international scheduled air line services, and the aircraft of the other Contracting States likewise engaged. 59/ It is not considered that anything in this article limits the right of States to set up prohibited areas for any reason that may desire as against non-contracting States.

117) The Chicago Conference in 1944, prepared and opened for signature two agreements known respectively as the "International Air Services Transit Agreement", and the "International Air Transport Agreement". These are legally multilateral permits under article 6 of the Chicago Convention, authorizing, in the Transit Agreement certain privileges (not rights), of flight over and landing for refueling in the territory of accepting States and in the Transport Agreement certain added commercial privileges. 60/

118) As a result of the rights of route control flowing from the doctrine of sovereignty of the air space, many bilateral agreements for the establishment of air trade routes, were entered into before and after the Second World War.

Any State, except during the time that it is committed otherwise by the Transit or Transport or other special agreements, is still fully authorized to take advantage of its own political position and bargaining power, as well as the fortunate geographical position of its homeland and outlying possessions. It could unilaterally determine, for economic or security reasons, what foreign aircraft will be permitted to enter or be excluded from its air space, as well as

the extent to which such air space may be used as part of world air trade. 61/

119) From the foregoing we may conclude, that International Aviation Law applicable to the question of the extent of national air space sovereignty now includes the following rules:

(a) Each State has complete and exclusive sovereignty over the air space above its surface territory and such airspace is in fact an integral part of national territory.

(b) Surface territory for the purpose of air space sovereignty includes territorial waters. Air space over such territorial waters has exactly the same legal status as air space over land territory.

(c) Every sovereign State has complete control of the air space included in its territory, has the exclusive right to fly in that air space, and may exclude all foreign aircraft or admit them on such terms as it sees fit. The aircraft of one State do not have in the air space of another State any right of entry or innocent passage, and will only be admitted to such air space with the consent of the State having sovereign control.

B.- In the National Domain:

120) From the foregoing we may say that the Paris and the Chicago Conventions state existing international law and do not legislatively create such law. The basic principle of international aviation law is that the air space has the same legal status as the surface of the earth beneath it. Air space over the land areas, inland waters,

canals, bays or gulfs under national sovereignty and territorial waters of any State, is part of the national air space of such State.

121) The non-adherence of Egypt to the Paris Convention had nothing to do with the acknowledgment of the principle of air space sovereignty enunciated by the said convention. In other words, the non-adherence was not due to any refusal by Egypt to accept the doctrine of air space sovereignty - quite the dontrary. Through separate practice and statutes, Egypt insisted on air space sovereignty and its consequent right to admit or exclude foreign aircraft from her territorial air space. By way of example, Imperial Airways Company and KLM were permitted to fly to or through Egyptian territory only after applying for an authorization from the Egyptian government. A conditional authorization was issued to each of these companies in the period 1931 - 1933, fixing the route of flight and designating the aerodromes to be used by them in landing and taking off.

Also, every recorded official act of Egypt has indicated its complete acceptance of the doctrine of air space sovereignty and its insistence on its right as a sovereign State, as against foreign nations to determine whether the aircraft of such foreign nations may be admitted to or excluded from use of the air space over Egyptian territory.

A primary step was taken toward the control of flight in Egypt. A law was issued on the 24th of March 1920 to the effect that the establishment of aerodromes is a government monopoly. By implication,

no aircraft was permitted to land or take off except on and from these aerodromes. Accordingly, they had to obtain prior permission from the government. On the 23rd of May 1935, a law was passed enunciating the principle of air space sovereignty over Egyptian territory. Article 1 of the said law provides that:

> "The State has complete and exclusive sovereignty over the air space above its territory. The territory of the State shall be deemed to be the land areas and territorial waters adjacent thereto".

This delay could not be construed in contrario, to the effect that Egypt had not recognized the principle of air space sovereignty before 1935. The only reason justifying this delay, in corporating the binding obligation of the principle of air space sovereignty into its legislation, was due to the fact that the civil aviation authorities were trying, since 1929, to codify aviation rules in one code. Inasmuch as they were confronted by many obstacles in completing the code and in view of the rapid development of air transport in Egypt, they abandoned the idea of codifying aviation rules in one code and started issuing separate laws for each case. 62/

122) The principle of absolute sovereignty, confers upon the State exclusive power to regulate flight within its atmosphere. The prerogatives which the State possesses are founded on two principles:

(1) That of permitting, refusing or withdrawing authorization to fly in the air space subject to its sovereign control.

(2) That of demanding that all aircraft flying in its air space conform to the laws, rules and regulations of the country flown over. It is from these two aspects that the juridical status of the Egyptian

flight space should be studied. Accordingly, we shall distinguish between the status of : 1. Egyptian aircraft; 2. Foreign aircraft.

123) Egyptian aircraft: According to the Air Navigation Act of the 27th of May 1935, no Egyptian aircraft is permitted to fly within Egyptian territory except by a prior permission from the Ministry in charge of civil aviation. 63/ In addition to this permission, a special (conditional) authorization is required if the aircraft is engaged in transportation of passengers and cargo for remuneration or is used for training, or any other aviation activity for remuneration. 64/ This authorization is personal to the owner of the aircraft: it would be invalid in case of change of ownership. The authorization would be for a fixed time or a fixed number of flights. Furthermore, the above-mentioned Air Navigation Act provided that Egyptian aircraft are required to have a prior authorization from the Minister in charge of civil aviation to fly abroad. 65/ The Minister in charge of civil aviation is empowered by the Act to suspend for a certain period or to withdraw any authorization if he sees that it is in the public interest. 66/

As to foreign aircraft which are registered in the Egyptian register and which are entitled to have registration marks but not nationality: they are subject to the above mentioned requirements - except that they are not permitted to ask for an authorization to fly abroad. 67/

124) Foreign aircraft: Broadly speaking, before and after the Second

World War, foreign aircraft, whether engaged in scheduled or non-scheduled flight, whether operating on a commercial or non-commercial basis, have been required to have a prior permission to operate to or through Egyptian territory.

Before 1935, foreign air carriers operating on a regular schedule were treated on the same basis as any foreign company applying to exercise commercial activities in Egypt. They applied directly to the government and got a conditional authorization from the Council of the Cabinet. Such was the case with the early air carriers operating to and / or through the Egyptian territory (KLM, Imperial Airways).

With the passage of the Air Navigation Act of 1935, all foreign aircraft were required to have a prior permission from the Ministry in charge of civil aviation, in order to operate to or through Egyptian territory. The practice in Egypt as to scheduled foreign air carriers, has been based on the grant of a temporary permission for six months, renewable if the case warrants such a renewal. As to non-scheduled air carriers, the conditions of the authorization vary to suit individual cases. All foreign aircraft have been required to apply for the authorization through their respective governments. The reason for such procedure was to guarantee that Egyptian aircraft in foreign countries would be treated similarily i.e. that reciprocity of authorizations be ensured.

125) Through ratification of the Chicago Convention, Egypt assumed obligations on the international level.

NOTAM No. 9-A/1947 stated that:

"As from October 15th, 1947 ..., all aircraft of Contracting States which are members of the International Civil Aviation Organization, being aircraft not engaged in scheduled international air services are permitted to make flights into or in transit non-stop across Egyptian territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission".
Scheduled air carriers were required to have a prior permission as was the practice previously.

126) Due to the troubles which took place in Palestine in 1948, these rules were changed. NOTAM No. 9-A/1948 issued on the17th of May, provided that:

(1) No private aircraft will be allowed to enter or fly through Egyptian territory.

(2) All aircraft engaged in the carriage of passengers, cargo or mail for remuneration or hire on other than scheduled international air services shall not enter Egyptian territory without special permission from the Ministry of National Defence.

This permission will be required whether the aircraft stops in Egypt or not and whether its stop is for traffic purposes or not.

(3) Scheduled international services having obtained prior permission from the Egyptian government to operate to or through Egypt will continue their operations on condition that their route does not include a stop in Palestine on their way into or out of Egypt.

(4) Notice to Airmen No. 9-A/1947 is cancelled.

The legal basis of the said NOTAM which is still in force, is article 89 of the Chicago Convention. This article provides that in case of war, which is still in existence between Egypt and the so-called Israel, the provisions of this convention shall not affect the freedom of action of any of the Contracting States affected, whether as belligerents or as neutrals.

127) In a letter from the Council Representative of Egypt to the Secretary General of I.C.A.O., dated 21,Nov.1950, it was indicated that Egypt would be willing to adopt rules for the entry of foreign non-scheduled flights along more liberal lines. In substance, the letter outlined the following regulations, conditions or limitations that might be imposed by the Egyptian government in regard to non-scheduled commercial flights of foreign aircraft:

A.- Aircraft engaged in the carriage of passengers, cargo or mail for remuneration or hire on other than scheduled international air services, shall have the privilege of taking on or discharging passengers, cargo or mail without prior permission.

1. Freedoms: Only 3rd and 4th freedom traffic to be carried.
2. Ownership: To enjoy the privileges mentioned, substantial ownership of aircraft operated and effective control of operations should be vested in nationals of the Contracting States in which aircraft are registered.
3. Load Carried:
    i. in case of passengers: "Pure Charters" can always enjoy the privilege in question.
    These are the cases of aircraft entirely chartered

for a specific act of transportation by a single customer; all passengers belonging to one same group-classification of people, i.e. football team, opera troupes, etc.

ii. in case of freight: when freight carried consists of one consistent category of freight, i.e. fruit, meat, engineering equipment.

(4) Route flown and adequacy of scheduled services: cases where route flown is not covered by any existing scheduled services.

B.- Any other type of operation not fulfilling conditions (1), (2), (3) and (4) will require prior permission.

128) After the ratification of the Chicago Convention, Egypt followed the method of concluding bilateral agreements with foreign countries, for the establishment of scheduled air services between and beyond their respective territories. The Egyptian government set up a standard form to be used in such treaties. It has entered into negotiations with many foreign governments for that purpose, and succeeded in concluding such agreements on the basis of the principles provided in the standard form set up by it. It is of great interest to examine here the principles of the standard form. In the preamble, the parties reaffirm their adherence to the general principles of the Chicago Convention and agree on the following further principles:

(1) Each Contracting Party grants to the other Contracting Party the right to operate the air services specified in the Annex to this agreement on the routes specified in the said Annex.

(2) Subject to the provisions of this agreement, any of the specified air services may be inaugurated in whole or in part, immediately or at a later date, at the option of the Contracting Party to whom the rights are granted.

(3) Each Contracting Party shall designate in writing, to the other Contracting Party one or more airlines for the purpose of operating the specified air services in virtue of the present agreement.

(4) On receipt of the designation, the other Contracting Party shall, subject to the provisions of this agreement and without undue delay, grant to the airlines designated the appropriate operating permission.

(5) The aeronautical authorities of one Contracting Party, before granting operating permission to an airline designated by the other Contracting Party may require the airline to satisfy them that it is qualified to fulfill the conditions prescribed under the laws, rules and regulations which they normally apply to the operation of scheduled air services - provided that such laws, rules and regulations do not conflict with the provisions of the Convention or of the present agreement.

(6) Each Contracting Party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the rights specified in this agreement or to impose such conditions as it may deem necessary on the exercise, by an airline, of those rights in any case where it is not satisfied that substantial ownership and effective control of that airline

are vested in the Contracting Party designating the airline, or in nationals of the Contracting Party designating the said airline.

(7) In the operation of the specified air services, each Contracting Party grants the designated airlines of the other Contracting Party, the right of putting down and taking on in the territory of one Contracting Party, international traffic originating in or destined for, the territory of the other Contracting Party or of a third country. The said right shall not be deemed to confer on the airlines of one Contracting Party the right to take up, in the territory of the other Contracting Party passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of the other Contracting Party, whatever the origin or the ultimate destination of such traffic.

(8) There shall be a fair and equal opportunity for the designated airlines of each Contracting Party to operate on the specified air routes between their respective territories.

In the operation of the specified air services, the designated airlines of either Contracting Party shall retain as their primary objective the provision, at a reasonable load factor, of capacity adequate to the current and reasonably anticipated traffic demand between the territory of the Contracting Party designating the airline and the countries of ultimate destination of the traffic.

In the operation of the specified air services of either Contracting Party, the combined capacity provided by the designated airlines of both Contracting Parties for each sector of the specified air routes - one end of which is in the territory of either Contracting

Party, together with the capacity provided by other air services on the same sectors, shall be maintained in reasonable relationship to the requirements of the public for air transportation.

(9) In the operation of the specified air services the rights granted to the airlines designated by either Contracting Party shall not be exercised abusively to the detriment or disadvantage of any airline of the other Contracting Party operating on all or part of the same route.

(10) Fuel and lubricating oils taken on board aircraft of the designated airlines of one Contracting Party in the territory of the other Contracting Party shall, subject to compliance in other respects with the customs regulations of the latter Contracting Party, be exempt from customs duties, inspection fees and similar charges imposed in the territory of the latter Contracting Party. This treatment shall be in addition to that accorded under article 24 of the convention.

(11) When, for the purpose of economy of onward carriage of through traffic, aircraft of different capacity are used by a designated airline of one Contracting Party on different sections of a specified air route, with the point of change in the territory of the other Contracting Party, such change of aircraft shall not be inconsistent with the provisions of this agreement relating to the capacity of the air services and the carriage traffic.

(12) The rates to be charged by any of the airlines designated under this agreement in respect of traffic on any of the specified air routes between the territories of the two Contracting Parties

or between the territory of a third country and the territory of one of the Contracting Parties shall be fixed either : (a) in accordance with such rate resolutions as may be adopted by an airlines' organization of which the designated airlines under this agreement are members, and accepted for that purpose by the two Contracting Parties; or (b) by agreement between the airlines designated by both Contracting Parties where these airlines are not members of the same airlines' organization.

Rates so fixed shall be submitted for approval by the aeronautical authorities of the two Contracting Parties and shall become effective thirty days after their receipt by the said aeronautical authorities unless either authority has given notice of disapproval.

(13) If a general multilateral convention on traffic rights for scheduled international air services comes into force in respect of both Contracting Parties, the present agreement shall be amended so as to conform with the provisions of such convention.

(14) (a) If any dispute arises between the Contracting Parties relating to the interpretation or application of this agreement, the Contracting Parties shall, in the first place, endeavour to settle it by negotiation, between themselves.

(b) If the Contracting Parties fail to reach a settlement by negotiation within ninety days,

i) they may agree to refer the dispute for decision to a tribunal of arbitration appointed by agreement between them or to some other person or body; or

ii) if they do not agree or, if, having agreed to refer

the dispute to a tribunal of arbitration, they cannot reach agreement as to its composition within thirty days, either Contracting Party may submit the dispute for decision to the Council of the International Civil Aviation Organization.

(15) Either Contracting Party may at any time give notice to the other, if it desires to terminate this agreement. If such notice is given, the agreement shall terminate twelve months after the date of receipt of the notice by the other Contracting Party.

129) Current Egyptian practice is to grant the designated airlines of the contracting party with whom a bilateral agreement is concluded an operating permission to operate the specified air services to and / or through Egyptian territory for an unlimited period.

As to the airlines of foreign countries, with whom Egypt has not concluded a bilateral agreement or has concluded a bilateral agreement but which is not yet in force, the practice is to grant them a temporary permission for six months, renewable if the case warrants such a renewal.

As to non-scheduled air carriers, the conditions of the operation vary to suit individual cases.

130) In fact, Egypt has always exercised sovereignty over the air to the extent that she wished. These claims have never yet been challenged; nor, has there ever, until now, been any suggestion made that sovereignty was more limited with regard to the space

above the land than it is with regard to the land itself. If this is not the case i.e. that air space is not within the jurisdiction of the sovereignty over the land, surely there would have been some protest, or at least some doubt expressed as to the validity of these assertions of sovereignty. But in the whole history of civil aviation in Egypt, there has never been any question raised in any single case, nor has any doubt ever been suggested as to the jurisdiction of Egypt over the air until the present time.

131) As to foreign military aircraft, they were not permitted to operate to or through Egyptian territory, except by a prior permission. Necessity for this permission was waived if an agreement existed between Egypt and the country of origin of the aircraft. 68/

132) Some debate on the status of the foreign armed forces in Egypt had occurred. Certain writers 69/, expressed doubt as to the extent and nature of Egyptian sovereignty over the air space above the Suez Canal area. As this question is no longer of any legal practical importance, it will not be the subject of study of this survey. It would be suffice to say that the status of friendly forces in Egypt and in Great Britain has been the subject of study by many eminent writers. 70/ A careful analysis of the forementioned studies, putting in mind the principles of air space sovereignty mentioned earlier in this chapter and being remindful of the fact that the Suez Canal area is an integral part of the Egyptian territory, one could say that there was no need of the doubt expressed as to the

full and exclusive sovereignty of Egypt over the Suez Canal. A treaty must be construed as a whole, so that no article of the treaty is to be taken substantive or standing alone and single from the rest.

CHAPTER II.-

INFRASTRUCTURE

"We look at an airplane in the air and we say what a wonderful thing it is. We see it passing overhead and think that is all there is to it, a magnificant structure, a great piece of technical mechanism. But that plane must go up from some point and it must come down, and the landing fields from which it rises and to which it goes are just as important as is the mechanism itself which goes through the air. The landing field is as much a part of the aviation industry and as much a part of the science as is the mechanism which passes from one landing field to another. Indeed, there is nothing more essential, from the standpoint of safety in the air, than safe and adequate places on which to land and from which to take off."

Pat McCarran 71/

134) Plan: An infrastructure involves a series of diverse legal and economical problems. The economical problems are not strictly of a legal nature; however, they have influence on installation conditions, management of aerodromes and on the question of taxes and fees to be paid by the users. A certain number of questions, which are of more immediately judicial nature would be raised on the occasion of the establishment of the infrastructure, the easement which impinges on private property, the right of use and access which it offers and the means of exploitation and control of aerodromes, etc. All these questions form the subject matter of the present chapter.

We will deal with these questions under the following headings:

Section 1.- Definition and classification.

Section 2.- Establishment of the infrastructure.

Section 3.- Management and exploitation of aerodromes.

Section 4.- Use and access of aerodromes.

Section 5.- Problems of economic nature.

SECTION 1.- Definition and Classification:

A. Definition:

135) The term infrastructure refers to all those land installations which aid air navigation. It includes aerodromes, and all those installations which aid the pilot in flying his aircraft. Some of the latter are situated at the aerodromes itself, others may be established at a distance on the air routes. Such are radio installations, radio beams, telecommunication and meteorological services.

Egyptian aviation law does not provide a definition of an aerodrome, nor of the air route. It leaves to doctrine and jurisprudence the elaboration of such definitions. The definition furnished by I.C.A.O. may serve as an example. According to this Organization, an aerodrome is that area defined on land or water, including any building, installations and equipment intended to be used either wholly or in part for the arrival, departure and movement of aircraft. 72/

136) In practice the term "Airport" is in current use. Certain legislations such as the Italian mention it expressly. 73/ However, there exists in all countries a great lack of certainty in the use of the terms "Aerodrome" and "Airport".

In the preliminary study, on "Airport Economics", prepared by the Air Transport Bureau of I.C.A.O., it has been stated that the simple word airport seems the most satisfactory term to distinguish the landing place for commercial air transport from landing places for other types of aircraft. The phrase "Terminal type airport" used in the United States besides being too lengthy for frequent use, contains the misleading suggestion that it refers to an airport at the terminus or end of a route. The word airport is analogus to the word "port", and can be distinguished from a military "air station", a club, private, or training "airfield" and an emergency "landing ground" just as a port is distinguished from a naval station and various types of harbours. 74/

137) According to the American civil aeronautics act of 1938, an airport is defined as a landing area used regularly by aircraft for receiving or discharging passengers or cargo. Although the term "airport" in the foregoing definition would include both land and water areas, it is usually used to denote land areas only. Where seaplane bases are to be included, it is specifically so stated. In fact, the airport is a special category of aerodrome. The practice in Egypt had been to differentiate between "aerodrome" and "airport"; the latter would be used to indicate aerodromes equipped with

installations demanded by heavy traffic. It has been recently changed to use the term "airport" as synonymous with the term aerodrome.

In fact all classes of "landing ground plus facilities", including airports, can be classed as "aerodromes" if a generic term is required. If this is the case, it is preferable, to avoid any confusion, to use the term "aerodrome" and not "airport".

138) For helicopters one speaks of heliports. An essential characteristic of this comparatively new type of aircraft is a reduction of the ground space required for landing and taking off. These fields may be placed nearer to the centre of a community, because of their more restricted size. Projects are periodically launched for building operating platforms for such aircraft as these over high buildings, or even for utilizing flat roofs directly. From this, must follow the establishment of certain easements, certain regulations of traffic over certain air routes and an appropriate beacon system.

One must take into account the risk of a certain decrease in the value of real estate as well as damage caused to third parties. It might be premature to plan such sites at the present time, however, one must take future possibilities into account.

Confirming this opinion, it is of great interest to mention here that the RAC Division at its Fourth Session (Nov. Dec. 1950) agreed that the lack of experience with international helicopter operations did not warrant additions and /or amendments to the Annex at the time, since most of the helicopter services presently

operated were of a local character. No Standards or Recommended Practices were passed, but the Division included on its work program an item entitled "Effect of Helicopters on Annexes 2 and 11 and Pans-ATC". 75/

B. Classification of Aerodromes:

139) Egyptian Aviation Law does not classify aerodromes expressly. The different types of aerodromes are fixed in Egypt by the Civil Aviation Department which is equally charged with maintaining contact on this subject with other governmental bodies and I.C.A.O.

By the end of 1952, there were twelve civil aerodromes on record with the Civil Aviation Department as comprising the airport system in Egypt. 76/ These airports may be classified in various ways:-

(1) According to the respective nature or purposes for which they were primarily planned.

(2) According to the nature of their ownership and control.

140) Airports may be classified, according to the respective nature or purposes for which they are planned, as follows:

(a) International airport: an airport designated by the aeronautical authorities as an airport of entry and departure for international air traffic, where the formalities incident to customs, immigration, public health, agricultural quarantine and similar procedures are carried out.

(b) Internal aerodromes: an aerodrome, designated by the competent authorities for taking off and landing of aircraft engaged

in internal traffic. In Egypt, international airports could be used by the latter type of aircraft.

Customs airports: As both by international and Egyptian law, aircraft leaving or entering a State must depart from or land at a custom aerodrome, it necessarily follows that such aircraft have a right of access to these aerodromes. Any Egyptian aerodrome may apparently be approved by the Minister of War and Marine with the concurrence of the Director of Customs Department as a customs aerodrome irrespective of the method of its establishment. 77/

Annex 9 to the Chicago Convention recommends that Contracting States should establish customs free airports and customs free trade zones in connection with international airports.

Although Egypt appears to favour the establishment of customs-free airports and customs free trade zones, nothing has been established till now. It is recommended that these airports should be established in Egypt at the earliest convenience.

Sanitary aerodromes: This is a custom aerodrome which has been recognized as a sanitary aerodrome.

141) Aerodromes may be classified according to ownership and control as follows:-

(a) Public owned and managed: these are aerodromes created by the State. All public aerodromes in Egypt are managed by the governmental body, the Civil Aviation Department.

(b) Private aerodromes: these are established by private persons. In Egypt there are but few aerodromes owned by individuals.

The distinction between public and private aerodromes lies not in the use, which is made of them but in the origin of their establishment.

(c) Privately owned but open to all users: private aerodromes may be opened to public use. The latter type is not yet well known in Egypt.

SECTION 2.- Establishment of the Infrastructure:

142) Complexity of the problem: The establishment of an adequate infrastructure is a difficult problem. It involves a set of problems which are in theory separable, but which in practice are interdependent and must be resolved simultaneously. There is first the economic and technical problem of the functional adoption of the infrastructure which has been already considered. There is the financial problem more or less limited to that of cognizance and competency. There are certain legal difficulties in its implementation.

143) Competency and Cognizance: It is necessary first to know to whom the establishment of the infrastructure should be entrusted and its means of financing. A question of general policy is immediately involved.

What role will the State play? To what extent should the State take part in the establishment of the infrastructure? To what

extent may this be left to private or local initiative ?

The answer to these questions is conditioned above all by practical considerations such as promotion of public welfare, available capital within the country or area, etc. It is also in a certain sense dependent on political administrative conditions. Solutions to the problem have varied from country and have evolved in time. A large share has often been left to private and local initiative. This has been the case in the U.S.A. and Canada.

In France, the Law of 1924 specifies that aerodromes may be established by individuals, by chambers of commerce, by communes or departments as well as by the State.

144) In Egypt, the Law of 1920 specifies that the establishment of aerodromes is a monopoly of the government. This law, however, provided indirectly that any person may by prior authorization from the government establish an aerodrome. Inasmuch as there is no legal provision refusing this right to foreigners, it may be deduced that the latter either as individuals or corporations may open and maintain aerodromes in Egypt. 78/ Nonetheless, the exercise of this right is controlled by the State. This policy has been widely considered as anomalous and erroneous. It is surprising that the legislators who are usually so strict on the question of the Egyptian nationality of proprietors of Egyptian aircraft should not have exacted a similar requirement with regards to the ownership of aerodromes situated in Egypt. There is a certain latent danger in the fact that a great number of aerodromes in Egypt be owned and

exploited by foreigners. It is proposed that the law be amended on this point to refuse any authorization to any foreigner to establish or exploit any aerodrome in the Nile Valley.

145) It should be noted that in the last few years there has been a general tendency toward increased State intervention and control. That is the case in Egypt, the U.K., France and Italy.

However, the experience of Canada and the U.S.A. has shown that aerodromes have developed rapidly, aided by private initiative. But, private initiative may lead to a certain dispersion of effort. Further, the problem has evolved. Private enterprise or particular group interests are no longer the sole factors. The establishment of an adequate infrastructure is of general public interest. Co-ordination of aids to navigation and communication is necessary for the safety of air transport. Finally, the cost of establishing an infrastructure has grown considerably and has reached, at least in the case of the larger commercial airports a figure which exceeds private resources. For this reason, the establishment of aerodromes and infrastructures offering the facilities required by modern aerial navigation is coming to be considered as a public service which should be undertaken by the State.

However, it is not appropriate to enunciate any general rule here. The solution to the problem is largely dictated by convenience.

In my opinion, it seems that the Egyptian government may be charged with the establishment of infrastructures required by international traffic as well as those which are of national interest.

146) Establishment of Public Aerodromes: As already indicated, public aerodromes are those established by the State.

In Egypt, the government establishes all aerodromes situated on regular air routes. It also organizes and sees to the maintenance of beacons, communication signals and meteorological services. The establishment of public aerodromes is the financial concern of the State alone. The authority concerned with the establishment is the Civil Aviation Department. The planning is the concern of the Civil Aviation Supreme Board.

147) Private Aerodromes: Private aerodromes, as we mentioned before, are those established by private persons. If an aerodrome is not established by the State, it is natural that it maintains some control over the establishment and reserves to itself the right of prohibition. No one could admit the principal of haphazard establishment of aerodromes. The right of the State derives principally from security considerations and policing power. Again, it is natural that the State should control the adaption of the aerodrome to its function, that it supervise the installation of technical facilities, etc. Needless to say, the police should know all the aerodromes in the country and they should be familiar with their location in order to exercise effective control. This explains the provisions of the second paragraph of the first article of the Law of 1920 which requires permission for the establishment of private aerodromes.

148) Condemnation of Land for Aerodromes: There is no single article,

in the Egyptian positive law of aviation empowering the civil aviation authorities to acquire land either compulsorily or by agreement, for the purpose of establishing aerodromes, including roads, approaches, buildings, apparatus and equipment. In the absence of such rules, we should resort to the rules of common law - in this case to the law of acquisition of land for public interest. The expression "land" is to include land covered with water and any right in and over land.

The State or its public agencies (Civil Aviation Department) in acquiring land for an airport, does not act differently than when it engages in other public projects such as establishing tunnels, docks, bridges or highways.

The acquisition of land Act governs the procedure for assessing compensation where land is acquired compulsorily. This Act establishes a panel of official arbitrators who have special knowledge of the evaluation of land. Compensation is payable to any person who suffers any direct injury or loss owing to condemnation of his property.

It is recommended that the new law should not provide any ruling in this connection, as the general rules would serve our purpose.

The preceding rules are not to be applied to private aerodromes. The Civil Aviation Department, before permitting any private person to establish any aerodrome, must be sure that the land proposed for such establishment is enough to fulfill the technical requirements.

149) Protecting the Vicinity of the Aerodrome: The landing area for aircraft is more than just the ground space required for the runways, loading and unloading aprons and for storage and servicing facilities.

The air space surrounding all landing areas is of so much importance that the approaches to the ground space should be considered a part of the landing areas. In order to protect the approaches, tall buildings, trees, and communication and power lines must not become a hazard. The air space as well as the ground space must be protected, and some control over neighbouring property is, therefore, necessary.

According to the officers of the National Institute of Municipal Law 79/, there are a number of means of protecting approaches:

(a) Voluntary action by the owners of installations which constitute hazards.

(b) Purchase of all land near the airport and razing of hazards located thereon.

(c) Purchase of air space rights over all land near the airport.

(d) Acquisition of air space rights over land near airports by use of the power of eminent domain in order to raze present and prevent future hazards.

(e) Police power: condemnation of hazards to use of airports.

The proposal that these obstacles be overcome by increasing the size of the airport and thus increasing the distance from the point of landing or take-off in which there are no structure to jeopardize the safety of operations, is obviously impracticable. If such purchase is impossible, the remaining alternative are regulation by

zoning and acquisition by purchase, lease, or condemnation of the rights on air space above the surrounding property.

150) Zoning: Under the police power, the main protection of airports from abutting neighbouring land is in the regulation of these areas by zoning. There can be no such regulation solely in the interest of the port; rather, such regulation must be for the protection of the interests of the public.

There are numerous illustrations, in the law books, of ordinances where the maintenance of public garages, laundries, moving picture, theatres and the like within specified distance of schools, and hospitals have been upheld as proper measures to protect the public's interests.

Aircraft operating upon regular schedules in the transportation of goods and passengers, generally carrying heavy loads and flying in all kinds of weather, must be assured at all times of safe avenues of approach to the established terminals and intermediate landing fields. The adoption of ordinances to eliminate undue dangers to such traffic thereby becomes a measure directly in the aid of the public welfare.

Police power cannot be exercised over private airports. The Civil Aviation Authorities must be sure that applicants' for private airport licences are able to purchase the adjacent land required for the protection of such an airport.

It is interesting to mention here that prohibiting any person from doing with his property what previously he was free to do, is

always the taking of a right in it. Compensation must be paid to such a person. In this connection, we would mention that article 805 of the Egyptian Civil Code provides that:-

> "Nul ne peut etre privé de sa proprieté que dans les cas et de la maniere prevus par la loi, et moyennant une indemnité équitable."

The means chosen to protect the vicinity of aerodromes, by the Egyptian legislators is zoning. Law No. 27 enacted in 1941, empowers the Minister of War and Marine, to issue orders to establish around each aerodrome a zone not exceeding four hundred meters in width. Once this zone is established, nobody is authorized to build anything higher than 1/20 of its distance from the aerodrome. 80/

151) Role of I.C.A.O. in the establishment of aerodromes: The Chicago Convention contains provisions 81/ of a kind not included in any earlier convention, designed to secure that airports and air navigation facilities of the standards laid down under the Convention, shall eventually be available for International Air Traffic in the territories of all contracting States. The obligations undertaken by the contracting States are, however, subject to limitations and safeguards which make it impossible for a State to be compelled to take action against its will. 82/ The obligation to provide airports and facilities is stated in article 28 of the Convention. 83/

SECTION 3.- Management and Exploitation of Aerodromes:

152) Each State has its own system. Here, by way of example, is the Egyptian system. Private aerodromes may be excluded : their management depends on their proprietors. State aerodromes may be managed by the State or by a concessionaire. The fact is that, till the present time, the Civil Aviation Department manages and exploits all public aerodromes.

Under exceptional circumstances, an aerodrome may be managed by a concessionaire. It is my belief that a concession is advantageous neither for the State nor for the concessionaire. It has become increasingly clear that an airport can seldom be expected to pay an adequate return on invested capital, so that it offers little attraction as a business project. Management or exploitation of an aerodrome is generally unprofitable because the different fees levied on aircraft, do not cover usually imposed operating management expenses nor the expenses of upkeep and improvement. One way out, would be to raise fees, but such a raise would be harmful to aviation. It would undermine the development of commercial aviation which would then be obliged to shift the burden to the passengers and shippers of cargo. Some one would say that the State should give some subsidies, but in this case the concessionaire is not likely to make any effort to improve the enterprise.

It is evident that an airport is a public utility deserving of support, even though a considerable net outlay may be entailed in keeping it up. It is submitted that it is highly desirable that

the Egyptian government retain management of all public aerodromes and not allot them to concessionaires.

153) Whatever the form of management, whether by the State or by a concessionaire, two sets of rules should be considered:

(a) The first concern fees which must be equal for foreign and domestic aircraft engaged in international flight. The Chicago Convention clarifies these rules in article 15.

(b) The second set of rules concern the position of the manager of aerodromes. It is he who exercises police power. This power is clearly defined in the existing rules. 84/ He is empowered to inspect the documents of the aircraft and to oppose its departure if the case warrants.

From the standpoint of the safety of aerial navigation, the aerodrome manager has wide discretionary powers. The Egyptian ruling limits the freedom of take off to the case where the manager is certain that the pilot has familiarized himself with the meteorological data for the trip. It is submitted that the law should clearly specify that the manager's liability ceases once he has provided the pilot with adequate meteorological information.

Moreover, the ruling provides that the manager has the right to stop all take-offs which he deems dangerous either because of ground conditions or exceptional atmospheric conditions. 85/ He may do this but he is in no way obliged.

SECTION 4.- Use and Access of Aerodromes:

154) Every country requires aircraft, whether domestic or foreign, to take off and to land at suitably equipped aerodromes. Such an obligation is imposed by reasons of security and public safety as well as for the purpose of maintaining customs control and safeguards in the interests of public health.

Before considering the question of use of aerodromes in aviation law, it might be well to say something on seaports in maritime law.

Certain writers 86/ thought that they were empowered to say that, "civilized nations have long since agreed on the principle of the freedom of sea trade, and have opened their sea ports to foreign shipping trade." This opinion is to be viewed as too far reaching. In 1928, the Institute of International Law voted at Stockholm, that the seaports must all be open, whether they are on the sea or inland ports such as Rouen, Hamburg and Antwerp. 87/

However, for reasons which seem convincing to us the solution advanced by the said Institute cannot be considered as being in agreement with practice. States do not admit that another country would close all its ports and refuse to maintain sea trade with other countries. On the other hand it is not considered as contrary to International Law that a State permit only a partial opening of its ports to foreign commerce and to keep a certain number of others closed. This is, we believe the true state of the question in customary public International Law. 88/

155) However, public aviation law tends to establish a different solution. In article 24 par. 1 the ICAN provided that every aerodrome in a contracting State, which upon payment of charges is open to public use by its national aircraft, shall likewise be open to the aircraft of all the other contracting States. The second paragraph of the same article adds that, in every such aerodrome there shall be a single tariff of charges for landing and length of stay applicable alike to national and foreign aircraft. The Chicago Convention stipulates in article 15 that every airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions of article 68, be open under uniform conditions to the aircraft of all the other contracting States. The same convention provides in article 68 that, each contracting State may, subject to the provisions of this convention, designate the route to be followed within its territory by any international air service and the airports which any such service may use. Finally, in our opinion, they should be the same for all foreign aircraft of contracting States. Has not the ICAO as its principal object to avoid all discrimination between all contracting States (art. 44, par. (g)).

These different provisions call forth certain remarks:

(1) Customary public International Law does not contain any ruling governing free access to all or some of the airports of a country to private foreign aircraft. Aviation law goes less far in a matter of airports than does maritime with regards to seaports. 89/ It is true that maritime law did not arrive at its present stage of

development in an instant.

(2) Conventional International Law exacts, as we have seen, that public airports be accessible equally to national and foreign aircraft. The ruling however, has only a limited application because it applies only to aircraft of authorized international regular air services. No State is obliged to authorize services of this nature.

According to the terms of article 10 of the Chicago Convention which amplifies article 15, par. 3, of the Paris Convention, the contracting States are free to require that aircraft when leaving and returning must use for purposes of customs and quarantine designated airports which the convention calls custom airports.

156) Egypt conforms to the same principles in its aerial legislation and applies them to aircraft engaged in domestic as well as international flight. Further, aircraft coming from abroad must make their first landing at aerodromes which have been designated as customs and sanitary aerodromes and cannot leave Egyptian territory for abroad except from such aerodromes. This practice has been adopted even before the adherence of Egypt to Chicago Convention. 90/

157) The opinion of recent jurists, 91/ the strict observation of this obligation will not be all together appropriate if the use of helicopters is increased. Helicopters may necessitate special rules. In my personal view, the above mentioned principles must be applied to helicopters and if possible must be more restrictive for they

may be easily used in smuggling.

For technical reasons free balloons and gliders are exempted from the requirement of landing at aerodrome.

SECTION 5.- Problems of Economic Nature:

158) The full measure of the utility of any aircraft cannot be obtained without providing adequate landing and take-off facilities for its operation. These facilities must be geared to the type of service to be rendered if maximum usefulness plus safety is to be realised.

The question of safety is very important if flying is to become a commonly accepted means of travel. Safety will demand the establishment of airports to a much larger degree than now anticipated. The need for more and better airports is great and must be satisfied to stimulate and promote widespread interest in aviation. They must be of the right kind and located in the proper places to do the most good.

Without airports of some sort, there could be no air transportation, no aircraft industry, no occasion for the development of the aeronautical arts and sciences. The better the airport provision the greater the opportunity for the use of aircraft to serve the general welfare.

159) Airports support each other: It is not merely true that there can be no air transportation without airports, it is also true that no airport exists by itself.

The usefulness of an individual airport depends on the status of other nearby airports and even on those a hundred or more miles away. Airports depend on one another's existence, they are deeply influenced by one another's quality. An isolated airport, with the operations of the aircraft located there restricted to brief local pleasure hops, to the training of students and to a few specialised industrial employments such as crop dusting and the making of aerial surveys, would be almost as useless as a railroad terminal with no tracks. The first airport to be constructed in a large area heretofore closed to aircraft would be of almost negligible usefulness. What is here stressed is that the construction of a second field would enormously increase the value of the first, a third would similarly benefit the two previously existing and so on.

160) Airports and National Defence: There is one special interest in an airport that touches every citizen. It is no more possible to operate an air arm in the national defense without suitable ground bases than it is to operate an airline without them. When a national airport system is contemplated, the service that such a system can render to the armed services and the specifications that their potential needs impose upon airport development must be considered.

161) The National Airport Plan: Egypt would require at least a total of three hundred airtransports to serve adequately the trahsport and private flying which reasonably could be expected to develop within the near future.

In developing any national airport program the national natural division of labour is for the central government to undertake the over-all planning since there must be a national pattern.

The provinces or the municipalities are, however, best fitted to handle the local details, and financing should be a joint enterprise, on the basis of the central government aid to public utilities : the highway system, for example. One formula for the distribution of central funds as they become available for provincial use involves taking four factors into account :-

(1) The area of each province.

(2) The population of each province.

(3) The number of registered aircraft in each province.

(4) The existing number of airports in each province.

Under such a plan, each province would match a specified percentage of its quota of central funds with its own money.

162) Seaplanes or Amphibian Bases: v Not only the coasts of Egypt, but the lakes and the River Nile as well, provide many natural landing areas for seaplanes and amphibians. The opportunities for seaplane and amphibian operation in the interior of the country should be increased in the near future by the formation of new

water bases. The existence of these water bases has ever been held to be one solution to the problem of airport shortage with which the nation of the Valley of the Nile is faced, particularly for the private flyer.

The briefest study of maps or charts, is enough to show that there are hundreds of possible sites well prepared by nature in this country.

A widespread use of seaplanes and amphibians is as dependent upon the supply of adequate seaplane bases as the use of land-based aircraft is dependent upon airports.

Commercial operations and private pilots could utilise lakes and rivers which often are more convenient to downtown city areas than present airports.

163) Airport Adequacy: The airport system of Egypt may be judged as to its adequacy on several bases. These are:-

(1) Airport location in relation to the cities served.

(2) Size of airports and runway distribution thereon.

(3) Airport equipment and buildings.

(4) Extent of protection of landing areas exclusive of the airport itself.

(5) Services available for the traveling public.

164) Airport Inadequacy Handicaps Air Transportation: The record of performance of air transport in Egypt has been admirable, and its growth both in volume of operation and in public acceptance

and popularity has been rapid, but it would give a better, safer and more reliable service if the general standards of quality of the airports used by the commercial airlines as regular scheduled stopping places or as occasional alternatives could be materially improved. 92/

165) Airport Income: All airports in Egypt are not paying their way or breaking even on the mere interest and sinking fund charges on the bonded indebtedness involved in their construction charged against operations.

Airport income includes all revenue received from both aeronautical and non-aeronautical activities. It includes such items as commissions, rentals from restaurants, garages, swimming pools, hotels and landing fees etc. The State should consider the airport in the light of a country attraction, bringing business to it, yielding an indirect and intangible return, and prefer not to take the chance of making their field less attractive to users by charging for example, more than nominal fees for its use and service. An attempt should be made to make an airport pay for itself. Whether or not an aerodrome can be made to pay, depends upon considerations which are subject to variations.

SECTION 6.- Recommendations:

166) In the light of the material presented in this chapter, and of the other information that has been secured during the preparatory

work for this survey, we make the following recommendations:-

(1) Development and maintenance of an adequate system of airports and seaplane bases should be recognized in principle as a matter of national concern.

(2) Such a system should be regarded, under certain conditions, as a proper object of government expenditure.

(3) In passing upon applications for central government expenditure on airport development, establishment or improvement, the highest preference should be given to airports which are essential to the maintenance of safe and efficient operation of air transportation along the major trade routes of the nation; and to those rendering special service to the national defense.

(4) At such times as the national policy includes the making of grants to local units of government for public-works purposes, a proportion of the funds involved should be allocated to airport purposes. Such purposes should be given preference as rendering an important service to the localities concerned, and at the same time being of particular importance to the nation's commerce and defense.

(5) The Director of Civil Aviation Department may for the purposes of civil aviation establish and maintain aerodromes and provide and maintain in connection therewith roads, approaches, apparatus, equipment and buildings and other accommodation.

(6) Any local authority may, with the consent of the Director of Civil Aviation and subject to such conditions as he may impose, establish and maintain aerodromes and provide and maintain in connection therewith roads, approaches, apparatus, equipment and buildings and other accommodation.

(7) A place in Egypt other than a government aerodrome shall not be used as a place of landing and departure by any aircraft carrying passengers or cargo unless it has been licensed for the purpose, or save in accordance with the conditions, if any, of such licence.

(8) A licence for an aerodrome for private use; that is to say, for use by the licensee and by individuals specifically authorized by the licensee, shall not be granted to any person or corporation other than:1)an Egyptian subject, or 2) a company or corporation registered and having its principal place of business in Egypt.

(9) An aerodrome may be licensed for all types of aircraft or for certain specified types or classes of aircraft and the licence may specify the conditions on which the aerodrome may be used.

(10) Every aerodrome which is open to public use by aircraft registered in Egypt upon payment of charges shall to the same extent and upon the same conditions be open to use by aircraft possessing the nationality of a contracting state.

(11) The Director of Civil Aviation shall for purposes of civil aviation and any purposes connected with the discharge of his functions have the power to acquire land or any right in or over land by agreement or compulsorily.

(12) The Director of Civil Aviation may by order provide for the creation in his favour of easement over land or of other rights in or in relation to land, including rights to carry out and maintain works on any land and to instal and maintain structures and apparatus on, under, over or across any land if he is satisfied

that it is necessary to do so in order to secure the safe use for civil aviation purposes of any land which is vested in him.

(13) The Director of Civil Aviation may by order impose such prohibitions or restrictions on the use of any aerodrome as he thinks expedient for the purpose of securing that aircraft may arrive and depart with safety at any aerodrome under his control.

(14) The Director of Civil Aviation shall appoint for each aerodrome vested in him an officer who shall be responsible to the Director for all services provided on the aerodrome on behalf of the Director, including signalling services, flying control services and services connected with the execution of works.

CHAPTER III.-

FLIGHT INSTRUMENT

SECTION 1.- Definition and Classification of Flight Instruments:

167) The Convention of Paris defined State and private aircraft and provided, in an Appendix, exhaustive classifications and definitions from the technical point of view. This Convention defined "aircraft" as comprising all machines which can derive support in the atmosphere from the re-action of the air. It also defined "aeroplanes", "aerostats", "aerodynes", "balloons", "airships" and "gliders" and gave a comprehensive and exhaustive classification within these categories, including helicopters, gyroplanes, ornithopters, and kites and kite balloons. It did not distinguish between aircraft and projectiles, nor between aircraft and pilotless aircraft, though international flight of the latter is prohibited. 93/

168) Apart from this technical definition and classification, the Convention distinguished between private and State aircraft. The latter include police, military and customs aircraft. Every other aircraft should be described as private aircraft. 94/ The Chicago Convention defines "State aircraft" on the same lines as the Paris Convention, and contains similar provisions as to pilotless aircraft. Technical Annexes attached to the Convention contain a large number of definitions, and, in particular, Annex 7 (aircraft nationality and registration marks) defines and classifies the various types of

aircraft on the same lines as Annex A. of the Paris Convention.

169) By Egyptian law, an aircraft is defined to include all balloons (whether captive or free), kites, gliders, airships and flying machines.

> "Aeroplane means a mechnically driven aerodyne supported by aerodynamic re-actions on surfaces remaining fixed under the same conditions of flight."
>
> "Aerodyne means an aircraft whose support in flight is derived dynamically from the re-action on surface in motion relative to the air."
>
> "Aerostat means an aircraft supported in the air statically."
>
> "Aircraft means any machine which can derive support in the atmosphere from re-actions of the air, and includes balloons whether fixed or free, airships, kites, gliders and flying machines."
>
> "Airship means a mechnically driven aerostat having means of directional control."
>
> "Glider means an aerodyne supported in flight by aerodynamic re-action on surfaces remaining fixed under the same conditions of flight and not provided with mechnical means of propulsion."

The Egyptian Legislations contain an elaborate table of general classification of aircraft. Aircraft are further classified as military , public transport and aerial work aircraft. Further categories of aircraft as normal and special are established, the latter including racing or record and research or expermental machines.

The above-mentioned definitions given by Egyptian Legislators before 1944, were inspired by the definitions of Paris Convention. 95/

170) As Egypt ratified the Chicago Convention and adopted its Annexes, it will be convenient, therefore, to classify all aircraft for the

purpose of Egyptian law as follows:-

Aircraft	Lighter-than aircraft	Non-power driven balloon	Free balloon — Spherical free balloon
			Free balloon — Non-spherical free balloon
			Captive balloon — Spherical captive balloon
			Captive balloon — Non-spherical captive balloon
		Power-driven	Airship — Rigid airship
			Airship — Semi-rigid airship
			Airship — Non-rigid airship
	Heavier-than aircraft	Non-power driven	Glider — Land glider
			Kite — Sea glider
		Power-driven	Aeroplane — Landplane
			Aeroplane — Seaplane
			Aeroplane — Amphibian
			Gyroplane — Land gyroplane
			Gyroplane — Sea gyroplane
			Gyroplane — Amphibian gyroplane
			Helicopter — Land helicopter
			Helicopter — Sea helicopter
			Helicopter — Amphibian helicopter
			Ornithopter — Land ornithopter
			Ornithopter — Sea ornithopter
			Ornithopter — Amphibian ornithopter

171) The above mentioned definitions and classifications are of a technical nature. The Egyptian legislators have not provided us with a definition of a legal nature. The new Code should fill such lacunae. With the unceasing development of the science and art of flight and the invention of new types of instruments, the new definition should be broad enough to cover the types now known or hereafter invented, used, or designed for navigation of or flight in the flight-space.

Moreover, the classification of flight instruments provided in

Article 3 of the Chicago Convention should serve as a basis in the new code. The new code should deal only with civil flight instruments, and should not be applicable to State flight instruments. Flight instruments used in military, customs and police services shall be deemed to be State flight instruments.

SECTION. 2.- Conditions of Flight:

172) From the beginning, the aircraft has been the object of fairly drastic control inspired by the fear of danger. This idea of danger plays a great role in international and national legislations. From this fact arise the many precaution envisaged by the Egyptian legislator in the elaboration of the administrative regime with regard to aircraft.

By international and Egyptian law certain conditions must be complied with before fligh starts. Thus, subject to minor exceptions, before an aircraft may leave the ground it is necessary that those concerned should have complied with the rules as to :- A. Registration and nationality; B. Airworthiness; C. Documents; D. Personnel.

It is proposed hereinafter to consider in some detail those conditions, scattered throughout Egyptian legislation and the international conventions, which relate to aircraft before flight. The fourth condition will be the subject matter of a separate chapter.

173) The consequences of non-compliance or attempted non-compliance with the conditions precedent to flight in Egypt may be at least three-fold.

First, various licences may be suspended or cancelled, with the result that flight becomes impossible without the imminent risk of incurring penalties. 96/

Secondly, if an aircraft flies in the contravention of the order, the persons responsible will be liable to imprisonment or fine or both. 97/

Thirdly, a person authorized by the Minister of War and Marine may give such directions and take such steps for detaining an aircraft as he thinks necessary to prevent its flight, if it appears that the aircraft is intended or likely to be flown in contravention of the law relating to nationality, prohibited carriage, registration and marking, certificates and licences for personnel, and airworthiness - particularly when the aircraft contravenes any provision of the regulations so as to be a cause of danger to persons in the aircraft or to persons or property on the ground. 98/

174) The preceding principles are not in contradiction to the rules of Chicago Convention. Since the right of flight under Article 5, para. (a) of the convention is only granted "subject to the observance of the terms of this convention an aircraft which fails in any respect to comply with the requirements of the convention is not entitled to fly over the territory of another State in the exercise of this right." Aircraft while exercising this right must observe

all conditions or restrictions attached to it by the convention itself, or by a contracting State under rights reserved by the convention. Moreover, Article 6 of the convention provides that no scheduled international air service may be operated over or into the territory of a contracting State except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

A. Nationality and Registration:

175) The right to flight is only available to aircraft registered in a contracting State. The convention provides that nationality depends on registration, and no aircraft can be validly registered in more than one State, though it may be validly registered in more than one State or its registration may be transferred to another State. 99/ The registration or transfer of registration of aircraft in any State is to be made in accordance with the national law of that State. Every aircraft engaged in international air navigation must bear its appropriate nationality and registration marks. Standards and Recommended Practices for aircraft nationality and registration marks were adopted by the Council on February 8, 1949 and designated as Annex 7 to the Convention. Egypt has introduced the rules of the said Annex into her national usages. 100/ This Annex provides that an aircraft must carry an identification plate inscribed with at least its nationality and registration marks. The plate must be secured to the aircraft in a prominent position near its main entrance.

Each contracting State undertakes to supply on demand to any

other contracting State or to ICAO, information concerning the registration and ownership of any particular aircraft registered in that State. The Convention further provides that the Council shall determine in what manner the provisions of the Convention relating to the nationality of aircraft shall apply to aircraft operated by international operating agencies.

176) Article 2 of the decree of air navigation, issued on the 27th of January 1953, provides that no aircraft shall fly or attempt to fly within Egypt unless there is in force in respect thereof a certificate of registration rendered valid under the law of the country to which the aircraft belongs. An aircraft cannot be registered in Egypt as having Egyptian nationality unless it belongs wholly to an Egyptian national. IN Egypt, for a corporation to be registered as the owner of an aircraft, the conditions differ according to the form of the corporation. If it is a "société collective" all the shareholders must be Egyptian subjects. If it is "société anonyme" it must have Egyptian nationality, provided that the chairman and the majority of the members of the Board of Directors be Egyptian subjects. 101/

Registration lapses on a change of ownership, or when one or more of the owners cease to comply with the requirements of nationality mentioned above, or when the registered aircraft is destroyed or permanently withdrawn from use. In all such case the Civil Aviation Department should be notified forthwith. 102/

On registration, the C.A.D. grants a certificate and assigns to

the registered craft a registration and nationality marks. The Egyptian nationality marks are the letters "SU" and the registration mark which is assigned on registration is of three capital letters. The nationality mark shall precede the registration mark with a hyphen in between. The letters must be capital letters in Roman characters without ornamentation. Needless to say, there is a regulation to the effect that the marks must always be kept clean and visible. 103/

177) It is of great interest to mention that aircraft owned by foreigners resident in Egypt are permitted to be registered, and to have a registration mark but not nationality.

The reason for such permission is to encourage foreigners to own aircraft; this will help to the development of aviation industry in Egypt. The Egyptian legislators were aware of the fact, that such aircraft without nationality could not engage in international flight, and thus they expressly stated that it should not be permitted to fly abroad. 104/

B. Certificates of Airworthiness of Aircraft:

178) No aircraft shall fly or attempt to fly within Egypt unless:

(a) There is in force, in respect thereof, a certificate of airworthiness, duly issued or rendered valid under the law of the country in which the aircraft is registered; and

(b) the conditions (if any) on which the certificate was issued or rendered valid are duly complied with. 105/

A certificate of airworthiness in respect of an aircraft may be issued by the Civil Aviation Department if it is satisfied that the aircraft :

(a) Is of a design approved by it in regard to safety;

(b) is constructed in a way approved by it in regard to workmanship and materials;

(c) is fitted with the prescribed instruments and equipment;

(d) has been weighed as may be prescribed; and

(e) has passed the prescribed flying trials and other tests. 106/

179) There must be shown on a certificate of airworthiness issued by the C.A.D. the period for which it is to remain in force and at the expiration of that period it shall cease to be in force but may be renewed as provided hereinafter.

Where an aircraft is registered in Egypt, in respect of which a certificate of airworthiness has been duly issued under the law of any other place, the Director may issue a validation conferring on that certificate the same validity as if it had been issued under the Order, or may issue a new certificate. 107/

180) The Civil Aviation Department may from time to time renew a certificate of airworthiness issued or rendered valid or a validation issued in accordance with the provisions of its regulation, on being furnished with such evidence as it may require with respect to the condition of the aircraft to which the certificate or validation relates.

Aircraft in respect of which the certificates of airworthiness are issued or rendered valid, may be classified by the Civil Aviation Department under such categories as it may consider necessary, and any restrictions which may be imposed on the manner in which and the purpose for which an aircraft in any category may be used shall be complied with.

Any certificate of airworthiness granted by the Civil Aviation Department may be cancelled or suspended if it is satisfied that reasonable doubt exists as to the safety of the aircraft in question or of the type to which the aircraft in question belongs. 108/

181) Nature of the certificate: The certificate of airworthiness is a document issued by the State, asserting that the aircraft has undergone the specified test, and that in the opinion of the experts it is constructed in conformity with existing rules of construction and that accordingly it may be flown under with reasonable assurance of safety. The Egyptian ruling provides that the responsibility of the government is waived after the issuance of the certificate of airworthiness, in accordance with the rules, laws and regulations. Such responsibility would be on the person to whom the certificate was issued. 109/

182) International Standards and Recommended Practices for the Airworthiness of the Aircraft: By the Paris and Chicago Conventions, all aircraft engaged in international flight must be certified as airworthy by the State whose nationality they possess. Such certificates

are to be recognized by the other Contracting States. 110/

The Conventions have fixed in this regard certain minimum Standards. Egyptian legislation has adopted the solution proposed by the Paris and Chicago Conventions, though it was not party to the former convention. It is of great interest to cite here some paragraphs of the letter written by the Egyptian Council Member to the Secretary General of ICAO in October 19, 1950, concerning certificate of airworthiness and international recognition for export and import:-

> 1. "Long before ICAO was established, all certificates of airworthiness issued by States members of ICAN were recognized and automatically validated by the Egyptian Government."
>
> 2. "At the moment, the Egyptian authorities are ready to recognize certificates of airworthiness on the following conditions:
>
> > (a) that the country of manufacture and export provides the Egyptian Government with a complete set of regulations governing airworthiness of aircraft in that country; this is to ascertain that such regulations are in accord with Annex 8 where applicable or with ICAN Standards where Annex 8 does not apply.
> >
> > (b) In addition for a flight manual is required for any aircraft to be used for public transport.
> >
> > (c) The country of manufacture is also to provide the Egyptian authorities with all technical information relating to the continued airworthiness of the aircraft they are exporting and to instruct the makers of the aircraft, engines, accessories, etc. to supply the Egyptian authorities with all handbooks and technical bulletins or instructions pertaining to the type or model being exported to Egypt."

183) Annex 8 to the Convention on International Civil Aviation, which is in force in Egypt, contains Standards and Recommended Practices for the airworthiness of aircraft adopted by the International

Civil Aviation Organization pursuant to the provisions of article 37 of the Chicago Convention.

These Standards and Recommended Practices came into force on 1st October 1949. Amendments numbered 1 to 63 inclusive are incorporated in the second edition of Annex 8 issued in March 1951. They were adopted by the Council on 26 June 1950 and became effective on January 1, 1951. Amendments numbered 64 to 83 inclusive are incorporated in the third edition. They were adopted by the Council on November 13, 1951 and became effective on April 15, 1952.

184) The purpose underlying the establishment of International Standards and Recommended Practices for the airworthiness of aircraft, as described by that Annex are:-

(a) to ensure that all aircraft engaged in International air navigation are certificated and inspected according to uniform procedures; and

(b) to establish airworthiness categories of aircraft, which shall 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.

185) Part II of the Annex pertains to general airworthiness procedures and is applicable to all aircraft; on the other hand Part I and Part III pertaining to specific minimum airworthiness characteristics of aircraft are applicable only to aeroplanes provided or to

be provided with certificates of airworthiness classifying such aeroplanes in an established ICAO category. Only two airworthiness categories - namely transport categories A. and D. for aeroplanes - are at present established in that Annex. Other ICAO airworthiness categories for aeroplanes, and ICAO airworthiness categories for aircraft other than aeroplanes, will be added in the future.

Transport categories of aeroplanes as established in this Annex are primarily intended for the public transport of passengers, cargo or mail. The Annex is to be regarded, for the purpose of Article 33 of the convention, as defining the minimum Standards established pursuant to the convention in respect of any aeroplanes provided with a certificate of airworthiness classifying aeroplanes in an established ICAO category.

A Contracting State shall not issue or render valid a certificate of airworthiness classifying an aircraft in an airworthiness category established by ICAO, unless the aircraft complies with the Standards in force for that category or, in the circumstances of particular cases, with variations therefrom in detail, that the State may consider appropriate to give at least an equivalent level of safety.

C. Documents to be carried in aircraft:

186) The Paris Convention in article 19, and the Chicago Convention in article 29, provide that every aircraft engaged in international flight shall carry certain documents. This rule has been applied by Egyptian legislation in the Ministerial Order issued on the 27th of

June 1942. Article 1 of this Order states that no aircraft shall fly within Egyptian territory, unless it carries the prescribed documents kept up to date in the prescribed manner, except in accordance with the directions or by special permission of the Civil Aviation Department.

The documents prescribed by international and Egyptian law are:-

(1) Its certificate of registration;

(2) Its certificate of airworthiness. By Egyptian law these certificates must be kept at all times in the pocket of the journey log book, and there must also be carried any other document required by the Order, for example, the permission to fly.

(3) The appropriate licences for each member of the crew.

(4) Its journey log book.

(5) If it carries passengers, a list of their names and places of embarkation and destination.

(6) If it carries cargo, a manifest and detailed declaration of the cargo.

(7) If it is equipped with radio apparatus, the aircraft radio station licence.

Egyptian legislation empowered the appropriate authorities to search and inspect all the documents carried by the aircraft. This rule is in conformity with Article 16 of the Chicago Convention which provides that the appropriate authorities of each contracting State have the right, without unreasonable delay, to inspect the documents prescribed by the Convention. 111/

SECTION 3.- General Safety Conditions:

187) No aircraft registered in Egypt shall fly or attempt to fly unless it has been inspected and found to have been maintained in accordance with maintenance schedules approved by the Civil Aviation Department in respect of such aircraft, and unless a certificate in the form prescribed hereinafter has been issued and is in force certifying that such aircraft is safe for flight. 112/

The inspection, before the issue of a certificate of safety, shall be carried out by ground engineers, who may be licenced in category "A" for inspection of a flying machine, or licensed in category "C" for the inspection of aero engines. There is nothing to prevent the same ground engineer inspecting both the machine and engines provided he is licensed in both categories. The inspection of the machine includes the inspection of its instruments. If satisfactory, the ground engineer gives a certificate of safety for flight in respect of machine and engines.

188) The certificate of safety issued in accordance with the Egyptian regulations 113/ shall, in the case of a flying machine, be in the following form:-

Certificate of Safety

Aircraft Type ----------

Nationality and Registration Marks ----------

1. I hereby certify that I am satisfied that the above aircraft (including its prescribed instrument and equipment, but excluding

the engines and engine installations and all instruments relating thereto) is safe in every way for flight, providing that the conditions of loading specified in the certificate of airworthiness are complied with.

Signed ----------

Aircraft Engineer, Licence No. ----------

Time of Issue ----------

Date at ------- this -------- day of ----- 19 --

2. I hereby certify that I am satisfied that the engines and engine installations (including the prescribed instruments relating thereto) of the above aircraft are safe in every way for flight, and I hereby certify that all maintenance and inspection in accordance with the approved maintenance schedules have been carried out and that adjustments and certifications found necessary have been made and inspected to my satisfaction.

Signed ----------

Aircraft Engineer, Licence No. ----------

Time of Issue ----------

Date at ------ this ------ day of ----- 19 ------

189) Precautionary Action before Flight: By Egyptian law, before the aircraft flies or attempts to fly within Egyptian territory, the pilot in charge of the aircraft must satisfy himself:-

(a) that the aircraft is equipped with the prescribed instruments and in the case of an aircraft required to be equipped with radio apparatus as prescribed, that the aircraft is so equipped and

that the aircraft and its instruments, equipment and radio apparatus are fit in every way for the proposed flight;

(b) that provision necessary in the circumstances of the proposed flight has been made for any prescribed devices to be used and for any prescribed precautionary measures to be taken in the aircraft for the purpose of promoting the safety thereof;

(c) that the load carried by the aircraft is of such weight, and so distributed and secured, that it may safely be carried on the proposed flight;

(d) that, except in such cases as may be prescribed, the view of the pilot is not interfered with by any obstruction not forming part of the structure of the aircraft and is not obscured by reason of any discolouration of, damage to, or deposit on any of the windows, windscreens or sidescreens of the aircraft;

(e) in the case of a flying machine or airship that sufficient fuel and oil are carried for the proposed flight, including a safe margin for contingencies, and that the output of electricty which will be available is sufficient to ensure the effective operation of all the electrical equipment installed in the aircraft which it is intended or which it may be necessary to bring into operation during the flight. 114/

190) No aircraft would fly over any city or town in Egypt, except at such altitude, as will enable the aircraft to land outside the city or town in the event of an emergency: Provided that this prohibition shall not apply within a distance of two kilometeres

from an aerodrome. 115/

191) No person shall fly any aircraft in such circumstances as, by reason of law altitude or proximity to persons or dwellings or for any other reason, to cause damage to any person or property. 116/

192) No person shall use any aircraft for acrobatics —

(a) When flying over any city, town or populous area; or

(b) when flying over any meeting for public games or sports or other public assembly, except where a permission for such flying has been made in writing by the Civil Aviation Department. 117/ When an aircraft is used for acrobatics, the aircraft commander should satisfy himself before commencing the flight that every person carried in the aircraft is properly secured by safety belts. 118/

193) No person acting as, or carried in an aircraft for the purpose of acting as, pilot, commander, navigator, engineer or operating member of the crew thereof, shall, while so acting or carried, be in a state of intoxication or in a state in which, by reason of his having taken or used any sedative, narcotic or stimulant drug or preparation, his capacity so to act is impaired; and no other person while in a state of intoxication shall enter or be in any aircraft. 119/

194) No person shall smoke in any aircraft, unless a notice permitting smoking is exhibited in the aircraft, and any person smoking shall comply all the terms of such notice. The owner of the aircraft

shall cause to be exhibited in a prominent place in the aircraft a notice stating where and to what extent smoking is prohibited or permitted therein. Such notice permitting smoking in such aircraft may be exhibited therein only if smoking in the aircraft is permitted by the certificate of airworthiness of the aircraft or by a written authorization from the Civil Aviation Department and only in accordance with the conditions relating to smoking contained in such certificate or authorization. 120/

195) No person shall, except in a case of emergency, descend by means of a parachute from an aircraft and no person shall drop or cause or permit to be dropped from an aircraft any article, whether attached to a parachute or not, unless the descent is made or the article is dropped in accordance with and subject to any conditions or limitations contained in a general or special order of the Civil Aviation Department in writing in that behalf: provided that nothing in this rule shall be deemed to prevent the dropping of ballast, smoke producing or other apparatus or materials dropped for the purpose of navigating an aircraft, subject to the observance of such precautions as to the nature of the articles dropped and the place of dropping as will avoid risk of injuring persons or property on the ground. 121/

196) No person shall interfere with the pilot or with a member of the operating crew of an aircraft, or tamper with the aircraft or its equipment or conduct himself in a disorderly manner in an

aircraft or commit any act likely to imperil the safety of an aircraft or its passengers or crew. 122/

197) No person shall at any time be carried on the wings or undercarriage of the aircraft, or on or in any other part thereof which is not designed for the accommodation of the personnel or passengers: Provided that --

(a) nothing in this rule shall prevent a person having temporary access :

(i) to any part of the aircraft for the purpose of executing repairs to the aircraft or adjusting the machinery, or equipment thereof or for the purpose of doing anything which may be necessary for the safety of the aircraft or persons or goods carried therein; or

(ii) to any part of the aircraft in which goods or stores are being carried and to which proper means of access is provided; and

(b) a person may be carried on or in any part of the aircraft, or anything attached thereto, with the permission in writing of the Civil Aviation Department and subject to any conditions which may be specified in such permission. 123/

SECTION 4.- Recommendations:

198) In the light of the material presented in this chapter, and of the other information that has been secured during the preparatory work for this survey, we make the following recommendations which could serve as a basis for future legislation :-

(1) The classification of flight instruments should be regulated by an order of the Civil Aviation Department. It should be empowered specifically to define what aircraft are to be considered as State aircraft.

(2) The authority empowered to register aircraft and to grant certificates of registration in Egypt shall be the Civil Aviation Department.

(3) An aircraft may not be enrolled in the Egyptian register unless it is wholly owned by an Egyptian national or by a company fulfilling the following conditions :

(i) In the case of a private company, (societé en nom collectif) all parties must be Egyptians.

(ii) In the case of a partnership (societé en commandite) all active partners must be Egyptians.

(iii) In the case of a limited liability company, its nationality must be Egyptian as well as that of the chairman of the Board of Directors and the majority of the Board.

(4) Aircraft enrolled in the Egyptian registery are to be considered as Egyptian aircraft.

(5) No aircraft in respect of which the conditions required in

rule 3 are not satisfied, and no aircraft which is already validly registered in another country, shall be registered in Egypt.

(6) In the event of any change in the ownership of a registered aircraft, or if a registered aircraft ceases to be owned wholly either by persons or by a company or corporation fulfilling the conditions set out in rule 3 mentioned above, then

(i) the registered owner of the aircraft shall forthwith notify the Director of the Civil Aviation Department of such change of ownership or, as the case may be, that the aircraft has ceased to be so owned as aforesaid; and

(ii) the registration and the certificate thereof shall lapse as from the date of such change of ownership, or the date on which the aircraft ceased to be so owned.

(7) A certificate of airworthiness may be issued by the Civil Aviation Department in respect of any flying machine which complied with minimum standards of airworthiness prescribed in the rules issued from time to time by the Civil Aviation Department.

(8) The period of validity of the forementioned certificates, their renewal and their cancellation should be regulated by an Order of the Civil Aviation Department.

(9) Similarly the composition of the crew, the equipment of aircraft circulating in Egypt and the documents which must be carried on aircraft should be regulated by an order of the Civil Aviation Department.

CHAPTER IV.-

FLIGHT PERSONNEL

Introduction:

199) In Maritime law, the term "gens de mer" seamen is applied to persons who follow the sea as a profession. The Italians extended the expression : they call persons who have aviation as their profession "gente dell'aria". In France they are called "Personnel navigant de l'air". In England they are called "Personnel". In the U. S. A. the Civil Aeronautics Act of 1938 called them "airmen". In Egypt they are called "Crew" (Takeim).

200) Frequently there is a confusion with regard to the meaning of the word navigating personnel. Whether it refers to a person having to do directly with piloting the aircraft, or with ensuring safety of flight, or whether it refers to any employee, on board having to do with servicing the aircraft, dealing with passengers or cargo. One would ask too, whether this term refers to personnel on the ground or if it only refers to flight personnel and whether the former would be under another term.

The term personnel generally refers to those who have been hired by an employer and who have signed a contract with him relative to the nature of their employment.

The word crew refers to the technical side of the operation, while navigating personnel has a legal connotation. This distinction between crew and navigating personnel is important. For instance,

am employer who works abroad an aircraft of his own is part of the crew and not of the navigating personnel. The latter have their own specific legal status. The legal conditions of one who belongs to the navigating personnel is radically different from that of one who is simply a member of the crew.

201) The term "personnel", in our opinion, includes those who directly or indirectly contribute to the technical efficiency of aircraft and to other auxiliary services. Personnel, in other words, are composed of : "flight personnel" and "ground personnel".

(a) Flight personnel: flight personnel includes all those whose presence abroad an aircraft is necessary, and whose work is normally done while the aircraft is in flight : the commander of the aircraft, pilot, co-pilot, the navigator, wireless operator, the mechanic, the persons in charge of auxiliary flight services : stweard etc..

(b) Ground personnel: to the ground personnel belong all those persons (on the ground) who assist the flight and navigation of the aircraft aerodrome personnel (ground controller), meteorological service, aircraft security service (beacon, radar).

SECTION 1.- Legal Regime of Flight Personnel :

Administrative Regulation:

202) Since the safety of air traffic is dependent both upon the airworthiness of the machine and upon the competence of its crew, the State naturally requires a special certificate, not only for the machines as we stated before but for the flight personnel.

The Convention of 1919 stipulates that the officers and crew of every aircraft shall be provided with certificates of competency and licences. Appendix 'D' of this convention issued rules on air traffic of which some dealt with flight personnel. Annex E. is concerned with rules governing the issuance of licences to flight personnel. In Egypt, before the ICAO standards for personnel came into force, licences were in conformity with international requirements specified in Annex E to the Paris Convention. Egypt was not a party to the said convention.

In Egypt, flight is forbidden unless the personnel of the aircraft are provided with such certificates and licences, except in cases of candidates undergoing tests for obtaining licences, or of pupils under instruction or flying for the purpose of becoming eligible for licences.

203) Some countries require only one permit (certificate of competency). This permit certifies that the holder possesses the necessary competence and, at the same time, authorizes him to fly. Others distinguish between the certificate of competency and the

police permit, both certificates being issued according to different procedures and under different conditions.

In Egypt, for the purpose of the regulation of licences, the expression "certificate of competency" and "licences" mean respectively a certificate of competency and licence in respect of the capacity in which the holder thereof is flying and in respect of the class, type and description of aircraft in which he is flying. This is the only certificate required.

204) Departments have been created to examine the health and technical competence of flight personnel. Technical competence is entrusted to the Civil Aviation Department. Medical competence, is left to the "Commission Médicale Générale du Caire" of the Ministry of Public Health.

According to the report of the section of licences which is in charge of the examination, the Civil Aviation Department grants or refuses the certificate.

We need only to mention that the certificate of competency varies according to the holder's duties on board and according to the type of aircraft for which it is to be valid. The different regulations, however, according to their chronological date, have taken account of the differences which recent technical progress has established between the various duties on board. Generally speaking, special certificates are issued for the commanding officer, the mechanic, navigator and wireless operator.

205) The requirements of the different countries as regards qualifications vary very widely. From the point of view of international traffic, it need only be said that certain countries in addition to requiring technical, moral and medical qualifications, demand that the flight personnel shall be nationals of the country, or be domiciled therein, a condition which is obviously explained, not so much by the nature of things, as by nationalist and protectionist tendencies. Permissions to fly over, the national territory will only be given to those who, in the event of war, can be mobilised for the service of the country.

There is no express rule in this connection, in the existing rules in Egypt; the new code should contain such a ruling.

206) A licence has to be issued or validated by the State whose nationality the aircraft, and not the crew possess.

This rule is followed by the Chicago Convention (art. 32 par. 1), and the Egyptian legislations. 124/

But the nationality of the crew may obviously be of importance. There is a number of contingencies for which some provision is required. Considered from the international point of view, the Chicago Convention provides in Article 32 para. B. that each Contracting State reserves the right to refuse to recognize for the purpose of flight above its own territory, certificates of competency and licences granted to any of its nationals by another Contracting State. The existing rules cover one phase of this rule. By this we mean that, if an Egyptian subject with a foreign licence, is flying

an Egyptian aircraft within Egyptian territory, his licence must be validated by the competent authorities in Egypt, upon such conditions as the Civil Aviation Depaɔtment thinks fit. 125/ The new law, should contain such plain language as to reserve the right of the Civil Aviation Department to refuse to recognize, for the purpose of flight within Egyptian territory, certificates of competency and licences granted to any of its nationals by another Contracting State.

207) General Conditions of Issuance of the Certificate of Flight Personnel : The Egyptian regulation specifies that certificates of flight personnel are issued only to persons fulfilling the following conditions :

(a) Have attained the minimum age fixed for the exercise of the specific aerial activity.

Conditions vary according to the licence sought by the candidate. In any event the minimum age for the issuance of certificates is 17 years for student pilots of aircraft; 15 for gliders. 126/

The minor who seeks a certificate of flight personnel must present within authorization from their parents or guardians. 127/

(b) Are apt physically and morally.

The examination undergone to determine the candidate's physical aptitude must conform to the standards set up by the Civil Aviation Department periodically issued which actually is in conformity with the rules of Annex 1 to the Chicago Convention. 128/

For the issuance or renewal of a licence, the candidate must

meet certain moral conditions. He is not eligible for a licence if he has been deprived of his liberty and it is thought that his exercise of any aerial activity would represent a danger to the national interest. 129/

(c) Fulfill the other conditions laid down in the present regulation ex. passage of examination; competence of minimum training period, etc.

The examination undergone to determine the candidate's technical aptitude must conform to the Standards set up by the Civil Aviation Department periodically issued.

208) Contents of the licence: Independently of the conditions of issuance, each licence contains special specifications.

(1) Conditions of age.

(2) Proof of minimum training period.

(3) Under the heading of privileges, the licence refers to the type of aerial activity permitted to its holder, and the type of aircraft which he may fly.

The period of privilege allowed by a licence may in certain cases be increased by issuance of an extension or by special permits. The latter are valid only if they are accompanied by a valid licence, of which they are supplements.

Extensions are written on the licence itself. Special permits are issued as annexes to the licence.

Finally, the licence contains specifications relating to its validity and to its mode of renewal as well a list of technical

and medical aptitude tests which the candidate must pass.

209) Period of Validity and Renewal: This period varies according to the type of licence issued. When the validity period is expired, licences are renewed if the holder of the certificate is declared fit following medical examination. The Civil Aviation Department may require a supplementary technical aptitude test in doubtful cases. Finally, it may refuse to renew or may revoke a licence if it is convinced that the public security would be endangered by renewal of the licence. 130/

Adoption of Annex 1 to the Convention on International Civil Aviation by Egypt :

210) In January 1947, the personnel licensing division at its second session recommended, for adoption by Council, Standards and Recommended Practices for the licensing of flight crew members and other key personnel responsible for providing and maintaining air navigation services. These were developed by the secretariat and the existent Air Navigation Committee and adopted by Council on 14 April as Annex 1 to the Convention.

The said Annex, adopted by the Council on 14 April 1948 became effective on 15 September 1948 and came into force on 1st of May 1949. Further amendements (1-123, 124 to 129) were incorporated in that Annex. 131/

211) The personnel licensing Division recognized that it would be impracticable for these Standards to be applied immediately after they had been adopted by Council. There were two good reasons for this :

First, Contracting States would need sufficient time to set up new training and licensing machinery to deal with these new Standards;

Second, existing holders of licences issued in accordance with previous international or national requirements, would need an even longer period to meet the more stringent requirements that the PEL Division had recommended. It was understood by the Division that the provisions of Article 42 of the Convention had been expressly designed to meet these two requirements.

212) The first period of grace, provided for in Article 42, of the Chicago Convention allowed Contracting States a period of one year, commencing at the date of adoption, for setting up the necessary training and licensing machinery so that licences conforming to the new ICAO Standards could be issued as soon as these Standards came into force.

The second period of grace, provided for in Article 42 of the Chicago Convention, allowed all holders of licences, issued before the date of coming into force of the new ICAO Standards, a maximum additional period of four years ib which to meet the new requirements although Contracting States are free to specify a shorter period of grace in their national licensing regulations.

213) Application of the PEL Standards : The Standards in Annex 1 apply : (a) to all applicants for and holders of licences provided for in those Standards, originally issued on or after 14 April 1949;

(b) on or after 14 April 1953 to all holders of licences provided for in those Standards regardless of the date of original issue.

214) Application of the PEL Standards to previously licensed personnel:

(a) The ICAO Standards for each licence have, for convenience, been grouped under the same general headings, viz, age, knowledge, experience and skill. The age requirements under the ICAO Standards are in the main less stringent than the corresponding requirements specified in previous international Standards. The remaining requirements, are however, more stringent.

(b) The expression "licence" used in Annex 1 has the same meaning as the expression "certificate of competency and licence"; licence or certificate" and "licence" used in the convention. Similarily, the expression "flight crew member" has the same meaning as the expressions "member of the operating crew of an aircraft" and "operating personnel" used in the Convention. The expression "personnel" other than "flight crew member" used in Annex 1 includes the expression "mechanical personnel" used in the Convention.

215) On the 21st of November 1949, Egypt issued a notice to Airmen No. 23 A/1949 concerning the conversion to new personnel licences.

The Annex accordingly became effective on that date. 132/

It is of great interest to cite here some parts of that NOTAM, for it would give a clear picture of the old and new system followed in Egypt as far as licences are concerned:

A. "On 1st of May 1950, the new I.C.A.O. licences will come in force instead of the old I.C.A.N. licences."

B. "From 1st of May 1950, no further aircrew licences, under the old system, will be issued. Instead all the new licences provided by Annex 1 to the Convention on International Civil Aviation will be available for issue."

C. "Licences issued under the old system which are still valid on 30th April 1950, will retain their validity and their full privileges until they finally expire, or are replaced by licences issued under the new system."

The NOTAM further listed the licences under the old system and the corresponding new licences. It also mentioned the requirements which must be fulfilled for the conversion to the new system.

216) Chapter 1 of the above-mentioned Annex pertains to definitions and general rules concerning licences. International Standards and Recommended Practices of Annex 1 are established for licensing the following personnel :

Private pilot;
Commercial pilot;
Senior commercial pilot;
Airline transport pilot;
Private glider pilot;
Free balloon pilot;
Flight navigator;
Flight engineer (flight mechanic);
Flight radio operator.

217) Article 1.2.1. of the forementioned Annex provides that a person shall not act as a flight crew member of an aircraft unless

he holds a valid licence appropriate to his duties issued by the State of Registry of that aircraft or issued by any other Contracting State and rendered valid by the State of Registry of that aircraft.

The Contracting States undertake, not to permit the holder of a licence to exercise privileges other than the privileges of the licence he holds. 133/

Medical fitness : A Contracting State shall require applicants for the licences enumerated by the Annex (1), to meet the medical requirements prescribed by that Contracting State and to have their medical fitness certified. 134/

Licences shall be renewed or shall remain valid subject to renewal of certificate of medical fitness at intervals not greater than :-

24 months for the private pilot licence;
24 ---------- glider licence;
12 ---------- commercial pilot licence;
6 ---------- senior commercial pilot licence;
6 ---------- airline transport pilot licence;
12 ---------- flight navigator licence;
12 ---------- flight engineer (flight mechanic) licence;
12 ---------- radio operator licence;
12 ---------- air traffic controller licence;

With a control zone rating entered thereon. 135/

Chapter 2 of Annex 1 pertains to licences and Ratings for pilots. This chapter deals with the requirements, which must be met by the applicant for the above-mentioned licences of flight crew members, from age, knowledge, experience and skill point of view.

SECTION 2.- Legal Status of Aircraft Commander:

218) The creation of the post of the aircraft commander is rather a juridical construction; surely his function corresponds to a practical need. It is certain that a modern aircraft with twelve crew members and a hundred passengers abroad needs some one in command. His function is no legal fiction; the problem is most timely presses for solution. There must be some determination of juridical status of the aircraft commander.

219) The problem of the legal status of the aircraft commander considered from the point of view of private law has been the object of many studies since the establishment of the CITEJA in 1926. Up to that time, this question has been dealt with in international conventions and national legislations only from the point of view of public law.

This was the case in the Paris Convention of 1919 and the Pan American Convention of Havana dated 20 February 1928. However, Article 25 of the latter convention provided that, in the absence of national laws or regulations, "the commander of an aircraft shall have rights and duties analogous to those of the captain of a merchant steamer, according to the respective laws of each State."

220) As early as its first meeting in 1926, the CITEJA began to study the legal condition of the aircraft commander; a first report was discussed in 1927 and a draft convention was provisionally

adopted in 1931. From that time up to 1945, the CITEJA did not deal exclusively with the aircraft commander but with the crew as a whole; drafts of a convention were discussed in 1935, 1936, 1937 and 1938; a last draft of 27 July 1939 remains in suspense. 136/

At the 15th plenary session of CITEJA held at Cairo, on November 16, 1946 the CITEJA adopted a draft convention concerning only the legal status of the aircraft commander and passed a resolution transmitting it to PICAO with a recommendation that this draft convention be submitted for approval to a conference on private International Air Law convened by PICAO.

221) The said draft dealt with ten ideas, as follows :-

(1) Every aircraft must have a commander, and a method for appointment and a succession in case of injury, incapacity, etc.

(2) The commander must have authority to command and control persons on board.

(3) He must be able, as commander to do what is necessary to expedite the voyage, procure, supplies and repairs necessary for the voyage; and if a crew member drops out, hire a suitable man to complete the voyage. It is debatable whether his authority may be specially limited.

(4) There should be public notice that he cannot, as commander, do certain things : sell or pledge or mortgage the aircraft : perform marriages, act as notary.

(5) His command of the crew begins at a certain point : as when they embark, and continues until the formalities of arrival are

completed,or until he is relieved by another commander. As to the aircraft passengers and cargo, his control begins when these are placed in his charge and continues until he turns them over to some other qualified authority.

(6) He may go to the consul of any nation whose nationals are interested in the aircraft, its managers, cargo or passengers; what the consuls may do depends on their consular laws and instructions.

(7) Births and deaths on board must be suitably recorded and reported.

(8) The convention states that it does not attempt to prescribe any competency tests for commanders; that is a matter for home legislations, or for CINA, PICAO and ICAO.

(9) The convention will apply to international flight of aircraft registered in a State which ratifies or adhered, or registered by an owner who is a national of such a State.

(10) It does not apply to military, customs or police aircraft. There are the usual concluding clauses concerning ratification, denunciation, etc. 137/

222) This draft was revised at Paris in February 1947 by an ad hoc legal Sub-committee of PICAO and was placed on the agenda of the first session of the Assembly of ICAO (May 1947), but was not discussed.

At the time of its first meeting (September 1947), the legal Committee placed the question of the aircraft commander on its work programme; and at its second session (June 1948), the committee

decided that it would be necessary to have first of all the opinion of the technicians concerning the draft, and to transmit the draft with this end in view to the Council asking that body to forward to the Legal Committee the comments of the technical bodies of ICAO. Up to the present, no comment has been forwarded. Moreover, the Council recently decided that there is no urgent need for such convention. 138/

223) As regards the rights and obligations of the aircraft commander, there are no international rules, except those which define, in the Annexes to the Convention, certain obligations of the pilot-in-command. On the other hand, the national legislations of many States contain express provisions concerning the rights and obligations of the aircraft commander; but these provisions are far from being uniform.

If the different legislations containing provisions concerning the aircraft commander are studied, it will be found that they deal with the following matters;

(1) Necessity of an aircraft commander;

(2) His appointment and replacement in case he is unable to act;

(3) His general responsibilities;

(4) His powers as the agent of the owner or of the operator, including the limitations or the extensions of these powers;

(5) The maintenance of the documents carried in the aircraft; births, marriages, or deaths, customs, sanitary and other regulations; negligence or fault. Here, by way of example, is what the Egyptian and French legislation prescribe concerning the aircraft commander.

224) French legislation : The law of July 25, 1936, on the judicial status of navigating personnel contains in article 7 -13, special provisions which we shall briefly summarize. The aircraft commander is not only the head of the crew, he has authority over all persons abroad the aircraft. He has the power to disembark any passenger or crew member, who because of his attitude or state of health, constitutes a menace to the safety of the aircraft. As the representative of the operator, he is responsible for the execution of all the operator's orders.

In order to ensure the safety of the flight, the law authorizes him in certain cases to take measures without any specific mandate: purchases, repairs, etc. He may not however sell the aircraft or pledge it without special authorization.

225) Egyptian legislation specifies that where there is more than one crew member on the aircraft, one of these must be designated as the pilot responsible for the flight. His name must be inscribed as such in the log-book of the aircraft. 139/ Inasmuch as the word "commander" is used in other texts, it may be construed that Egyptian legislation has de facto created such a post. Nonetheless, Egyptian legislation has not clearly defined the status of the aircraft commander. There were but few texts relating to such post, e.g. it is the responsibility of the pilot-in-command to notify the competent authorities of any accident which involves death or any personal injury to any person, whether carried in the aircraft or not, or serious structural damage to the aircraft,

provided that if he is incapacitated by injury one of the members of the crew would notify the said authorities.

By the adoption of the Annexes to the Chicago Convention, Egypt has entered the rules of the Annexes into her usages. It could be said that the existing Egyptian ruling requires the operator to designate one pilot to act as pilot-in-command and for each flight. 140/ For the purpose of this ruling, the pilot-in-command is defined as the pilot responsible for the operation and safety of the aircraft during flight time. 141/ Moreover, flight time is defined as the total time from the moment the aircraft first moves under its own power for the purpose of taking off until the moment it comes to rest at the end of the flight. 142/

The pilot-in-command shall be responsible for the operation and safety of the aircraft, and for the safety of all persons on board during the flight time. Moreover, he shall be responsible for reporting all known or suspected defects in the aircraft to the operator at the termination of the flight and he shall be responsible for the maintenance of the journey log-book.

No person is permitted to act as pilot-in-command of an aircraft carrying passengers or operated for remuneration or to act for remuneration as pilot-in-command of an aircraft, unless he is the holder of a pilot's licence and unless he has received the proper authorization to act as pilot-in-command from the Civil Aviation authorities. 143/

The category, class and type rating shall be appropriate to the aircraft in which the holder of the licence either acts as

pilot-in-command carrying passengers or acts for remuneration as pilot-in-command. 144/

We could say from the preceding texts that the operator has got only the right to designate the pilot-in-command from those who have got the appropriate authorization from the Civil Aviation Authorities to act as such.

If an emergency situation which endangers the safety of the aircraft or persons necessitates the taking of action which involves a violation of local regulations or procedures by any crew member, the pilot-in-command shall notify the appropriate local authority without delay. If required by the State in which the incident occurs, the pilot-in-command shall submit a report on any such violation to the appropriate authority of such State; in that event the pilot-in-command shall also submit a report to the Egyptian authorities. Such reports shall be submitted as soon as possible and normally within ten days. 145/

SECTION 3.- Recommendations:

226) In the light of the material presented in that chapter, and on the other information that has been secured during the preparatory work for this survey, we make the following recommendations which might serve as a basis for future legislation :

(1) No person shall fly or attempt to fly as a member of the

operating crew of an aircraft registered in Egypt unless he is the holder of a certificate of competency and a licence granted or rendered valid under the regulations prescribed by the Civil Aviation Department.

(2) An aircraft not registered in Egypt shall carry the personnel prescribed by the laws of the State in which it is registered and such personnel shall be licensed in accordance with the laws of that State. Recognition of licences of flight crew members of aircraft registered in a non-contracting State shall be in accordance with such agreement on this subject as may be entered into between Egypt and such State.

(3) When the Civil Aviation Department renders valid a licence issued by another contracting State, as an alternative to the issuance of its own licence, it shall establish validity by suitable authorization to be carried with the former licence accepting it as the equivalent of the latter. The validity of the authorization shall not extend beyond the period of validity of the licence.

(4) No holder of a licence shall be permitted to exercise privileges other than the privileges of the licence he holds.

(5) Applicants for the licences prescribed by the Civil Aviation Department shall meet the medical requirements prescribed by the latter department and have their medical fitness certified.

(6) Applications for the grant or renewal of a licence, or for the extension of a rating included in such a licence, shall be made to the Director of Civil Aviation Department in such form as he shall prescribe.

(7) When a licence has been granted to an Egyptian subject by the duly competent authority in a foreign State, the Egyptian Civil Aviation Department may, subject to such conditions and limitations and for such periods as it shall think fit, confer on such licence the same validity for the purpose of flying aircraft registered in Egypt as if it had been granted under its rules.

(8) The Civil Aviation Department, through special orders, should establish the rights and duties of flight personnel within the limits set by International Agreements and Egyptian legislation. Moreover, it should be provided in the new legislation that working conditions of flight personnel should be fixed through contracts.

(9) Any aircraft which is operated on a commercial basis must have on board a person specially invested with the powers of a commander. The commander of the aircraft shall be the person vested with the powers of safety, discipline and authority on board the aircraft, and representing the operator.

(10) The name of the aircraft commander must be recorded on the aircraft papers. The choice of the commander and the granting of the special agency shall devolve upon the operator of the aircraft, provided that the choice would be from those who are qualified for such post and got the proper authorization from the Civil Aviation Department to act as such.

(11) Births and deaths occurring on board the aircraft shall be recorded on the aircraft documents by the aircraft commander who will issue transcripts thereof to the interested parties, and

who must forward as soon as possible, certified copies thereof to the Egyptian competent authority.

(12) The aircraft commander shall have the right even without a special agency :-

(a) to make the necessary purchases for the voyage undertaken;

(b) to make the necessary repairs on the aircraft;

(c) to hire and dismiss members of the crew.

The said powers of the commander may be enlarged in a special agency. However, the use of such a restriction as a defence against third parties is conditioned upon proof, by the operator, that the third parties in question had knowledge of the restrictions involved.

(13) The aircraft commander shall not have the right to sell the aircraft or to encumber it with mortgages or other real rights without a special agency.

(14) If a crime be committed on board, the aircraft commander should have the right to investigate and to accumulate evidence. He should further be empowered to detain suspects, to search passengers and crew members and to take charge of every thing which may serve as proof of the crime.

(15) The contract of hire of flight personnel must be in writing, and must contain the following clauses :

(a) The names and surnames of the parties, their nationality and domicile;
(b) The place and date of the contract;
(c) The service to which the person hired is to be assigned;
(d) The date for the beginning of the service;
(e) The amount of salary;
(f) The duration of the employment.

PART III.

PRIVATE AVIATION LAW

CHAPTER I.-

Flight Instrument in Egyptian Private Law

SECTION 1.- Legal Nature of Right of Property:

227) Property: From the material standpoint, it is certain that an aircraft is a movable. However, two view points come into play in the determination of the method of transfer of ownership of aircraft. Should the aircraft be considered as purely a movable or as quasi-immovable object like ships ?

In Egyptian law, there are no special provisions with regard to the transfer of ownership of aircraft. The certificate of registration is of no consequence in private law. Therefore, the right of disposal of aircraft is regulated by the Civil Code. The owner has the right to dispose freely of his aircraft. This right extends to every part thereof.

Article 82 para. 1 of the Egyptian Civil Code defines movables as follows :-

> "Toute chose ayant une assiette fixe et immobile, qui ne peut être déplacée sans détérioration, est une chose immobiliere. Toutes les autres choses sont mobilieres."

Article 803 para. 1. of the Civil Code provides that :

> "Le Droit du propriétaire de la chose comprend tout ce qui constitue élément essentiel de cette chose, de sorte qu'il ne puisse en être séparé, sans qu'elle périsse, se détériore ou soit altérée."

Means of Acquisition of Ownership :

228) Occupation : The acquisition of the right of ownership of an aircraft could conceivably arise by the mere taking of possession of an aircraft which has no owner. Article 870 provides that :

> "Quiconque prend possession d'une chose mobiliere sans maître, dans l'intention de se l'approprier, en acquiert la propriété."

Moreover, article 871, para. 1 reads as follows :

> "La chose mobiliere devient sans maitre lorsque son propriétaire en abandonne la possession dans l'intention de renoncer a sa propriété."

229) Possession : The following three articles of the Civil Code cover the acquisition of movable things through possession.

Article 968: "Celui qui exerce la possession sur une chose ou sur un droit réel, mobilier ou immobilier, sans qu'il en soit le propriétaire ou le titulaire, en devient propriétaire si sa possession continue sans interruption pendant quinze ans."

Article 976: "Celui qui possede en vertu d'un juste titre une chose mobiliere, un droit réel mobilier ou un titre au porteur, en devient propriétaire ou titulaire si, au moment ou il en pris possession, il était de bonne foi."

"Si le possesseur a, de bonne foi en vertu d'un juste titre, possédé la chose comme étant libre de toutes charges ou limitations réelles, il en acquiert la propriété libre de telles charges ou limitations."

"La seule possession fait présumer le juste titre et la bonne foi, sauf preuve contraire."

Article 977: "Celui qui a perdu ou auquel a été volé une chose mobiliere ou un titre au porteur peut, dans un délai de trois ans de la perte ou du vol, les revendiquer contre le tiers de bonne foi entre les mains duquel il les trouve.

"Si la chose volée ou perdue se trouve entre les mains d'une personne qui l'a achetée de bonne foi dans le marché, aux encheres publiques ou a un

"marchand qui fait le commerce de choses semblables, cette personne pourra demander a celui qui revendique la chose de lui rembourser le prix qu'elle a payé."

230) Contract: Transfer of ownership may arise from any contractual act i.e. contract of sale or contract of donation, etc. An aircraft as we have stated before is a movable, and therefore the law governing its sale is the law of sale of movables provided in the Civil Code. For the same reason, no special instrument is required in order to transfer the property in an aircraft, It is not within the scope of this survey to give any account of the law relating to sale of aircraft but only to mention few articles.

Article 418: "La vente est un contrat par lequel le vendeur s'oblige a transférer a l'acheteur la propriété d'une chose ou tout autre droit patrimonial moyenant un prix en argent."

Article 431: "Le vendeur est obligé de délivrer a l'acheteur l'objet vendu dans l'état ou il se trouvait au moment de la vente."

Article 432: "La délivrance comprend les accessoires de l'objet vendu et tout ce qui est destiné d'une façon permanente a son usage, d'après la nature des choses, l'usage des lieux et l'intention des contractants."

Article 436: "Si l'objet vendu doit être expédié a l'acheteur, la délivrance n'aura lieu, a moins de convention contraire, que lorsque l'objet lui sera parvenu."

Article 437: "Si l'objet vendu périt avant la délivrance par suite d'une cause non imputable au vendeur, la vente sera résolue et le prix devra être restitué à l'acheteur, a moins que celui-ci n'ait été, avant la perte, mis en demeure de prendre livrasion de l'objet vendu."

Article 438: "Si l'objet vendu diminue de valeur par détérioration, avant la délivrance, l'acheteur aura la faculté soit de demander la resolution de la vente au cas ou la diminution de valeur serait de telle importance qu'elle

"aurait empeché la conclusion de la vente, si cette diminution était survenue avant le contrat, soit de maintenir la vente avec réduction du prix."

SECTION 2.- Pledge of an Aircraft:

231) A ship, although a movable, can be mortgaged. Other movables, including aircraft, cannot be mortgaged. Any movable can be pledged - that is to say, deposited with the creditor as security for the debt. In the first place, a distinction should be made between privately-owned aircraft and aircraft owned by public bodies. The latter aircraft could not be subject to pledge and similar rights which are contractually created as security for payment of an indebtedness.

The forementioned rule could be ascertained from articles 87, and 88 of the Egyptian Civil Code.

Article 87: "Sont biens du domaine public, les immeubles et les meubles qui appartiennent a l'Etat ou aux autres personnes morales de droit public, et qui sont affectés soit en fait, soit par une loi ou par un décret a un service d'utilité publique.

Ces biens sont inaliénables, insaisissables et imprescriptibles."

Article 88: "Les biens du domaine public perdent leur caractere avec la cessation de leur affectation au service d'utilité publique. Cette cessation a lieu par une loi ou un décret ou en fait, ou si le service d'utilité publique auquel ils étaient affectés a pris fin."

232) We shall hereinafter mention the important articles concerning the pledge of movables iée. aircraft in the Egyptian Civil Code.

Article 1096: "Le nantissement est un contrat par lequel une personne s'oblige, pour la garantie de sa dette ou de celle d'un tiers, a remettre au créancier, ou a une tierce personne choisie par les parties, un objet sur lequel elle constitue au profit du créancier un droit réel en vertu duquel celui-ci pourra retenir l'objet jusqu'au paiement de sa créance et pourra se faire payer sur le prix de cet objet, en quelque main qu'il passe, par préférence aux créanciers chirographaires et aux créanciers inférieurs en rang."

Article 1102, para. 1. "La perte ou la détérioration de l'objet mis en nantissement sont à la charge du constituany, lorsqu'elles sont dues à sa faute ou à un cas de force majeure."

Article 1097: " Ne peuvent faire l'objet d'un nantissement, que les biens, meubles ou immeubles, susceptibles d'être vendus séparément aux encheres publiques."

Article 117: " Outre la remise du meuble engagé au créancier, il faut, pour que le gage soit opposable aux tiers, qu'il soit constitué par un écrit désignant suffisamment le montant de la dette garantie et l'objet engagé et portant date certainée. Le rang du créancier gagiste sera déterminé par cette date certaine."

Article 1119: "Si la chose engagée menace de dépérir, de se détériorer ou de diminuer de valeur au point qu'il y ait lieu de craindre qu'elle puisse plus suffire pour la sureté du créancier, et que le constituant ne demande pas sa restitution en lui substituant une autre garantie, le créancier, ou le constituant, peut demander au juge l'autorisation de la vendre aux encheres publiques ou au cours de la bourse ou du marché.

En autorisant la vente, le juge sattue sur le depot du prix. Dans ce cas, le droit du créancier se transporte sur ce prix."

Article 1112: "Le droit de nantissement s'éteint par l'extinction de la créance garantie; il renait avec la créance si la cause de l'extinction disparait, et ce sans préjudice des droits qu'un tiers de bonne foi aurait régulièrement acquis dans l'intervalle."

If the convention on the International Recognition of Rights in Aircraft is ratified by Egypt, substantial amendment of existing law on this subject will be necessary so far as concerns aircraft

governed by the provisions of the Convention. 146/

The Egyptian legislator provides in article 1122 that in case there will be special rules governing the pledge of certain movable things, they would be applied instead of the forementioned rules. Article 1122 reads as follows:-

> "Les précédentes dispositions s'appliqueront dans la mesures ou elles ne seront incompatibles ni avec les lois de commerce, ni avec celles concernant les maisons autorisées à prêter sur gage, ni avec les lois et reglements concernant des cas particuliers de mise en gage." 147/

CHAPTER II.-

Property Rights over the Flight-Space

233) It is of some importance that we determine what obligation and right a proprietor has to allow or oppose flight over his property. For quite some time this question has been the subject of much heated discussion. The solution should be found on the one hand in the provisions of the Civil Code on property and on the other hand in Aviation law which contains special rules on the free utilisation of air space for aerial traffic.

234) Some authors consider that property rights over air space are vested in the proprietor of the subjacent land. They derived their opinion from the maxim of Roman Law "Cujus Solum Ejus Coelum" 148/, and from the text of article 552 of the French Civil Code which reads as follows:

> "Le propriétaire peut faire au-dessus toutes les plantations et constructions qu'il juge à propos, sauf les exceptions établies au titre des Servitudes ou Services fonciers.
>
> "Il peut faire au-dessous toutes les constructions et fouilles qu'il jugera à propos, et tirer de ces fouilles tous les produits qu'elles peuvent fournir, sauf les modifications résultant des lois et règlements relatifs aux mines, et des lois et règlements de police."

This article has been incorporated into many other civil codes e.g. article 350 of the Spanish Civil Code and article 440 of the Italian Civil Code.

235) Much learning has been devoted to the legal construction and

interpretation to be given to article 552 in order to state exactly the landowner's rights. The construction assigned to article 552 has ranged from an analysis based on the restatement of the maxim "Cujus Solum Ejus Coelum", with its arbitrary construction of ownership of space to infinity, to the theory that the article creats no ownership rights except in buildings or other physical additions to the land, but does give the landowner the right to occupy such space over his land as may be used by buildings, trees, etc., together with the right to be protected from interference by third parties in the use and enjoyment of his lands and any improvements thereto. 149/ It might be said that such contradiction in the construction assigned to article 552 would be of no great value if one kept in mind article 19 of the French law of 31 May 1924 which reads as follows:

> " Les aéronefs peuvent circuler librement au dessus du territoire français sous réserve des dispositions de l'article 8 ci-dessus.
>
> Toutefois, le droit pour un aéronef de survoler les propriétés privées ne peut s'exercer dans des conditions telles qu'il entraverait l'exercice du droit du propriétaire." 150/

236) In a more liberal fashion the German civil code of 1900 in section 905, provided that the right of the owner of the land extended to space which is above and to the earth which is below the surface of the land, but that the owner cannot prevent the use of such space above or below ground where he has no interest in excluding any one therefrom: it is obvious that the German legislator allows the land owner right to the air space above his property; further than that his right is not absolute : he may not oppose any

use of the air space above his land which is not prejudicial to his interest. This may be expressed by the maxim "pas d'intérêt pas d'action." It might be said rightly that the forementioned article is an application of the theory of "Abus des Droits". Owing to the tenacity of legal concepts and principles the past always exerts a presponderant influence upon the present law. For the purpose of this study it might be well to trace the history of this principle in the western hemi-sphere from 1794.

237) The first trace of western doctrine on the theory of the abuse of right is to be found in the Prussian "Landrecht" of 1794. The latter codification established, for the first time in a clear way, the bases for the distinction between the legitimate exercise and the abuse of right :

Section 94: "Any person who exercises his right in conformity of the law, is under no obligation to compensate for damage caused through such exercise."

Section 95: "If one person's right undermines the exercise of another person's right, that of the stronger party will prevail".

Section 96: "In the absence of any special provisions in the law, he who seeks some advantage through the exercise of his right must cede to that person who seeks merely to avoid damage."

238) The "landrecht" foresaw a particularly important application of this principle in the title of property (first part, title 8, section 26 - 28);

Section 26: "Every use of property is regular and permitted, which does not undermine the legitimate right of others and which does not exceed the limits prescribed by the laws of the land."

Section 27: "No one may use his property to undermine the rights of others or to cause them damage."

Section 28: "By misuse is to understand any use of property which by its very nature can have no other effect than to do harm to another." 151/

In spite of the clarity of the forementioned texts they remain largely inoperative. This was due to the fact that the spirit of the "Landrecht" was not, as a whole, too conductive to the development of new ideas, nor was the jurisprudence of the time in favour of the development of such theory.

The seeds sown by the "Landrecht" remained unfruitful until the end of the 19th century. At that time it began to penetrate slowly into western jurisprudence through the medium of the German civil code of 1896 - 1900. The definitive text of the German civil code contains but few provisions relative to the abusive exercise of rights, e.g. section 905 referred to before, section 226 and section 138. 152/

239) In Egypt the land owner's right to air space was not quite clear before the promulgation of the new Egyptian Civil Code which has been in force since the 15th of October 1949. The latter Code abrogated and replaced the National Civil Code of 28th of October 1883 and the Mixed Civil Code of 28th of June 1875.

Before discussing the articles of the new Civil Code on the question of property rights of the land owner over the subjacent land, it might be well to examine briefly the situation before 1949.

240) Egyptian legislator prior to the 15th of October 1949, devoted

to this question of property rights article 11 of the National Civil Code, and article 27 & 28 of the Mixed Civil Code which read as follows :

Article 11: "La propriété est le droit de jouir et de disposer des choses de la manière la plus absolue.
Elle donne droit à tous les produits naturels ou accidentels, et à tous les accessoires."

Article 27: "La propriété est le droit de jouir et de disposer des choses de la manière la plus absolue."

Article 28: "Elle donne droit à tous les produits, naturels ou accidentels, et à tous les accessoires de ce bien".

These texts do not make use of the adage "Cujus Solum Ejus Coelum". But on the other hand they did not establish a limitation of property rights in a vertical direction as did the German civil code. These texts were not interpreted by the Egyptian jurists, in a dense that property rights over land are limited to what is on its surface. On the contrary they were engaged in developing doctrinal principles based on the observation that ownership of land implies free disposal thereof - something which goes further than free use of that which is at the surface. To justify their theory, they had recourse to the Ottoman law on mines of the 5th of November 1870, in force at the time in Egypt. Article 6 of that law states that extraction of ores may not be undertaken without authorization from the Government. However, article 11 stipulates that this permission may be dispensed with, if one expoits a mine on one's own property or with the authorization of the owner of the property. They conclude that, this clearly proves that the legislator allowed to the owner, property rights over that which is under ground.

By analogy they said that there is no limitation to his property rights over the air space above his land. 153/ Some authors are of the opinion that the provisions of article 552 of the French Civil Code must be applied in Egypt, with the modifications and restrictions applied by the French jurisprudence 154/. Others confuse the provisions of German and Swiss Civil Codes with those of the French Civil Code and wish that all would be applied in Egypt.155/ No case involving property rights over the air space above specified property has been submitted to the National and Mixed Egyptian tribunals. However, in kindred cases, jurisprudence throws some light on the problem and demonstrates in a general way, the mind of Egyptian jurisprudence on the extent of property rights. It has been held that in the absence of all restrictions of property rights other than those exposed in article 61 of the Mixed Civil Code, Egyptian law allows to every proprietor to dispose of his property in the most absolute way, provided that he does not make of his right any use abusive or prejudicial to his neighbours. 156/ It has been held also that the exercise of the right of property is not unlimited. It is, through social necessity, restrained by the equal right of one's neighbour. 157/

From this we may deduce that Egyptian jurisprudence allows to the proprietor rights over that which is above and under his property with certain restrictions applied through respect of the rights of neighbours and with a view to repress any abuse of the law. But what is the nature of this right in regard to aviation ? To what height does the land owner's property right extend ?

In this regard the silence of the Egyptian text is preferable to the clarity of foreign texts e.g. art. 552 of the French Civil Code. In order to limit the land owner's right to the air space over his property the judge had at his disposal a definite precedent. Through analogy the judge may limit the land owner's property right not by seeking to determine what part of the air space may be legally appropriated, but by resorting to the theory of "Abus de droit". 158/

This theory could be briefly stated as follows: A person who causes prejudice to another while acting within his rights commits no fault. There are circumstances, however, when an act itself lawful may become unlawful. He who exercises his right in such a way as to prevent the equal exercise of his rights by another is committing an "abus des droits", which constitutes a fault.

As an application to this theory it might be said that a mere entering into the air space above the land is not an actionable wrong unless it cause some harm, danger or inconvenience to the occupier of the surface.

241) The aforementioned theory has been clearly stated in the new Egyptian Civil Code of 1949. An examination of the pertinent original texts of the new Civil Code relating to the theory of "Abus des droits" may be useful as a background for the purpose of this study. The draftsmen of the Egyptian Civil Code of 1949 were inspired by the Islamic doctrine on the abuse of rights. 159/ Moreover, article 1 of the said law provides that:

"La loi régit toutes les matières auxquelles se rapporte la lettre ou l'esprit de des dispositions.

A défaut d'une disposition législative applicable, le juge statuera d'après la coutume, et à son défaut, d'après les principes du droit musulman. A défaut de ces principes, le juge aura recours au droit naturel et aux règles de l'équité."

242) The Islamic doctrine of the abuse of rights is of great antiquity. It derives ultimately from provisions laid down in the Sacred Texts of the Koran. 160/ The latter development of the theory of the abuse of right was affexted by the schools of Moslem Jurisprudence which appeared in the second century of the Hegira (8th century A.D.). The four orthodox schools are those of Malik, Shafi, Hanafi and Hambal. In order to throw some light on the general trend of Islamic jurisprudence as briefly as possible, we shall discuss the main texts of Malik and his school. 161/

243) Malik originated one of the most widespread and durable schools of law. 162/ The spirit of the Maliki school is to establish a harmonious and equitable equilibrium among individual rights and to temper the law on personal rights through insistence upon the rights of one's fellow citizen. His main ideas may be stated under these three headings:

1.- A right, may not be exercised unless it leads to the end for which the right was accorded.

2.- The exercise of any right ceases to be legitimate if the damage it causes is excessive.

3.- No one may exercise his right if such exercise is of no profit

to him, and if it may cause damage to another. 163/
Malik and his disciples maintain that one may not blindly dispose of one's property. It may not be used save for the purpose for which it is owned. 164/

244) To illustrate the foregoing principles we shall cite two cases decided according to Maliki principles at that time. The first involves the case the owner of property who questioned Ibn El Quasm about the establishment of public bath, a foundry or a mill on his land. The petitioner wished to know whether the neighbours would have any legitimate right to prevent such constructions. Ibn El Quasm answered as follows: "If the buildings which you purpose to construct may cause damage to your neighbours because of the smoke, etc., the neighbours have the right to oppose your project for as Malik said : 'One must prevent a person from exercising his right if this right causes damages to his neighbours.' Therefore your project is to be refused." 165/

The seond case reads as follows: Ibn El Quasm was asked whether a proprietor has the right to oblige a neighbour to block windows in his house which would allow him to spy upon the intimate activities of the petitioner's family life. Ibn El Quasm answered in the affirmative and added that such was the opinion of Malik and Omar Ibn Al Khat't'ab. 166/

245) The new Civil Code of 1949 provides the forementioned principles of the theory of "Abus des droits" in articles 4 & 5 which read as

follows :-

Article 4: "Celui qui exerce légitimement son droit n'est point responsable du préjudice qui en résulte.

Article 5: "L'exercice du droit est considéré comme illégitime dans les cas suivants :

a) S'il a lieu dans le seul but de nuire à autrui;
b) S'il tend à la satisfaction d'un intérêt dont l'importance est minime par rapport au préjudice qui en résulte pour autrui;
c) S'il tend à la satisfaction d'un intérêt illicite."

As an application of this theory, the said Code provides in article 803 para. 2 the following:

"La propriété du sol comprend, en hauteur et en profondeur, celle du dessus et du dessous, jusqu'à la limite utile à la jouissance."

Moreover, article 806 and 807 para. 1 provide the following :

Article 806: "Le propriétaire doit, dans l'exercice de son droit, se conformer aux lois, décrets et règlements ayant pour objet l'utilité publique ou celle des particulièrs. Il doit, en outre, observer les prescriptions suivantes."

Article 807 para. 1: "Le propriétaire ne doit pas exercer son droit d'une manière excessive au détriment de la propriété du voisin."

Being remindful of the principles developed by the forementioned articles, it might be said that the individual right of property ceases when the interest of the individual must be subordinated to a superior social interest. Accordingly no one may, on account of a right of property, oppose the passage of an aircraft under conditions not presenting for him and his property any appreciable inconvenience.

246) The text of the existing aviation legislation is in agreement

with that conclusion. The right to fly over the Egyptian territory is permitted once the authorization required is given by the Civil Aviation Authority. 167/ Provided that no person shall fly any aircraft in such circumstances as, by reason of law altitude or proximity to persons or dwellings or for any other reason, to cause damage to any person or property on the ground. 168/

Chapter III.

Certain Rules Relating To The Liability of the Air Carrier in Egypt in respect of (i) the Carriage of Passengers, Goods and Luggage by Air and (ii) Damage Caused to Third Parties on the Surface.

SECTION 1.- The Law of Liability in Egypt :

247) In Egypt the contract of land and fluvial transport is governed by articles 90 - 104 of the Code of Commerce of 1883. These texts are strictly inspired by the French Code of Commerce (art. 96 - 108), hence the importance of French doctrine and jurisprudence in this matter. It should be noted that the contract of transport in Egyptian law is not governed specifically by the Civil Code, but only by the Code of Commerce. On the contrary the French Civil Code contains rules governing the contract of transport (art. 1782 seq.). The reason for the inclusion of contract of transport in the French Civil Code is explained by the fact that this contract is not always considered as commercial. On the contrary, the Egyptian legislator considers as commercial any operation of transport.

The Egyptian Code of Commerce considers only the carriage of goods and baggage. It should be mentioned that the Egyptian Civil Code and the Commercial Code contain no provisions dealing with the question of carriage of persons. The rules concerning passengers

cannot be ascertained easily. There are difficulties in applying to the carriage of persons dealing with the carriage of goods.

248) In Egypt, there is no specific ruling governing the liability of the air carrier. The law treats of aviation from the standpoint of administrative policy. Air transport was non-existent at the time the Code of Commerce was drawn up. In the absence of any national legislation on this form of transport, it may be asked whether the provisions of the Code of Commerce are applicable to it. The latter provisions have the character of common law, by that we mean they are applicable to all forms of transport where no special rules to the contrary exist. Moreover, it should be noted that the new Civil Code which came into force in 1949, has not dealt with any form of transportation, as we have stated before, but only regulates the general rules of liability, both contractual and delictual.

The rules governing the liability of the air carrier for damage done to third parties on the surface and liability for damage caused to passengers and shippers of cargo can be ascertained from the Code of Commerce of 1883 and the Civil Code of 1949 as supplemented by the decisions of the courts on matters relating to liability of land carriers. It is at present still doubtful how far this analogy will continue to be applied to new problems as they arise.

249) Traditionally in the realm of civil responsibility, following the example of the French and Egyptian Civil Codes which deal separately with liability in the case of a contract, 169/ and

liability in the absence of contract 170/; there is a distinction between delictual and contractual liability. Contractual liability, thus conceived, is to be clearly differentiated from delictual. The latter is the responsibility to repair the damage resulting from a failure to live up to a general obligation imposed by law. Contractual responsibility is the responsibility to repair the damage resulting from a failure to live up a special obligation existing in virtue of a contract. The first responsibility supposes two persons who juridically are strangers to one another; the second, two persons between whom exists a contractual bond. In Egypt the distinction seems almost dictated by the arrangement of the Civil Code.

250) Conditions of Responsibility: The conditions of responsibility in the Egyptian Civil Code require the plaintiff (unless there is a presumption of fault shifting the burden of proof from the victim to the debtor) to prove;

(a) The fault of the defendant;

(b) That such fault was in law the cause of the damage for which he seeks to recover, that is, that the act causing the damage is imputable to the defendant, and

(c) That the damage was actually suffered.

251) Fault is the basic element in civil responsibility in Egypt. There will be no responsibility unless fault is proved, or unless at least the circumstances are such that it may be presumed. Fault, legally speaking, presupposes a certain objective behaviour. This

may consist of an act either of omission or commission. In other words, it could be said that evey wrongful act, whether of omission or commission, which causes damage to another constitutes a fault. It is essential that the act be unlawful, that is, that it be committed outside of the exercise of a right. Moreover, a fault is a mode of behaviour on the part of a person, capable of realizing the nature and consequences of his act or omission. The doctrine in Egypt contends that there is no difference between contractual and delictual fault, since, both pre-suppose the existence of an obligation, both are a consequence of a breach of that obligation and both entail the obligation to compensate for the resulting damage 171/ .

Article 163 of the Civil Code provides that :

"Tout faute qui cause un dommage à autrui oblige celui qui l'a commise à le réparer."

252) The general rule as we stated before, is that a person must have been proved at fault if he is to be civilly responsibile. Exceptionally, however, there are cases in which a person is held responsible without proof of fault. The basis of responsibility is fault, although it may not be necessary to prove it. He is responsible not only for the damage caused by his own fault, but also for that caused by the fault of persons under his control and by things which he has under his care.

253) Responsibility of masters and employers : Masters and employers are responsible for the damage caused by their servants and workmen in the performance of the work for which they are employed. The

workman who causes damage while in the performance of the work for which he is employed, engages his employer's responsibility if he is in a relationship of subordination to him. The master's responsibility exists as long as this relationship continues, implying his exercise of authority and control. To interpret the words "in the performance of the work for which they are employed", it is necessary to consider the nature of the work, the latitude allowed to the workman, and the degree of authority and control exercised by the employer. The forementioned principles are provided in the following two articles of the Civil Code :

Article 174: "Le commettant est responsable du dommage causé par l'acte illicite de son préposé lorsque cet acte a été accompli par le préposé dans l'exercice ou à cause de ses fonctions.

Le lien de préposition existe même lorsque le commettant n'a pas eu la liberté de choisir son préposé, du moment qu'il a sur lui un pouvoir effectif de surveillance et de direction."

Article 175: "La personne responsable du fait d'autrui a un recours contre l'auteur du dommage dans les limites où celui-ci est responsable de ce dommage."

254) The evolution of the modern law of civil responsibility has been determined by social and industrial development. In Egypt the changes were effected by the new Civil Code of 1949. Traditionally the basis of delictual liability is fault, and normally the burden of proof is on the person alleging the fault. The progress of the mechanical age and the invention of new and complicated machinery brought on a vast increase in the number of accidents to workmen employed in factories, to passengers carried by the mechanical means

of transportation, to third parties suffered damage from such machines and in an increasing number of cases of the complicated machinery, made it impossible to prove the necessary fault by the victim. There followed the new construction placed by the Civil Code whereby in cases of damage caused by inanimate things there was held to be a presumption of fault against the person in whose care they are.

Article 178 provides that: "Quiconque se trouve tenu en vertu de la loi surveillance particulière ou la garde d'engins méchaniques répond des dommages causés par ces choses, à moins de prouver que le dommage est dû à une cause étrangère qui ne peut lui être imputée, et cela sans préjudice des dispositions spéciales."

The forementioned articles set up a presumption of fault and declare the person vicariously responsible for the acts of others.

255) As a general rule, everyone injured by the defendant's fault has a right of action to recover damages, assuming of course that he is capable of suing, or, being incapable, has the proper authorization to sue. The damages awarded will consist of the loss the plaintiff has sustained and the profit of which he has been deprived, provided always that they are the immediate and direct consequences of the defendant's fault.

Article 170 provides that :

> "Le juge détermine, conformément aux dispositions des articles 221 et 222 et tout en tenant compte des circonstances, l'étendue de la réparation du préjudice éprouvé par la victime. S'il n'est pas possible, lors du jugement, de déterminer l'étendue de la réparation d'une façon définitive, le juge peut réserver à la victime le droit de demander dans un délai déterminé une révision de l'évaluation du montant de la réparation."

Article 171 states that :

> "Le juge détermine le mode de la réparation d'après les circonstances. La réparation peut être répartie en plusieurs termes ou être allouée sous forme de rente; dans ces deux cas, le débiteur peut être astreint à fournir des sûretés.
>
> La réparation consistera en une somme d'argent. Toutefois, à la demande de la victime, le juge pourra, selon les circonstances, ordonner la réparation du dommage par la remise des choses dans leur état autérieur, ou par l'accomplissement d'une certaine prestation ayant un rapport avec l'acte illicite".

Article 221 provides that:

> "Il appartient au juge de fixer le montant des dommages-intérêts, s'il n'a pas été déterminé dans le contrat ou dans la loi. Les dommages-intérêts comprennent les pertes qu'a subies le créancier et les gains dont il a été privé, à condition que ce soit la suite normale de l'inexécution de l'obligation ou du retard dans l'exécution. La suite normale comprend le préjudice qu'il n'était pas raisonnablement au pouvoir du créancier d'éviter.
>
> "Toutefois, s'il s'agit d'une obligation contractuelle, le débiteur qui n'a pas commis de dol ou de faute lourde n'est tenu que du préjudice qui a pu normalement être prévu au moment du contrat."

256) If the loss sustained is a moral loss can the creditor claim damages ? This was a controversial question, but it has been settled since a long time. The father of a child killed by the fault of another person may not have sustained any pecuniary loss by the death of his child, but he can claim for the moral prejudice. 172/

The same rule applies in case there is contract. The new Civil Code provided in a precise way the above mentioned rules. Article 222 reads as follows:

> "Les dommages-intérêts comprennent également la réparation du préjudice moral. Le droit à la réparation du préjudice moral ne peut toutefois se transmettre aux tiers que s'il a été fixé par convention ou s'il a fait l'objet d'une demande en justice.

"Toutefois, le juge peut allouer seulement aux conjoints et aux parents jusqu'au second degré, des dommages-intérêts en raison de la douleur que leur cause la mort de la victime."

257) Contributory negligence : The principle of the Egyptian Civil Code (art. 216) is that, where the party who claims compensation for an injury caused by the fault of another has been also guilty of fault, which contributed to the accident, he must share the responsibility and in that case, the damages are not divided equally but the plaintiff is awarded only a proportion varying according to the degree in which the respective parties were to blame.

258) Cause of exoneration: There is no civil responsibility for a fortuitous event or for irresistable force because there is no responsibility without fault. The burden of proof is on the side of the debtor. Article 165 provides the cause of exoneration in case of delictual liability :

"A défaut de disposition ou de convention contraire, échappe à l'obligation de réparer le dommage, celui qui prouve que ce dommage provient d'une cause étrangère qui ne peut lui être imputée, telle que le cas fortuit ou de force majeure, la faute de la victime ou celle d'un tiers."

As to the causes of exoneration of contractual liability, it is stated in article 215 which are more or less not different of that mentioned in article 165.

Article 215: "Si l'exécution en nature devient impossible, le débiteur sera condamné à des dommages-intérêts pour l'inexécution de son obligation, à moins qu'il ne soit établi que l'impossibilité de l'exécution provient d'une cause étrangère qui ne peut lui être imputée. Il en sera de même en cas de retard dans l'exécution de son obligation."

259) Prescription: The action for damages in case of delictual liability must be brought within three years from the date the debtor knows of the damage and the person responsible for it. Article 172 of the Egyptian Civil Code states the following :

> "L'action en réparation résultant d'un acte illicite se prescrit par trois ans à compter du jour où la partie lésée a eu connaissance du dommage ainsi que de la personne qui L'a causé. Dans tous les cas, l'action en réparation se prescrit par quinze ans à partir du jour où l'acte illicite a été commis.
>
> Toutefois, lorsque cette action résulte d'un acte constituant une infraction et que l'action pénale y relative n'est pas prescrite à l'expiration des délais prévus à l'alinéa précédent, l'action en réparation ne se prescrit que lorsque l'action pénale sera elle-même prescrite."

The right to damages shall be extinguished in case of contractual liability if an action is not brought within fifteen years.

260) The method of calculating the prescription and the reasons for suspension or interruption of the prescription are provided in the following articles.

Art. 3 : "A moins de disposition spéciale, les délais seront calculés d'après le calendrier grégorien."

Art. 380: "Le délai de prescription se compte par jours, non par heures; le jour initial n'est pas compté, et la prescription n'est acquise que si le dernier jour est révolu."

Art. 382: " La prescription ne court point toutes les fois qu'il y a un obstacle, même moral, qui empêche le créancier de réclamer sa créance. Elle ne court point non plus entre représentant et représenté.

La prescription dont le délai est de plus de cinq ans ne court point contre les incapables, les absents et les personnes condamnées à des peines criminelles s'ils n'ont pas de représentant légal."

Art. 383: "La prescription est interrompue par une demande justice, même faite à un tribunal incompétent, par un commandement ou une saisie, par la demande faite par le créancier tendant à faire admettre sa créance à la faillite du débiteur ou dans une distribution, ou par tout acte accompli par le créancier au cours d'une instance, en vue de faire valoir sa créance."

Art. 385 para. (1):

"Lorsque la prescription est interrompue, une nouvelle prescription commence à courir à partir du moment où l'acte interruptif a cessé de produire son effet. La nouvelle prescription aura la même durée que la première."

261) The damage resulting from failure to execute an obligation resulting from a contract is not due unless there is "Mise en demeure" 173/ to the debtor. The following articles regulate this question.

Art. 218: "A moins de disposition contraire, les dommages-intérêts ne sont dus que si le débiteur est en demeure."

Art. 219: "Le débiteur est constitué en demeure soit par sommation ou par acte équivalent, soit par voie postale de la manière prévue au Code de procédure, soit par l'effet d'une convention stipulant que le débiteur sera constitué en demeure par la seule échéance du terme, sans besoin d'une autre formalité."

262) Joint liability: Article 169 of the Egyptian Civil Code covers the case of joint liability of the debtors in case of delictual liability. It reads as follows:

"Lorsque plusieurs personnes sont responsables d'un fait dommageable, elles sont obligées solidairement à la réparation du dommage. La responsabilité sera partagée entre elles par parts égales, à moins que le juge n'ait fixé la part de chacune dans l'obligation de réparer." 174/

SECTION 2.- Distinction between Delictual and Contractual liability:

263) At first sight, it seems easy to distinguish between contractual and delictual liability. Truly, the distinction is not easy to establish. Certainly it is beyond doubt that when the party who has caused the damage and the victim who suffered from such damage are not bound by a contract, the liability is delictual. However, when there is a contract one may hesitate before stating that liability is contractual or delictual. Is the responsibility of a carrier to his passengers, of a physician to his patient, or of a landlord to his tenant, delictual or contractual ? Does the mere existence of a contractual relationship between the parties exclude the possibility of one of them being delictual responsible to the other and, if not, can the two kinds of responsibility exist side by side, to be appealed to by the plaintiff at his discretion ?

It may be noted that liability was for a long time considered as purely delictual; contractual liability is a fact of relatively recent origin. Those responsible for the drafting of the Civil Code did not even consider the problem. Neither the French nor the Egyptian Civil Code contains any solution for this problem. Jurisprudence is equally uncertain. Courts have applied the pertinent texts at times in favour of delictual liability and on other occasions in favour of contractual liability. 175/ We will discuss hereinafter, the problem raised before the court with regard to labour contract and contracts affecting transportation of passengers.

264) In order to distinguish between contractual and delictual liability it would seem opportune to summarize the conditions under which liability is contractual. These conditions are :

(a) Existence of a valid contract;

(b) Resulting damage must be due to failure to execute obligations arising from the contract.

265) In the absence of a contract, or if the contract is null and void, liability can only be delictual. In this connection, two questions must be studied.

Existence of the Contract: Generally this question raises no difficulty. It is usually easy to establish whether two parties are bounf by a contract. However, it is frequently difficult to ascertain the precise nature of the relationship existing between the person causing the damage and the victim. It is simply a question of fact whether there is any contract. The question has arisen in Egypt notably with regard to the liability of the carrier in case of carriage performed not for reward. In other words if the carriage is done, freely without remuneration, is there a contract ? Further, in case of accident, is the carrier's liability delictual or contractual. The Commercial Code, by placing the transportation operation within the field of commercial enterprises, definitely established the remunerative character of the contract of carriage. The contract of carriage not for reward lacks one of the essential elements of a contract; price. In remunerative transport it may be easily seen that the carrier is held to an obligation of safety

toward those who paid price of passage. To compensate the risk which he runs, he has to demand an adequate price. It would not be wholly just to impose a similar obligation upon those who give this service gratuitously. However, gratuitous transport involves some voluntarily agreement between the carrier and the passenger or shipper; for this reason it must be distinguished from (clandestine) transportation e.g. the case of a stow-away who takes passage without the knowledge and in spite of him. The doctrine in Egypt is of the opinion that gratuitous transport is not a contract. It is rather an active courtesy, a free service rendered in good faith but which, gives rise to no reciprocal contractual obligation. 176/

266) Delictual responsibility of the provider of gratuitous transport : Inasmuch as there is no contract between the provider of free transportation and his passenger or his shipper, the liability of such a carrier can only be delictual. For gratuitous transport we may invoke two sources of delictual liability : (1) personal liability and, (2) liability for inanimate things.

(1) Personal liability : Before the promulgation of the new Civil Code the Mixed Court was in the habit of judging that the provider of gratuitous transport, was not responsible save in the case of gross fault or wilful misconduct. A person who accepts free transportation should foresee and be ready to accept certain ordinary risk. In view of this, he may not invoke the liability of the carrier unless he is able to prove gross fault on the part of the carrier.177/ This is no longer allowed in Egyptian law by reason of the provision

of article 217 of the Egyptian Civil Code. 178/ The carrier at the present time is responsible for damage which is due to his "Faute Légere" or "Faute Lourde".

(2) Liability for inanimate things : Some thought to saddle the provider of gratuitous transportation for liability arising from things. This opinion is based on a reading of article 178 of the new Civil Code. 179/ The Egyptian Civil Code has maintained that full responsibility falls on the custodian of a thing which requires special supervision, some mechanical device, in a word of any dangerous thing. The custodian is responsible for damage caused by these things unless he is able to prove that this damage was due to some outside cause for which he could not be responsible. The burden of proof is on the part of the debtor. It may be seen that such application would aggravate the situation of the provider of free transportation. He would be responsible not only of his personal fault, but because of his custodianship of a dangerous thing. In fact the text of article 178 of the Egyptian Civil Code establishes the principle of presumption of fault on the part of the custodian of a thing requiring special supervision or of a mechanical device. But nothing prevent the court from limiting the applicability of this article. If such limitation be accepted the liability of the provider of free transportation could be expressed in the following terms: (1) This liability is delictual; (2) It is regulated by article 163 of the Egyptian Civil Code; (3) No tacit or express agreement may exonerate the carrier from his liability; (4) In any case the burden of proof rests with the victim.

267) Validity of the Contract: In the case of nullity of contract, is liability contractual or delictual ? From the standpoint of doctrine : Some authors who follow the thesis developed by Ihering, Planiol and Ripert consider that the liability is of a contractual nature, for, in making an unvalid contract, one of the parties is guilty of culpa in contrahendo. According to other jurists, (Pothier, Aulry et Mazeand), the liability is delictual because of nullity of the contract.

But most jurists consider delictual liability as the basis for legal action. In case of nullity of contract the majority of jurists are in favour of delictual liability, inasmuch as there is no contract, and consequently there cannot be contractual liability.

According to jurisprudence liability in case of nullity of contract is subject to the rules of delictual liability both as regard the burden of proof and the nature and extent of compensation. 180/ We may note in this regard that the new Civil Code provides in article 114 the following :

> "Est nul tout acte passé par une personne atteinte de démence ou d'infirmité mentale postérieurement à la transcription de la sentence d'interdiction.
>
> Quant aux actes passés antérieurement à la transcription de la sentence d'interdiction, ils ne sont nuls que si l'état de démence ou d'infirmité était notoire au moment du contrat ou si l'autre partie en avait connaissance."

268) Failure to execute an obligation arising from the Contract: In order that there be contractual liability, the existence of a valid contract does not suffice. There must be definite failure to execute some obligation arising from the contract. It is important

to distinguish among the obligations of the contracting parties, those which are undertaken voluntarily and those imposed by the law. Failure to execute an obligation imposed by law, mandatory or permissible law engendre contractual liability. Obligations undertaken voluntarily may be essential or accessory. There is no difficulty as regards failure to execute an essential obligation. For example, in the contract of carriage of goods, the carrier is obliged to transport the goods to their destination; if there is loss or damage the shipper or receiver may sue the carrier on the bases of contractual liability. 181/ As to failure to execute an accessory obligation, the problem of the nature of liability arising from such violation was raised and discussed in the case of contracts of carriage of persons and labour. In other words, in order to determine in case of an accident occuring to a passenger during the period of carriage, whether the carrier's liability is delictual or contractual, we must determine whether the obligation of security is implicitly contained in the contract. The existence of security obligation in the contract of carriage of passengers has been heatedly debated in Egypt. It is certain that this contract obliges the carrier to transport the passenger from one place to another and imposes on the passenger the obligation to pay the fare for such transportation. But is the carrier under the obligation of carrying the passengers safely to their destination ? Failing, any provisions relative to the carriage of persons the jurisprudence has to intervene to fill such lacunae. Egyptian jurisprudence had to make a choice between the two sources of liability : delictual

and contractual. Egyptian jurisprudence before 1949 (as a whole because there were certain dissenting decisions) refused to admit the existence of any security obligation based on contract and binding the carrier. The carrier's liability is delictual, the victim should, through application of the general rules of delictual liability, prove the fault committed by the carrier. 182/ Some decisions of the courts attempted for some time to protect the passenger without having to abandon the principles of delictual liability of the carrier; they admitted the existence of a fault on the part of the carrier and some times even presumed this fault. This presumption was contrary to the rules of delictual liability in force at that time; that is why certain judgments, aiming at greater protection for all passenger admitted the existence of a contractual obligation of insuring safety. 183/

269) Recently, a decision of the court of Appeal in Alexandria (February 5th, 1950) recognized the existence of an obligation on the part of a carrier to ensure that his passenger be transported safe and sound to his destination. The decision was given on the following case: A little girl had taken her seat in the "Tanta" autobus. Before the bus could get under way a fire broke out in the car and inflicted serious burns on the child - from which she subsequently died. The victim's father sued the carrier as being responsible for the death of his child. The court of Appeal admitted that the plaintiff could choose to pursue his suit under the provisions of either delictual or contractual liability.

Subsequently, suit based on delictual responsibility was disallowed because no fault on the part of the company or its agents had been proved. Nonetheless, the court allowed continuance of the suit based on contractual responsibility.

The court recognized that the carrier is bound contractually in virtue of a tacit obligation to carry the passenger safe and sound to his destination. He may not be exonerated from this liability unless he can prove that the damage sustained was due to "Force majeure", was due to the victim's fault, or was the act of a third party.

The autobus company failed to prove any of the above. The cause of the conflagration remained unknown.

This decision established that the contract of transport of persons gives rise to "obligation de resultat" and that the company may not be discharged of its liability by the simple proof of the fact that it took all the usual precautions against fire. The court awarded the damages asked by the father. 184/

270) More recently, decision of the court of first instance at Cairo 185/ was based on the obligation to provide safe transport. This decision involved recognition of the liability of the administration of the State Railroad in the case of a fatal accident to a passenger. Thus, the safety obligation is constantly gaining ground in Egyptian jurisprudence.

271) In Egypt and in France there is no specific mention of the

safety obligation in the law. Jurisprudence may not directly impose this obligation upon litigants. It may presume its existence by interpreting the contract and by affirming that this obligation is derived from the will of the contracting parties. The obligation of safety is thus revealed to be a private obligation arising from the contract.

Really, the obligation of safety is somewhat superflous. At the present time the rules of delictual liability have been modified. The new Civil Code in Egypt recognized full liability of the custodian of inanimate things especially of things of a dangerous nature. The victim of damage caused by such things does not have to prove fault on the part of the custodian of the thing; the burden of proof falls on the part of the owner or custodian of the thing.

SECTION 3.- Stipulations of Exoneration from Liability :

A contract may contain a clause that, in the event of its not being duly performed by the debtor, he shall not be liable in damages, and that, even though the breach of contract shall be caused by his fault, or by the fault of person for whom he is normally responsible. To what extent are such stipulations valid if they are clearly expressed ?

272) It is contrary to elementary notions of good faith to allow a man who binds himself by a contract to stipulate at the same time

that if he breaks the contract intentionally he shall not be liable in damages. And there is a degree of fault so gross that the law assimilates it to wilfull intention to break the contract. If the debtor in the contract shows such negligence as to indicate complete indifference to the interests of the other party, it would be against public policy to let him escape his liability by pleading that he had stipulated for immunity culpa lata dola equiperatur. These rules taken from the Roman law have always formed a part of the French law. We will see if the said rules have or have not formed part of the Egyptian law. We shall first expose the state of jurisprudence previous to the Code of 1949. We shall then deal with solutions which may be drawn from the new text of the latter Code.

Jurisprudence Previous to the Civil Code of 1949

273) Before the promulgation of the new Civil Code of 1949 the decisions of the Egyptian Courts especially in the Mixed Courts were inspired by theoretical solutions admissible in French law, exceptions being made of the field covered by application of the Rabier law. 186/

The Mixed Court of Appeal allowed in principle the validity of non-liability clauses, but there has been an evolution of opinion on the effect of such clauses. It was held that the non-liability clause in a contract of transport does not free the carrier of his liability but shifts the burden of proof. 187/

It was stated in other case that :

> "Une pareille clause n'a pas pour effet d'exonerer le voiturier des soins qu'il est tenu d'apporter, suivant le droit commun,

" a la garde et a la conservation de la marchandise qui lui a été confiée; elle tend uniquement a limiter sa responsabilité a une valeur qui a été expressement et tacitement fixée par les parties elles-mêmes, pour les cas ou elles se trouveraient dans l'impossibilité de remplir les devoirs de preuve qui leur incombent respectivement, en ce qui regarde soit la faute de voiturier (dont il a necessairement a repondre, nonobstant toute convention contraire, des qu'elle est établie en fait), soit la force majeure qui a pour effet de le decharger de toute responsabilité. 188/

274) In another case where goods of a very fragile nature were sent by train and many of them were broken en route, it was proved that they had been reloaded again to send to the station of Abu El Ellé to which they were addressed. The bill of lading contained a clause of non-warranty, and it was proved that the administration offered the sender of the goods an option either to send them under this bill of lading with the clause "de non-garantie", or to have them sent with a man to look after them, or to insure them for a small premium. It was held that seeing that option was offered to the consignor of the goods the clause of non-warranty could not be considered as unlawful, but that the Railway Administration was liable inasmuch as fault had been proved by the fact of their having unloaded the goods at the wrong station. 189/

275) In another case part of the goods sent had disappeared en route. There was no reasonable explanation of this except that the goods had been stolen by the servants of the railway or owing to their grave negligence. In these circumstances it was held that the Railway Administration was liable for the full value of the goods

stolen and could not rely upon the clause restricting its liability to a certain sum 190/

276) The Mixed Court of Appeal placed certain limitation on the effect of these clauses. As regards Railroad transport, it was decided that the State Railways may not exonerate themselves or their servants from "faute lourde" or "Dol". The burden of proof of faute lourde or dol falls on the shipper. The Mixed Court of Appeal decided that faute lourde was proved if a portion of a cargo was discovered to be lost or if the seals placed on the freight car had been removed. 191/

It is of particular interest to notice that Egyptian jurisprudence before 1949 did not allow the carrier to exonerate himself or his servants from faute lourde or dol.

The Text of the new Civil Code as Regards the Non-Liability Clause:

277) The new Civil Code of 1949 contains an apparently clearcut text on the controversed question of the validity of non-liability clauses and of the effect of delictual and contractual liability. The latter Code allows in a very liberal fashion the use of clauses of exoneration in cases of contractual responsibility. Article 217 para. (2) states that it may be agreed that the debtor be discharged of all responsibility for failure to execute a contract save that which arises from dol or faute lourde.

Article 217 para. (2) profoundly modifies solutions previously

admitted in what concerns the liability of the debtor for fault of servants under his control. This text allows the debtor to exonerate himself through the stipulation of non-liability in case of dol and faute lourde committed by his servants.

On the other hand article 217 para. (3) prohibits most vigourously any clause of exoneration in case of delictual liability. Article 217 reads as follows :

(1) "Il peut être convenu que le débiteur prendre à sa charge les risques du cas fortuit ou de force majeure.

(2) Il peut également être convenu que le débiteur sera déchargé de toute responsabilité pour inexécution de l'obligation contractuelle, sauf celle qui naît de son dol ou de sa faute lourde. Le débiteur peut toutefois stipuler qu'il sera exonéré de la responsabilité résultant du dol ou de la faute lourde commis par les personnes dont il se sert pour l'exécution de son obligation.

(3) Est nulle, toute clause exonérant de la responsabilité délictuelle".

278) Contracts of carriage frequently include clauses which limit liability. These clauses have as their objective to fix the extent of the carrier's responsibility when he is adjudged liable. In Egyptian law non-liability clauses, in case of contractual liability, being valid, clauses which limit liability are also valid. The provisions of the new Egyptian Civil Code make certain modifications of the previous system, either in what concerns the effects of clauses which limit liability or in their field of applicability. These effects may be summarized as follows :-

(1) The indemnification due to the creditor may never be higher than the sums stipulated, even though the damage suffered may exceed

the agreed sum. Art. 225 of the Egyptian Civil Code provides that :

> "Lorsque le préjudice dépasse le montant des dommages-intérêts conventionnels, le créancier ne peut réclamer une somme supérieure, à moins qu'il ne prouve le dol ou la fautelourde du débiteur."

However, if the agreed indemnification is ludicrously low, the clause must be considered as a non-liability clause.

(2) The stipulated indemnification may be reduced if it is excessively above the real damage suffered by the creditor.

Article 224 provides that :

> "Les dommages-intérêts conventionnels ne sont pas dus si le débiteur établit que le créancier n'a point subi de préjudice.
>
> Le juge peut réduire le montant de ces dommages-intérêts si le débiteur établit qu'il est excessivement exagéré ou que l'obligation principale a été partiellement exécutée.
>
> Est nul, tout accord conclu contrairement aux dispositions des deux paragraphes précédents."

279) Conditions of applicability of clauses limiting liability :

These conditions may be summarized as follows: The clause limiting the liability may not be applied save in cases where :

(1) The carrier is responsible for the failure to execute an obligation resulting from a contract;

(2) This failure to execute the obligation arising from the contract has caused damage; and

(3) If the failure to execute the contract is not due to gross negligence or wilfull misconduct on the part of the carrier.

The burden of proving the gross negligence is on the part of the victim. Needless to say that clauses limiting liability in case of delictual responsibility are invalid.

280) Given these provisions which distinguish so clearly between the two domains of liability, it may be questioned whether the thesis of the cumulative effect of delictual and contractual liability can still be sustained. It is still possible, in Egyptian law to limit the effect of clauses of exoneration in contractual responsibility which are authorized by the Code by invoking delictual responsibility. It is certain that application of the theory of cumul would provide the courts with an excellent mean of limiting the effects of clauses of exoneration or limitation in cases of contractual responsibility.

281) Rules of Conflict of Laws in Egypt : The new Civil Code of 1949 contains 19 articles regulating conflict of laws. As these articles are self-explanatory we are going to mention them in Appendix 9 of this survey. Inasmuch as they have not been translated officially into any foreign language except French, we think it is more advisable to put them in that language.

SECTION 4.- Conclusion

282) The rules governing the liability of the air carrier for damage done to third parties on the surface and liability for damage caused to passengers and shippers of cargo can be ascertained from the Code of Commerce of 1883 and the Civil Code of 1949 as supplemented by the decisions of the courts on matters relating to

liability of land carriers.

283) Where damage or loss is caused by an aircraft in flight, taking off, or landing, or by any person in any such aircraft, or by any article falling from any such aircraft,to any person or property on land or water, damages shall be recoverable from the operator in respect of such damage or loss without proof of negligence or intention or other cause of action. The operator cannot relieve himself from liability unless on proof that the damage or loss was caused by inevitable accident. The liability of the air carrier to damage caused to third parties on the surface is delictual and therefore the rules of delictual liability, mentioned in the last three sections would be applied. Non-liability clauses, in delictual responsibility, are invalid and accordingly the clauses limiting liability are invalid too.

284) In case of loss or damage to goods and luggage carried, the air carrier is responsible contractually. He could stipulate in the contract of carriage that he is not responsible to damage or loss caused to the goods or luggage by his own fault. But he could not stipulate that he is not responsible to damage or loss caused to the goods or luggage by his own "faute lourde" or "dol". He could stipulate that he is not responsible in case of damages caused by the fault of his servants even in case of their "faute lourde" or "dol". Non-liability clauses, being valid,clauses limiting liability are valid too.

285) As to damage caused to persons during their carriage, it could hardly be said that the law is settled. The courts may consider that the carrier is responsible contractually or delictually and thus the rules applied would vary according to the source of liability chosen.

APPENDIX 1.-

Agreement
Between the Government of Egypt and
the Government of Norway
For the Establishment of Scheduled Air Services
Between and Beyond Their Respective Territories

The Government of Egypt and the Government of Norway hereinafter described as the Contracting Parties,

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the 7th day of December 1944. (hereinafter referred to as the "Convention");

Considering that it is desirable to organize international air services in a safe and orderly manner and to further as much as possible the development of international co-operation in this field;

Considering also that it is desirable to stimulate international air travel, at the lowest possible rates consistent with sound economic principles, as a means of promoting friendly understanding and goodwill among peoples and securing the many indirect benefits of this form of transportation to the common welfare of both countries,

And desiring, to conclude an agreement for the purpose of promoting commercial scheduled air transport services between and beyond their respective territories,

Have accordingly appointed the undersigned plenipotentiaries for this purpose, who, being duly authorized to that effect by their respective Governments, have agreed as follows:-

Article I.

1. Each Contracting Party grants to the other Contracting Party the right to operate air services specified in the Annex to this agreement (hereinafter referred to as the "specified air services") on the routes specified in the said Annex (hereinafter referred as the "specified air routes")

2. Subject to the provisions of this agreement, such services may be inaugurated in whole or in part, immediately or at a later date, at the option of the Contracting Party to whom the rights are granted.

Article II.

1. Each Contracting Party shall designate in writing to the other Contracting Party one or more airlines for the purpose of operating, by virtue of the present Agreement the specified air services.

2. On receipt of the designation, the other Contracting Party shall, subject to the provisions of paragraph one of this article and of Article III of the present Agreement, without undue delay grant to the airlines designated the appropriate operating permission.

3. The aeronautical authorities of one Contracting Party, before granting operating permission to an airline designated by the other Contracting Party, may require the airline to satisfy them that it is qualified to fulfil the conditions prescribed under the laws, rules and regulations which they normally apply to the operation of scheduled air services, provided that such laws, rules and regulations do not conflict with the provisions of the Convention or of the present agreement.

4. At any time after the provisions of paragraph (1) and (2) of this Article have been complied with, an airline so designated and authorized may begin to operate the specified air services.

Article III.

1. Each Contracting Party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the rights specified in Article V of the present agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those rights in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline.

2. Each Contracting Party shall have the right, to suspend the exercise by an airline of the rights specified in Article V of the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those rights in any case where the airline fails to comply with the laws, rules and regulations of the Contracting Party granting these rights or otherwise to operate in accordance with the conditions prescribed in the present Agreement. Such unilateral action, however, shall not take place before the intention to do so is notified to the other Contracting Party and consultation between the aeronautical authorities of both Contracting Parties has not led to mutual agreement within a period of thirty days from the date of the said notification.

Article IV.

1. The laws, rules and regulations of one Contracting Party,

especially those relating to entry into or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft while within its territory, shall apply to aircraft of the designated airlines of the other Contracting Party.

2. The laws, rules and regulations of one Contracting Party, especially those relating to entry into or departure from its territory of passengers, crew, or cargo of aircraft (such as regulations relating to entry, clearance, immigration, passports, customs, quarantine and exchange regulations) shall be applicable to the passengers, crew and cargo of the aircraft of the designated airlines of the other Contracting Party, while in the territory of the former contracting Party.

3. The Contracting Parties will endeavour to facilitate such regulations with regard to entry and departure of passengers in transit and aircraft crews. Luggage and cargo in transit will, subject, to compliance in other respects with the customs regulations, be exempted from customs duty, inspection fees and similar charges.

Article V.

1. In the operation of the specified air services, each Contracting Party grants the designated airlines of the other Contracting Party, subject to the provisions of Article VI and VII, the right of putting down and taking on in the territory of one Contracting Party, international traffic originating in or destined for the territory of the other Contracting Party or of a third country.

2. Paragraph (1) of this Article shall not be deemed to confer on the airlines of one Contracting Party the right to take up, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party, whatever the origin or the ultimate destination of such traffic.

Article VI.

1. There shall be a fair and equal opportunity for the designated airlines of each Contracting Party to operate on the specified air routes between their respective territories.

2. The air services provided by the designated airlines of either Contracting Party shall retain as their primary objective the provision, at a reasonable load factor, of capacity adequate to the current and reasonably anticipated traffic demands between the territory of the Contracting Party designating the airlines and the countries of ultimate destination of the traffic.

3. In the operation of the specified air services of either

Contracting Party the combined capacity provided by the designated airlines of both Contracting Parties shall be maintained in reasonable relationship to the requirements of the public for air transportation.

Article VII.

In the operation of the specified air services the rights granted to the airlines designated by either Contracting Party shall not be exercised abusively to the detriment or disadvantage of any airline of the other Contracting Party, operating on all or part of the same route.

Article VIII.

Fuel and lubricating oils taken on board aircraft of the designated airlines of one Contracting Party, in the territory of the other Contracting Party shall, subject to compliance in other respects with the customs regulations of the latter Contracting Party, be exempt from customs duties, inspection fees and similar charges imposed in the territory of that latter Contracting Party. This treatment shall be in addition to that accorded under Article 24 of the Convention.

Article IX.

1. Each Contracting Party shall cause its designated airlines to provide to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, copies of time tables, rate schedules and all other similar relevant information concerning the operation of the specified air services and copies of all modifications of such time-tables, rate schedules and information.

2. Each Contracting Party shall cause its designated airlines to provide to the aeronautical authorities of the other Contracting Party information relating to the traffic carried on their air services to, from or through the territory of the other Contracting Party showing the origin and destination of the traffic.

Article X.

When, for the purpose of economy of onward carriage of through traffic, aircraft of different capacity are used by a designated airline of one Contracting Party on different sections of a specified air route, with the point of change in the territory of the other Contracting Party, such change of aircraft should not be inconsistent with the provisions of this Agreement relating to the capacity of the air services and the carriage of traffic. In such cases the second aircraft shall be scheduled provide a connecting service with the first aircraft, and shall await its arrival, except in the case of operational necessity.

Article XI.

1. Rates shall be fixed at a reasonable level, due regard being paid to all relevant factors, including cost of economical operations reasonable profit, differance of characteristics of service (including standards of speed and accomodation) and the rates charged by the other scheduled air service operators on the route concerned or part thereof.

2. The rates to be charged by any of the airlines designated under this Agreement in respect of traffic on any of the specified air routes between the territories of the two Contracting Parties, or between the territory of a third country and the territory of one of the Contracting Parties shall be fixed either:
(a) In accordance with such rate resolutions as may be adopted by an airlines' organization to which the designated airlines, under this Agreement, are members, and accepted for that purpose by the two Contracting Parties; or
(b) by agreement between the airlines designated by both Contracting Parties to operate the agreed services where these airlines are not members of the same airlines organization, or where no resolution as referred to in 2 (a) above has been adopted; provided that, if either Contracting Party has not designated an airline in respect of any of the specified air routes and rates for that route have not been fixed in accordance with paragraph 2(a) above, the airlines designated by the other Contracting Party to operate on that route may fix the rates thereof.

3. Rates so fixed shall be submitted for approval by the aeronautical authorities of the two Contracting Parties and shall become effective thirty days after their receipt by the said aeronautical authorities unless either authority has given notice of disapproval.

4. In the event that rates are not fixed in accordance with para. 2 above or that the aeronautical authorities of either Contracting Party disapprove of the rates so fixed, the Contracting Parties themselves shall endeavour to reach agreement and shall take all necessary steps to give effect to such agreement. Should the Contracting Parties fail to agree, the dispute shall be dealt with in accordance with Article XVI. Pending the settlement of the dispute by agreement or until it is decided under Article XVI, the rates already established or, if no rates have been established, reasonable rates, shall be charged by the airlines concerned.

Article XII.

This agreement shall be registered with the Council of the International Civil Aviation Organization set up by the Convention.

Article XIII.

In a spirit of close collaboration, the aeronautical authorities of the two Contracting Parties will consult each other on the request of either authority for the purpose of ensuring the observance of the principles and the fulfilment of the provisions set out in this agreement and will exchange such information as is necessary for that purpose.

Article XIV.

If a general multilateral convention on traffic rights for scheduled international air services comes into force in respect of both contracting parties, the present Agreement shall be amended so as to conform with the provisions of such convention.

Article XV.

1. If either of the Contracting Parties considers it desirable to modify the terms of the annex to this agreement, it may request consultation between the aeronautical authorities of the two Contracting Parties, and in that event such consultation shall begin within a period of sixty days from the date of the request. Modifications agreed between these authorities will come into effect when they have been confirmed by an exchange of notes through diplomatic channel.

2. The above provisions shall not apply to changes made by either Contracting Party in points on the specified air routes other than those in the territory of the other Contracting Party and those points immediately preceding and immediately following that territory; such changes can be introduced if no objection is raised by the aeronautical authorities of the other Contracting Party within thirty days of their receipt of the notification of the change from the aeronautical authority of the first Contracting Party.

Article XVI.

1. Without prejudice to Art. XVII of this agreement, if any dispute arises between the Contracting Parties relating to the interpretation or application of the present agreement, the Contracting Parties shall, in the first place, endeavour to settle it by negotiation between themselves.

2. If the Contracting Parties fail to reach settlement by negotiation within ninety days;
(a) They may agree to refer the dispute for decision to an arbitral tribunal appointed by agreement between them or to some other person or body; or
(b) If they do not agree or, if, having agreed to refer the dispute to an arbitral tribunal, they cannot reach agreement as to its composition within thirty days, either Contracting Party may submit

the dispute for decision to the Council of the International Civil Aviation Organization.

3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this article,

4. If and so long as either Contracting Party or a designed airline of either Contracting Party, fails to comply with a decision given under para. 2 of this article, the other Contracting Party may limit, withhold or revoke any rights which it has granted by virtue of the present agreement to the Contracting Party in default or to the designated airlines of that Contracting Party or to the designated airline in default.

Article XVII.

Either Contracting Party may at any time give notice to the other, if it desires to terminate this agreement. Such notice shall be simultaneously communicated to the Council of the International Civil Aviation Organization. If such notice is given, this Agreement shall terminate twelve months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period.

In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen days after the receipt of the notice by the Council of the International Civil Aviation Organization.

Article XVIII.

1. For the purpose of this Agreement the term "aeronautical authorities" shall mean, in the case of the Egyptian Government, the Director General of Civil Aviation for the time being, and any person or body authorized to perform any functions presently exercised by the said Director and, in the case of the Norwegian Government, the Director General of Civil Aviation for the time being, and any person or body authorized to perform any functions presently exercised by the said Director.

2. The term "designated airlines" shall mean the air transport enterprise which the aeronautical authorities of one of the Contracting Parties have notified in writing to the aeronautical authorities of the other Contracting Party as being the airlines designated by it for the operation of the specified air services.

3. The annex to this agreement shall be deemed to be part of the Agreement and all references to the "Agreement" shall include references to the Annex, except where otherwise expressly provided.

Article XIX.

After the constitutional requirements have been fulfilled by

the Government of Egypt, this Agreement shall enter into force as soon as both Contracting Parties have exchanged notes through the diplomatic channel to that effect.

In witness thereof the undersigned plenipotentiaries, being duly authorized there-to-by their respective Governments, have signed the present agreement and have affixed thereto their seals :

Done at Cairo the day of 1949

in the Arabic, Norwegian & English languages, each of which shall be of equal authenticity.

ANNEX

A.

1. The airlines designated by the Government of Egypt shall be entitled to operate air services in both directions on each of the routes specified, and to land for traffic purposes in the Norwegian territory at the points specified in this paragraph :

(a) Routes terminating in the Norwegian territory
(to be determined later)

(b) Routes traversing Norwegian territory
(to be determined later)

2. The airlines designated by the Government of Norway shall be entitled to operate air services in both directions on each of the routes specified, and to land for traffic purposes in Egypt at the points specified in this paragraph :

(a) Routes terminating in Egyptian territory
(to be determined later)

(b) Routes traversing Egyptian territory

1. Oslo and/or Stavanger - Amsterdam - Geneva - Rome - Athens - Cairo - Basra and/or Abadan - Bombay - Calcutta - Bangkok - Hong kong - Shanghai

2. Norway via intermediate points to Cairo and points beyond southwards in Africa.

(All points whether intermediate or beyond to be determined later)

B.

In case the designated airlines of either Contracting Party do not handle their own traffic in the territory of the other Contracting Party through their own office and by their own personnel, the airlines will be free to assign such functions to an organization of their choice approved by the aeronautical authorities of the other Contracting Party and bearing, whenever possible, the nationality of that authority.

Echange of Notes

In Connection with the Conclusion of

A Norwegian-Egyptian Air Transport Agreement

I. Note from Norwegian Signatory :

I have the honour to refer to the Air Transport Agreement signed between the Government of Norway and the Government of Egypt and to inform you that the Norwegian Government, in accordance with article II (1) of the Agreement, designate :

A) Braathens South - American and Far East Air Transport A/S (SAFE) to operate the route specified in the Annex to the Agreement under section 2 (b) (I) :

Oslo and/or Stavanger - Amesterdam - Geneva - Rome - Cairo - Basrah - and/or Abadan - Karachi - Bombay - Calcutta - Bangkok - Hong Kong - Shanghai,

B) Det Norske Luftfartsselskap A/S (DNL) to operate the route specified in the Annex to the Agreement under section 2 (b) (2) as follows :

Oslo - Stockholm and/or Copenhagen - Amesterdam - Zurich - Rome - Athens - Cairo - Khartom ¾ Nairobi - Johannesburg and/or Cape-town,

In this connection and with reference to the corresponding Agreements signed between the Government of Egypt and the Government of Denmark and Sweden respectivàly, I have the honour to confirm on behalf of my Government the following understanding reached in the course of the negotiations which led to the signature of the Agreement:

1. Det Norske Luftfartsselskap A/S (DNL) co-operating with Det Danske Luftfartsselskab (DDL) and Aktiebolaget Aerotransport (ABA) under the designation of Scandinavian Airlines System (SAS) - may operate the services assigned to it under the Agreement with aircraft, crews and equipment belonging to one or both of the other airlines.

As long as this co-operation scheme is pursued, Det Norske Luftfartsselskap A/S (DNL) will operate the specified air routes only as a member of Scandinavian Airlines System (SAS).

2. In so far as Det Norske Luftfartsselskap A/S (DNL) employ aircraft, crews and equipment of the other airlines participating in the Scandinavian Airlines System (SAS), the provisions of the Agreement shall apply to such aircraft, crews and equipment as though they were the aircraft, crews and equipment of Det Norske Luftfartsselskap A/S (DNL), and the competent Norwegian authorities and Det Norske Luftfartsselskap A/S (DNL) shall accept fàll responsibility under the Agreement therefor.

Exchange of Notes

In Connection with the Conclusion of

A Norwegian-Egyptian Air Transport Agreement

II. Note of the Egyptian Signatory :

I have the honour to acknowledge the receipt of your letter of to-day in the following terms :

"I have the honour to refer to the Air Transport Agreement signed between the Government of Norway and the Government of Egypt and to inform you that the Norwegian Government, in accordance with article II (1) of the Agreement, designate :

A) Braathens South - American and far East Air Transport A/S (SAFE) to operate the route specified in the Annex to the Agreement under section 2 (b) (I) :

Oslo and/or Stavanger -Amesterdam -Geneva- Rome- Cairo- Basarah - and/or Abadan -Karachi - Bombay- Calcutta -Bangkok Hong kong - Shanghai,

B) Det Norske Luftfartsselskap A/S (DNL) to operate the route specified in the Annex to the Agreement under section 2(b) (2) as follows :

Oslo -Stockholm and/Or Copenhagen -Amesterdam - Zurich -Rome- Athens -Cairo -Khartoum- Nairobi - Johannesburg and/or Cap-town.

In this connection and with reference to the corresponding Agreements signed between the Government of Egypt and the Governments of Denmark and Sweden respectively, I have the honour to confirm on behalf of my Government the following understanding reached in the course of the negotiations which led to the signature of the Agreement :

1. Det Norske Luftfartsselskap A/S (DNL) co-operating with Det Danske Luftfartsselkab (DDL) and Aktiebolaget Aerotransport (ABA) under the designation of Scandinavian Airlines Syatem (SAS) - may operate the services assigned to it under the agreement with aircraft, crews and equipment belonging to one or both of the other airlines.

As long as this co-operation scheme is pursued, Det Norske Luftfartsselskap A/S (DNL) will operate the specified air routes only as a member of Scandinavian Airlines System.

2. In so far as Det Norske Luftfartsselskap A/S (DNL) employ aircraft, crews and equipment of the other airlines participating in the Scandinavian Airlines System (SAS), the provisions of the Agreement shall apply to such aircraft, crews and equipment as though they were the aircraft, crews and equipment of Det Norske Luftfartsselskap A/S (DNL), and the competent Norwegian authorities and Det Norske Luftfartsselskap A/S (DNL) shall accept full responsibility under the Agreement therefor.

MINISTRY OF WAR & MARINE

CIVIL AVIATION DEPARTMENT

Ref. No. 75/32/1
Enclos : 14274

Egypt, Cairo, 28th Dec. 1950.

Secretary General
I.C.A.O.
Int. Aviation Dldg.,
Montreal, CANADA.

Sir,

Reference to your letter no. EC 4/2.20 dated 11th of December 1950, I have the honour to enclose herewith the following documents concerning the Air Transport Agreement concluded between the Royal Government of Egypt and the Government of Norway :-

1. Five certified copies of the said agreement (in Arabic & English).
2. Five certified copies of the notes exchanged between the two governments supplementing the above mentioned agreement (in Arabic & English).
3. Three copies of the exchange of notes relating to the entry into force of the said agreement.

H. E. Mohamed Salah El Din Bey Minister of Foreign Affairs signed the said agreements on behalf of the Egyptian Government, and H.E. Francis Irgens the Minister Plenipotentiary of Norway in Egypt signed on behalf of the Government of Norway.

Pursuant to art. XIX of this agreement, it became in force from the 30th of September 1950.

I would appreciate if necessary steps will be taken to register the above mentioned agreement with the Council of the International Civil Aviation Organization.

I have the honour to be,

Sir,

Your obedient servant,

(M. R. Moursi)
Director General
Civil Aviation.

APPENDIX 2.

Loi No. 15 de 1947 portant approbation de la Convention relative à l'Aviation Civile Internationale, signée à Chicago le 7 décembre 1944.@ @

NOUS, FAROUK 1er, ROI d'EGYPTE,

Le Sénat et la Chambre des Députés ont adopté;
Nous avons sanctionné et promulguons la loi dont la teneur suit :

Article unique - Est approuvée la Convention relative à l'Aviation Civile Internationale annexée à cette loi@, et signée à Chicago le 7 décembre 1944.

Nous ordonnons que la présente loi soit revêtue du sceau de l'Etat, publiée au "Journal Officiel" et exécutée comme loi de l'Etat.

Fait au Palais de Koubbeh, le 9 Rabi Tani 1366 (2 mars 1947).

FAROUK

Par le Roi :

Le Président du Conseil des Ministres,
MAHMOUD FAHMY EL-NOKRACHI.

Le Ministre des Affaires Etrangères,
MAHMOUD FAHMY EL-NOKRACHI.

(Traduction officielle)

@@ Journal Officiel Du Gouvernement Egyptien No. 20, Jeudi 6 Mars 1947.

@ Le texte de la Convention sera publié avec le décret de promulgation.

APPENDIX 3.

Loi No. 16 de 1947 portant approbation de l'Accord au Transit des Services Internationaux, signé à Chicago le 7 décembre 1944. @@

NOUS FAROUK ler, ROI d'EGYPTE,

Le Sénat et la Chambre des Députés ont adopté ;
Nous avons sanctionné et promulguons la loi dont la teneur suit :

Article unique - Est approuvé l'accord relatif au Transit des Services Internationaux annexé à cette loi @, et signé à Chicago le 7 décembre 1944.

Nous ordonnons que la présente loi soit revêtue du sceau de l'Etat, publiée au "Journal Officiel" et exécutée comme loi de l'Etat.

Fait au Palais de Koubbeh, le 9 Rabi Tani 1366 (2mars 1947).

FAROUK

Par le Roi :

Le Président du Conseil des Ministres,
Mahmoud Fahmy El-Nokrachi.

Le Ministre des Affaires Etrangères,
MAHMOUD FAHMY EL-NOKRACHI.

(Traduction Officielle)

@@ Journal Officiel Du Gouvernement Egyptien, No. 20. Jeudi 6 Mars 1947

@ Le texte de l'accord sera publié avec le décret de promulgation.

Appendix 4.

Décret-loi sur la Police de la Navigation Aérienne @@

NOUS, FAROUK ler, Roi d'EGYPTE

Vu l'article 14 du décret du 23 mai 1935 reglementant la navigation aérienne;

Sur la proposition de notre Ministre de la Defense Nationale et l'avis conforme de notre Conseil des Ministres;

Decretions :

Art. 1.- Aux fins du présent décret et des arrêtés pris pour son execution, et a moins que le texte n'en dispose autrement:

Le mot "aéronef" désigne tout appareil pouvant se soutenir dans l'atmosphére grâce aux réactions de l'air;

Le mot "aerostat" designe un aéronef se soutenant dans l'air statiquement;

Le mot "ballon" designe un aérostat (libre ou captif) n'ayant aucun organe motopropulseur;

Le mot "dirigeable" designe un aerostat muni d'un organe motopropulseur et de moyens de direction;

Le mot "aerodyne" designe un aeronef à sustentation dynamique obtenue par la réaction de l'air sur des surfaces en mouvement relatif;

Le mot "avion" designe un aérodyne muni d'un organe motopropulseur et dont la sustentation est assurée par les réactions aerodynamiques sur des surfaces restant fixes au course d'un même régime de vol;

Le mot "planesur" designe un aerodyne non muni d'un organe motopropulseur et dont la sustentation est assurée par les réactions aerodynamiques sur des surfaces restant fixes au cours d'un même regime de vol;

L'expression "aeronef militaire" designe l'aeronef appartenant à l'armée, à la marine ou à l'aviation militaire. Tout aeronef exerçant un acte de défense nationale et commandé par un militaire est considéré comme aéronef militaire;

L'expression "vol normal" designe tout vol qui ne comporte pas de changements brusques d'altitude ou d'assiette;

@@ Journal Officiel du Gouvernement Egyptien, No. 57 du Jeudi 8 Mai 1941.
(traduction officielle)

L'expression "vol d'acrobatie" designe les evolutions aériennes, effectuées volontairement, qui comportent des changements brusques d'altitude ou d'assiette.

Art. 2.- Tout aéronef devra se conformer aux règles générales de la circulation aérienne, ainsi qu'aux règlements sur les feux, balisages de jour et signaux, qui seront établis par arrêtés ministériels.

Art. 3.- Tout aéronef devra observer les règles de la securité publique et la sauvegarde des habitants et des biens. Ces règles seront déterminées par arrêtés ministériels, qui traiteront notamment les questions suivantes :

1. Le survol des agglomérations;
2. Le survol de la mer et des eaux interieures;
3. Le vol d'acrobatie, ainsi que le vol dangereux qui serait donné en spectacle;
4. La defense de fumer à bord d'un aéronef;
5. Le vol d'un aéronef sans pilote;
6. Les compartiments affectés au personnel et aux passagers;
7. Le remorquage des aéronefs;
8. Les jets et les décharges des aéronefs.

Art. 4.- Sous réserve des dispositions des accords ou traités conclus entre l'Egypte et les pays etrangers, aucun aéronef militaire étranger ne pourra survoler le territoire Egyptien, ni y atterrir, sans avoir obtenu une autorisation spéciale du Ministre de la Defense Nationale.

Art. 5.- Aucun appareil radio-électrique ne pourra être installé à bord d'un aéronef sans une licence spéciale délivrée à cet effet par l'autorité compétente de l'Etat sur le registre duquel l'aéronef est immatriculé.

Cet appareil ne pourra être employé que pour la circulation et la sécurité de l'aéronef et par les membres du personnel munis d'une licence spéciale délivrée à cet effet par l'autorité désignée à l'alinéa premier et à la condition de se conformer aux disposition des lois et règlements en viguer en Egypte.

Art. 6.- Sauf autorisation du Ministre, il est interdit de transporter à bord d'un aéronef les articles suivants :

1. Les explosifs, sauf ceux qui sont necessaires au fonctionnement de l'aéronef ou pour donner les signaux prescrits;
2. Les armes et les munitions de guerre;
3. Les pigeons voyageurs;
4. Les objects de correspondance compris dans le monopole postal;
5. Tout autre objet designé par arrêté ministeriel.

Art. 7.- Sauf autorisation écrite et préable du Ministre, il est est défendu à toute personne à bord d'un aéronef de prendre des photographies de tout ou partie d'un aérodrome, d'un zone interdite ou d'un établissement appartenant aux forces navales, militaires ou aériennes.

Les appareils photographiques ou tous autres appareils similaires peuvent être conservés par le pilote ou le commandant de façon àne pouvoir être employés pendant le vol de l'aeronef.

Art. 8.- Seront prescrits par arrêté ministeriel les points entre lesquels les aéronefs doivent passer et les routes qu'ils doivent suivre en arrivant en Egypte venant de l'étranger ou sortant de l'Egypte pour l'étranger et en survolant le térritoire Egyptien.

Tout aéronef arrivant en Egypte venant de l'etranger ou sortant de l'Egypte pour l'étranger doit atterrir dans un aerodrome douanier ou il sera soumis aux mesures de dédouanage, sous les réserves suivantes :

1. Lorsque, par suite d'un accident ou a cause du mauvais temps, ou en tout autre cas de force majeure, un aéronef venant à l'Egypte de l'étranger ou sortant de l'Egypte pour l'étranger, se trouve forcé de ne pas suivre les routes prescrites ou de passer loin des points fixés, il doit atterrir dans l'aerodrome douanier Egyptien le plus proche ou tout autre aerodrome specialement designé dans ce but et se conformer aux mesures de contrôle ordonnées par les autorités compétentes;

2. Lorsque un aéronef se trouve forcé d'atterrir avant d'arriver à un aérodrome douanier ou un aérodrome spécialement désigné dans ce but, le pilote doit aviser immediatement l'autorité locale la plus proche et présenter le livre de bord àpremière réquisition.

Les marchandises ne pourront être déchargées et les passagers ne pourront quitter le lieu d'atterrissage sans l'autorisation de l'autorité locale compétente précitée.

Un arrêté du Ministre déterminera les formalités qui doivent être remplies dans les aérodrome douaniers envers les aéronefs venant en Egypte de l'étranger ou sortant de l'Egypte pour l'étranger, et désignera les aérodromes douaniers et les autres aérodromes affectés à l'atterissage forcé.

Art. 9.- Les aérodromes désignes par arrêté ministeriel pourrant être utilisés par les aéronefs à la condition de se conformer aux lois et règlements relatifs au survol des aerodromes et à leur usage, et de payer les droits fixés par le tarif.

L'atterrissage et le vol ne pourront avoir lieu ailleurs que dans les aérodromes susmentionnés, sauf autorisation du Ministre et dans les conditions y stipulées.

Le tarif des droits sera établi par arrêté ministeriel.

Art. 10.- Le pilote doit aviser immediatement l'autorité compétente de tout accident survenu à l'aéronef qui causerait la mort ou des blessures à une personne ou qui endommagerait sérieusement l'aéronef. Lorsque le pilote dans l'impossibilité de le faire, l'avis sera donné par un des membres du personnel de l'aéronef. Une enquête technique devra avoir lieu en vue de déterminer les causes de l'accident. A moins que le Ministére n'en décide autrement, l'aéronef ou ses débis seront détenus jusqu'àla fin de l'enquête. Cette enquête se fera indépendamment de toute investigation ou instruction des sutorités judiciaires.

Art. 11.- Le pilote et les membres du personnel de l'aéronef devront présenter, à toute réquisition du délégué du Ministére, tout certificat, livre de bord ou autorisation personnelle ou de l'aéronef devant se trouver entre ses mains conformement aux dispositions des lois règlements en vigueur.
Tout aéronef qui transporte contre rémunération des personnes ou marchandises, doit porter, parmi ses documents :
1. Une liste nominative des passagers;
2. Les lettres du transport aérien et le manifeste des marchandises.

Art. 12.- Il est interdit au pilote, à tout navigateur, ingénieur ou autre membre du personnel de l'aéronef de se trouver dans un état entraînant une incapacité de travail, provoqué par des boissons alcooliques, sédatifs, stimulants ou toute autre drouge.
Il est interdit à toute personne présentant des symptomes d'ivresse d'entrer ou de rester dans l'aéronef.

Art. 13.- Les agents du Ministére peuvent entrer pour inspéction dans toute usine fabriquant les pièces de rechange et tout atelier de montage ou de réparation des aéronefs, pendant les heures de travail. Ils peuvent prendre connaissance de tout croquis et plans relatifs aux dites pièces.

Art. 14.- Notre Ministre de la Défense Nationale est chargé de l'execution du présent décret, qui entrera en vigueur dés sa publication au "Journal Officiel".

Fait au Palais d'Abdine, le 8 Rabi Tani 1360 (5 mai 1941).

FAROUK

Par le Roi :
Le Président du Conseil des Ministres,
HUSSEIN SIRRY

Le Ministre de la Défense Nationale
HASSAN SADEK

APPENDIX 5.

Loi No. 27 de 1941 sur l'Etablissement de zones de Danger autour des Aérodromes. @@

Nous, FAROUK ler, Roi d'EGYPTE

Le Sénat et le Chambre des Députés ont adopté;
Nous avons sanctionné et promulguons la loi dont la teneur suit :

Art. 1.- Le Ministre de la Defense Nationale pourra par arrêté publié au "Journal officiel", établir autour de tout aérodrome, sur une largeur maximum de 400 mètres, une zone dite "zone de danger".

Art. 2.- A moins d'une autorisation préable du Ministre de la Defense Nationale, il est interdit dans la zone de danger, d'élèver des constructions, d'installer des poteaux ou des câbles de transmission, de planter des arbres, de pratiquer des excavations, et d'une manière générale, d'exécuter tous ouvrages constituant un obstacle quelconque à la navigation aérienne.

En aucun cas, la hauteur des constructions, plantations ou ouvrages, ne devra depasser le vingtième de la distance les séparant du périmetre de l'aérodrome.

Art. 3.- La hauteur de construction, plantations ou ouvrages élève autour de la zone de danger ne devre pas depasser les limites prévues au dernier alinea de l'article précedent.

Art. 4.- Il est interdit d'allumer dans le voisinage d'un aérodrome des feux avenglants ou des feux susceptibles d'être confondus avec les feux et balises prescrits pour la navigation aérienne ou qui sont de nature à empêcher la parfaite visibilité.

Art. 5.- Toute infraction aux dispositions de la présente loi sera punie d'un emprisonnement ne dépassant pas un mois et d'une amende n'excedant pas dix livres Egyptiennes ou de l'une de ces peines seulement.

Le tribunal ordonnera en outre, suivant le cas, la démolition de la construction, la suppression des plantations ou des ouvrages, la reduction de leur hauteur ou l'enlevement des feux, le tout aux frais du contrevenant.

@@ Journal Officiel No. 69 du Juin 1941.

Art. 6.- Sans préjudice des poursuites pénales, les Ministére de la Défense Nationale pourra prendre d'office, aux frais du contrevenant, toutes mesures nécessaires pour suspendre les travaux ou pour masquer les feux incriminés.

Art. 7.- Les infractions aux dispositions de la présente loi seront jugées d'urgénce.

Art. 8.- Les officiers des aérodromes auront aux fins de l'application de la présente loi, la qualité d'officiers de police judiciaire.

Art. 9.- En ce qui concerne aérodrome existant lors de la promulgation de la présente loi, ou ceux qui seront crées dans l'avenir, le Ministre de la Défense Nationale pourra, par arrêté ordonner soit la demolition des constructions ou la suppression des plantations ou ouvrages préexistant dans la zone de danger, soit la reduction de leur hauteur dans la dite zone et dans la zone environnante.
La arrêté fixera le délai dans lequel la démolition, la suppression ou la reduction devront être executées et sera signifié au propriétaire par les voies administratives. Faute d'execution par le propriétaire dans délai fixé, il y sera procédé, à ses frais, par le soins du Ministère.

Art. 10.- La démolition des constructions, la suppression des plantations et ouvrages la réduction de leur hauteur dans les conditions prévues à l'article précédent, donneront lieu au profit du propriétaire, au paiement d'une indemnité qui sera fixée par une Commission d'Evaluation dont la composition sera determinée par arrêté du Ministre de la Défense Nationale.

La decision de la Commission sera notifiée par les voies administratives, au propriétaire qui pourra, dans les trente jours de la notification, faire opposition devant le tribunal de premiere instance compétent. Le jugement à intervenir ne sera susceptible d'aucun recours.

Art. 11.- Nos Ministres de la Défense Nationale et de la justice sont chargés de l'exécution de la présente loi, qui entrera en vigueur des sa publication au "Journal officiel".

Nous ordonnons que la présente loi soit revêtue du sceau de l'Etat, publiée au "Journal officiel" et exécutée comme loi de l'Etat.

Fait au Palais d'abdine, le 29 Rabi Tani 1360 (26 mai 1941)

FAROUK

Par le Roi
Le Président du Conseil des Ministres
HUSSEIN SIRRY

Le Ministre de la Justice
Mohamed Helmi Issa

Le Ministre de la Défense Nationale
HUSSEIN SADEK

(Journal Officielle)

APPENDIX 6.

Décret-Loi No. 57 de 1935 sur la Navigation Aérienne @@

NOUS, FOUAD 1er, ROI d'EGYPTE,

Vu Notre Rescrit No. 67 de 1934;

Sur la proposition de Notre Ministre de Communications et l'avis conforme de Notre Conseil des Ministres;

DECRETIONS :

Art. 1.- L'Etat exerce une souveraineté pleine et exclusive sur l'espace atmosphérique au-dessus de son territoire.

Dans le terme "territoire" sont comprises les eaux territoriales adjacentes.

Art. 2.- La règlementation de la Navigation Aérienne sera établie par décrets.

Art. 3.- Notre Ministre des Communications est chargé de l'exécution du présent décret-loi qui entrera en vigueur dès sa publication au "Journal Officiel".

Nous ordonnons que le présent décret-loi soit revêtu du sceau de l'Etat, publié au "Journal Officiel" et exécuté comme loi de l'Etat.

Fait au Palais de Koubbeh, le 20 Safar 1354 (23mai 1935).

FOUAD

Par Le Roi :

Le Président du Conseil des Ministres,
MOHAMED TEWFICK NASSIM

Le Ministre des Communications,
ABDEL MAGUID OMAR

(Traduction officielle)

@@ Journal Officiel du Gouvernement Egyptien No. 47. Mai 27,1935.

APPENDIX 7.

Décret Règlementant la Navigation Aérienne. @@

NOUS, FOUAD 1er, ROI d'EGYPTE,

Vu l'article 2 du Décret-Loi No. 57 de 1935 sur la navigation aérienne;

Sur la proposition de Notre Ministre des Communications et l'avis conforme de Notre Conseil des Ministres;

DECRETONS :

Art. 1.- Il est défendu àtout aéronef de survoler le territoire égyptien ou d'y atterrir sans avoir obtenu l'autorisation préalable du Ministre des Communications.

Le mot aéronef désigne tous les ballons, captifs ou libres, les dirigeables, les avions, les cerfs-volants et les planeurs ainsi que tous autres appareils aptes à s'élever ou à circuler dans les airs.

Art. 2.- L8autorisation ne sera accordée qu'aux aéronefs pourvus d'un certificat régulier d'immatriculation dans leur pays d'origine et d'un certificat de navigabilité délivré régulièrement ou rendu exécutoire par les autorités de ce pays.

Art. 3.- L'autorisation est accordée aux conditions suivantes :

a) L'aéronef devra porter ostensiblement ses marques de nationalité et d'immatriculation ainsi qu'une plaque indiquant le nom et le domicile du propriétaire, le tout de la manière prescrite;

b) L'aéronef devra avoir à bord tous les instruments, installations et appareils qui seront prescrits dans les conditions particulières de son vol;

c) L'aéronef devra être muni des documents prescrits, ainsi que du carnet de route lequel sera tenu à jour de la façon et dans la forme prescrites;

d) Le personnel de l'aéronef devra être du nombre et avoir les qualifications prescrites et être muni de brevets d'aptitude et de licences valables, délivrés ou rendus exécutoires par l'autorité compétente de l'Etat sur le registre duquel l'aéronef est immatriculé.

@@ Journal officiel du Gouvernement Egyptien, No. 47 du 27 mai 1935.

(Traduction Officielle)

Par "personnel" on entend le commandant, les pilotes, les navigateurs, les mécaniciens et tout autre membre du personnel de l'aéronef;

e) Les conditions auxquelles le certificat de navigabilité aura été délivré ou rendu exécutoire devront être observées;

f) Les règles édictées par les décrets et arrêtés pris en exécution du présent décret devront également être observées.

Toutefois le Ministre des Communications pourra exempter de l'une ou plusieurs des dites conditions; les cerfs-volant, planeurs ou tous autres appareils similaires n'ayant pas de moyen propre de population.

Aux fins du présent article, le mot "prescrit" signifie prescrit par les lois et les réglements en vigueur dans l'Etat sur le registre duquel l'aéronef est immatriculé.

Art. 4 .- L'autorisation pour un aéronef est personnelle. Elle devient nulle et non avenue en cas de changement de propriétaire.

Elle est accordée pour une période ou un voyage déterminé.

Art. 5.- Indépendamment de l'autorisation prévue aux articles précédents, une autorisation spéciale est nécessaire pour utiliser en Egypte un aéronef aux fins suivantes :

Le transport contre rémunération des personnes ou marchandises;

2. Les vols d'instruction;

3. Toutes autres entreprises aériennes contre rémunération.

Art. 6.- Pour les vols d'essai technique aux fins de délivranée d'un certificat de navigabilité, l'autorisation est remplacée par un permis spécial du Ministre.

Pour les vols aux fins d'instruction ou aux fins d'obtention d'une licence ou brevet d'aptitude, le Ministre peut dispenser des conditions prévues à l'article 3.

Art. 7.- En cas de condamnation pour contravention au présent décret ou aux décrets et arrêtés pris pour son exécution, le Ministre des Communications peut suspendre pour une durée déterminée ou retirer définitivement toute autorisation ou tout certificat de navigabilité d'un aéronef ou toute licence au personnel, délivrés par lui. Il peut également dans ce cas révoquer toute validation qu'il aurait donnée aux certificats ou licences dont seraient munis un aéronef ou son personnel.

Le Ministre peut également suspendre pour une durée déterminée ou retirer définitivement toute autorisation lorsqu'il l'estime nécessaire dans l'intérêt de l'ordre public.

Art. 8.- Il sera tenu au Ministère des Communications un registre matricule égyptien des aéronefs. Pour être inscrit sur le dit registre, il faut que l'aéronef ne soit pas immatriculé dans un autre Etat et qu'il appartienne en entier à des sujets égyptiens ou à une société remplissant les conditions suivantes :

1. Pour une société en nom collectif, tous les associés devront être des sujets égyptiens;

2. Pour une société en commandite, tous les associés responsables devront être des sujets égyptiens;

3. Pour une société anonyme, elle devra être de nationalité égyptienne et la majorité des administrateurs ainsi que le président devront être de nationalité égyptienne.

Tout aéronef immatriculé au registre égyptien a la nationalité égyptienne.

Art. 9.- L'aéronef sera rayé du registre matricule égyptien dans les cas suivants :

a) Si les conditions prescrites à l'article précédent cessent d'être remplies;

b) En cas de changement ou de décés du propriétaire;

c) En cas de destruction, perte ou mise hors d'usage de l'aéronef.

Art. 10.- Les aéronefs inscrits sur le registre matricule égyptien ne pourront circuler en dehors des limites du territoire égyptien sans une autorisation préable du Ministre des Communications à cet effet. Les dispositions du présent décret et des décrets et arrêtés pris pour son exécution leur demeuront applicables en tant que leur application n'est pas en conflit avec les lois et règlements de l'Etat étranger.

Art. 11.- Les lois et règlements applicables en ce qui concerne l'entrée des personnes en Egypte ou leur sortie ainsi que l'importation et l'exportation des marchandises par voie de mer ou de terre, s'appliqueront également à l'entrée et à la sortie des personnes, ainsi qu'à l'importation et l'exportation des marchandises par la voie de l'air.

Art. 12.- Les délégués des Douanes, de la Sécurité Publique, du Service Quarantenaire et de l'Administration de l'Hygiène Publique ainsi que tous autres fonctionnaires délégués par le

Ministre des Communications pourront, pour surveiller l'application du présent décret ainsi que des décrets et arrêtés pris pour son éxécution, ordonner à tout aéronef en évolution d'atterrir. Ils pourront également et sans formalités préalables visiter et examiner l'aéronef son contenu et empêcher son vol. Ils auront à cet effet qualité d'officiers de police judiciaire.

Ces délégués pourront retenir tout aéronef, tous livres de bord, tous certificats, brevets et licences, toutes personnes et marchandises à bord, jusqu'à ce que les mesures prescrites par les autorités compétentes ou les formalités réglementaires aient été éxécutées ou remplies.

Art. 13.- Les autorisations, certificats, brevets et licences délivrés ou rendus exécutoires en vertu des dispositions du présent décret ou des décrets et arrêtés pris pour son exécution le seront aux risques et périls des bénéficiaires sans que le Gouvernement puisse encourir de ce chef aucune responsabilité.

Art. 14.- Un décret réglementera la police de la navigation aérienne.

Art. 15.- Les aéronefs appartenants à des étrangers résidant en Egypte, même non immatriculés dans un autre Etat, pourront, aux fins d'être employés en Egypte, être inscrits dans un registre spécial d'aéronefs étrangers.

L'autorisation prévue à l'article premier leur sera accordée aux conditions déterminées par un arrêté du Ministre des Communications.

Ces aéronefs seront soumis aux dispositions des lois et réglements en vigueur sur la navigation aérienne, en tant qu'elles ne sont incompatibles avec les conditions de leur inscription. Toutefois, ila ne peuvent requérir l'autorisation prévue à l'article 10.

Art. 16.- Sans préjudice des dispositions plus graves prévues par les lois et réglements, toute contravention à l'une quelconque des dispositions du présent décret ou des décrets ou arrêtés pris pour son exécution sera punie d'un emprisonnement ne dépassent pas sept jours et d'une amende n'excédent pas P.T. 100 ou de l'une de ces deux peines seulement.

Tout aéronef, instrument, installation ou appareil de bord en contravention pourra être saisi administrativement.

En cas de condamnation pour défaut d'autorisation, ou pour toute autre infraction lorsque le Ministre des Communications par application de l'article 7 aura suspendu ou retiré définitivement l'autorisation, l'aéronef pourra être détenu par les soins de l'administration jusqu'à ce que l'autorisation ait été accordée ou la période de suspension expirée.

Cette détention qui aura lieu aux frais, risques et périls du propriétaire de l'aéronef prendra toutefois fin si l'aéronef est

vendu ou cédé ou s'il est expédié en dehors des limites du territoire égyptien dans les conditions établies par arrêté du Ministre des Communications.

Art. 17.- Les contraventions ci-dessus seront poursuivies et jugées d'urgence.

Art. 18.- Nos Ministres de l'Intérieur, des Finances et des Communications sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret qui entrera en vigueur dès sa publication au "Journal Officiel".

Fait au Palais de Koubbeh, le 20 Safar 1354 (23 mai 1935)

FOUAD

Par Le Roi :

Le Président du Conseil des Ministres
et Ministre de l'Intérieur
MOHAMED TEWFICK NASSIM.

Le Ministre des Finances,
AHMED ABDEL WAHAB.

Le Ministre des Communications,
ABDEL MAGUID OMAR.

APPENDIX 8.

Loi No. 19 de 1920. @@

Déclarant monopole de l'Etat l'installation des aérodromes.

NOUS, SULTAN d'EGYPTE,

Sur la proposition de Notre Ministre des Communications et l'avis conforme de Notre Conseil des Ministres,

DECRETONS :

Art. 1.- L'installation des aérodromes, en Egypte, constitue un monopole de l'Etat.

Aucun terrain ne pourra être aménagé ni utilisé pour le départ ou l'attérrissage des aéronefs, que par le Gouvernement ou sur son autorisation.

Art. 2.- Notre Ministre des Communications est chargé de l'exécution de la présente loi, qui entrera en vigueur à partir de sa publication au Journal Officiel.

Fait au Palais d'Abdine, le 4 Ragab 1338 (24 mars 1920)

FOUAD

Par le Sultan :
Le Président du Conseil des Ministres,
YOUSSOUF WAHBA.

Le Ministre des Communications,
AHMAD ZIWER.

(Traduction officielle)

@@ Journal Officiel du Gouvernement Egyptien No. 28 du 29 mars 1920.

APPENDIX 9.

Rules of Conflict of Laws provided in the Egyptian Civil Code of 1949.

Art. 10

En cas de conflit entre diverses lois dans un procés déterminé, la loi égyptienne sera seule competente pour qualifier la catégorie à laquelle appartient le rapport de droit, en vue d'indiquer la loi applicable.

Art. 11

1) L'Etat et la capacité des personnes seront régis par leurs lois nationales. Toutefois, si l'une des parties, dans une transaction d'ordre pécuniaire conclue en Egypte et devant y produire ses effets, se trouve être un étranger incapable et que son incapacité soit due à une cause obscure qui ne peut être facilement décelée par l'autre partie, cette cause n'aura pas d'effet sur sa capacité.

2) Le statut juridique des personnes morales étrangeres : société, associations, fondations ou autres, est soumis à la loi de l'Etat sur le territoire duquel se trouve le siège d'administration principal et effectif de la personne morale. Toutefois, si cette personne exerce son activité principale en Egypte, la loi égyptienne sera appliquée.

Art. 12

Les conditions de fond relatives à la validité du mariage seront régies par la loi nationale de chacun des deux conjoints.

Art. 13

1) Les effets du mariage, y compris ceux qui concernent le patrimoine, seront soumis à la loi nationale du mari, au moment de la conclusion du mariage.

2) La répudiation sera soumise à la loi nationale du mari au moment où elle a lieu, tandis que le divorce et la séparation de corps seront soumis à la loi du mari au moment de l'acte introductif d'instance.

Art. 14

Dans les cas prévus par les deux articles précédents, si l'un des deux conjoints est égyptien au moment de la conclusion du mariage, la loi égyptienne sera seule applicable, sauf en ce qui concerne la capacité de se marier.

Art. 15

L'obligation alimentaire entre parents est régie par la loi nationale du débiteur.

Art. 16

Les règles de fond en matière d'administration légale, de tutelle, de curatelle, et autres institutions de protection des incapables et des absents seront déterminées par la loi nationale de la personne à protéger.

Art. 17

1) Les successions, testaments et autres dispositions à cause de mort seront régis par la loi nationale du de cujus, du testateur ou du disposant au moment du décés.

2) Toutefois, la forme du testament sera régie par la loi nationale du testateur au moment du testament ou par la loi du lieu où le testament est accompli. Il en est de même de la forme des autres dispositions à cause de mort.

Art. 18

La possession, la propriété et les autres droits réels sont soumis, pour ce qui est des immeubles, à la loi de la situation de l'immeuble, et pour ce qui est des meubles, à la loi du lieu où se trouvait le meuble au moment où s'est produit la cause qui a fait acquérir ou perdre la possession, la propriété ou les autres droits réels.

Art. 19

1) Les obligations contractuelles sont régies par la loi du domicile quand elle est commune aux partie contractantes, et, à défaut de domicile commun, par la loi du lieu où le contrat a été conclu. Le tout, à moins que les parties ne conviennent ou qu'il ne résulte des circonstances qu'une autre loi devra être appliquée.

2) Toutefois, les contracts relatifs à des immeubles seront soumis à la loi de la situation de l'immeuble.

Art. 20

Les actes entre vifs seront soumis, quant à leur forme, à la loi du lieu où ils ont été accomplis. Ils peuvent être également soumis àla loi qui les gouverne, quant au fond, comme ils peuvent être soumis à la loi du domicile des parties ou à leur loi nationale commune.

Art. 21

1) Les obligations non contractuelles seront soumises à la loi de l'Etat sur le territoire duquel se produit le fait générateur de l'obligation.

2) Toutefois, lorsqu'il s'agit d'une obligation née d'un fait dommageable, la disposition du paragraphe précédent ne sera pas appliquée aux faits qui se sont produits à l'étranger et qui, quoique illicites d'après la loi étrangere, sont considérés comme licites par la loi egyptienne.

Art. 22

La compétence et les formes de procédure sont déterminées d'après la loi du lieu où l'action est intentée ou la procédure poursuivie.

Art. 23

Les dispositions qui précédent ne s'appliquent que lorsqu'il n'en est pas autrement disposé par une loi spéciale ou par une convention internationale en vigueur en Egypte.

Art. 24

Les principes du droit international privé seront appliqués dans les cas de conflits de lois qui n'ont pas été prévue par les dispositions qui précédent.

Art. 25

1) En cas d'apatridie ou de pluralité de nationalités, la loi àappliquer sera déterminée par le juge.

2) Toutefois, la loi égyptienne sera appliquée si la personne possède, en même temps, la nationalité égyptienne, au regard de l'Egypte, et, au regard d'un ou de plusieurs Etats étrangers, la nationalité de ces Etats.

Art. 26

Lorsque les dispositions qui précédent renvoient au droit d'un Etat dans lequel existent plusieurs systèmes juridiques, le système àa appliquer sera déterminé par le droit interne de cet Etat.

Art. 27

En cas de renvoi à une loi étrangère, ce sont les dispositions internes qui devront être appliquées à l'exclusion de celles du droit international privé.

Art. 28

L'application de la loi étrangère en vertu des articles précédents sera exclue si elle se trouve contraire à l'ordre public ou aux bonnes moeurs en Egypte.

(Traduction Officielle)

Extrait du Journal Officiel du Gouvernement Egyptien No. 108 du 29

Extraordinaire du 29 Juillet 1948.

APPENDIX 10.

Decree No. 359 - 1952 Establishing the Supreme Board of Civil Aviation :

In the name of the King of Egypt and the Sudan

The Regent of the Kingdom

Pursuant to the Rescript of the 10th of December 1952 by the Chief of the Armed Forces in his capacity as the Head of the Army Movement

And with the approval of the 'Conseil d'Etat'

On the proposal of the Minister of War and Marine and with the approval of the Council of Ministers :

Be it decreed :

Art. 1.- That there be established a Supreme Board of Civil Aviation. Its composition is to be the following :-

Minister of War and Marine.	Chairman
Under Secretary of State for Air.	Members
Under Secretary of State for Finance and Economics for military affairs.	
Under Secretary of State for Commerce and Industry.	
Judiciary officer of the Ministry of War and Marine.	
Director of the Air Force.	
Director General of Civil Aviation.	
Director General of Tourist Department.	
Three persons connected with civil aviation. They are to be designated by the Minister of War and Marine in a Ministerial Order.	

In the absence of the Chairman, the chairmanship will be assumed by Under Secretary of State for Air; in his absence the chairmanship will be assumed by the various members of the Board in sequence.

The work of the Secretariat will be undertaken by the Director of the office of the Minister of War and Marine for Air.

The Board has the right to invite to its meetings those whose experience and knowledge might be helpful.

The resolutions of the Board will not be valid unless its meeting is attended by quorum of eight members. The resolutions are passed by the majority vote of the members present.

Art. 2.- The Supreme Board of Civil Aviation is the body responsible for the supervision of the execution of government policy in matters pertaining to civil aviation.

Art. 3.- The Board is the competent authority on the following matters :-

First: Drawing up of long range policy in matters of civil aviation particularly in what affects :

a) Aerodromes, their equipment and their sites;
b) Safety equipment for air traffic control;
c) The promotion of the training of technical personnel needed for civil aviation.

Second: Drawing up of policy for air transport. The supervision of aviation establishments and of the public aid forwarded to them by the government.

Third: The supervision of flying schools and aero clubs and the framing of policies to encourage aviation trainees.

Fourth: To ensure that activities of civil aviation are in harmony and co-ordination with the activities of other departments involved.

Fifth: Seeing to the setting up of appropriate aviation legislation and its amendment, should this be necessary.

Sixth: Approve the project of the annual budget of the civil aviation department before its presentation to the competent authority.

Seventh: To define the external relations of Egypt in matters pertaining to civil aviation particularly in the following matters :-

a) Adopt the principles which should be followed by Egypt in concluding bilateral agreements with foreign countries.
b) The choice of the representative of the Egyptian Government to the Council of I.C.A.O., delegates

to conferences, divisions, technical meetings which are held by the latter organization and any meeting or International conferences relating to civil aviation.

The Board is competent to deal with any matter relating to civil aviation forewarded by the chairman and may pass resolutions on it.

Art. 4.- The resolutions of the Board will be final, save those which normally would require for their execution, enactment by law or decree or an order of the Council of Ministers.

Art. 5.- The Board will establish its procedure. This will be promulgated through an Order of the Minister of War and Marine.

Art. 6.- The Minister of War and Marine is charged with the execution of this law and he is empowered to issue orders necessary for such execution. This law will come into force upon its publication in the Official Gazette.

Done at the Palace of Abdine on the 8th of Rabi Tani 1372 (25, December 1952).

On the order of the Regent

(Mohamed Abdel Moneim)

Minister of War & Marine
(Mohamed Naguib)

Prime Minister
(Mohamed Naguib)

(Personal Translation of the Writer).

APPENDIX 11

Future Development of International Air Services

In drawing up a long-range policy, Egypt should not be guided by commercial motives (in the strictest sense) alone.

The first requirement of sound policy is to organize a net-work of air routes leading to any part of the countries which are tied with us either culturally or racially. The Egyptian aircraft must go to kindle the patriotic ardor of the population of the countries which are most sympathetic to us.

From the Egyptian point of view, the countries of the world should be divided into five groups which are classified according to the following scale of importance :-

1. Algeria, Morocco, Tunisia, Lybia, Palestine, Trans-Jordan, Syria, Lebanon, Iraq, Yemen, Aden, El Quwait, Bahrein, Saudi Arabia.

The ties between Egypt and those countries are cultural and racial.

2. Turkey, Iran, Pakistan, India, Afghanistan, Indonesia, Yugoslavia, Albania, Ethiopia.

Those countries are linked with Egypt culturally. Religion plays a great part in strengthening this tie. (Through the Coptic church, there is a strong tie between Ethiopia and Egypt. There are also over four million Muslims in Ethiopia).

3. Spain and Latin America: Because of the historic contact of the Arabs with Spain, there is a natural sympathy between Egypt and the Spanish-speaking countries. Due to this fact, the future etension of Egyptian air lines should be to Spain and the Latin American countries.

4. The Mediterranean countries have been naturally linked with one

another from ancient times till the present. The role of air transport in maintaining this tie cannot be denied.

5. Other countries - Egypt's relations with the other countries of the world are primarily commercial.

In this connection we would mention that the Egyptian Airlines are operating to the following countries :

Lybia , Trans-Jordan, Syria, Lebanon, Iraq, Aden, EL Quwait, Bahrein, Saudi Arabia.

Turkey, Iran, Ethiopia.

Greece, Italy, Switzeland, France.

APPENDIX 12.

Training Personnel

Proposed Aviation University

1.- Successful, efficient and safe aviation largely depends on the soundness of the training available to those entering the profession. Efficient business organisations cannot operate aircraft successfully and safely unless the right type of personnel is available, and has been properly trained.

2.- Fifteen or twenty years ago, flying training was a comparatively simple matter, and could be handled by any sound pilot with good flying experience and an aptitude for imparting knowledge. The aircraft in use for training and commercial service, followed the same flying characteristics, and there was little difference between the basic trainees and the samll commercial type. Example, the Tigers Moth and the Fox Moth, even the Rapide with its twin engines was not so unlike the Fox as to require any very specialised training before an average pilot could handle it with ease.

3.- Aviation at the beginning was an adventure, and few amongst its foremost ranks at that time, had sufficient vision to see the tremendous possibilities and the changes that would come within a short space of time.

The adventurous atmosphere attracted those with money in need of diversion. Rather naturally, enthusiasts gathered in localities, and as counter parts to their pther sporting activities they formed

the Royal Flying Club. The latter movement took root in Cairo, and altough it has not become exceptionally strong, much good has been done. But, flying training is more a business undertaking than a semi-social entertainment.

In other words, civil aviation training cannot depend entirely on such a body.

4.- Seventeen years ago, Misr Airlines established a flying school, which has done good to civil aviation training. It succeeded to some extent in providing the country with its required pilots and flight engineers (succés d'estime). To its credit, we have to mention that it has stood alone in the field of training for fifteen years (established in 1932). In the last five years another school was established. The founders of the latter school entered the field with a huge programme, which in fact, they knew nothing about. Their capital was not sufficient to fulfill one/third of this programme.

5.- Have the flying schools above-mentioned served their purpose ? The answer to this question would be neither in the affirmative nor in the negative. From examining the activities of the existing schools, I could not in good faith make, a recommendation to entrust all the civil aviation training to them.

To-day, commercial flying is carried out on types of aircraft entirely different to those found in schools of flying, and the science of aeronautics has become so advanced and exact, that the would-be pilot requires very specialised training. Any kind of aeronautical training, piloting, navigation, radio and radar, and

engineering, is a costly and highly specialised form of education. There is no alternative cheap way into the profession.

6.- Is it not time to review the position to see if some more effective way of furthering aviation training throughout the country can be established ? To whom would the civil aviation training would be entrusted and what would be their means of financing ? What role will the State play ? Would it entrust the civil aviation training to private enterprise or would it carry the training or finally as a compromise the training should be handled by private initiative subsidised by the State ?

The answer to these questions is conditioned above all by practical considerations such as promotion of public welfare and available capital within the country.

7.- Civil aviation training entrusted to private enterprises : It has become increasingly clear that standard flying schools can seldom be expected to pay an adequate return on invested capital, so it offers little attraction as a business project. The different fees collected from the students, could not cover the expenses. One way out would be to raise fees. Such an increase would be harmful to aviation because that would mean restricting the profession to those whose parents or guardians are in a financial position to foot the bill. In other words, in our case, the majority would be entirely excluded. This would limit the field of selection.

8.- Civil aviation training entrusted to public body : As, we have mentioned before, civil aviation training can seldom be

expected to pay an adequate return on invested capital, but it is evident that this kind of training is a public utility deserving of support, even though a considerable net outlay may be entailed in keeping it up. Another factor promoting the shift to public control is the availability of central funds for public schools. The State, in undertaking the training would not be looking primarily for profit. It could centralise aviation in one standard university, provided with qualified staff and modern equippment, which will not be the case with private enterprises as they lack the capital and knowledge. One of the main difficulties with which government would be confronted, is how to avoid killing the flying schools which they supported at great cost. If the government supports a central training establishment, on a scale to meet the country's needs in aeronautical training, substantial support to the schools would no longer be justified, and they would either have to fade away or have to change their policy drastically. To overcome this difficulty, and, in order that centralisation might be secured, the existing schools should be purchased by the government.

The third and last solution to the problem is to entrust the training to private initiative, subsidised by the government. Those advocating this solution are aware of the efficiency of the management of private enterprises and of the routine of the government which would hamper the development of training. Apart from considerations of initiative, efficiency in management and the supreme need for personal attention it is utterly inadvisable

to saddle the exchequer with financial burdens and losses which nationalisation will involve. One argument which would be drawn against this solution is that the training in former use, though it has been entrusted to private entities subsidised by the government, has not provided the country with adequate trainees. The answer to this argument is that the subsidies beside being insufficient, were not given to the right person. We could add to this that lack of a firm policy on the part of the government is undoubtedly the besetting sin of the civil aviation training in Egypt.

A clear definition of government policy ought to be made now to put an end to this state of uncertainty. It would be more beneficial to all, to standardise all aviation training at one well organised private establishment, under the supervision of the government. Then all the monies at present poured out to flying schools could be paid in one lump sum, which would be a worthy subsidy to assure the success of the establishment.

I do not have any feelings one way or the other about the present flying school, but I have tried to line up the arguments that I think are in favour of entrusting the training to one private establishment subsidised by the government and the arguments against it and judgment on my part does lead me to believe that the creation of such unique standardised establishment, will be a sort of panacea to all those evils.

APPENDIX 13.

NOTAM REPUBLIC OF EGYPT 11 A/53

Ministry of War & Marine

Civil Aviation Department
CAIRO

JUNE

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1. The attention of aircraft commanders, operating companies and all concerned is hereby drawn to the data contained in the following NOTAM concerning regulations governing 1 non-scheduled flights. The NOTAM is presented in the form which will appear in the relevant part of the aeronautical Information Publications - FAL - EGYPT.

2. NOTAM No. 9 -A/1948 is hereby cancelled.

Cairo, 28 June 1953. (M. A. FAHMY)
Director General Civil Aviation

AIP EGYPT FAL 1-1-1

Regulations Governing Non-Scheduled Flights

In compliance with Article 5 of the Chicago Convention, the Egyptian Authorities have approved the undermentioned regulations governing non-scheduled operations over Egyptian territory.

Scheduled operations are governed by bilateral air agreements or special authorizations and the International Air Services Transit Agreement.

1. All flights

1.1 Aircraft registered in States, not party to the Chicago Convention, are not allowed to fly over or into Egyptian Territory without having obtained a prior permission through the diplomatic channels.

1.2 Aircraft registered in Israel and any other aircraft destined for or departing from Israel are not allowed to fly over or into Egyptian Territory.

1.3. Aircraft operators should be properly insured against damage to third parties.

1.4. All flights should be carried in accordance with ICAO regulations and any other regulations in force in Egypt.

2. Flights across Egyptian Territory without landing (First Freedom)

2.1 Only aircraft belonging to operators duly authorized to operate scheduled services in Egypt, are permitted to overfly Egyptian Territory without landing; provided that notification has been given to the Cairo Area Control Centre.

2.2 All other aircraft must land in an approved customs aerodrome.

3. Flights with landings for non-traffic purposes (Second Freedom)

These flights are permitted to land at an approved customs aerodrome without prior permission or notification.

4. Flights with landings for traffic purposes (third, fourth and fifth freedoms)

4.1 All flights not operated for remuneration or hire will be allowed without prior permission or notification.

4.2. Flights operated for remuneration or hire will be subject to the following conditions :-

4.2.1 No prior permission is required if the carriage of passengers, cargo or mail is between a point in Egypt and another point not served by Egyptian scheduled operators. However a 48 hours notification is required as detailed in paragraph 5.

4.2.2 If the carriage is between a point in Egypt and another point served by Egyptian scheduled operators or if that other point is not in the territory of the state whose nationality the aircraft possesses (5th freedom), prior permission must be obtained as detailed in para. 5.

5. Procedures for notifications and applications for permission :

All notifications and applications required under 4.2.1 and 4.2.2 should be addressed to :-

The Director General,
Civil Aviation Department,
Ministry of War & Marine,
Cairo.

(Telegraphic Address : CIVILAIR)

5.1 Notifications required under 4.2.1 should contain the following information :

a) Nationality and Registration Marks
b) Origin of pay load
c) Route followed
d) Estimated Date & Time of Arrival.

5.2 Applications for permission as required under 4.2.2 should contain the following information in addition to that required under a,b,c & d above :

e) Full name of operator
f) Nationality of operator
g) Business address of operator
h) Type of aircraft to be used
i) Purpose of flight.

5.3 All information should be given in the order detailed in 5.1 and 5.2 above.

Note: This NOTAM was received after the writer finished the final typing of Part I and Part II of this survey.

APPENDIX 14.

Accidents du Travail

Loi No. 89 du 5 juillet 1950 sur les accidents du travail. @@

Chapitre I er. Définitions

Art. 1.- Aux fins de la présente loi, l'expression "Etablissements industriels" comprend notamment :

a) les mines, carrières et industries extractives de toute nature;
b) les établissements dans lesquels les produits sont manufacturés, modifiés, nettoyés, réparés, décorés, achevés, préparés pour la vente, ou dans lesquels les matières subissent une transformation, y compris la construction des navires, le démontage de matériel, ainsi que la production, la transformation et la transmission de la force motrice en général et de l'électricité;
c) la construction, la reconstruction, l'entretien, la réparation, la modification ou la démolition de tous bâtiments, édifices, chemins de fer, tramways, bateaux, ports, docks, jetées, canaux, installations pour la navigation intérieure, routes, tunnels, ponts, digues, égouts, collecteurs, égouts ordinaires, puits, installations télégraphiques ou téléphoniques, installations électriques, usines à gaz, distribution d'eau, ou autres travaux de constructions, ainsi que les travaux de préparation et de fondation précédant les travaux ci-dessus;
d) le transport de personnes ou de marchandises par routes, voies ferrées, maritimes, fluviales ou aériennes, y compris la manutention des marchandises dans les docks, quais, wharfs et entrepôts, sous réserve des droits reconnus aux marins par les dispositions du Code de commerce maritime;
e) les fouilles archéologiques.

L'expression "Etablissements commerciaux" comprend notamment :

a) tout lieu affecté à la vente des marchandises ou à toute autre opération commerciale;
b) les hôtels, restaurants, pensions, cafés, buffets, théâtres, cinémas, music-halls et tous autres établissements de même genre.

Sont assimilés aux établissements commerciaux :
a) les écuries de courses et les cercles sportifs;
b) les services administratifs de toute autre entreprise privée ou d'utilité publique.

@@ Journal officiel du gouvernement égyptien, 12 avril 1951, No. 32, p. I.

Art. 2.- La présente loi est applicable aux ouvriers, employés et apprentis dans les établissements industriels et commerciaux.

Elle ne s'applique pas :

a) aux personnes employées occasionnellement pour des travaux étrangers à l'industrie ou au commerce;
b) aux personnes qui travaillent à domicile;
c) aux personnes employées dans l'agriculture, sauf si, au moment de l'accident, elles étaient employées au fonctionnement d'outillages mécaniques, ou effectuaient un travail industriel.

Les personnes auxquelles la présente loi est applicable seront désignées ci-après par le mot "travailleur".

Chapitre II. Dispositions générales

Art. 3.- Tout travailleur atteint d'une lésion par le fait et pendant l'accomplissement du travail aura droit contre son employeur à une réparation conformément aux règles établies par les chapitres III et Iv.

Toutefois, aucune réparation ne sera due par l'employeur :

a) si la lésion n'a rendu le travailleur incapable d'exercer son métier ou sa profession que pour une période ne dépassant pas trois jours;
b) si la lésion a été provoquée intentionnellement par le travailleur;
c) si la lésion a été occasionnée par l'inconduite grave et intentionnelle du travailleur.

Seront considérés comme tels :

1) tout acte fait sous l'influence de l'alcool ou des stupéfiants;
2) la contravention aux instructions établies par l'employeur et qui il a rendues publiques par un avis affiché dans l'établissement de travail; ou la désobéissance aux ordres formels dûment donnés et contrôlés dans leur exécution par le chef du travailleur, ou le défaut d'utiliser une sauvegarde que le travailleur savait établie pour sa sécurité, à moins qu'il ne s'agisse d'un accident occasionnant la mort ou une infirmité permanente dépassant le pourcentage de 25 p. cent mentionné au barème annexé à la présente loi ou établi par le médecin légiste visé par l'article 24.

Les causes d'exonération prévues par les alinéas b) et c) du présent article ne peuvent être invoquées que si elles ont été mentionnées dans la déclaration prévue par l'article 12, ou dans l'instruction faite par la police conformément à l'article 13.

Art. 4.- Le travailleur ne peut se prévaloir, à l'égard de l'employeur, à raison des accidents dont il est victime dans son travail, d'autres dispositions que celles de la présente loi, à moins que l'accident n'ait été provoqué par la faute lourde de l'employeur.

Sera nulle toute convention ayant pour but d'accorder aux travailleurs victimes d'accidents ou à leurs ayants droit des réparations inférieures aux taux établis par la présente loi, que cette convention soit intervenue antérieurement ou postérieurement à l'accident.

Art. 5.- Dans le cas où l'exécution d'un travail est confiée par l'employeur à un sous-traitant, le travailleur aura droit à la réparation contre le sous-traitant et l'employeur, sur la base du salaire payé au travailleur par le sous-traitant. Au cas où le travailleur aurait exercé son droit contre l'employeur, ce dernier pourra recourir contre le sous-traitant pour se faire rembourser toute somme qu'il aura payée.

Art. 6.- Si les services d'un travailleur ont été temporairement loués ou prêtés à un tiers par son employeur, celui-ci continuera d'être, aux termes de la présente loi, responsable vis-à-vis dudit travailleur.

Art. 7.- Au cas où une lésion donnant lieu à réparation aux termes de la présente loi engage en même temps la responsabilité légale d'une personne autre que l'employeur, le travailleur pourra réclamer la réparation, soit à l'employeur, soit à cette personne.

L'employeur qui aura payé la réparation due sera subrogé dans les droits du travailleur à l'égard de la personne responsable; de même les dommages-intérêts que le travailleur aura effectivement obtenus de la personne responsable seront déduits de la réparation qui lui est due par l'employeur.

Art. 8.- Toutes les sommes dues au travailleur victime d'un accident ou à ses ayants droit en vertu des dispositions de la présente loi sont des créances privilégiées, avec le même rang et les mêmes conditions que les sommes dues aux ouvriers et visées à l'article 1141 du Code Civil.

Ces créances seront incessibles et insaisissables, sauf pour dettes d'aliments et jusqu'à concurrence du quart.

Art. 9.- Si l'employeur est couvert par l'assurance, le travailleur pourra exercer ses droits conjointement et solidairement contre l'employeur et l'assureur.

Dans les cas prévus par l'article 7, l'assureur qui aura payé la réparation sera subrogé dans les droits de l'employeur.

En cas de faillite de l'employeur, le montant dû par l'assureur n'entrera pas dans l'actif de la faillite.

Art. 10.- La demande en réparation ne sera recevable que si la réparation a été réclamée par écrit à l'employeur ou à son représentant dans le délai d'un an à partir du décés ou de la constatation de l'infirmité permanente.

Toute mesure prise par le Département du travail envers l'employeur ou envers son représentant sera considérée comme une réclamation au sens de l'alinéa précédent.

Toutefois, le défaut de réclamer la réparation dans le délai prévu au premier alinéa ne constitue pas un empêchement à la recevabilité de l'action s'il est dû à des raisons plausibles.

Art. 11.- Lorsque son état le lui permettra, le travailleur notifiera immédiatement à son employeur ou à tout préposé à sa surveillance l'accident et les circonstances dans lesquelles il s'est produit.

Art. 12.- L'employeur est tenu de notifier par écrit à la police, dans les quatre jours après qu'il en a eu connaissance, tout accident survenu à l'un de ses travailleurs et qui aurait entraîné une incapacité de travail de plus de trois jours.

Cette déclaration donnera, outre le nom et l'adresse de la victime, une relation succincte de l'accident, et indiquera la nature de la lésion, le nom et l'adresse du médecin traitant et éventuellement le nom de la société d'assurance auprès de laquelle l'employeur serait assuré.

Art. 13.- L'autorité de police procédera à l'instruction de toute notification à elle faite conformément aux dispositions de la présente loi et relatera dans le procés-verbal de cette instruction les circonstances détaillées de l'accident. Les déclarations des témoins, de l'employeur ou de son représentant et de la victime de l'accident, s'il y a lieu, seront actées dans ce procés-verbal.

L'autorité de police devra immédiatement informer de ces cas le Département du travail, tout en lui communiquant une copie du procés-verbal de l'instruction. Ledit Département pourra, s'il le juge utile, demander une instruction complémentaire.

Art. 14.- Dans tout établissement, les registres suivants devront être tenus :

a) un registre où seront inscrits les noms des travailleurs suivant la date de leur engagement, ainsi qu'un numéro distinct pour chacun d'eux;

b) un registre où seront inscrits les noms des travailleurs, le montant du salaire journalier, hebdomadaire ou mensuel de chacun d'eux , les journées de sa présence au travail et la date à laquelle il a définitivement quitté le travail;

c) un autre registre où seront inscrits les accidents survenus aux travailleurs et résultant du travail, et ce aussitôt après la déclaration prévue aux articles 11 et 12.

Le sous-traitant devra également tenir lesdits registres pour y inscrire ses ouvriers ;

d) chacune des sociétés d'assurance devra tenir un registre où sera inscrit le nom de l'assureur, celui du travailleur et de l'établissement où il travaillait lors de l'accident, la date de l'accident, les conditions dans lesquelles il s'est produit, la date à laquelle le traitement a commencé et celle où il a pris fin, le nom du médecin traitant, l'étendue de l'infirmité, le salaire du travailleur et le montant de la somme payée comme réparation en cas d'accident ou de décés.

Tous ces registres devront être tenus conformément aux instructions du Département du travail en application des règles établies par un arrêté du ministre des Affaires sociales. Ledit arrêté indiquera l'endroit où l'on pourra se procurer lesdits registres.

Ces registres devront être présentés, à toute réquisition, aux inspecteurs du Département du travail. L'ensemble des rôles de paye pourra tenir lieu du second registre tenu pour l'inscription des salaires.

Art. 15.- L'employeur devra, dans le délai d'un mois à partir du décés ou de la constatation de l'infirmité prévue à l'article 23, notifier par écrit au Département du travail la somme qu'il a payée ou qu'il s'est engagé à payer au travailleur ou à ses ayants droit à titre de réparation. Cette notification sera accompagnée d'un certificat délivré par le médecin traitant. Si L'obtention dudit certificat est difficile, il pourra être remplacé par un certificat d'un autre médecin. Si l'accident survenu à l'ouvrier a entraîné une incapacité, le certificat devra indiquer le degré de cette incapacité. Ce certificat sera délivré aux frais de l'employeur ou de la société auprès de laquelle l'assurance est effectuée, suivant le cas.

A défaut de paiement ou d'engagement dans le délai prévu à l'alinéa précédent, l'employeur notifiera au Département du travail les motifs qui empêchent le règlement de la réparation.

L'employeur sera tenu de la notification prévue aux deux alinéas précédents, alors même qu'il aurait contracté une assurance contre les accidents de travail conformément aux dispositions de la loi No. 86 de 1942.

Art. 16.- S'il y a désaccord entre le travailleur et l'employeur ou l'assureur sur la constatation de l'infirmité permanente ou sur la durée de traitement, l'employeur ou la société auprès de laquelle l'assurance est effectuée devra, si le Département du travail le lui demande, produire un certificat médical attestant que l'accident n'a entraîné aucun infirmité chez le travailleur ou que son traitement a pris fin.

Art. 17.- Les contestations relatives à la réparation des accidents du travail seront jugées d'urgence. Le travailleur ou ses héritiers seront exemptés des frais judiciaires.

Art. 18.- Tout employeur devra afficher dans son établissement, dans un endroit apparent, d'une manière très lisible et dans la forme qui sera établie par le Département du travail, un résumé des dispositions des articles 10 et 11.

Chapitre III. Traitement médical

Article 19.- L'employeur sera toujours tenu de procurer les premiers soins au travailleur blessé, quand même la blessure ne l'obligerait pas à quitter son travail.

Dans tout établissement où plus de vingt travailleurs sont employés, une ou plusieurs caisses de secours médicaux devront être tenues en bon état et dans des endroits qui seront portés à la connaissance publique. Ces caisses contiendront les bandages, les médicaments et désinfectants qui seront indiqués par le Département du travail d'accord avec le ministère de l'Hygiène publique et en application des règles qui seront établies par un arrêté du ministre des Affaires sociales. Ledit arrêté devra fixer le nombre de travailleurs pour lequel une caisse sera affectée, l'endroit où cette caisse devra être mise et la personne à laquelle l'emploi de la caisse sera confié.

Art. 20.- Tout travailleur victime d'un accident aura le droit de se faire soigner gratuitement par les hôpitaux du gouvernement, pourvu qu'il en existe un dans un rayon de 50 kilomètres du lieu de l'accident, que des lits s'y trouvent vacants et que la direction de l'hôpital estime que le cas mérite hospitalisation. Ladite direction restera juge de la période nécessaire de séjour à l'hôpital.

Art. 21.- Dans le cas où, à la distance précitée, il n'y a ni hôpitaux du gouvernement ni d'autres hôpitaux où le travailleur pourra être soigné à titre gratuit, l'employeur sera tenu de payer tous les frais médicaux, pharmaceutiques et d'hospitalisation, mais il lui sera loisible de choisir le médecin et l'hôpital.

Art. 22.- Dans tous les cas, les frais de transport à l'hôpital seront à la charge de l'employeur.

Art. 23.- L'existence d'une infirmité permanente, totale ou partielle, sera établie par un certificat médical dont un arrêté du ministre des Affaires sociales fixera la forme ainsi que les honoraires à payer pour l'obtenir.

Si c'est le médecin traitant qui, à la demande du travailleur, délivre ledit certificat, il ne touchera pas d'honoraires à cette occasion.

L'infirmité permanente sera considérée comme totale si elle occasionne au travailleur une incapacité absolue à exercer un métier ou une profession quelconque. Toute autre infirmité permanente sera considérée comme partielle.

Art. 24.- Si le contenu du certificat médical fait l'objet d'une contestation entre l'employeur et le travailleur, chacune des deux parties pourra demander que la contestation soit soumise au médecin légiste dans le ressort duquel l'accident a eu lieu.

La procédure de l'examen de cette contestation par le médecin légiste sera réglementée par un arrêté du ministre des Affaires sociales.

Cette contestation n'empêche pas l'exécution par l'employeur des obligations mises à sa charge par le présent chapitre.

Art. 25.- Les honoraires du médecin légiste seront à la charge du demandeur, à moins que la contestation ne se trouve justifiée, auquel cas ils seront à la charge de la partie adverse.

Le taux des honoraires ainsi que les modalités du paiement seront fixés par un arrêté du ministre des Affaires sociales d'accord avec le ministre de la Justice.

Art. 26.- Le travailleur devra se prêter à toute visite du médecin désigné à cet effet par l'employeur ou les assureurs, S'il est sous traitement dans un hôpital gouvernemental ou privé, un préavis est nécessaire.

Chapitre IV. Réparations

Art. 27.- Lorsque la lésion réduit le travailleur à l'incapacité d'exercer son métier ou sa profession, l'employeur sera tenu de lui payer, jusqu'à la guérison, ou la constatation d'une infirmité permanente conformément à l'article 23, ou le décès, un secours en espèces.

Ledit secours sera égal au montant du salaire intégral durant les premiers 90 jours, puis il sera réduit à la moitié dudit salaire, pourvu qu'il ne soit pas inférieur à P.T. 10 par jour ou au montant intégral du salaire du travailleur s'il est inférieur à cette somme.

Le montant du secours sera calculé d'après le dernier salaire. Pour les travailleurs payés à la tâche, il sera calculé d'après la moyenne de la rémunération journalière durant les 90 jours précédant l'accident, compte tenu des dispositions du précédent alinéa.

Le secours sera payé hebdomadairement à la victime.

Au cas où le décès sera survenu, ou l'infirmité permanente constatée dans les douze mois de l'accident, aucune somme payée aux termes du présent article ne sera déduite du montant de la réparation prévue aux articles 28 et 30.

Par contre, les sommes payées de ce chef après la période de douze mois en seront défalquées.

Art. 28.- Lorsque l'accident entraîne le décès du travailleur, l'employeur sera tenu de payer une réparation égale à mille jours du salaire calculé d'après la dernière rémunération. Pour les travailleurs à la pièce, le montant de la réparation sera

calculé d'après la moyenne de la rémunération durant les derniers 90 jours.

Sont compris dans cette rémunération tous les gains supplémentaires en espèces et en nature reçus par le travailleur.

Pour le calcul de ladite rémunération, le mois sera considéré de trente jours pour les travailleurs payés au mois. Pour ceux travaillant à la tâche, il sera fait masse de la rémunération reçue pendant les jours de présence, laquelle sera divisée par le nombre de ces jours.

Si, en raison de la courte durée des services du travailleur ou des conditions de son emploi, il n'est pas possible d'établir la moyenne de la rémunération journalière, on y suppléera par la rémunération moyenne calculée comme ci-dessus d'un travailleur de la même catégorie au service de l'employeur, ou, à défaut, occupé par un autre employeur choisi préférablement dans le même district.

La réparation intégrale payable en cas de décès ne devra pas être inférieure à L.E. 15 ni supérieure à L.E. 600. Dans le cas d'un apprenti non payé, la réparation intégrale sera de L.E. 100.

Outre la réparation ci-dessus, l'employeur paiera les frais funéraires qui ne pourront dépasser L.E. 5.

Art. 29.- Le montant de la réparation payable aux ayants droits du travailleur décédé ainsi que sa répartition entre eux seront établis sur les bases indiquées au tableau annexé à la présente loi.

Les ayants droit à la réparation seront désignés en vertu d'un certificat administratif dressé d'après un formulaire à établir par le ministre des Affaires sociales.

Art. 30.- Lorsque la lésion entraîne une incapacité de travail totale et permanente, une réparation égale au salaire de 1.200 jours sera payée à la victime, le salaire devant être calvulé sur la même base qu'en cas de décès.

La réparation ainsi due ne sera pas inférieure à L.E. 180 ni supérieure à L. E. 700.

Pour les apprentis non payés, la réparation sera de L.E. 125.

Art. 31.- Lorsque la lésion entraîne une infirmité partielle et permanente, le montant de la réparation sera établi sur les bases suivantes :-

1) Si la lésion est mentionnée au barème annexé à la présente loi, l'employeur devra payer le pourcentage de la réparation payable en cas d'infirmité totale et permanente établi dans le barème.

2) Si la lésion n'est pas mentionnée au barème, l'employeur devra payer une réparation proportionnelle à la perte subie par le travailleur dans sa capacité de gain conformément au certificat médical.

Dans ces deux cas, il faut tenir compte des taux maximum et minimum prévus à l'article précédent.

3) Les apprentis non payés recevront, suivant les cas, un pourcentage de la somme de L.E. 125 établi par le barème ou en proportion de la perte qu'ils ont subie dans leur capacité de gain.

Chapitre V. Sanctions et dispositions générales

Art. 32.- Toute infraction aux dispositions des articles 12, 14, 15, 18 et 19 sera punie d'une amende ne dépassant pas P.T. 1.000, et toute infraction aux dispositions des articles 27, 28, 30 et 31 d'une amende ne dépassant pas P.T. 2.000.

Art. 33.- Le directeur de l'établissement et l'employeur sont conjointement responsables des contraventions qui tombent sous le coup des dispositions du précédent article. Toutefois, l'employeur sera exempt de la peine s'il établit qu'il ignorait les faits constituant la contravention.

Art. 34.- Les fonctionnaires délégués par arrêté du ministre des Affaires sociales auront qualité d'officiers de police judiciaire, relativement à la constatation des infraction aux dispositions de la présente loi et aux arrêtés pris pour son exécution. Ils auront droit d'accés aux établissements et locaux où les travailleurs effectuent leur tâche.

Art. 35.- Est abrogée la loi No.64 de 1936 sur les accidents du travail.

Art. 36.- Les ministres des Affaires sociales, de l'Intérieur, de l'Hygiène publique et de la Justice sont chargés, chacun en ce qui le concerne, de l'exécution de la présente loi. Le ministre des Affaires sociales prendra tous arrêtés nécessaires à son exécution. Cette loi entrera en vigueur dès sa publication au Journal officiel.

Tableau indiquant le montant de la réparation payable aux ayants droit du travailleur décédé, ainsi que sa réparation entre eux.

Degré de parenté	Pourcentage de la réparation due	Réparation
1) Quand le décédé laisse une ou plusieurs veuves et des enfants.	100	(a) Pour la ou les veuves et un enfant: 60% pour la ou les veuves (à parts égales) et 40% pour l'enfant. (b)Pour la ou les veuves et deux enfants : 60% pour la ou les veuves (à parts égales) et 20% pour chaque enfant. (c) Pour la ou les veuves et plus de deux enfants: 50% pour la ou les veuves (à parts égales) et 50% pour les enfants (à parts égales).
2) Quand le décédé laisse une ou plusieurs veuves sans enfants et ses père et mère ou l'un d'eux.	100	75% pour la ou les veuves (à parts égales) et 25% pour les père et mère (à parts égales) ou l'un d'eux.
3) Quand le décédé laisse une ou plusieurs veuves et ne laisse pas d'enfants, ni père ou mère.	100	Pour la ou les veuves (à parts égales).
4) Quand le décédé ne laisse pas de veuves mais laisse des enfants.	100	Pour les enfants (à parts égales).
5) Quand le décédé ne laisse ni veuves ni enfants, mais laisse ses père et mère ou l'un d'eux et des frères ou soeurs.	75	50% pour ses père et mère (à parts égales) ou l'un d'eux et 25% pour les frères ou les soeurs (à parts égales).
6) Quand le décéde ne laisse ni veuves ni enfants ou frères ou soeurs, mais laisse ses père, mère ou l'un d'eux.	50	Pour ses père et mère (àparts égales) ou l'un d'eux.
7) Quand le décédé ne laisse ni veuves, ni enfants, ni père ou mère, mais laisse des frères ou soeurs, N'ont droit à cette réparation parmi les enfants ou les frères et soeurs susmentionnés que les filles qui ne seraient pas mariées ou les garçons qui n'auraient pas atteint l'âge de 21 ans révolus selon le calendrier grégorien, ou les incapables physiquement de gagner leur vie.	50	A parts égales entre les frères et soeurs.

8) Quand le décédé ne laisse pas des parents de l'une des catégories ci-dessus, mais d'autres membres de la famille jusqu'au troisième degré, vivant entièrement de son gain au moment de l'accident.	50	A parts égales entre tous.

Barème de certaines lésions considérées comme entraînant une incapacité partielle et permanente de travail.

Lésions	Degré de l'infirmité
	Pour-cent
Perte du bras droit au coude ou au-dessus	70
---------- gauche au coude ou au-dessus ...	60
---------- droit au-dessous du coude	60
------- d'une jambe au genou ou au-dessus	60
------- du bras gauche au-dessous du coude ...	50
---- d'une jambe au-dessous du genou	50
---- totale et permanente de l'ouie	50
---- d'un oeil	30
---- du pouce	25
---- de tous les orteils d'un pied	20
---- d'une phalange du pouce	10
---- du gros orteil	10
---- de l'index	10
---- d'un doigt autre que l'index	5

La perte complète et permanente de l'usage d'un des membres mentionnés ci-dessus équivaudra à la perte de ce membre.

Dans le cas où le travailleur est gaucher, il touchera pour le bras gauche les indemnités prévues pour le bras droit et vice versa, pourvu qu'il en ait fait la déclaration à l'employeur lors de son engagement.

APPENDIX 15.

Conventions Collectives @

Loi No. 97 du 24 juillet 1950 relative aux conventions collectives de travail. @@

Art. 1.- La convention collective de travail est un accord relatif aux conditions de travail, conclu entre, d'une part, un ou plusieurs syndicats ou une ou plusieurs fédérations de syndicats de travailleurs et, d'autre part, un ou plusieurs employeurs occupant des travailleurs appartenant à ces syndicats, qui règle les salaires minima, la durée du travail, les congés, l'apprentissage, la procédure de conciliation et d'arbitrage et de modification des contrats, le droit des travailleurs à l'indemnité de départ et toutes conditions propres à assurer le bien-être, la tranquillité, la sécurité et la santé des travailleurs. L'employeur peut se faire représenter, dans la conclusion de la convention, par la chambre d'industrie à laquelle il appartient.

Art. 2.- Si plusieurs fédérations ou syndicats sont parties à la convention collective, ils doivent représenter soit la même profession ou le même métier, soit des professions ou métiers similaires ou connexes ou participant à la même production.

Art. 3.- La convention collective doit être conclue par écrit, à peine de nullité. Elle est soumise à l'assemblée générale de la fédération ou du syndicat ou aux assemblées générales des fédérations ou des syndicats et adoptée à la majorité des voix.

Art. 4.- La convention collective ne lie les parties qu'après enregistrement au ministère des Affaires sociales et publication d'un avis annonçant cet enregistrement au Journal Officiel, avis qui doit contenir un résumé de ses clauses.

Si le ministère refuse d'enregistrer la convention, il en avise les requérants dans le délai de trente jours, à compter de la date du dépôt de la demande, en indiquant les raisons du refus. Faute par lui d'enregistrer la convention collective ou d'en refuser l'enregistrement dans ce délai, il est tenu de procéder à l'enregistrement et à la publication conformément aux dispositions du premier alinéa du présent article.

Art. 5.- Si le ministre refuse l'enregistrement dans le délai fixé à l'article précédent, chaque partie peut, dans les trente jours suivant la notification du refus, soliciter du tribunal administratif du conseil d'Etat un arrêt d'enregistrement; cet arrêt tient lieu d'enregistrement et est publié sans frais au Journal Officiel avec un résumé des clauses de la convention.

Art. 6.- Sans préjudice des dispositions de l'article 2, d'autres syndicats, fédérations de syndicats ou employeurs peuvent adhérer à la convention après l'enregistrement ; cette adhésion a lieu par accord entre les deux parties qui demandent à adhérer, sans que le consentement des membres originaux soit nécessaire ; la demande d'adhésion, signée des deux parties, est adressée au Département du travail près le ministère des Affaires sociales.

Art. 7.- Les clauses de la convention collective de travail sont applicables :

a) aux syndicats et fédérations de syndicats de travailleurs et aux employeurs qui ont été parties au contrat lors de sa conclusion ou y ont adhéré postérieurement par la procédure prévue à l'article précédent, de même qu'aux syndicats et fédérations remplaçant les syndicats et fédérations contractants et aux employeurs remplaçant les employeurs contractants ;

b) aux syndicats qui adhérent postérieurement à une fédération qui a été partie à la conclusion de la convention collective ou y a adhéré après sa conclusion;

c) aux travailleurs qui adhérent à un syndicat qui a été partie à la conclusion de la convention ou y a adhéré postérieurement à sa conclusion.

Les travailleurs visés au présent article restent liés par la convention collective pour toute la durée de sa validité, même s'ils ont cessé d'être membres du syndicat pendant cette durée.

Art. 8.- Sera nulle et non avenue toute clause de la convention collective qui serait contraire aux dispositions de la loi relative au contrat individuel de travail, à moins qu'elle ne soit plus avantageuse pour les travailleurs.

Art. 9.- Sera nulle et non avenue toute clause d'un contrat individuel de travail conclu avec une personne liée par une convention collective, en tant qu'elle y est contraire, à moins qu'elle ne soit plus avantageuse pour les travailleurs.

En ce cas la clause de la convention collective est applicable.

Art. 10.- Sera nulle et non avenue toute clause de la convention collective qui serait de nature à compromettre la sécurité publique, nuisible aux intérêts économiques du pays ou contraire aux dispositions des lois et règlements ou à l'ordre public.

Art. 11.- Si les conditions du travail ont subi des modifications essentielles justifiant son annulation, chacune des deux parties à la convention peut soliciter un jugement la déclarant annulée, à condition qu'elle ait été en vigueur pendant un an au moins.

Art. 12.- La convention collective peut être conclue pour une durée déterminée ou pour la durée nécessaire à l'exécution d'un ouvrage déterminé, à condition, dans ces deux cas, que cette durée n'excéde pas trois ans.

A l'expiration de la période fixée, la convention est tacitement reconduite pour une autre année, et ainsi de suite, à moins qu'une durée de reconduction plus courte n'y soit prévue.

La convention cesse obligatoirement de porter effet à l'expiration de la durée primitivement stipulée ou de la durée renouvelée, sur avis adressé par une partie à l'autre et au Département du travail au moins trois mois d'avance, si la durée de la convention ou celle du renouvellement excède six mois, et quinze jours d'avance si la durée de la convention ou celle du renouvellement est inférieure à six mois.

Si l'une des parties est constituée par plusieurs personnes ou organisations, la résolution de la convention à l'égard de l'une d'elles n'entraîne pas sa résolution à l'égard des autres.

Art. 13.- Les adhésions à la convention, son renouvellement, son annulation et son expiration sont notés en marge de l'enregistrement.

Le Département du travail publiera au Journal Officiel, dans les quinze jours suivants, un avis résumant l'annotation.

Art. 14.- Si un établissement industriel ou commercial conclut une convention collective avec le syndicat de ses travailleurs, la convention est considérée comme applicable à tous les travailleurs de l'établissement, y compris ceux qui ne sont pas membres du sundicat, à condition que à la date de la conclusion du contrat, le nombre des travailleurs membres du syndicat ne soit pas inférieur à la moitié du nombre total des travailleurs de l'établissement et que les clauses de la convention collective soient plus avantageuses pour les travailleurs que celles du contrat individuel de travail.

Si un établissement conclut une convention collective avec le syndicat représentant les travailleurs de la branche d'activité qu'il exerce, cette convention n'est applicable qu'aux travailleurs de l'établissement qui sont membres du syndicat, à moins que leur nombre n'excède la moitié du nombre total des travailleurs de l'établissement à la date de la conclusion de la convention, auquel cas elle est applicable à tous les travailleurs, à condition que ses clauses soient plus avantageuses pour eux que celles du contrat individuel.

Art. 15.- Chacune des deux parties à la convention collective, ainsi que tout travailleur ou employeur auquel la convention est applicable, peut solliciter un jugement ordonnant l'application de la convention ou le paiement d'une indemnité pour inobservation contre l'autre partie, ou contre l'un quelconque de ses membres s'il s'agit d'un syndicat, d'une fédération de syndicats ou d'une personne quelconque liée par la convention collective.

Un jugement ne pourra être rendu contre un syndicat que si l'acte causant le préjudice sur lequel est fondé le jugement a été commis par un organe qui représente le syndicat. Les dispositions de l'alinéa précédent sont applicables aux fédérations de syndicats professionnels.

Le syndicat est tenu de l'indemnité à concurrence de sa fortune, non compris celle de son fonds de prévoyance et de son fonds d'assurance sociale.

La responsabilité de la fédération est limitée à sa propre fortune et ne s'étend pas à celle des syndicats affiliés.

Art. 16.- Les syndicats et fédérations parties à une convention collective peuvent intenter toute action fondée sur l'inobservation de la convention au nom de l'un quelconque de leurs membres sans qu'une procuration soit nécessaire à cet effet.

Toutefois, le membre peut intervenir dans l'instance introduite par le syndicat ou la fédération ou introduire une action indépendante de celle du syndicat.

Art. 17.- Toutes conventions collectives conclues avant la promulgation de la présente loi doivent, dans le délai de deux mois, à compter de la date de son entrée en vigueur, être déposées au Département du travail aux fins d'enregistrement.

Lesdites conventions seront soumises aux dispositions de la présente loi.

Art. 18.- Toute personne pourra obtenir du Département du travail une copie conforme à l'original d'une convention collective ou des pièces relatives à l'adhésion.

Art. 19.- Un arrêté du ministre des Affaires sociales fixera les modalités de la demande d'enregistrement d'une convention collective et de la demande d'adhésion, ainsi que de la délivrance des copies.

Art. 20.- Le ministre des Affaires sociales et le ministre de la Justice sont chargés de l'exécution de la présente loi, chacun en ce qui le concerne.

La présente loi entrera en vigueur six mois après sa publication au Journal officiel.

Le ministre des Affaires sociales prendra les arrêtés nécessaires à son exécution.

@ The status of flight personnel has not been subject to international agreements. It is thus left to each State to determine by its own legislation, the status of flight personnel. In Egypt, a special provisions are not yet in existence, accordingly the provisions of common law will apply. e.g. the forementioned law.

@@ Journal officiel (édition arabe), 31 juillet 1950, No. 76, p. 2.

FOOTNOTES

1/ Goedhuis, Air Law in the Making, The Hague, Martinus Nijhoff 1938, p. 1

2/ Antonio Ambrosini Istituzioni Di Diritto Aeronautico II Edizione Ufficio Editoriale Aeronautico Roma 1940. XIX.

3/ The first Egyptian Airline "Misr Air" was granted a concession in 1932 for fifteen years as to internal traffic and aerial work; surveying, spraying insecticide on crops.

4/ J. C. Cooper, Air Law - A Field for International Thinking , Transport and Communications Review, United Nations, Vol. IV, No. 4 October-December 1951, p. 2

5/ Ibid, p. 3

6/ Juglart, Traité élémentaire de droit aérien, Paris 1952, p.10

"Le droit aérien doit être considéré dans son sens le plus large. Il est constitué par l'ensemble des règles qui régissent les rapports juridiques naissant de l'utilisation de l'air que cette utilisation soit le fait du propriétaire foncier ou le fait d'un tiers. C'est dire que, dans l'étude du droit aérien, on peut réserver une certaine place au domaine aérien, ainsi qu'aux diverses utilisations de l'atmosphère : radiodiffusion, télémécanique, transmission de signaux optiques."

7/ Cf. R. Coquoz, Le Droit Privé International Aérien, Paris 1938, p. 3.

8/ Ibid, p. 3

9/ Ambrosini : Corso di Diritto Aeronautico, Vol. I, p. 7

10/ Lemoine, Traité de Droit Aérien, p. 3

"La branche du droit qui détermine et étudie les lois et règles de droit réglementant la circulation et l'utilisation des aéronefs, ainsi que les rapports qu'elles engendrent. Le terme 'circulation' doit y être pris dans son acception courante et aussi dans le sens que lui donnent les économistes lorsqu'ils parlent de la circulation des biens, celui d'utilisation dans le sens le plus large."

11/ J. C. Cooper, Air Law - A Field For International Thinking, Transport and Communications Review, United Nations, Vol. IV, No. 4 October-December 1951, p. 7

12/ Revue Française de Droit Aérien , Vol. III, 1949, p. 52 (footnote 1.)

13/ Prof. Arnold W. Knauth, Lecture given at the Institute of International Air Law, McGill University 1952 - 1953 (not published).

14/ Cf.M. V. Alessandroni-Gambardella, L'Autonomie Substantielle et Formelle du Droit Aérien. Revue Française de Droit Aérien Vol. III,1949, p. 259.

15/ R. Coquoz, Le Droit Privé International Aérien p. 37

16/ M. Kaftal, La réparation des dommages causés aux voyageurs dans les transports aériens, Rev. Trim. Droit Civil, 1929, p. 995.

17/ Malézieux, Caractères et nature du Droit Aérien, Revue Française de Droit Aérien, 1948, p. 33.

18/ A. F. Beheri, La Police de la Navigation Aérienne, Thèse pour La Doctorat, Le Caire 1938, p. 19

19/ Cf. Freedom of Passage for International Air Services by Mr. Lambertus Hendrik Slotemaker, 1932, p. 2

20/ Lissitzyn, International Air Transport and National Policy, 1942, p. 15

21/ Ibid, p. 16

22/ Cf. Appendix 4, Article 1 para. 8 and Article 4.

23/ Article 34, para. (g) of the International Convention Relating to the Regulation of Aerial Navigation (Paris Convention).

24/ Fixel, The Law of Aviation, Second Edition 1945, p. 26

25/ Warner, The International Convention for Air Navigation : and the Pan American Convention for Air Navigation. A Comparative and Critical Analysis. Air Law Review, Vol. III July, 1932 No. 3 P. 221 - 307.

26/ Goedhuis, La Convention de Varsovie, La Haye 1933.

27/ The English Translation of the Convention, from the French original was published by the U.S. Treaty Information Bulletin No. 47, p. 22

28/ Cf. Appendix 4, 5, 6, 7 and 8 of this survey.

29/ Article 91 para. (b) of the Chicago Convention.

30/ Cf. Appendix 3 of this survey.

31/ I am indebted for this information to the learned work on Development And Coordination of Technical Annexes To The Convention prepared by I.C.A.O., Doc. 7215 - AN/ 858. 1951

32/ Ibid.

33/ Cf. ICAO and Other Agencies Dealing with Air Regulation by Eugene Pepin, Journal of Air Law and Commerce Vol. 19, No. 2 Spring, 1952, p. 154.

34/ NOTAM No. 8-A/1950 & NOTAM No. 14-A/ 1952.

35/ NOTAM No. 14-A/ 1952.

36/ It did not seem desirable to print as Appendices all the NOTAMS which are in force in Egypt. Such a course would have had the effect of doubling the size of this survey, merely to provide the reader with matters in technical language. Those who require information on minute details, will find the said NOTAMS at I.C.A.O. (Aeronautical Information Services).

37/ Cf. Appendix 10 of this survey.

38/ Cf. p. 51, No. 68.& Appendix 7 of this survey.

39/ e.g. the sector Cairo - Beirut, also sector Cairo - Athens.

40/ Cf. Lissitzyn, International Air Transport and National Policy, 1942, p. 15.

41/ Ibid, p. 37.

42/ Ibid, p. 55.

43/ Ibid, p. 57

44/ Ibid, p. 57

45/ Ibid, p. 57

46/ Ibid, p. 60

47/ Inspired by the text of the Civil Aeronautics Act of 1938 of the U.S.A. (United States Government Printing Office, Washington, 1940), particularly Title IV - Air Carrier Economic Regulation, p. 17

48/ Ibid.

49/ Ibid.

50/ Since 1952 there has been only one company, "Misr Airlines", operating the internal and international air services.

51/ Vol. VII Encyclopaedia of the Social Sciences - "Sovereignty" p. 265.

52/ Vol. I, Moore; Digest of International Law,(P. 19 - quoting from Wheaton : Elements, Chap. II, Sections 20, 21, Dana's ed. 31-33).

53/ Sovereignty over the Air - A lecture delivered before the University of Oxford on October 26, 1912 by Sir H. Erle Richards, Oxford at the Clarendon Press, p. 5

54/ Ibid, p. 7, 8 and 9.

55/ International Air Law, A Lecture delivered by Prof. John C. Cooper at the U. S. Naval War College, Newport, R. I. on 20 December, 1948, p. 3

56/ Ibid, p. 10

57/ Cf. p. 25 & 26 of this survey.

58/ Article 3 para. (c) of the Chicago Convention.

59/ Article 9 of the Chicago Convention.

60/ Cf. Air Transport and World Organization by Prof. John C. Cooper, Yale Law Journal, Vol. 55, 1946, pp. 1191 - 1213.

61/ Ibid.

62/ Cf. Appendix 4, 5, 6, 7 and 8.

63/ Article 1 para. (1), Appendix 7.

64/ Article 5, Appendix 7.

65/ Article 10, Appendix 7.

66/ Article 7, Appendix 7.

67/ Article 15 para. (3), Appendix 7.

68/ Article 4 , Appendix 4.

69/ Legoff, M. Le statut aérien du canal de Suez d'après le traité anglo-égyptien du 25 août 1936. Revue générale de droit internationale public. 1939: 142 - 58.and David Morgan Hughes Airspace Sovereignty over Certain International Waterways, Journal of Air Law and Commerce Vol. 19 Spring, 1952 No. 2, p. 144-151.

70/ Jurisdiction over members of Allied Forces in Egypt, by J.Y. Brinton, American Journal of International Law, Vol. 38, 1944, p. 375. The Legal Aspect of the American Forces in Great Britain by A. L. Goodhart, American Bar Association Journal, Vol. 28, p. 762. Jurisdiction over Friendly Foreign Armed Forces. American Journal of International Law Vol. 36, p. 539. 1942 by A. King. Further Developments concerning Jurisdiction over Friendly Foreign Armed Forces. American Journal of International Law, Vol. 40, 1946, p. 257 by A. King. The Egyptian Mixed Courts and Foreign Armed Forces, American Journal of International Law, Vol. 40, 1946, p. 737 by J. Y. Brinton.

71/ Pat McCarran, Frontiers of Aviation Law, The Journal of Air Law and Commerce Vol. 14, Summer 1947, No. 3, p. 349.

72/ Annex 14 to the Chicago Convention of 1944, 1st ed. 1951, p. 9.

73/ Article 700 para. (a) and (b), The French translation is published in the Revue Française de Droit Aérien III, 1949, p. 54.

74/ Cf. I.C.A.O. Circular 3 -AT/1, May 1948, Airport Economics, p. 9.

75/ Aerodromes, Air Routes and Ground Adis Division, 5th session AGA V - WP/6, 11/7/1952.

76/ The following are the aerodromes opened for internal and international air traffic: Cairo, Almaza, Alexandria, Mersa-Matruh, Luxor & Port Said.

77/ The forementioned aerodromes are custom aerodromes.

78/ Article 1 of the law No. 19 of 1920, Appendix 8.

79/ Commercial Air Transportation by John H. Frederick, Revised Edition 1946, p. 116 (footnote 9), quoted from Airports and Airplanes and the Legal Problems They Create for Cities (Washington, D. C., 1939).

80/ Cf. Appendix 5 of this survey.

81/ Cf. Chapter XV of the Chicago Convention on Airports.

82/ Ibid.

83/ For more details see Shawcross, C.N. and Beaumont, K.M. Air Law, 2nd edition, London 1951, p. 504, 505, and 506.

84/ e.g. Article 8 of the Law No. 27 of 1941, See Appendix 5.

85/ Article 12 of the Decree issued on the 23rd of May 1935, see Appendix 7.

86/ Louis Le Fur, Précis de droit international public, 1939, No. 325, p. 168.

87/ Gilbert Gidel, Le droit international public de la mer, tome II, pp. 39 et ss.

88/ Ibid, pp. 45 et ss.

89/ Article 10 of the Chicago Convention.

90/ Article 8 of the Law on Air Navigation issued on the 5th of May 1941, See Appendix 4, of this survey.

91/ Juglart, Traité élémentaire de Droit Aérien, op. cit, p. 112,No. 104

92/ This subject is under careful study of the C.A.D. and the C.A.B. in Egypt.

93/ Paris Convention of 1919, Annex D.

94/ Paris Convention of 1919, Article 30 & 31.

95/ See the Official translation of the definitions provided, in Appendix 4 of this survey. See also Annex D. of the Paris Convention op.cit.

96/ See Appendix 7 of this survey, art. 7.

97/ See Appendix 7 of this survey, article 16.

98/ Ibid.

99/ Article 17, 18 and 19 of the Chicago Convention.

100/ NOTAM No. 14-A/1952.

101/ See Appendix 7 of this survey, article 8.

102/ See Appendix 7 of this survey, article 9.

103/ Article 8 of the Ministerial Order No. 13 issued on the 26 of May 1942.

104/ See Appendix 7 of this survey, article 15.

105/ See Appendix 7 of this survey, article 2 & 3 para. (e).

106/ Article 9 & 10 of the Ministerial Order No. 29 issued on the 23rd of June 1942.

107/ Article 11 of the Ministerial Order No. 29 issued on the 23rd of June 1942.

108/ Article 23 of the Ministerial Order, op. cit.

109/ See Appendix 7 of this survey, article 13.

110/ Article 31 & 33 of the Chicago Convention, article 11, 13 and also see Annex B. of the Paris Convention of 1919.

111/ See Appendix 7 of this survey, article 12. See Also the opinion of Prof. O. Riese and Oppikofer quoted by Nasir Zeytinoglu author of "Etude sur le Droit Aérien Turc". Lausanne, 1951, p. 67.

112/ Article 13 of the Ministerial Order No. 15 issued on the 26 of May 1942. This article applies only to aircraft engaged in public transport.

113/ Article 15 of the Ministerial Order No. 15, op. cit. (personal translation).

114/ Article 16 of the Ministerial Order No. 15, op. cit.

115/ Article 22 of the Ministerial Order No. 15, op. cit.

116/ Article 28 of the Ministerial Order No. 15, op. cit.

117/ Article 26 of the Ministerial Order No. 15, op. cit.

118/ Article 29 of the Ministerial Order No. 15, op. cit.

119/ See Appendix 4 , of this survey, Article 12

120/ Article 32 of the Ministerial Order No. 15, op. cit.

121/ Article 34 & 35 of the Ministerial Order No. 15, op. cit.

122/ Article 31 of the Ministerial Order No. 15, op. cit.

123/ Article 23 of the Ministerial Order No. 15, op. cit.

124/ See Appendix 7 of this survey, article 3 para. (d).

125/ Ibid.

126/ Article 6 of the Ministerial Order No. 15, op. cit.

127/ Article 44 para. (2) of the Egyptian Civil Code provides that: " La majorité est fixée à 21 ans révolus, d'après le calendrier Grégorien".

128/ The rules of Annex 1 to the Convention on International Civil Aviation were put into force in Egypt by NOTAM 23-A/1949 & NOTAM 14-A/1952.

129/ By application of article 7 of the Decree of Aerial Navigation issued on the 23rd of May 1935 - See Appendix 7 of this survey.

130/ Ibid.

131/ Cf. The Foreword p. 5 of the Standards and Recommended Practices on Personnel Licensing, Annex 1, second edition March 1951,op. cit.

132/ Inasmuch as this NOTAM re-enacted almost all the rules of Annex 1 op. cit., word by word; we believe that it is unnecessary to put it in an Appendix.

133/ Article 1.2.3. of Annex 1, (p. 10) op. cit.

134/ Article 1.2.4. of Annex 1, op. cit.

135/ Article 1.2.5. of Annex 1, op. cit.

136/ Cf. Report on the Legal Status of Aircraft Commander presented by Mr. André Garnault, p. 321 of Doc. 7157 - LC 130 (Seventh Session, Mexico-City, Minutes and Documents, May 1951).

137/ Cf. The Aircraft Commander in International Law by Arnold W. Knauth, Journal of Air Law and Commerce 1947, p. 157.

138/ Council Decision of 15 May 1953, LC/Working Draft # 404, 11/6/53.

139/ Article 12 of the Ministerial Order No. 15 issued on the 26 of May 1942.

140/ Article 4.2.7.1 of Annex 6 To The Convention on International Civil Aviation. 3rd edition, May 1952.

141/ Definition, Annex 6 op. cit., p. 10.

142/ Annex 6 op. cit., p. 9

143/ Cf. Duties of Pilot-in-Command, Annex 6 op. cit, p. 17, Cf. also Article 2.1.2.1. of Annex 1 op. cit., p. 11

144/ Article 2.1.2.3 of Annex 1 op. cit.

145/ Article 3.4 of Annex 6 op. cit.

146/ On this Convention, Cf. Précis de Droit Aérien by O. Riese, 1951,p. 166

147/ Inasmuch as there exist no official English translation of the articles of the Egyptian Civil Code, it was thought best to quote from the official French translation rather than to attempt an English version.

148/ H. Guibé , Essai sur la navigation aérienne en droit interne et à droit international, p. 35 ss.

149/ Cf. The excellent article on Rpman Law and The Maxim "Cujus Est Solum" in International Air Law by John C. Cooper, Institute of International Air Law -McGill University 1952, Publication No. 1,p.31.

150/ Cf. Jean Constantinoff, Le Droit Aérien Français et Etranger, Paris, 1932, The French Law of 31 May 1924 is printed as an Annex to the latter book, p. 291 - 306.

151/ For much of the data as to codification of "Landrecht" of 1794 , the writer is greatly indebted to the book entitled "La Doctrine Musulmane de L'Abus des Droits", by the eminent writer Mahmoud Fathy, 1913, p. 4 & 5 (Personal translation from French to English).

152/ Cf. Mahmoud Fathy, op. cit., p. 8.

153/ Gelat, Répertoire Administratif et de Jurisprudence, éd. 1900 t. III, p. 635.

154/ Kamel Moursi (bey), De la Propriété et des Droits Réels. p. 113

155/ Abdel Salam Zohni (bey), Les Biens, ed. 1926, p. 160.

156/ See 9 Feb. 1905, B. 17, 117, See 3 May 1906 B. 18, 223. Code Civil égyptien mixte annoté, Bestawros, t. I art. 27, p. 445.

157/ See 3 May 1911. B. 23, 298. See 18 April 1912, B. 24, 299. See 17 April 1919 B. 31, 252. Bestawros, op. cit.

158/ As to the legal bases and the application of the theory of "L'Abus des Droits" in Egyptian jurisprudence, See the excellent introduction by Late Dean Edouard Lampert, to the book of "La Doctrine Musulmane de L'Abus des Droits", by Mahmoud Fathy, op. cit., particularly p. xxxix.

159/ It is of interest to mention here that Late Dean Lampert was asked by the Egyptian Government to join the Committee which was in charge of drafting a new Civil Code for Egypt. This Committee finished its work in 1946. The Committee was formed of two members : Maitre El Sanhoory who is considered as an authority in Islamic Law (he is now the President of Conseil d'Etat in Egypt) and Late Dean Lampert who was quite familiar with Islamic Law. Moreover, the public opinion in Egypt was advocating the necessity of adopting the principles of Islamic Law in the new Civil Code. The Code as we stated in the body of this survey, came into force in 1949. For more details, see the explanatory note of the latter Code.

160/ The Prophet Mohamed received his revelation at the beginning of the seventh century A.D.

161/ For a fuller discussion of the subject, vid the excellent work of Mahmoud Fathy on "La Doctrine Musulmane de L'Abus des Droits", op. cit. (a copy of this book is available at the library of law faculty McGill University, KIILC , F. 26)

162/ Malik Ibn Anas (97-173 A.H.; 715-795 A.D.) was born and lived in Medina (Arabia). He was thus able to learn the teachings of the Prophet in the very city in which they were given and where the traditions and teachings of Mohamed were kept in living memory. Malik originated one of the most widespread and durable schools of law.

163/ M. Fathy, La Doctrine Musulmane de L'Abus des Droits, op. cit. p. 134.

164/ Ibid, p. 142.

165/ Ibid, p. 145.

166/ Ibid, p. 147

167/ See article 1 of the Decree on aerial navigation issued on the 23rd of May 1935 - Appendix 7 of this survey.

168/ Article 28 of the Ministerial Order No. 15 issued on the 26th of May 1942.

169/ Article 1137 - 1146 to 1155 of the French Civil Code, article 215 to 233 of the Egyptian Civil Code.

170/ Article 1382 to 1386 of the French Civil Code, article 163 to 178 of the Egyptian Civil Code.

171/ G. Stefani, Cours de Droit Civil Aprofondi et Comparé - Les Cours de Doctorat de la Faculté de Droit , Université Fouad 1er. 1949 - 1950 - Responsabilité Contractuelle et Responsabilité Delictuelle en droit Egyptien et en droit Français. - Les Editions Universitaires d'Egypte , Le Caire. p. 133.

172/ C.A. Alex. 17 mai 1905. BL. J. XVII, 280; C.A. Alex. 12 juin 1918 B. L. J. XXX, 469 ; C. A. 17 mars 1910, O.B. XI.n. 111 p. 80 cf.

173/ "Mise en demeure"= notice calling upon a person to do some act or to perform some obligation within a fixed period.

174/ All the articles cited in this chapter are from the official translation of the Egyptian Civil Code of 1949.

175/ G. Stefani, op. cit. p. 199 & 200.

176/ M. G. Caby, Le Contrat de Transport, Cours de Doctorat Diplôme de droit privé 1950 - 1951, Faculté de Droit de L'Université Fouad 1er. - Le Caire. p. 22 & 23.

177/ Cf. the decisions cited in the Répertoire Générale Alphabétique du Droit Egyptien Mixte by Vroonen, Responsabilité Civile, No. 202 V. particularly the interesting decision of the Mixed Court of Appeal of 28 December 1933, Bulletin, Tome 46, page 109.

178/ See the text of this article at p. 210 of this survey.

179/ See the text of this article at p. 193 of this survey.

180/ G. Stefani, op. cit. p. 227, 228, 233 and 234.

181/ Article 92 and 98 of the Egyptian Commercial Code.

182/ Cf. Mixed Court of Appeal, decision of 7 March 1906 B. L. J. XVIII - 137. See also G. Stefani, op. cit. p. 3, also see Soliman Morcos, Les causes légales d'exonération de la responsabilité civile thèse le Caire 1936, p. 60 to 63.

183/ G. Stefani, op. cit., p. 14

184/ This decision is published in the "Bulletin de législation et de Jurisprudence Egyptiennes, Nouvelle série, 1950, p. 207, and Magallat Al Tashri Wal Kadda, 1949 - 1950 , p. 278.

185/ To the knowledge of the writer this decision is not yet published.

186/ Cf. Penetta, Egypte Contemporaine, 1933, p. 213, 214.

187/ CAM. 5 March 1919, Bulletin, Vol. 31, p. 149.

188/ C. A. Alex. 18 Jan. 1900. B.L.J. XII, p. 90.

189/ C. A. Alex 16 May 1900 B.L.J. XII, p. 251.

190/ Trib. Somm. Alex 4 Jan. 1919, Gaz. Trib. 9, p. 48 cf. CA. Alex 18, Feb. 1914, Gaz. Trib. 4 p. 108, No. 273.

191/ 3 Nov. 1928, Bulletin Vol. 41, p. 16, also 26 Jan. 1922 Bulletin Vol. 34, p. 138.

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ABREVIATIONS

B. ..... Bulletin officiel des tribunaux mixtes.

C. ..... Arrêt de la Cour d'Appel Mixte.

ICAN ..... International Commission for Air Navigation.

ICAO ..... International Civil Aviation Organization.

Eg. Cont. ..... Egypte Contemporaine.

Eg. Jud..... Egypte Judiciaire.