CHOICE OF LAW
IN
CONTRACTS OF INTERNATIONAL CARRIAGE BY AIR

by

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PREFACE.

"The realm of the conflict of laws is a dismal swamp, filled with quaking quagmires, and inhabited by learned but eccentric professors who theorize about mysterious matters in a strange and uncomprehensible jargon. The ordinary court, or lawyer, is quite lost when engulfed and entangled in it." 1/

"Virtually every judge, lawyer, and law teacher who deals with conflict questions involving contracts now prefaces his analysis with a confession and an apology to the effect that such questions concern 'the most confused subject in the conflict of laws'." 2/

"The law is confusing enough on the ground. When it leaves the earth it seems to seek the obscurity of the clouds rather than the clarity of the stars." 3/

In spite of this three-fold curse from learned jurists, the present study will deal with a problem of conflict of laws in contracts of air carriage, namely choice of the applicable law. It will not deal with other conflict problems arising from international carriage by air.

The term "international contracts" 4/ has been avoided in order to prevent confusion with "inter-state contracts" 5/, i.e., international treaties. The term "international carriage" is used here to describe what Lord Justice GREENE called "carriage with an international element" 6/. It is not identical with the narrower definition of international carriage in the Warsaw Convention, hereafter called "Warsaw carriage" 7/.

Much of the further terminology used in the following analysis may not be familiar British, American, or Canadian, legal language. The English language will be used, as SUNDBERG puts it, "in the way in which scholars formerly used Latin, as a means of communication with scholars of other nations including the English-speaking ones, but not them alone." 8/ English has gradually acquired this international status in the field of international air transport and international air law. Still,

a foreigner writing in the English language may be excused for what DRION compares to"the kind of frustration suffered by the person who attends a formal dinner in borrowed clothes which he knows do not fit too well." 9/

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INTRODUCTION.

A Dutch aircraft, on its way from Geneva to London, has an accident in Belgium. One of the victims, a Frenchman domiciled in Denmark, had purchased his ticket in Stockholm. Which law applies to the claims of the passenger's widow against the carrier: Dutch, Swiss, English, Belgian, French, Danish, or Swedish law? 10/

Of this kind of hypothetic cases, frequently presented in writings on air law 11/, McNAIR says: "Far-fetched though these examples may appear at first sight, they are by no means beyond the realms of possibility." 12/

The choice-of-law problem will arise whenever the carriage contains at least one foreign element, as was explained in Grein v. Imperial Airways:

"If there is under the contract an implied obligation on the carrier to take care, it must be an obligation arising under the law of some country. In the case of carriage with an international element this at once opens the door to questions as to what law is to be considered for the purpose of ascertaining the extent of the duty, if any, questions which may well be answered in different ways with different results according as they arise in the Courts of one country or another." 13/

This is why McNAIR says that "contracts of carriage by air are a potentially rich source of situations involving a conflict of laws." 14/ VERPLAETSE adds: "In the sector of air law, those conflicts are frequent and become steadily more important." 15/

It is the purpose of the following chapters to ascertain the choice-of-law rules existing in this field of the Conflict of Laws, as derived from treaties, national legislation, case law and commercial practice (de lege lata). The final chapter will deal with the separate issue of future international legislation on this subject (de lege ferenda).

Chapter № 1 :
CONFLICTS OF LAWS IN SPITE OF THE WARSAW CONVENTION.

There seems to be a tendency in writings on the Conflict of Laws to consider contracts of air carriage as a settled affair. Frequently they are disposed of in a footnote containing a sweeping reference to the Warsaw Convention 16/, apparently based on the assumption that this convention has eliminated all conflicts 17/.

This opinion seems to be shared by writers on Air Law. VERPLAETSE says that the Warsaw Convention "was the first and most successful attempt to eliminate conflicts in matters of air law and perhaps in the field of private international law in general." 18/ SHAWCROSS and BEAUMONT submit that in carriage governed by the Warsaw Convention "no question of choice of law normally arises, the object and effect of the treaty being to avoid any such question." 19/ Or, as MEYER puts it, "once the Warsaw Convention is held to be applicable, it is superfluous to ask which national law governs the carriage." 20/

"The possibility of questions arising between the parties as to the law applicable to the contract which they have made" was said in Grein v. Imperial Airways to have been "the mischief requiring to be remedied by the adoption of an international code." 21/ But there remains the question: Has this mischief really been remedied by the Warsaw Convention?

I. Limited Scope of the Convention.

It is generally agreed that the Warsaw Convention applies irrespective of the so-called general rules of Conflict of Laws. While SCERNI was of the opinion that the Convention was only applicable if the rules of Conflict of Laws pointed to a member state of the Convention (thus making choice of law a "prius" to application) 22/, this view has been strongly rejected by MALINTOPPI 23/ and ROMANELLI 24/.

The Convention itself determines its scope of application in article 1, which RIESE calls a "special conflicts rule, prevailing over the general conflicts rules of national law which would otherwise apply." 25/

As distinct from ordinary conflicts rules, article 1 of the Warsaw Convention contains two localizing factors instead of one: (1) the agreed place of departure, (2) the agreed place of destination or an agreed stopping place. If (1) and (2) are situated in the territory of different High Contracting Parties 26/, the carriage is deemed 'international' and the Convention applies (Warsaw carriage) 27/.

By this definition, three groups of cases are left outside the scope of the Convention:

a) International (non-Warsaw) carriage, i.e., carriage with a place of departure, or a place of destination, or both, situated in the territory of states not members of the Convention. There are at least 24 independent states which have not ratified the Warsaw Convention 28/, which leaves considerable room for conflicts arising outside the Convention 29/.

b) Cabotage, i.e., carriage with place of departure and place of destination (plus stopping places) all situated within the territory of a single High Contracting Party 30/. Such domestic carriage is frequently being performed by foreign carriers 31/, for foreign passengers, on tickets purchased abroad, with occasional accidents abroad 32/. It opens numerous possibilities for conflicts of laws not covered by the Warsaw Convention 33/.

c) Exceptional carriage, i.e., international carriage not covered by the Warsaw Convention: experimental and other extraordinary flights (art. 34), gratuitous carriage performed by a carrier other than an "air transport undertaking" (art.1 para.1) 34/, and carriage performed directly by a state which has availed itself of the reservation to article 2 of the Convention 35/.

According to SHAWCROSS and BEAUMONT, the question as to which law applies to these groups of cases "must (until some direct authority becomes available) depend on the general principles applicable to contracts, torts, etc." 36/

II. The Warsaw Gaps.

The very title of the Warsaw "Convention for the Unification of Certain Rules Relating to International Carriage by Air" indicates that this treaty does not settle all legal problems raised by contracts of air carriage 37/. During the last decade, there have been several court decisions pointing out that the Convention "has left open" a particular question 38/, "failed to define a term" 39/, "failed to resolve a dispute" 40/.

1. Inadvertent Omissions.

Most of these so-called "open questions" 41/ may be ascribed to unintentional ommissions by the drafting authors of the Convention. It would be unfair to put the blame on "defective draftsmanship" 42/. A text which excludes all doubts is, as RIESE says, "beyond the force of man" 43/. With the advent of new fact situations created by technical progress, the number of omitted points of law will constantly increase. Among those already being felt in the Warsaw Convention today are such matters as the existence and validity of the contract 44/, the standards of care 45/, the definition of an'accident' 46/, fraud of the carrier 47/, insurance problems 48/, and the personal liability of the carrier's agents 49/.

It is little consolation indeed to hear that "these imperfections, all international conventions have them - one should consider them with indulgence and see nothing but the fine work accomplished on the whole." 50/

2. Abandoned Matters.

There is also a number of "open questions", of which the drafting authors of the Convention were quite aware, but on which they were unable to reach agreement, and which consequently were "abandoned to that national law which would be recognized as competent by the principles of private international law", as DE VISSCHER says 51/.

Among these abandoned matters are the cause of action 52/,

the persons who have a right to sue 53/, the extent of recoverable damages 54/, the validity of 'additional regulations' made by the carrier 55/, the negotiability of the air waybill 56/, and the liability for hand-baggage 57/.

As to some of these questions, it may be doubted whether they were deliberately abandoned at the Warsaw Conference, or simply not thought of, e.g., the problem of air charter 58/. However, the motives of the omittance hardly matter: the important fact is that today they appear as legal gaps in the Warsaw Convention. Since no court may deny a judgment on the ground that there is a gap in the law 59/, some national law will presumably have to fill the holes. The problem is: which?

III. Insufficient Conflicts-Rules of the Warsaw Convention.

The Convention contains one provision on jurisdiction (art.28 §1) and five references to the lex fori for special questions: contributory negligence (art.21), periodical payment of damages (art.22), fault equivalent to wilful misconduct (art.25), procedural questions (art.28 §2), and the method of calculating the period of limitation (art.29 §2) 60/.

It has been suggested by BLANC 61/, VAN GORKUM 62/, and LUREAU 63/, that these provisions indicate an implied intention of the drafting authors to the effect that the lex fori is to be generally applied in any case of conflict. As RABEL says, "international draftsmen are likely to think of this first." 64/

Courts were inclined to follow this apparent analogy: In Wucherpfennig v. SAS it was pointed out that "the Convention itself refers to the lex fori for several questions" 65/; in Komlos v. Air France, "..this duty is in keeping with certain other duties explicitly imposed on the forum by the Warsaw Convention" 66/; and in Noel v. Linea Aero ostal Venezolana: "It is obvious/that the Convention intended to leave much to the law of the forum." 67/

Are these assumptions as to the intentions of the drafting authors correct?

1. Jurisdiction.

Article 28 §1 of the Convention grants the plaintiff a right of option 68/ to bring his action before one out of four "fora convenientes" 69/: the court of the carrier's domicile 70/, or of its principal place of business, or where it has a place of business through which the contract was made, 71/ or the court at the place of destination 72/.

This enumeration is exclusive; in particular, the court at the place of accident has no jurisdiction 73/. The action can only be brought before a court of a High Contracting Party 74/. However, nothing is provided to guarantee mutual recognition or execution of foreign judgments 75/.

2. Choice of Law.

In the first report of 1925 on the outlines of the future Convention, DE LA PRADELLE urged the draftsmen to determine "whether it is possible, while awaiting uniform legislation, to fix here and now a certain number of rules concerning the solution of the conflict of laws." 76/

The Bern Convention Concerning the Carriage of Passengers and Luggage by Rail (C.I.V.) of 1924 77/ might have served as a model for such a solution, for it contained an article 28 §1 reading as follows:

"The liability of a railway in respect of death, injury or other bodily harm sustained by a passenger, and in respect of loss or damage resulting from the late arrival or cancellation of a train or loss of a connection, shall be determined by the law and regulations of the State in which the fact causing such death, injury, bodily harm, loss or damage occurred." 78/

However, the Warsaw Conference in 1929 rejected a proposal to the effect that in the absence of provisions in the present Convention the analogical provisions of the Bern Convention should apply 79/.

Instead, the influence of another model prevailed, namely the Brussels Convention for the Unification of Certain Rules

of Law Relating to Bills of Lading (the so-called Hague Rules) of 1924 80/, which did not contain a choice-of-law rule 81/. As RIPERT, one of the authors of the Warsaw Convention (and a strong advocate for the analogy of maritime law and air law 82/), said of the Hague Rules: "The example was given, it has been followed by air law." 83/

From a retrospective point of view, it may be doubted whether RIPERT's enthusiasm has been justified by the subsequent record of the Hague Rules, which have recently been criticized as "the more meaningless the easier to adopt" 84/. According to YIANNOPOULOS "unfortunately, even the reserved optimism which prevailed at the time the Convention was signed, proved to be illusory. The very text of the Convention, as finally adopted, left the door open for subsequent deviations to the prejudice of the desired uniformity." 85/ MARKIANOS even speaks of a "failure of legal unification" 86/. It is interesting to note that MORRIS suggests that the frequent conflicts of laws in carriage by sea could have been avoided "if the various states had laid down a general choice of law rule." 87/

The general attitude of the Warsaw Conference towards choice of law is illustrated by the drafting minutes 88/. When the matter of vicarious liability was discussed, the British delegation proposed to determine the applicable national law, "the law of the country where the contract was entered, or such other law as you may wish." 89/ AMBROSINI (Italy) replied that "in any case, we must push aside any recourse to national law." 90/. RIPERT (France) added:

"We shall make every effort to find an expression which will be satisfactory, but it should be well understood, here and now, that we are absolutely opposed to any provision which would return the application of the matter to national law. This is the first time that national law is sought to be applied, and if we were to accept it in this instance, it would be sought for other questions. As we see it, the convention would be destroyed, if recourse to national law is established for each article. We wish to be as conciliatory as possible on the expres-

sion we adopt; we will work it over as much as possible, but I implore the delegates not to take this dangerous path which consists of reserving the solution of the litigation to national law." 91/

The British attempt at including a choice-of-law rule on this subject failed. Considering the attitude of the majority, as illustrated by AMBROSINI's and RIPERT's comments, it is almost surprising to find some references to the national law of the forum in articles 21, 22, 25, 28 §2, and 29 §2. At least, these references cannot be considered as evidence for an alleged intention of the drafting authors to refer all conflicts to this national law. They were "second-best" solutions, of which CALKINS says, "if a uniform rule had been promulgated, the Convention would not have been acceptable to one bloc or the other of the participating nations." 92/

There are several explanations for the reluctance of the Warsaw draftsmen to provide choice-of-law rules.

First, their idealistic zeal to create substantive new law above national legislation, as expressed in RIPERT's phrase: "The airplane/leaves the realm of national laws so fast that they give up trying to reach it." 93/ Many jurists deplored the strong assertion of national sovereignty in the air by the Paris Convention of 1919 94/, and they hoped to establish an international legal order in the field of private air law, which would come closer to FAUCHILLE's famous concept of "freedom of the air", i.e., freedom of national regulation 95/.

On the other hand, the teaching of Conflict of Laws in Continental Europe until 1929 was still dominated by the French-Italian school of 'nationality', of which RABEL says that "no other doctrine has more estranged the civil and common laws from each other." 96/ The techniques of Conflict of Laws were looked at as serving national interests only. Thus, conflict rules in the Warsaw Convention were said to have been avoided for fear "to neglect the points on which international agreement was likely to be reached." 97/

RIPERT presented unification of law and choice of law as two alternative methods, of which choice of law had to be rejected as being "more satisfactory to the lawyers than to the interested parties." 98/ The possibility of combining the two methods was not even considered.

Moreover, only two of the distinguished jurists who drafted the Warsaw Convention seem to have been interested in the subject of Conflict of Laws 99/. Most other delegates were either suspicious of, or unfamiliar with, the techniques of choice of law in private international law. The result was a declaration of incompetence, formulated by DE VOS as Rapporteur:

"The question has been raised whether it could be determined who are the persons who have a right of action in case of death, and what are the damages subject to compensation. It has not been possible to find a satisfactory solution for this two-fold problem, and the C.I.T.E.J.A. considered that this question of private international law ought to be settled independently of the present Convention." 100/

Or, as GOLDHUIS puts it, the problem was put over "because it related to private international law." 101/

3. Unresolved Conflicts.

The impact of the Warsaw Convention on conflicts of laws in air carriage may be summed up as follows:

a) As SHAWCROSS and BEAUMONT say, "international air law has not entirely ended this conflict of laws," 102/ considering the fact that a number of conflicts situations remained outside the scope of the Convention 103/.

b) As CAPLAN says, "in many areas the Convention has failed to achieve the desired uniformity." 104/ The Warsaw Convention is "not complete" (SUNDBERG 105/) and "by no means perfect" (CALKINS 106/). RABEL calls the unification of air law effectuated by the Warsaw Convention "fragmentary", and adds: "But the remaining conflicts are even more important and less well worked out than the traditional maritime questions." 107/

c) As the Court of Appeal of Hamburg stated in Lucherpfennig v. SAS, "the Warsaw Convention does not contain a provision on the applicable national law." 108/

Even the jurisdiction rule of article 28 §1 is subject to diverging interpretation by different national jurisdictions 109/. As SCHEMHUT says, "the jurisdictional provisions of the Warsaw Convention ask for ascertainment of the carrier's domicile or principal place of business." 110/ In the absence of general rules on the recognition of foreign judgments 111/, these provisions are not a safeguard against conflicts of jurisdiction, as has been pointed out in Indemnity Insurance Co. v. IAA 112/.

The few references to the lex fori in articles 21,22,25, 28 §2, and 29 §2, must be considered as exceptions of "no more than relative value" 113/, in the light of what SUNDBERG terms "the utter hostility which was displayed by the (Warsaw) Conference relating to conflict of law solutions." 114/

d) The result is a situation which LUREAU describes as "full of incertitude." 115/ When the Warsaw Convention is applied to the example presented in the Introduction 116/, two or possibly three national jurisdictions would be competent to decide the case: a Dutch court (carrier's principal place of business), a British court (place of destination), and a Swedish court (assuming that the contract was made through the Dutch carrier's Stockholm office). The passenger's widow, when exercising her option where to bring the suit, will be advised by Counsel that all questions of substantive law not settled by the Warsaw Convention will depend on this option. Following their respective choice-of-law rules, the Dutch court will presumably apply either Dutch law (law of the flag and of the carrier's principal place of business), or Swedish law (lex loci contractus), or British law (lex loci solutionis). The British court will apply either British law or Belgian law (lex loci delicti). The Swedish court will usually not follow specific conflicts rules and apply the national law which it considers as having the closest connection to the case.

e) Anticipating this state of the law, MAKAROV warned in 1927 that choice-of-law rules in an air law convention are "indispensable, as long as there exist substantially different air law systems." 117/ After the Warsaw Conference failed to resolve the choice-of-law problem, RIESE 118/, GOLD-MUIS 119/ and others pointed out the difficulties which were likely to follow. In 1932, MUELLER concluded: "It is one of the most serious defects of the Convention that it did not provide a remedy for this situation by a conflicts rule." 120/

Chapter № 2 :
CONFLICTS CREATED BY TRANSFORMATION OF THE CONVENTION.

The Warsaw Convention has been labelled by COQUOZ "a common, supranational legislation"121/. CHAUVEAU says that "the convention is absolute law in that it cannot be interpreted nor amended nor altered by borrowing from the national law." 122/ MEYER maintains that nothwithstanding its transformation into national laws the Warsaw Convention remains "substantive international law"123/.

It is submitted that these are illusions. The Convention has not remained unaffected by the fact that since 1932 124/ it was enacted in 57 different independent states 125/.

I. The Dualism of the Warsaw Rules.

If international law is defined strictly in the sense of "inter-state law", i.e., rules relating to the rights and duties of states between themselves 126/, then the Warsaw Convention contains little international law indeed.

1. Inter-State Rules.

Only the final provisions of articles 36-41 set up certain rights and duties for "any High Contracting Party"127/ and for two specific states 128/, relating to the diplomatic acts of ratification, accession, denunciation and reservation. In addition, certain implied rights and duties of states may be deduced from these provisions 129/.

According to diplomatic practice these rights and correlative duties become automatically binding on states after ratification, i.e., after approval of the treaty by the political body which is constitutionally competent to bind the state internationally 130/.

2. Inter-Individual Rules.

By contrast, the core of the provisions of the Warsaw Con-

vention contains inter-individual law ("private law"), i.e., rules relating to the rights and duties of air carriers and passengers (or shippers) between each other. The nationality of these private parties is irrelevant. It has been held in Garcia v. PAA 131/ and in Flores v. Empresa Cubana de Aviación 132/ that the Convention applies regardless of the citizenship of either carrier or passenger.

These inter-individual rules of the Warsaw Convention do not only create new rights and duties for individuals, they also modify and supersede existing national law 133/. However, treaties can ordinarily create effects only between states, not between individuals 134/. If their provisions are to be binding on individuals, they must be transformed into inter-individual (national) law 135/.

II. Transformation.

Art. VI US says that "By ratification of conventions, the ratifying state enacts the agreed rules as national law and does not assume any further duty." 136/ However, the international responsibility of a High Contracting Party does not necessarily end with ratification. By ratifying the Warsaw Convention, a state undertakes to give operative effect to its provisions within the national territory, i.e., to transform them into national law, even though this duty is not expressly stipulated in the Convention 137/.

1. Different ways of transformation.

The enactment of inter-individual law is most often the monopoly of the legislature. Consequently, a number of legal systems requires legislative action for the transformation of conventions affecting domestic legislation 138/. In some states, mere ratification may be deemed sufficient to create the effects of the transformation, if the convention is considered to be "self-executing" 139/.

As was pointed out in Indemnity Insurance Co. v. PAA, in

the United States "whether a treaty is self-executing or requires implementing legislation depends upon its terms, whether they call for further action or whether they are enforceable without legislation."140/ A treaty may even be considered as being self-executing in part, and require legislation in part.141/

The way of transformation is up to the constitution of each state; international law only imposes the general obligation to transform.

a) It appears that the Warsaw Convention, despite its impact on inter-individual law, has been regarded as self-executing in many states. Thus, it seems to have been enacted by mere ratification, and official publication or promulgation, in France 142/, Belgium 143/, Italy 144/ and Austria 145/.

b) By contrast, the Convention was enacted by special legislation in the United Kingdom 146/, in other Commonwealth countries 147/, in Ireland 148/, and in Scandinavia 149/. Special implementing legislation was enacted, further to promulgation of the Convention, in Germany 150/ and in the Netherlands 151/.

c) In the United States, treaties may be denied operative effect in the absence of implementing legislation 152/, although they are said by the Constitution to be the supreme law of the land 153/. This was exactly what at first happened to the Warsaw Convention in Choy v. PAA 154/ and Wyman v. PAA 155/, but the subsequent decisions in Indemnity Insurance Co. v. PAA 156/, Garcia v. PAA 157/ and Noel v. Linea Aeropostal Venezolana 158/ eventually construed the Convention to be self-executing 159/.

2. Different Effects of Transformation.

Once the inter-individual provisions of the Warsaw Convention are transformed into national law, they become an intrinsic part of the national legal system. It is not correct to consider the Convention as something "quite apart from our laws"160/. In numerous court decisions the rules of the Convention were declared "part of the law of the land" of the United States 161/ and of particular states of the Union 162/, "a part of German

legislation" 163/, "part of the Swiss legal order" 164/, and in Grein v. Imperial Airways it was held:

"..When by the appropriate machinery they are given the force of law in the territory of a High Contracting Party they govern (so far as regards the Courts of that party) the contractual relations of the parties to the contract of carriage, of which (to use language appropriate to the legal system of the United Kingdom) they become statutory terms." 165/

ROMANELLI confirms: "The Warsaw Convention always applies as internal law of the Italian legal system." 166/

Whether transformed by way of self-execution or by special legislation, the rules of the Convention are applied by the courts in the same way as any national statute 167/. However, the constitutional status of the Warsaw rules varies from country to country 168/:

a) The Convention may have the status of a "special law" 169/ placed above the general rules of law of the state 170/, and overriding both prior and subsequent national legislation (lex superior derogat inferiori). As CHAUVEAU puts it, the national legislature "loses its liberty as respects the contents of the law." 171/ This was the status of the Warsaw Convention under the former French Constitution. In Gallais v. Aéro-Maritime Co. it was held:

"In application of the principle expressed in article 28 of the Constitution of 27 October 1946, the provisions of the said Convention must prevail over those of the internal legislation." 172/

However, the new French Constitution of 1958, although affirming the "superior authority" of treaties (art.55) does not seem to invalidate any longer, French legislation inconsistent with treaties, if passed after the treaty was enacted 173/. Moreover, BATIFFOL points out that French judges do not have the right to invoke the constitution against legislation of the parliament, and consequently may not invalidate a subsequent statute as being contrary to a treaty. 174/

b) In the United States, the rules of the Warsaw Convention are not only placed below the Constitution, as evidenced by Indemnity Insurance Co. v. PAA 175/ and Pierre v. Eastern Airlines 176/, but on equal level with federal legislation, so that they may be superseded by a subsequent inconsistent Act of Congress (lex posterior derogat priori) 177/. This principle appears to apply to treaties also in Switzerland 178/, Sweden 179/ Italy 180/ and Austria 181/, whereas it is still controversial in Germany 182/.

On the whole, subsequent legislation inconsistent with the Warsaw Convention is recognized as involving the international liability of a state for breach of a treaty obligation 183/, but the internal validity of the lex posterior would appear to be unaffected thereby, in the majority of states 184/.

III. Supplementary National Legislation.

GOEDHUIS says that "states can do useful work, on the one hand, by completing the rules of the Convention in so far as they are incomplete, on the other hand, by providing an interpretation for those provisions which are not entirely clear, thus dissipating all doubts regarding their true meaning." 185/
RABEL submits that such unilateral legislative supplements to the Warsaw Convention rest "on an autarchic ground"186/.
However, for certain states supplementary legislative action will not only be permissible, but even necessary in order to give operative effect to certain rules of the Convention which call for such legislation. 187/

Thus, certain "open questions" such as the persons who have a right to sue, and the measure of damages have been ascertained by statutory provisions supplementing the Warsaw Convention in the United Kingdom 188/ and in other Commonwealth states, also in Ireland 189/, in Germany 190/ and in the Netherlands 191/.

This type of legislation should not be confused with national statutes extending the rules of the Convention to

non-Warsaw carriage 192/. Since the latter kind of legislation applies to another field of air transport, it cannot be considered as "authentical interpretation" of the Warsaw Convention 193/.

The various national statutes supplementing the rules of the Warsaw Convention are, of course, at variance with each other. They add to the diversification of the "uniform" text of the Convention. As GEORGIADES says, "the extreme diversity of the legislative systems of each country as regards the Convention" becomes a major source for new problems of conflict of laws 194/.

IV. Translation.

The Warsaw Convention was "drawn up in French in a single copy" (art.36 195/). But only a few member states have French as their official language 196/. As each High Contracting Party is under an obligation to transform the provisions of the Convention into national law, the first step of transformation for most states was translating the French text into their respective national language or languages.

Thus, the Warsaw Convention has been translated into approximately 30 languages of the world. In other words, there exist today about 30 different official texts. The chances for conflicts are self-evident.

1. Reference to Original Language.

According to SUNDBERG it follows from article 36 that "words used in the Convention thus have to be determined as to their meaning by reference to the French language." 197/ The author makes it clear that this should be understood not as a reference to the 'popular meaning' in French, but "to the meaning which the terms of the Convention have acquired in French law." 198/ This would attribute to article 36 the quality of an indirect choice-of-law rule.

A similar point of view is presented by ROMANELLI who submits that the Warsaw Convention applies both in Italy and in the United States "in the original French text"199/.

There are very few court decisions which would lend support to this contention. In Primatesta v. Ala Littoria an Italian court sitting in Libya once quoted the Warsaw Convention in the French text 200/. In Fischer v. SABENA a Belgian court said that "the term 'wilful misconduct' is not expressed in the text of the Warsaw Convention drafted exclusively in the French language, the text of which is binding (fait foi)." 201/ In Froidevaux v. SABENA a Swiss court said: "..Whenever ambiguity results from translations into the official languages of the individual member states of the Warsaw Convention, recourse must be had to the French original text of this international agreement... Therefore, where the French text is so unequivocal as in article 29 §1 of the Warsaw Convention as regards the nature of the period of limitation, there is no room for the application of rules and doctrines of Swiss law concerning prescription." 202/ In Djabbarzade v. Linee Aeree Italiane a Swiss court in a case not governed by the Warsaw Convention, but by a statute extending the Warsaw Rules to non-Warsaw carriage, interpreted the term 'establishment' of article 28 by reference to two popular French dictionaries, "Nouveau Larousse Illustré" and "Littré"203/. - It should not be overlooked that both in Belgium and in Switzerland French is one of the official national idioms 204/.

2. Objections.

Several points may be raised against what SUNDBERG calls "the principle of the prevalence of the French legal system when interpreting the Convention." 205/

a) First there is the basic problem of administration of justice: Few foreign judges can be presumed to be able to read the Convention in the French text, and even less, to render decisions in conformity with French law. Consequently, every case involving interpretation of the Warsaw Convention would have to

follow the testimony of expert witnesses on French law.

b) Nothing in the minutes of the Warsaw Conference indicates a common intention of the draftsmen to attribute the rôle of interpreter to the French legal system. On the contrary, the conference rejected a proposal to leave the definition of the monetary unit ("Franc") to French legislation 206/, and when the British delegate pointed out that a French legal term might have no equivalent in another legal system, he was informed that in such cases the Convention could not be applied at all 207/.

c) There is no reason why interpretation of a French text should be the privilege of the legislators, courts, or jurists, of the French Republic, as distinct from other French-speaking states, such as Belgium, Switzerland or Canada. The argument of the "conceptualist uniformity which centers on France" 208/ is disproved by the divergent interpretation of concepts such as "faute lourde équivalente au dol" (art.25 of the Convention) in different French-speaking countries 209/.

d) The reference to French legal language raises an intertemporal conflict: Either the reference is to the meaning which the terms had acquired in French law at the time when the Convention was concluded 210/, or to their meaning in contemporary French law. In the former alternative, the court will have to apply a law "frozen" in 1929, unadjusted to the development of air transport and air law during the past 30 years 211/. In the latter alternative, French law-makers will be at liberty to fix and alter the meaning of the Convention whenever they feel like it, and all other High Contracting Parties will have to instruct their courts to follow up. As DRION says, "it is obvious that no State would be willing to go that far." 212/

e) Statutory provisions supplementing and interpreting the Warsaw Convention are, of course, not in French, but in the national language of the legislating state 213/. There is no way of obliging states to enact legislation in conformity with the law of France, or to prevent them from enacting their own supplementary legislation.

3. Authority of Official Translations.

The practice of American courts interpreting the Warsaw Convention appears to lead to a presumption in favour of the official translation of the Convention.

In Pekelis v. TWA it was noted: "The above translation is from the text of the Convention which was in French, and is the translation which was before the United States Senate when it ratified the treaty," 214/ and in Fuller v. KLM: "This was the English translation before the Senate for consideration." 215/ In Holzer Watch Co. v. Seabord & Western Airlines it was held: "As translated by the United States Department of State, the Warsaw Convention is the law of the land. The court is thus bound by our official translation without regard to the British translation." 216/

The parties may attempt to defeat the presumption, by challenging the correctness of the official translation, as in Ulen v. American Airlines, where the court said: "Appellant has gone to the trouble of having translated (by a translator of its own selection) a portion of the official minutes of the Conference which later formulated the Convention. We see nothing in these minutes which would justify a holding that the official translation of 'dol' into 'wilful misconduct' is incorrect." 217/

If the translation is not challenged, it is considered as binding, as in United States v. Flying Tiger Line: "The original text of the Warsaw Convention was French, but neither party objects to the English translation which we have quoted." 218/

It does not follow, as SUNDBERG claims, that the binding force of the French text will thus "be reduced almost to nil"219/. Article 36 of the Warsaw Convention makes the French text binding as between states. Consequently, the terminology of French public international law will provide the yard-stick in case of disputes between High Contracting Parties concerning their respective treaty obligations. French legal language will thus govern the interpretation of all inter-state provisions 220/.

This is in accordance with the reasons which led to the adoption of article 36. This provision was adopted by the Warsaw Conference not because of an alleged "primacy of the French legal system" 221/, but because of the then recognized primacy of French as diplomatic language, i.e., the language of inter-state relations.

By contrast, the French text of the Convention cannot be deemed to be binding as between individuals, unless French is also the national language of the state which enacted the Warsaw Convention as inter-individual law. If the rules of the Convention are to become effective as between air carriers and passengers (or shippers) in the territory of a High Contracting Party, they must be transformed into national language as well as into national law.

In 1927 MAKAROV said, commenting on the draft which later was to become the Warsaw Convention: "Each legal concept of a particular legal system, even though it has been introduced into that legal system by way of a treaty, is organically linked with all its concepts." 222/

Much more so than ordinary language 223/, legal terms are symbols which presuppose the background of a whole legal system inorder to make sense 224/. This is why RIPERT says: "Unfortunately, it is sometimes rather toilsome to translate into a national law /rules adopted at an international conference." 225/

The 30 or more translations of the Warsaw Convention must thus be seen as a translation "into national law" rather than into national language, of the unattached concepts elaborated at Warsaw. This is clearly evidenced by the fact that there exist at least three different English translations of the Convention (the British, American and Irish texts 226/), each one official in some English-speaking country 227/.

However, the transformation is not completed with the act of translation: in a gradual process of judicial interpretation the translated concepts will eventually be linked with all other concepts of the national legal system. This phenomenon may be described as a gradual "nationalization" of the original text.

V. The Fifty-Seven Warsaw Statutes.

Commenting on the law of carriage by sea, MARKIANOS says: "The reasons for the failure of legal unification can be found in the Hague Rules themselves as well as in the national legal systems." 228/ This is equally true for the Warsaw Rules.

The Warsaw Convention had to be transformed into 57 national legal systems, because it contains essentially inter-individual law rather than substantive international law. At best, it is "transnational law" in JESSUP's terminology 229/, namely national law dealing with the 'international' fact situation of boundary-crossing transportation.

Consequently, what is known today as the "Warsaw Convention" throughout the world, is something very different from the document deposited in the archives of the Polish Ministry of Foreign Affairs on October 12, 1929. In each member state is has undergone an irreversible process of transformation, translation and interpretation particular to that state; in some states, it underwent a reservation 230/ or supplementary legislation 231/.

The result has been called "uniform legislation" 232/. It would be more adequate to speak of a more or less 'parallel legislation', similar to the common legislation of the Scandinavian states 233/ or to the uniform laws advocated by the United States at the Hague Conferences on Private International Law 234/. The only difference lies in the fact that members of the Warsaw Convention are under a treaty obligation to enact this legislation 235/. But otherwise the Warsaw Convention cannot control the actual ways and effects of its transformation into national law 236/, nor its subsequent legislative and judicial interpretation 237/.

MANKIEWICZ says: "The rules of the Convention must be applied within the framework of legal systems based on different technical concepts." 238/ They have undergone and will continue to undergo a different evolution in each of these legal systems. In fact, instead of a single Convention there are today 57 independent 'Warsaw Statutes'. MAKAROV characterized this state of the law by KAHN's famous term "latente Gesetzeskollision" 239/, whichm may be translated freely as "creeping Conflict of Laws."

Chapter № 3 :
CONFLICTS IN JUDICIAL INTERPRETATION OF THE CONVENTION.

All conventions on 'uniform law' raise the problem of uniform interpretation 240/. Speaking of the Hague Rules of maritime law, Lord Justice SCOTT said in The Eurymedon: "The maintenance of uniformity in the interpretation of a rule after its international adoption is just as important as the initial removal of divergencies." 241/ For the Warsaw Convention, as the most widely accepted convention of this kind, the problem has become of primary importance. 242/

I. Absence of a Common Interpreting Body.

According to the International Institute for the Unification of Private Law , there are two possible ways of maintaining uniformity of interpretation 243/: 1) the insertion in conventions of uniform law, of a clause attributing competence to special courts to give interpretative opinions upon request; 2) the creation of bodies competent to safeguard the interpretation of the unified law.

1. International Court.

WOLFF says: "The danger exists that unless an international supreme court is established, the courts of the various States will interpret the rules of the Convention in different ways, so that the apparent unity of the law falls to pieces." 244/

In 1927, KAFTAL called for an international supreme court to be created even before the elaboration of uniform air law 245/. When the Hague Conference on Private Air Law recommended in 1955 that "such international bodies and organizations, as are responsible for or interested in the development of international private air law, commence as soon as possible to study the problems involved in the promotion of uniform interpretation of the international private air law conventions and in the international settlement of disputes arising under said conventions," 246/ it

considered that these were "problems which cannot easily be solved otherwise than by means of some international legal forum." 247/ There have been numerous proposals for the creation of

a) an international court of appeals in air law matters 248/,
b) a special international court competent to interpret air law conventions 249/,
c) recourse to the International Court of Justice, or to an international tribunal of arbitration 250/.

- These proposals regularly met with strong opposition 251/.

It would appear that at present there is no chance for an air law supreme court on a world-wide scale, whereas agreement may become possible within a regional frame-work, as suggested by RIESE 252/.

2. Board of Experts.

NADELMANN points out that major causes of conflicts may not be 'interpretative' at all: "Where the legislation contains serious mistakes and gaps, where new technical, economic, social and political developments require new legal solutions, courts often are not equipped to deal with what is essentially a legislative task." 253/ The author therefore proposes to appoint permanent stand-by committees, similar to institutions existing in the United States 254/, which would periodically recheck the uniform law 255/.

This way of preserving uniformity, which also was under consideration in the Nordic Council for common Scandinavian legislation 256/, has been discussed in international air law since 1933 257/. However, DE LA PRADELLE's plan for a system of authoritative interpretation of private air law conventions, in the framework of the Comité International Technique d'Experts Juridiques Aériens (CITEJA) 258/ was opposed from the start 259/, and had to be dropped in 1939 260/. In 1952, SAPORTA proposed to apply the technique of "Technical Annexes" (of the Chicago Convention of 1944 261/) to the field of private air law 262/,

which would in effect attribute quasi-legislative powers to a selected international body 263/. However, states are not likely to accept international legal standardization in the field of the law of carriage as easily as in the more technical field of the Chicago Annexes 264/.

II. The Rôle of the National Courts.

In the absence of a common interpreting body, the application and interpretation of the Warsaw Convention is left wholly to the national courts of its 57 member states. Thus, the Convention has become a perfect example of what SCELLE termed "dédoublement fonctionnel" 265/, i.e., the double task of a national court to apply both national and international law 266/.

1. Lack of Governmental Control.

Since the Warsaw Convention contains a few provisions of substantive international (inter-state) law 267/, its interpretation may involve matters of "international public policy", e.g., the question whether the Convention is in effect as between one state and another.

Following a strict doctrine of separation of powers, French courts will usually defer this kind of political questions to the Executive Branch (the Ministry of Foreign Affairs) for interpretation 268/. This principle (eius est interpretare cuius est condere) was followed in French State Treasury v. Aigle Azur 269/, where article 40 of the Warsaw Convention (applicability of the Convention as between Laos and Vietnam) was interpreted by reference to a letter received from the Minister of Foreign Affairs 270/.

The situation with respect to article 40 seems to be similar in the United Kingdom. In the early case of Philippson v. Imperial Airways the House of Lords felt competent to decide whether a signatory state which had not yet ratified the Warsaw Convention was a "High Contracting Party" 271/. However, since 1939 the British Government itself interprets this article, by publishing a

list of Parties which now is conclusive for the purposes of the Carriage by Air Act, though not for other purposes 272/.

Governmental explanatory reports on the Convention have also been cited in Swiss 273/ and Austrian 274/ court decisions. 275/

Apart from these cases, and in most other states, governments have no control over the judicial interpretation of the Warsaw Convention. American courts have occasionally referred to an interpretation of the Warsaw Convention by Secretary of State HULL 276/. However, HYDE says that the United States Supreme Court "does not appear to regard itself as necessarily bound by the conclusions of the political department of its own government." 277/ E.g., it may be imagined that the Supreme Court would not have to follow the declaration of the State Department concerning the adherence to the Warsaw Convention by the People's Republic of China 278/.

Similarly, ERADES points out that "Netherlands courts are never bound by interpretations given by the Government; they are free to follow them or to depart from them as they see fit." 279/

In Germany, the Court of Appeal of Hamburg decided in Wucherpfennig v. SAS 280/ that the Warsaw Convention was in effect between Germany and Italy, although Italy had not notified the German Federal Government of a revalidation of the treaty after World War II. In Blumenfeld v. BEA 281/, the Berlin Court of Appeals held the Convention applicable to carriage between West-Berlin and Greece.

Even French courts do not always go to the trouble of asking the Quai d'Orsay for its opinion on questions of public international law. In Attias v. Air Afrique 282/ the Warsaw Convention was declared inapplicable to carriage from Algeria to Tunisia, the latter state being "placed under the suzerainty, and by any means, under the authority of France" at the time when the accident occurred. In Gallais v. Aéro-Maritime Co. 283/ the Lebanon was considered as a High Contracting Party, although it had not separately adhered to the Convention. In these cases there is no indication to the effect that such 'diplomatic' interpretations of article 40 were procured from the Foreign Ministry.

As a result, the power of the national courts to interpret the Warsaw Convention appears to be almost unlimited, extending to both inter-individual and inter-state rules of the Convention.

2. Lack of International Control.

As NADELMANN suggested, the task of a court applying rules of uniform law may be legislative rather than interpretative, particularly when it consists in filling 'gaps' 284/. BATIFFOL says that "every day, judges are faced with old, insufficient and mute statutes, and under the pretext of interpretation they remake them." 285/ WILLIAMS says: "If marginal cases must occur, the function of the judge in adjudicating them must be legislative." 286/ BAYER concludes that the judge interpreting conventions of 'uniform law' has to act like a "supranational legislator" 287/.

However, unlike the legislative branch, the judiciary does not seem by its quasi-legislative acts (under the disguise of interpretation) to render the state internationally liable for implicit alterations, or even de facto abrogations, of treaty law 288/. RIESE says that "the contracting states are not under a responsibility of international law for the actual application of the rules laid down in the Convention."289/ In 1951, an attempt was made to incorporate a new provision to this effect in the proposed revision of the Warsaw Convention, reading: "Contracting states shall co-operate to secure, as far as possible, a uniform interpretation of this Convention." 290/ It merely resulted in a recommendation of the Hague Conference in 1955 291/, which RIESE rightly called "platonic" 292/.

As shown in the preceding chapter, it is extremely difficult for the international community to control the proper transformation of the Warsaw Convention into national law. But it seems virtually impossible to control its proper interpretation by national courts.

III. Absence of Common Rules of Interpretation.

"Here we have an illustration of the fact that an international convention is a relatively small gain for the unification of law, unless the courts applying these international rules agree on a common basic concept, to interpret these rules from the higher view-point of International Law rather than under the narrow angle of their own national view-points." 293/

This comment by SCHWEICKHARDT reiterates the request that the judge interpreting the Warsaw Convention let himself guide by "the rules of international law." 294/

Unfortunately, OPPENHEIM's statement is still true: "There are no precise rules of customary or conventional International Law concerning the interpretation of treaties," 295/ not withstanding numerous attempts since the times of GROTIUS and VATTEL 296/. This becomes apparent when the Warsaw Convention is viewed in the light of 'canons of interpretation' such as the 1956 Resolution on the Interpretation of Treaties, of the Institut de Droit International 297/. Following the principles enumerated in this resolution, the Convention may be analyzed by four means of interpretation:

1) the meaning of the terms "in their context as a whole", or autonomous interpretation;
2) recourse to preparatory work, or historical interpretation;
3) the practice followed in the actual application by states, or comparative interpretation;
4) consideration of the objects of the Convention, or functional interpretation.

1. Autonomous Interpretation.

A treaty will usually not raise problems of interpretation, as long as its terms are clear, - although there remains the question as to just when a text is "clear" 298/.

What DE VISSCHER calls "the art of interpretation" 299/ will have to be practiced only on ambiguous or incomplete texts,

a category to which the Warsaw Convention -unfortunately- belongs.

BAYER submits that a national court interpreting a convention of 'uniform law' "has the right and the duty to interpret undefined, doubtful or incomplete treaty provisions exclusively from the Convention itself, whenever possible."300/ According to CHAUVEAU, it would follow from the "autonomy of this kind of treaties with respect to national legislation" 301/ that their interpretation "obeys to proper rules." 302/ Thus, ROMANELLI proposes to fill the gaps of the Warsaw Convention "by analogy from other rules of the Convention." 303/ Similarly, GRÖNFORS attempts "to derive /arguments mainly from the Convention itself / in order to obtain a solution that has any chance of being approved by lawyers representing different legal systems." 304/

SUNDBERG refers to this approach as the 'lex specialis proposition' which tries to "avoid the divergencies which follow from the reliance on the structures of the national law."305/ Following this line of interpretation, the Warsaw Convention would have to be construed as a self-contained 'intrinsic' system.

However, "Certain Rules Relating to International Carriage by Air" cannot produce a comprehensive and gapless system of law 306/. Such a construction tends, as SUNDBERG points out, "to become artificial, complicated and theoretical, because it cuts out the natural determination of words and phrases and offers in principle no remedy when doubtful expressions cannot be determined as to their meaning by mere inference from the Convention materials". 307/

National courts cannot construe the Warsaw Convention in a vacuum, separated from all national law. As MALINTOPPI puts it, they will not forget century-old legal traditions 308/. LEVEL concludes that a judge "does not apply the statute or the treaty as an independent and autonomous rule, but as part of a whole, as an element of the internal and international legal order." 309/

2. Historical Interpretation.

As an auxiliary means of interpretation of the Warsaw Convention, the travaux préparatoires have been quoted without hesitation by French 310/, Belgian 311/, Italian 312/, German 313/ and Dutch courts 314/. The materials cited include the minutes of the Warsaw Conference of 1929 as well as the minutes of previous drafting sessions of CITEJA back to the first meeting in 1925 315/.

By contrast, GUTTERIDGE emphasizes the point that the right to look at preparatory work "is almost wholly denied to the English-speaking judges." 316/ It would appear that this principle is less rigidly applied in American courts 317/. The preparatory work of the Warsaw Convention was thus expressly referred to in Ulen v. American Airlines 318/, Komlos v. Air France 319/, and Tuller v. KLM 320/.

It should not be overlooked, though, that the preparatory work is of rather limited value, for two principal reasons:

a) The present High Contracting Parties of the Warsaw Convention are in their majority states which were not represented at the drafting sessions from 1925 to 1929. It is doubtful whether they would have to consider themselves to be bound by the statements made at preparatory meetings 321/.

b) The Convention was drafted more than 30 years ago. DE JUGLART, commenting on Stichting v. Air France, questions the reasonableness, "after thirty years of spectacular progress in every respect," of the court's relying on the theory of risk as it was in existence at the time the Convention was drafted 322/. This objection would affect all preparatory work, since there is probably not a single field of air law that could be said to have remained unaffected by progress.

As Judge ACEVEDO of the International Court of Justice once put it, travaux préparatoires are "a double-edged weapon" 323/, containing many contradictory views. Their rôle is summed up by McNAIR as a "useful make-weight", but "it would be unfortunate if preparatory work ever became a main basis of interpretation." 324/

3. Comparative Interpretation.

In its 1959 Report on the Warsaw Convention, the New York City Bar Association submits: "Experienced plaintiffs' attorneys have argued /that since this is an international treaty, the interpretation of 'dol' made by French courts and other European courts should carry as much weight here in the United States as that of a domestic case." 325/ BAYER urges to take foreign decisions into account for all conventions of 'uniform law' and calls for "comparative interpretation" 326/. LE GOFF even contends that an interpretation of the Warsaw Convention made by a Tribunal of a High Contracting Party can be invoked in the courts of any other member state 327/.

However, the Warsaw Convention as interpreted by the courts is by no means the same in all member states. It has been restricted by national reservations, transformed into national law, translated into national legal language, supplemented by national legislation and by national case law 328/. Foreign interpretations of the Convention must therefore be seen in the light of all changes which the once uniform rules underwent in that particular country. For rely on a foreign decision means to import a part of foreign law, which raises a number of procedural and constitutional problems 329/.

Nevertheless, in cases interpreting the Warsaw Convention American decisions are found to be cited by French 330/, Belgian 331/, British 332/, Canadian 333/ and Malayan courts 334/, and English cases vice versa are cited by American courts 335/; even English statutes by a Belgian court 336/. English and Dutch treatises on air law are cited by American 337/, Swiss 338/ and Belgian courts 339/, and French treatises by Swiss 340/ and Belgian courts 341/. - GAZDIK concludes that "Courts, in interpreting the rules of the Warsaw Convention, will rely to some extent on foreign decisions dealing with the Convention." 342/.

This "international sensibility" of the courts, as MALIN-

TOPPI calls it 343/, may be ascribed both to the lack of domestic cases on international carriage by air 344/ and to a peculiar kind of 'demonstration effect': a judge interpreting a uniform statute will be more inclined to look at foreign decisions dealing with an identical or almost identical statute than a judge deciding at common law. GILES says that "easy accessibility of foreign precedents may be as effective as a common court of appeal." 345/

Unfortunately, comparative interpretation of the Warsaw Convention seems to result in an improvement of the carrier's position only. This phenomenon, which is particularly evident in the 'wilful misconduct' issue 346/, may be explained by the greater international experience of the defendant airlines and their lawyers, as compared with plaintiffs' attorneys 347/. It is regularly Counsel for defendant who quotes foreign cases in support of his pleadings, sometimes arguing that a decision not in conformity with the foreign jurisdictions "would place the national air transport industry at a competitive disadvantage with respect to foreign carriers." 348/ If such is the effect of 'comparative interpretation', the end result will be international uniformity - on the basis of the jurisdiction most favourable to air carriers. In the light of the already existing predominance of carrier interests in the legislative elaboration of air law 349/, this is hardly a desirable solution.

The method of "comparative interpretation", as outlined by GUTTERIDGE 350/, or "harmonizing interpretation", as advocated by KISCH 351/, should therefore be accepted by national courts only on one important condition: the source of information on foreign precedents should be reliably impartial.

A "center of documentation" on decisions interpreting the Warsaw Convention, as proposed in other fields of uniform law 352/, would appear to be necessary as a first step in this direction; for the available collections of case material on international carriage by air are either out of date or incomplete 353/.

As long as this necessary condition is not fulfilled, the hesitation of the court in Fischer v. SABENA seems perfectly justified: "It seems quite obvious that the American cases cited, although undoubtedly interesting from a juridic point of view, cannot be retained for the purpose of determining the meaning of 'faute lourde équivalente au dol' in conformity with Belgian law." 354/ This cautious approach to comparative interpretation is summarized by DRION, as "'do what you can', with the mental reservation that one is allowed to take into account one's own desires and prejudices." 355/.

4. Functional Interpretation.

The "laconism" 356/ of the Warsaw Convention has inspired numerous courts to look for the objects, purposes, aims or functions of the treaty. American courts particularly referred to the maxim that "this treaty, like any other statute, must be construed reasonably and so as to accomplish its obvious purposes." 357/

Now, the only official declaration about the goals of the Convention is the preamble: "..having recognised the advantage of regulating in a uniform manner the conditions of international carriage by air in respect of the documents to be used for such carriage and of the liability of the carrier.." 358/. In the absence of any further indication, the Belgian courts in Fischer v. SABENA and in Collet v. SABENA came to the conslusion that the aim of the Convention was "to unify the most important rules relating to international air transport" 359/ or "to unify certain rules relating to international air transport and particularly the régime of the carrier's liability" 360/.

However, it appears that by reverberating the title of the Convention, no further light is shed on its objects. Not very much is added by Lord Justice GREENE's opinion in Grein v. Imperial Airways, stating that the removal of the difficul-

ties resulting from the lack of uniformity was "one, at any rate, of the main objects at which the Convention aims." 361/

It may well have been one of the desires of the drafting authors to remove conflicts of laws. Unfortunately they did not achieve this task 362/. This object, therefore, is quite useless for a judge who is faced with an actual conflict arising in spite of the good intentions of the draftsmen 363/.

The reason for the redundance of these findings on 'objects' may be found in a principle pointed out by PRION: Unification is not a goal in itself 364/. As a general rule, this is confirmed by MADELMANN: "Unification of law, including unification of conflicts rules, is not an aim per se, a question of creed. Practical reasons must justify such an effort." 365/

Practical reasons for the Warsaw unification have been suggested by three court decisions, - each arriving at a different formula. According to Berner v. United Airlines, the "primary purposes of the Warsaw Convention" were "to stabilize the rules and regulations pertaining to international air travel and thus enable both carrier and passenger to know in general their rights and obligations in the event of aircraft accident." 366/ According to Frajdevaux v. SABENA, it was "one of the primary purposes of this Convention /to distribute between air carriers and aircraft users, in the interest of a prosperous development of international air transport, the high risks which are peculiar to aviation." 367/ And in Noel v. Linea Aeropostal Venezolana, "the purpose of the Convention was only to effect a uniformity of procedure and remedy." 368/

None of these manyfold purposes is supported by any authoritative evidence. The speculative nature of this way of reasoning becomes all too obvious when two conflicting interpretations both claim to rely on the objects of the Warsaw Convention. Thus, in Grein v. Imperial Airways, Justice TALBOT found his opinion "strongly supported by the exposition of the objects and scope of the Convention with which Lord Justice GREENE has prefaced his judgment."369/. Lord Justice GREER, in his dissenting opinion, however, relied on "the express and implied provi-

sions of the Convention." 370/ - In Froman v. PAA, DESMOND,J., found his decision confirmed "by examining into the general purport and purpose of the Convention" 371/, - whereas CONWAY,J., insisted that it was his dissenting opinion which would best serve "the aims and intendments of the Warsaw Convention." 372/.

SCHWARZENBURGER characterizes 'functional interpretation' as "a method which is both the most difficult to apply and the most likely to lead to the desired result." 373/ Unfortunately this method, as applied to the Warsaw Convention, lends itself to dialectic use: It seems to enable the courts to rationalize all desired results - even contradictory ones.

IV.. Judicial Disunification.

GUERRERI submits that "through a slow and gradual process /the courts of law in various countries are tending toward a certain uniformity in their interpretations of the problems arising out of the liability of carriers" 374/, and that "there is hope that greater uniformity will appear as time passes." 375/ This view seems to be shared by BAYER 376/ and LE GOFF 377/.

There is little evidence to support such optimism. In the absence of a common interpreting body, and in the absence of common rules of interpretation, the Cassandra words of SCHREIBER in 1927 have turned out to be realistic: "The courts of different states will give an often diverging application to laws which have the same tenet. All these courts are coming from the traditional background of different legal systems. Each will apply this uniform law on the basis of a text drafted in its own mother-language. Great differences in practical application will thus appear in a very short time. By usus fori, separate laws will rise again in the different national territories, and destroy the uniformity which it was so toilsome to achieve."378/

The experience of the Warsaw Rules has been similar to that of the Hague Rules of 1924, in that these "unified rules"

as YIANNOPOULOS says, "have been interpreted in a most uniform way." 379/

LUREAU observes that unification of air law through court practice is unlikely to occur 380/. BIN CHENG emphasizes the predominant "centrifugal tendencies in air law" 381/, and PANKIEWICZ even speaks of a "judicial disunification" of the Warsaw Convention, proving that

"certain basic divergencies relating to legal methods and concepts come back to the surface in the moment when the uniform text is applied on the national scale - no matter how careful its drafsmen may have been to find a solution acceptable to all legal systems." 382/

Chapter № 4 :
CONFLICTS IN SUPPLEMENTARY TREATIES.

The Warsaw Convention has been called "the first important step towards the unification of air law." 383/ It initiated what KNAUTH described as "a race between the makers of uniform laws and the haphazard work of legislatures and judges in the 250 or more states of this modern world." 384/

In the course of this 'race', two supplementary treaties had to be drawn up: the Hague Protocol "to amend" the Warsaw Convention in 1955 385/, and the Guadalajara Convention "supplementary to" the Warsaw Convention in 1961 386/.

I. Additional Conflicts Rules.

The Hague and Guadalajara treaties were designed to fill some of the gaps of the Warsaw Convention 387/, while leaving other sources of conflicts untouched 388/. They extended the protection of the Warsaw Rules to new groups of persons (such as the carrier's servants and agents 389/ and the actual carrier under a charter contract 390/), but did not extend the scope of application of the Convention beyond "Warsaw carriage". Consequently, they did not provide solutions for conflicts of laws outside the Warsaw Convention.

1. Jurisdiction.

While originally there seemed to be a trend towards reducing the number of 'fora convenientes' enumerated in article 28 of the Warsaw Convention 391/, the provision remained unchanged at The Hague 392/, and article VIII of the Guadalajara Convention even added two more jurisdictions, namely the court having jurisdiction at the place where the actual carrier (as distinct from the contracting carrier) is ordinarily resident, or has his principal place of business 393/.

An attempt made at The Hague to include a provision for the mutual recognition and execution of foreign judgments failed 394/.

2. Choice of Law.

No general choice-of-law rule was provided. Instead, the Hague Protocol eliminated what KLEE and LACOUR had called an "regrettable" 395/ lex fori reference, from article 25 (article XIII of the Protocol). An attempt to eliminate also what VAN HOUTTE had called the "illogical" 396/ lex fori reference of article 21, failed 397/.

On the other hand, new provisions referring certain special questions to the law of the forum were introduced both at the Hague and at Guadalajara: amended article 22 §4, concerning the awarding of litigation costs (article XI of the Hague Protocol), and article VII of the Guadalajara Convention, concerning procedure and effects of joinder in the proceedings.

II. Three Authentic Texts.

According to article XVII of the Hague Protocol, and article XVIII of the Guadalajara Convention, the treaties were drawn up "in three authentic texts in the English, French and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Convention was drawn up, shall prevail."

This method reduces the problems of national translations to a certain extent: at least it will prevent the existence of three different official English texts such as under the original Convention 398/. Whether it confirms, as GARNAULT says, the general "primauté" of the French language 399/, may be doubted:

ROUSSEAU says that there is indeed a rule of the "superior language" 400/, if this is expressly stipulated by the Parties to a treaty. He mentions, however, as an important exception a case concerning the St.Germain Peace Treaty of 1919, which contained a provision almost identical with the above-mentioned provisions of The Hague and Guadalajara, namely article 381 §2:

"The present treaty, in French, in English, and in Italian, shall be ratified. In case of divergence the French text shall

prevail, except in Parts I and XIII, where the French and English text shall be of equal force." 401/

Not withstanding this provision, the Polish Supreme Court in Archdukes of Habsburg-Lorraine v. Polish State Treasury 402/ applied the English rather than the French text, stating that "all the texts should be conceived as expressing the will of the parties." McNAIR, commenting on this decision, says that this was "a good point" 403/.

It is submitted that the rôle of the French text in the Hague and Guadalajara documents is the same as outlined for article 36 of the Warsaw Convention 404/: it is binding as between states (i.e., it governs the interpretation of inter-state rules contained in the treaties) 405/, but not as between individuals in member states which do not have French as their official language (i.e., the interpretation of inter-individual rules is governed, or presumed to be governed, by the official text in the national language).

III. Conflict of Conventions.

Instead of providing a solution for the "mischief" of the Conflict of Laws in air carriage 406/, the supplements of The Hague and Guadalajara created an additional problem of "conflict of conventions":

To date, the Warsaw Rules were at least based on a common original text, even though they underwent a different process of reservation, transformation, translation, supplementation and interpretation in each state. From now on, four different 'original texts' may be applicable:

1) the unamended Warsaw Convention (W),
2) the Convention as amended at The Hague (W/H),
3) the unamended Convention as supplemented at Guadalajara (W/G),
4) the Convention as amended at The Hague and supplemented at Guadalajara (W/H/G).

The possibility of conflicts arising from the simultaneous existence of different editions of the Warsaw Convention was pointed out both at the Hague Conference 407/ and during the drafting of the Guadalajara Convention 408/, but VERPLAETSE says: "The coexistence of the Warsaw Convention and the Protocol has not been, and could probably not be, peacefully settled by article XVIII." 409/

For the judge who will have to choose the applicable edition in a case involving carriage between states adhering to different texts, GARNAULT prophesied legal contradictions as well as breaches of the international obligations of the forum state 410/. Comments by LANKIEWICZ and DE LA PRADELLE appear to confirm the conclusion that the 'supplementary treaties' have created supplementary conflicts. 411/

Chapter № 5 :
CHOICE OF LAW IN INTERNATIONAL STANDARD CONTRACTS.

Choice of law in contracts with an international element is usually considered as being governed by the principle of 'party autonomy', i.e., the law chosen by the parties 412/. However, as BATIFFOL points out, "an inadvertent mind will accept more easily the idea that it is up to the law to determine the persons, goods, and acts to which it applies, rather than leaving it to the parties to decide arbitrarily that they will obey to this law and not to some other one."413/

The first question is, therefore, whether the parties to contracts of international carriage by air do in practice make stipulations as to the applicable law.

I. The IATA Standard Contract.

Most air carriage is performed by big companies which regularly use standard contracts of carriage 414/. Apart from efforts on the diplomatic level, private trade associations of air carriers have attempted to standardize the legal conditions of carriage. The most important among them is the International Air Transport Association (IATA) 415/. Besides its functions as an international cartel for uniform rates and service conditions 416/, IATA has issued since 1927 uniform 'general conditions' for contracts of air carriage concluded by its member airlines 417/. SCHWEICKHARDT describes this activity as a "law-supplementing function" 418/.

1. Binding Force.

The IATA "Conditions of Contract" are binding on members of the Association 419/. Originally, these rules were a mere extract of more comprehensive "Conditions of Carriage" adopted and "recommended" in 1953 420/, which however failed to receive universal government approval 421/. At present, only the Conditions of Contract, contained in Resolutions № 275(b) (passenger ticket 422/) and № 600(b) (air waybill 423/) are uniform.

2. Quasi-Legislation.

As in other industries (surface transportation, insurance, public utilities), standardization is a step from the free contract towards a quasi-statutory relationship 424/. In this type of 'con tracts of adhesion', almost nothing remains of "freedom of contract" 425/, of the'right to bargain' between air carriers and passengers or shippers 426/. FRIEDMANN says: "Because of the inability of the other party to bargain effectively on terms, such private enterprises exercise, by permission of the State, a quasi-legislative power." 427/ As LEDERER-LADOR puts it, international cartels have often developed into a kind of independent 'state' or 'federation'; they exercise over their members, and in dispute with third parties, certain powers of a legislative, administrative and judicial character 428/.

It is therefore not surprising to find IATA's law-making activity described as "international legislation" 429/, qualified by DRION as "private legislation" 430/. GAZDIK says that this activity "tended in practice to end up in the uniformity of the aeronautical law." 431/

3. IATA Contract and Warsaw Rules.

As the first IATA contract of 1927 had contained sweeping exonerations and other clauses favouring the carriers, the Warsaw Convention of 1929 "did not entirely please the airlines" 432/. But at the Antwerp meeting of IATA in 1930, the Legal Committee Report by BEAUMONT concluded: "On the whole /we were very fortunate." 433/ New conditions of carriage were adopted, which were based on, and entered into force simultaneously with, the Warsaw Convention 434/. As a result, the principles of the Convention were then extended beyond 'Warsaw carriage' proper, to govern all international carriage of IATA carriers.

However, the post-war IATA conditions adopted since 1949 435/ abandoned the liability system of the Convention as regards all carriage not directly covered by article 1 of the Warsaw Convention 436/. This departure from the principles

of the Warsaw Convention is often overlooked 437/. It has been criticized by SAINT-ALARY and others as a blow to the unification of the law of carriage by air 438/. As a result, there is practically a dichotomy of the IATA contract:

a) the entire set of the new "Conditions of Contract", applicable to all non-Warsaw carriage, unless excluded by national laws;
b) the limited part of the "Conditions of Contract" which is not excluded by the Warsaw Convention. This set applies to all Warsaw carriage, and may also be further restricted by national laws.

II. Choice of Law Clauses.

FRIEDMANN says that "the most powerful international cartels do not have to worry greatly about the private international law applicable to their relations and transactions or about the choice of national jurisdictions. Their main sanctions, both in relation to their members and outsiders, lie in economic power rather than in civil remedies." 439/

Under article 33 of the Warsaw Convention it would be feasible for the carrier to insert into the contract an arbitration clause 440/. DRION points out that IATA has not made use of this possibility 441/. At this point, a distinction is necessary between pre-war and post-war IATA conditions:

1. Antwerp Conditions.

Article 22 §4(1) of the 1931 IATA conditions for the carriage of passengers, and article 21 §4(1) of the conditions for the carriage of goods, provided that in all cases not governed by the Warsaw Convention, actions had to be brought before the court at the carrier's principal place of business, and that the national law of that court applied 442/. DÖRING, one of the draftsmen of the Antwerp conditions 443/, conceived this contractual clause as a consensual agreement of the parties to make the lex fori applicable to all actions

including actions brought pursuant to article 28 of the Warsaw Convention 444/. Most authors, however, rejected this extensive interpretation, and declared the choice-of-law rule of the pre-war IATA contract to be limited to carriage outside the Warsaw Convention 445/. The effect of the clause was to make the law of the place of the carrier's head office applicable to all non-Warsaw carriage.

2. Honolulu Conditions.

The IATA Conditions of Contract in effect since October 1957 446/ do not contain a general provision on choice of law. They merely repeat one of the specific lex fori references of the Warsaw Convention (concerning the method of calculating the period of limitation) in the passenger ticket 447/.

III. Party Autonomy and IATA Conditions.

DE JUGLART raises the question whether interpretation of the Warsaw Convention by means of the IATA conditions is "a practice in conformity with the rules governing the application of Conventions and Treaties" 448/, and answers it in the affirmative, stating that he does "not see any major objection to this solution." 449/

It is submitted that there are several objections.

1. Limited Scope of IATA Conditions.

The IATA Conditions of Contract are not applicable in the territory of all High Contracting Parties to the Warsaw Convention, as the airlines of a number of states are not members of the Association. As far as the conditions are applicable to non-Warsaw carriage, they are not based on the Warsaw Rules.

As VERPLAETSE says, "it is wrong /to consider these usages as real customs." 450/ They are binding on member airlines

but not on the independent carriers engaged in international air transport. Without general acceptance, they are not a kind of 'Law Merchant' of the air transport industry. Again quoting VERPLAETSE, "the binding force of such conditions does not derive from their own virtue but stems from the fact that they are part of the contract." 451/

2. Adhesion by the Aircraft Users.

While the technique of uniform standard contracts avoids the cumbersome negotiation of diplomatic conventions, FRIEDMANN points out that "at the same time it is certain that the standardization of contracts affects both freedom and equality of bargaining, except where groups of approximately equal strength confront each other." 452/

In the absence of any representative group of air transport users 453/, the IATA conditions appear as a'diktat' by the carriers rather than the result of collective bargaining.454/ It is only natural that under such circumstances the authors of the standardization try "to get the better from the customers" 455/, so that certain IATA conditions have been criticized by RIESE, LACOUR and ABRAHAM as "a manifest abuse of economic power" 456/ or even as "directly misleading the damaged persons" 457/. In the light of the objections which have been raised against participation of carriers (even indirectly) in the elaboration of air law 458/, an association of air carriers can hardly be considered as an objective "international legislator" 459/.

When faced with conflicts clauses in this type of contracts, the passenger, as Justice FRANK said in his dissent in the maritime case of Siegelman v. Cunard White Star Ltd. "having no real choice about the matter cannot in fairness be said to have joined in a 'choice of law' merely because the carrier has inserted a provision to this effect." 460/

3. Dependence on National Law.

DE JUGLART says: "According to the weight of authority the provisions of the IATA agreement are valid only as far as they are not in conflict with the provisions of this or that internal law." 461/ This reopens the vicious circle of Conflict of Laws: which internal (national) law? At least, the lex fori will reserve its approval of contracts which it is called upon to enforce, such as, e.g., in Robert-Houdin v. Panair do Brasil 462/.

The combination of choice-of-law and choice-of-jurisdiction which was characteristic of article 22 §4 of the IATA Antwerp conditions, was probably fatal for this clause.

LEMOINE submitted that such a clause was illegal according to French law 463/. RIESE and LACOUR confirmed that it was probably also illegal under Swiss law 464/.

In Kidston v. Lufthansa, Lord Justice SCRUTTON said that with respect to airline conditions the principle of freedom of contract had to cede to the principle "that the King's Courts do not allow their jurisdiction over matters happening in England in regard to contracts made in England to be ousted by the agreement of the parties; they do not allow parties in England making a contract to say that the English Courts shall not deal with questions arising from it.." 465/.

Choice-of-law clauses in adhesion contracts are constantly struck down by American courts 466/, and EHRENZWEIG concludes: "Whatever the status of the principle of party autonomy in the conflicts law of contracts in general, this principle has no place in the conflicts law of adhesion contracts." 467/ In 1948, the U.S. Civil Aeronautics Board issued an order disapproving the portion of the IATA contract which required aircraft users to bring their action at the carrier's principal place of business 468/.

In the new IATA conditions of Honolulu the whole choice-of-law clause was dropped. As a result, we are back at the conflict, as GAZDIK's comment on the new IATA contract shows:

"The first observation which must be made is to the striking silence of the contract on many important principles which presumably will be governed by national laws applicable to the contract." 469/

Chapter № 6 :
CHOICE OF LAW BY THE COURTS.

The foregoing chapters were intended to demonstrate that neither the Warsaw Convention, nor supplementary treaties, nor international standard contracts, could eliminate what Lord Justice GREENE called the 'mischief' of Conflict of Laws in contracts of carriage by air 470/. As FICKER says, the unification effectuated by the Warsaw Convention "does not dispense (the courts) of the determination of the law applicable to the contract of carriage by air, according to the law of Conflict of Laws." 471/

I. Absence of Principles of Private International Law.

According to Bucherpfennig v. SAS, the question as to which law applies "must be answered in accordance with the general principles of private international law." 472/ DE VISSCHER suggests that a gap in the Warsaw Convention has to be filled by that national law "which the principles of private international law would recognize as competent." 473/ Article 11 §2 of the Swiss Aviation Act also refers to "the recognized rules of the law of nations and of private international law." 474/

However, RIESE puts a question mark behind the latter phrase 475/: do these so-called general rules or principles of Private International Law, i.e., the law of Conflict of Laws, exist? This would presuppose a uniformity of 'characterization' and 'localization' in international carriage by air. 476/

1. Conflicting Characterizations.

The question whether the claims of an aircraft users against the carrier are in contract or in tort, is not clearly answered by the Warsaw Convention 477/. While claims arising from carriage of goods are generally treated as contractual,

there is no common principle as regards carriage of passengers. Actions for personal injury and wrongful death will be characterized as delictual by Common Law courts 478/, as contractual by Civil Law courts 479/. There are indications, though, that they are not necessarily delictual in the Common Law 480/, and not necessarily contractual in the Civil Law 481/.

The dispute is less academic than it may appear, for it seems that a contractual basis of recovery would be more advantageous to passengers in the United States 482/, while a delictual action would offer more advantages to the deceased passenger's dependents in France 483/. Consequently, the carriers are interested in maintaining the present delictual structure west of the Atlantic, and the contractual system on eastern shores, which makes it all the more difficult for the twain to meet.

2. Conflicting Localizations in Tort.

Assuming the action to be founded in delict, there are several possibilities to localize the tort. This may be illustrated by the inexhaustible source of conflicts law offered by U.S. interstate carriage by air 484/. In 25 cases analyzed, the lex loci delicti was localized more precisely:

where the wrong occurred 485/; where all elements of the alleged wrong occurred 486/; where both accident and death occurred 487/; where the death occurred 488/; not where the death occurred, but where the events causing the death took place 489/; where the accident occurred 490/; not where the accident occurred, but where the act or omission occurred 491/; not where the tortious conduct occurred, but where the impact of the tortious conduct produced the injury 492/.

The lex loci delicti may not be subject to any national law at all, e.g., the High Seas 493/.

It must be added that, not withstanding the tort characterization, the status of the plaintiff "may be determined by the law of the place where the ticket was issued" 494/, the validity of

certain stipulations of the contract "by the law of the place where the contract was made and the transportation commenced"495/, and a number of other 'preliminary questions' 496/ by the lex fori 497/.

3. Conflicting Localizations in Contract.

Assuming the action to be founded in contract, there are several possibilities to localize the contract. Civil Law codes and courts have determined the proper law of the contract in international air carriage to mean:

the law chosen by the parties to the contract 498/; the law of the place where the contract was made 499/; where the contract was to be performed, usually at the place of destination 500/; the place of departure 501/; the place where the damaging event occurred 502/; the law of the flag, i.e., of the aircraft's place of registry 503/; the air carrier's domicile 504/; the air carrier's principal place of business 505/; the lex fori 506/.

'Preliminary questions', such as existence and form of the contract (statute of frauds), capacity, etc., may be governed by different laws 507/.

4. Forum Conflicts Rules.

As stated in Grein v. Imperial Airways, these questions "may well be answered in different ways with different results according as they arise in the Courts of one country or another" 508/. Since "these puzzling questions", as Wilson v. Transocean Airlines put it, "strangely have not yet been set at rest" 509/ even within the conflicts law of the United States, uniformity can hardly be expected on the international level. LEWALD once commented on 'private international law': "Il n'y a rien qui ne soit contesté." 510/ BABINSKI points out that a universal set of principles is "inexistent indeed" 511/.

According to GULDIMANN, "it belongs to the lex fori to classify the factual relations and then according to its con-

flict rules either to apply its own substantive law or to draw upon the law of another country, not at all being barred by the (Warsaw) Convention to apply, if that is the law, e.g. a tort or delictual basis." 512/ What the courts apply, is not an allegedly universal 'private international law', but their own local conflicts rules, based on national codes 513/, case law 514/ and restatements 515/, - irrespective of whether the Warsaw Convention applies or not 516/.

II. Court Practice and Conflict of Laws.

It seems desperate to look for rules and consistency in the apparent chaos of divergent characterizations and localizations of air carriage contracts, as outlined above. Yet, as EHRENZWEIG says, "only this chaotic state of the law can justify another attempt to articulate a formula that will facilitate prediction and promote certainty." 517/

An analysis of the choices actually made by the courts will have to take into account the various possibilities of choice which the case offered to the judge, i.e., the 'connecting factors' or 'contacts' of the case. For this purpose, a "table of contacts" will be found in the Annex 518/, containing all available information on factual connections of the cases with different national laws.

1. The 'Homeward Trend'.

In the judicial search for the applicable national law, NUSSBAUM discovered what he calls "a distinct 'homeward trend', a tendency to arrive, if possible, at the application of domestic law." 519/ This trend is particularly evident in cases involving contracts of international carriage by air.

a) Application of foreign law is excluded a priori by the court's refusal to take jurisdiction over a case with predominantly foreign contacts: (1) on the ground of lex fori legislation "closing the door" to actions arising from accidents

occurring abroad, as in Reed v. Northwest Airlines 520/; (2) on the ground that maintaining the action would place an "unreasonable burden upon commerce with foreign nations", as in Overstreet v. Canadian Pacific Airlines 521/; (3) on the ground of article 28 of the Warsaw Convention, as in Dunning v. PAA 522/, and in Galli v. REAL Brazilian International Airlines 523/.

b) The lex fori is applied as a substitute: (1) where no other national law is found to be applicable, as in Choy v. PAA 524/, and in Hyman v. PAA 525/; (2) where the court has "no definite knowledge" of the foreign law, as in Airtrafic Co. v. Transocean Airlines 526/; (3) where the applicable foreign law does not seem to grant a cause of action, as in Noel v. Linea Aeropostal Venezolana 527/.

c) The lex fori is arrived at by means of other choice-of-law rules: (1) the law chosen by the parties, "explicitly" as in Djabbarzade v. Linee Aeree Italiane 528/, Concorde v. Swissair 529/ and Election Co. v. PANAGRA 530/, or "implicitly" as in Munier v. Divry 531/; (2) the "center of gravity" doctrine 532/, as in G.& L.Berufsgenossenschaft v. DERULUFT 533/, Engeli v. Swissair 534/, and Nittka v. Lufthansa 535/; (3) the lex loci contractus as in Lafayette Laboratories v. PAA 536/, Gonano v. BEA 537/, and Heitz v. Allgemeine Unfallversicherungsanstalt 538/.

d) The lex fori is arrived at by means of the Warsaw Convention: (1) on the ground of specific references in the text of the Convention 539/, as in Nicolet v. TWA 540/, Fischer v. SABENA 541/, Gallais v. Aéro-Maritime Co. 542/, Hennessy v. Air France 543/, Moutafis v. SABENA 544/, Emery v. SABENA 545/, and Style v. Braun 546/; (2) on the ground that the Convention has the effect of making the lex fori generally applicable, as in Garcia v. PAA 547/ and in Bucherpfennig v. SAS 548/.

e) The lex fori is arrived at (for certain questions) by acceptance of renvoi, as in Komlos v. Air France 549/.

f) The public policy of the forum limits the application of foreign law, as stated in Young v. KLM 550/, and in Indemnity Insurance Co. v. PAA 551/.

Besides the three latter cases (e-f, lex fori limiting foreign law), there remain eight cases in which foreign law was declared applicable: six of them American decisions referring to a foreign lex loci delicti, viz. Salamon v. KLM 552/, Finne v. KLM 553/, Supine v. Air France 554/, Berkley v. KLM 555/, DaCosta v. Caribbean International Airways 556/, Pignataro v. United States 557/ (designating the laws of Canada, Scotland, Portugal, India, Jamaica and Saudi-Arabia, respectively), one American decision referring to the law of the flag of the aircraft, viz. Bergeron v. KLM 558/ (designating the law of the Netherlands), and one Hungarian decision referring to the law of the place of the damaging event, viz. A.gy v. MALERT 559/ (designating the law of Czechoslovakia).

As compared to the 23 cases (b-d) applying the lex fori under various pretexts, the number of 11 genuine references to foreign law(in a total number of 34 cases expressing a choice of law) is surprisingly low.

2. Choice of Law and Crypto-Choice.

It is still more surprising to find that out of 114 cases dealing with contracts of international carriage by air 560/, only 34 decided the problem of choice of law 561/. In the remaining 80 cases, i.e., more than two thirds, the Conflict of Laws is not even mentioned, - although all these cases manifestly and ex definitione contain an international element.

At first glance this would seem to prove that it is possible to adjudicate contracts of international air carriage without reference to any national law at all, in a kind of legal vacuum inhabited by the Warsaw Convention,(74 of the 80 are Warsaw cases) or by no legal system whatsoever 562/. However, closer analysis of the cases reveals that the vacuum is only apparent.

a) The silence may partly be ascribed to the firm belief of the court that the case at bar falls to be decided under the court's own law. DE JUGLART, commenting on French State Treasury v. Air Atlas 563/, says that the court accepted application of the law of the flag (which also happened to be the lex fori),

"and it did not even think it necessary to explain this point." 564/ GULDIMANN, while criticizing the Italian case of Calcio Torino Association v. Avio Linee Italiane 565/, for its failure to mention conflicts rules, suggests that "considering the plethora of factual links to Italian law, this is unfortunate but by no means incomprehensible." 566/

b) Although the courts often fail to state which national law they apply and why, their decisions are full of citations to Civil Codes 567/ and other legislation 568/ as well as precedents 569/, - all taken from the law of the forum.

E.g., In re Hoover's Estate the Orphans' Court of Montgomery County (Pennsylvania) begins:

"Decedent was killed apparently instantly, in the crash of a commercial airliner in the jungles of Brazil on an international flight; there were no medical or funeral expenses," 570/

and then goes on quietly to discuss whether a question not settled by the Warsaw Convention should be governed by the Pennsylvanian Wrongful Death Act, or by the Pennsylvanian Fiduciaries Act 571/, without bothering with the problem as to what might be the law of the jungles of Brazil or of any other place in the world.

c) Frequently, the Warsaw Convention is used as a means to avoid an explicit 'choice' of the lex fori: instead, the courts 'interpret' the Convention in the light of their own law.

Interpretation of treaties lege fori is well established in both Civil Law and Common Law countries. BARTIN said (1930) that French judges will interpret a treaty "by reference to the corresponding provisions of French law which will thus intervene as supplementing those treaty terms the meaning of which is not clearly fixed by the convention." 572/ MAURY restated (1937) with approval "the presumption that, in the absence of contrary indication, France has understood the terms of a treaty in their meaning in French law." 573/ BATIFFOL says (1959) that the French judges show "a tendency to interpret treaties as an element of domestic legislation, hence by reference to the concepts and to the spirit of such legislation." 574/

While BATIFFOL seems to be of the opinion that this is an attitude peculiar to French judges 575/, WOLFF affirms that generally the courts of the various states "will be prone to construe an ambiguous term in the sense in which it is understood by their own law." 576/ MANN describes the situation in the United Kingdom as follows:

"English courts tend to regard uniform legislation as a step in the development of English law. Accordingly they are inclined to apply to such legislation canons of construction developed by English municipal law. In particular English courts are likely to construe such legislation in the light of previous English authorities." 577/

The interpretation of the Hague Rules by English courts, from Gosse Millard v. Canadian Merchant Marine 578/ to Riverstone Meat Co.Pty.Ltd. v. Lancashire Shipping Co.Ltd. 579/, perfectly illustrates this way of 'interpretation'. It is generally confirmed by SHAWCROSS and BEAUMONT as regards interpretation of the Warsaw Rules in England. 580/

In the United States, it was said in United States v. Flying Tiger Line 581/ of the Warsaw Convention: "The document being a writing accomplished by international agreement, an American court does not have the right to interpret it as freely as it might interpret an American statute or contract." 582/ However, this appears to be mere lip-service to the 'international' origin of the Convention, without practical implications; the general practice of the courts seems to follow the method indicated in Bochory v. PAA: "..this question is one of interpretation of the Warsaw Convention, and it is the law of this jurisdiction which determines the interpretation." 583/

3. The Lex Fori Rule.

If any conflicts rule at all may be deduced from the case material analyzed, it is the 'lex fori rule', as formulated by EHRENZWEIG: "Courts and Lawyers, in the everyday life of the law, have always applied, and will always apply, their own law even in cases involving so-called foreign contacts - unless they are compelled to do otherwise in certain rather rare and

easily identified situations." 584/

The lex fori has always been, as DRION says, "the stepchild of the authors, cherished by the courts." 585/ RAAPE calls it the deus ex machina of judicial choice of law 586/. KNAUTH would ascribe the preference of the courts for their own law to their ingnorance of foreign law 587/, LACOMBE to their ignorance of international law 588/, DRION to the "lack of interest of many judges and practising lawyers as regards anything foreign to their own legal system, often combined with a comfortable superiority complex." 589/ CHAUVEAU and COMBEAU plainly call it "chauvinism" 590/ and "national particularism" 591/.

However, CURRIE says that it is the "normal business" of a court to apply the domestic rule 592/. Criticizing the Dutch case of Young v. KLM 593/, MEIJERS says: "One cannot find a relevant legal provision that would prohibit the application of Dutch law." 594/ NUSSBAUM points out that "application of foreign law lays a considerable burden upon the court and is often attended by further inconveniences and disadvantages. Moreover, substantial justice may frequently be obtained under the local law. It would be a mistake to dismiss such a momentuous phenomenon as an aberration or as a vagary of the courts." 595/ BATIFFOL mentions the 'coherence' of the national legal system as one of the legitimate reasons for the lex fori to be applied. 596/.

As far as the Warsaw Convention is concerned, GEORGIADES concedes that its lamentable lack of precision may, to a certain extent, authorize and justify the application of national law by the judge 597/. Moreover, article 28 of the Convention designates four 'fora convenientes' closely connected with the contract of carriage 598/, which may indeed be considered as "natural fora" of the contract, to use a term introduced by DRION 599/. The undesirable effects of 'forum-shopping' will thus be minimized 600/.

Finally, any choice-of-law rule is better than no rule at all (or the "principle of no principles" 601/). In the words of CARDOZO, "the finality of the rule is in itself a jural end." 602/

Chapter № 7 :
CHOICE OF LAW 'DE LEGE FERENDA'.

The 'lex fori rule', as the only universal rule followed by the courts, reminds of William FAULKNER's description of an American court room: "A certain clumsy stability in lieu of anything better." 603/

It is not disputed that stable rules of law, including rules of choice of law, are necessary for the sake of certitude which in turn is indispensable for economic and social reasons. However, as SCELLE has pointed out, 'social necessity' is only the initial ground of the law: it must be completed by 'social utility', since "it is not only a matter of how to live, but how to progress." 604/ If a choice-of-law rule is merely viewed as a safeguard of stability, any rule can serve the purpose, provided it is universally followed. By contrast, a "socially useful" rule requires to be chosen among all conceivable rules, according to its practical merits.

The question as to which would be the most appropriate, or as RABEL put it, "the least inappropriate local connection" 605/ for contracts of international carriage by air, is not one of positive law ("which law applies", de lege lata), but one of the optimal law ("which law ought to apply", de lege ferenda). It has no bearing on the present state of the law, as discussed in the preceding chapters. It is a problem of future law-making (legislative or judicial), i.e., of international legal policy.

I. Alternatives.

Theoretically, eight different choice-of-law rules are conceivable for contracts of international carriage by air:

1) the law of the place where the contract was made 606/,
2) the law of the agreed place of performance (usually the place of destination) 607/,
3) the law of the agreed place of departure 608/,
4) the law of the contracting carrier (domicile, nationality, principal place of business) 609/,

5) the law of the contracting passenger or shipper (domicile, nationality) 610/,
6) the law of the actual carrier's flag (place of aircraft registry) 611/,
7) the law of the place of the damaging event 612/,
8) the law of the court seized of the case 613/.

The question has been raised as to whether the choice of law in contracts of carriage by air should be the same as in other fields of transportation (maritime 614/, inland 615/), or whether it should follow its own rules. RODIERE advocates a common choice-of-law rule for all contracts of carriage 616/, while WETTER says that in air law there is "no necessity for the solution sought after to be in conformity either with principles prevailing in other fields of transportation, or with traditional legal concepts." 617/ MAKAROV takes an intermediate position 618/.

It is submitted that, like the famous controversy about the 'autonomy of air law' 619/, this is a moot point. Neither the law of carriage by sea nor the law of inland transportation have to offer a solution for the choice-of-law problem. A universal set of 'general principles of Conflict of Laws' does not exist in contracts of surface transportation any more than it exists in contracts of air carriage 620/. All that the law of the 'traditional' means of international carriage can offer to Air Law (being "the last born of juridical notions" 621/) are divergent alternatives, choice-of-law rules varying from state to state, and even within states. The problem is not whether these rules also apply to air carriage, but which of them.

II. Policy Aspects.

In the Conflict of Laws, policy considerations were first introduced (under the term of "interests") by HECK in 1891 622/. Owing to the fact that "this branch of the law is and remains traditional", as FRANCESCAKIS says 623/, such modern ideas are still declared "entirely premature" in the 1958 edition of RABEL's treatise 624/. It cannot be overlooked, though, that the

discussion of the interests, objectives and practical ends of conflicts law is steadily spreading 625/.

In the law of international carriage by air, a basic policy rule given by LEMOINE is "not to accept any other source of inspiration than the needs of the practice." 626/ WETTER postulates that the rules governing air carriage be "simple", "fair to both parties, the carriers and the public", and "universally acceptable to the various states." 627/

Considering these factors, it is submitted that a policy rationale for choice of law in contracts of carriage by air can be reduced to three basic principles: (1) legal certitude, (2) substantial justice, (3) international balance.

1. Legal Certitude.

The primary object and effect of choice-of-law rules in international carriage is, as pointed out by RIPERT, to enable the contracting parties to know in advance which law will govern their respective rights and duties 628/. The first requirements to be fulfilled by a 'socially useful' choice of law, are those of legal certitude: (a) both carrier and aircraft user should be able to know and foresee the applicable law, at the moment when they make the contract of carriage; (b) the localization of the contract should be free of doubts; (c) the applicable law should remain constant during the entire carriage.

a) Known and foreseeable law. This requirement is not fulfilled by the passenger's domicile or nationality 629/, the actual carrier's flag 630/, the place of the damaging event 631/ and the law of the court seized 632/. It is usually fulfilled by the place of contracting, the agreed places of performance and departure, and the contracting carrier's principal place of business.

b) Precisely localized contract. This requirement is not fulfilled by the place of contracting 633/, the agreed place of performance 634/, the contracting carrier's domicile, nationality, or principal place of business 635/, the passenger's domicile or nationality 636/,and the place of the damaging event 637/. It is

usually fulfilled by the agreed place of departure, the actual carrier's flag, and the law of the court seized.

c) Constant during the carriage. This requirement is not fulfilled by the agreed place of performance 638/, and by the actual carrier's flag 639/. It is usually fulfilled by the other localizations proposed.

2. Substantial Justice.

The principle of fairness to the parties, substantial justice, or equity, provides three further policy requirements for a choice-of-law rule in contracts of air carriage: (a) fair balance between carriers and aircraft users (synallagma); (b) no discrimination against individual aircraft users; (c) no discrimination against individual air carriers.

a) Fair balance. This requirement is not fulfilled by the contracting passenger's domicile or nationality 640/, by the actual carrier's flag 641/, and possibly the law of the court seized 642/. It is usually fulfilled by the contracting carrier's principal place of business 643/, and by all localizations not connected with either party.

b) No discrimination against users. CASPERS and RIESE require that "all persons aboard an aircraft should be subject to a common conflicts rule." 644/ The necessity for such an equality 'by aircraft' is strongly denied by MUELLER 645/. This requirement, if accepted, could only be fulfilled by the actual carrier's flag and by the place of the damaging event.

c) No discrimination against carriers. This requirement seems to be fulfilled by all localizations 646/.

3. International Balance.

Choice-of-law rules exercise a genuine international or diplomatic function, in that they attribute cases to the laws of different states. They cannot guarantee an equal number of cases to each state 647/: instead, they should distribute adequate shares. In other words, a choice-of-law rule should

not without sufficient reason privilege certain states, by permitting their national law to be applied to a large number of conflicts cases 648/.

This leads to a final policy requirement: the choice-of-law rule should favour application of the law of the states which have the strongest protective interest 649/ in the contract of carriage.

This requirement is not fulfilled by the states where most contracts are made, where most flights end, where most flights begin, where most aircraft are registered, where most accidents occur, and where most suits are brought.

It seems to be fulfilled only by the states representing the largest number of contracting parties, viz.,(a) the state the carriers of which make most contracts, (b) the state the passengers and shippers of which make most contracts of international carriage by air. 650/

4. Result.

Assuming the policy basis to be correct, a table of 'policy requirements' may be drawn up:

	Alternative Localizations:							
Policy Requirements:	place of contr.	place of destin.	place of depart.	carrier's law	pass's (sh's) law	law of flag	place of accid.	law of forum
foreseeable	x	x	x	x	-	-	-	-
precise	-	-	x	-	-	x	-	x
constant	x	-	x	x	x	-	x	x
fair balance	x	x	x	x	-	-	x	(-)
no discrimin. against users (equal aboard)	-	-	-	-	-	x	x	-
no discrimin. ag. carriers	x	x	x	x	x	x	x	x
strongest protective interest	-	-	-	x	x	-	-	-
Result	4	3	5	5	3	3	4	3

The result may be summarized as follows:

a) There is no "perfect" choice-of-law rule that would satisfy all policy requirements.

b) Different "optimal" choice-of-law rules may be of equal 'social utility' 651/, e.g., the law of the contracting carrier's principal place of business, and the law of the agreed place of departure.

c) When compared to the optimal solutions, other choice-of-law rules appear as second-best or even inappropriate, - among them the lex fori as applied to contracts of international carriage by air.

III. Conclusion.

In 1938, COOOZ wrote:

"Once CITEJA has finished its work, and the international conferences have legislated on the main problems of private air law; once we know the success or failure of the conventions drafted, from the numbers of ratifications or adherences; then, the moment will have come to complete the work of unification and to formulate the rules of Conflict of Air Laws, designed to govern those questions which were not successfully settled by internationally uniform rules." 652/

It may well be that this moment has come, - now that international air law has reached what SAPORTA calls a "crisis of growth" 653/. CAPLAN points out that many international conventions remained unratified, and asks: "Was this because they were imperfect? Or was it because they no longer satisfied the needs which were felt to be urgent long before they were signed? If the answer to either of these questions were yes - then this might be more of an indication of intrinsic defects in the Conventions, rather than an indication of the slothful nature of Governments." 654/

It has been the purpose of the present study to demonstrate that the lack of 'socially useful' choice-of-law rules is one, at any rate, of the intrinsic defects of our law of international

carriage by air. DE VISSCHER and NEST have called for international agreement on rules governing Conflicts of Laws in air carriage 655/, and more recently the Institut de Droit International has resumed its efforts in this direction 656/.

The only conclusion to be drawn is the one at which PROSSER arrives, after having crossed the 'dismal swamp' of Conflict of Laws:

"Something will have to be done about all this." 657/

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Table of Abbreviations.

Citations follow in general the HARVARD "Uniform System of Citation" 658/, except for certain frequently cited foreign legal periodicals, and airlines' short names.

1. Foreign Legal Periodicals:

A.LUFTRECHT	Archiv für Luftrecht (Berlin 1931-43)
ASDA-BULL.	Bulletin de l'Association Suisse de Droit Aérien (Zürich 1957-date)
IATA L.R.	International Air Transport Association Law Reporter (Montreal 1953-date)
RABELS Z.	Zeitschrift für ausländisches und internationales Privatrecht (Rabels Zeitschrift, Berlin-Tübingen 1927-date)
REV.FRANC.DR.AERIEN	Revue Française de Droit Aérien (Paris 1947-date)
REV.GEN.AIR	Revue Générale de l'Air (Paris 1947-date)
REV.GEN.DR.AERIEN	Revue Générale de Droit Aérien (Paris 1932-40)
REV.TRIM.DR.COM.	Revue Trimestrielle de Droit Commercial (Paris 1948-date)
RIV.DIR.AERONAUT.	Rivista del Diritto Aeronautico (Rome 1927-40)
RIV.DIR.NAV.	Rivista del Diritto della Navigazione (Rome 1935-date)
UNIDROIT	"Unification of Law", Yearbook of the International Institute for the Unification of Private Law (Rome)
Z.GES.LUFTRECHT	Zeitschrift für das gesamte Luftrecht (Berlin 1927-30)
Z.LUFTRECHT	Zeitschrift für Luftrecht, und Weltraumrechtsfragen (Cologne 1952-date)

2. Airlines Short Names:

BEA	British European Airways Corp.
BOAC	British Overseas Airways Corp.
DERULUFT	Deutsch-Russische Luftverkehrs-Gesellschaft m.b.H. German-Russian Airlines
KLM	Koninklijke Luchtvaart Maatschappij N.V. Royal Dutch Airlines
Lufthansa	Deutsche Lufthansa A.G. German Airlines
MALERT	Magyar Légiforgalmi R.T. Hungarian Airlines
PAA	Pan American World Airways Inc.
PANAGRA	Pan American Grace Airways
SABENA	S.A.Belge d'Exploitation de la Navigation Aérienne Belgian Airlines
SAS	Scandinavian Airlines System
TWA	Transcontinental & Western Air Inc. Trans World Airlines Inc.

SYSTEMATICAL TABLES OF CASES.

I. Table of Cases on Contracts of International Carriage by Air.

Cases are arranged geographically (by states), and chronologically (by date of first decision) except that cases arising from the same accident are grouped together.

This table does not contain cases clearly relating to domestic carriage 659/ and cases not relating to contracts of carriage 660/.

W = Warsaw Convention held applicable;
'W' = Warsaw Convention per se inapplicable, but applied by virtue of contractual condition, or statute 661/
W = Warsaw Convention discussed, but held inapplicable; 662/
(W) = Warsaw Convention discussed, but held unnecessary to decide whether applicable to the contract; 663/
W? = Warsaw Convention not mentioned, but considered as applicable by commentators. 664/

1. Common Law Countries.

a) United States of America:

W- Choy v. PAA, S.D.N.Y. 26 March 1941, (1941) Am.Mar.Cas. 483, (1941) U.S.Av.10, (1942) U.S.Av.93, 1 Av.Cas.946; note ST. JOHN'S L.REV.209 (1942).

W Wyman v. PAA, N.Y.Sup.Ct. 25 June 1943, 181 Misc.963, 43 N.Y.S.2d 420, (1943) U.S.Av.1; aff'd, 267 App.Div.947, 48 N.Y.S.2d 459; Ct.of App., 293 N.Y.678, 59 N.E.2d 785; cert.denied U.S.Sup.Ct. 23 April 1945, 324 U.S.882, 65 Sup.Ct.1029, 1 Av.Cas.1093.

W Indemnity Insurance Co. v. PAA, S.D.N.Y. 8 Dec.1944, 57 F.Supp.980, (1945) U.S.Av.46, 1 Av.Cas.1243; 22 Dec.1944, 58 F.Supp.338, (1945) U.S.Av.52, 1 Av.Cas.1247.

W Garcia v. PAA, N.Y.Sup.Ct.(App.Div.) 21 May 1945, 269 App. Div.287, 55 N.Y.S.2d 317, (1945) U.S.Av.39, 1 Av.Cas.1280; aff'd,(Ct.App.1946) 67 N.E.2d 257, 68 N.E.2d 59; cert.denied, 329 U.S.741, 67 Sup.Ct.79, (1946) U.S.Av.496; - N.Y.Sup.Ct. 77 N.Y.S.2d 256 (1947); aff'd,(App.Div.) 84 N.Y.S.2d 408, (1948) U.S.Av.621,628; leave to app.denied,(Ct.App.1949) 85 N.E.2d 794; cert.denied, 338 U.S.824, 70 Sup.Ct.70, (1949) U.S.Av.357, 2 Av.Cas.14,802.

W Proman v. PAA (also sub.nom. Ross v.PAA), N.Y.Sup.Ct. 10 Feb. 1948, 190 Misc.974, 77 N.Y.S.2d 257, (1948) U.S.Av.47, 2 Av. Cas.14,556; aff'd, (App.Div.) 80 N.Y.S.2d 735, (1948) U.S.Av. 541; Ct.App. 14 April 1949, 85 N.E.2d 881, 299 N.Y.88, (1949) U.S.Av.168, 2 Av.Cas.14,911, 13 A.L.R.2d 319, note PATRINELIS at 337; - N.Y.Sup.Ct. 13 April 1953, 123 N.Y.S.2d 263, (1953) U.S.& Can.Av.1,586, 4 Av.Cas.17,171; aff'd,(App.Div. 3 Nov. 1954), (1954) U.S.& Can.Av.400; cert.denied, 31 May 1955, 349 U.S.947, 75 Sup.Ct.874, (1955) U.S.& Can.Av.396, 4 Av. Cas.17,682.

W Vila v. PAA, (1946) U.S.Av.499.

W Sheldon v. PAA, N.Y.Sup.Ct. 6 May 1947, 74 N.Y.S.2d 578, (1947) U.S.Av.546, 2 Av.Cas.14,566; aff'd, (App.Div. 10 Oct. 1947) 74 N.Y.S.2d 267.

W Goepp v. American Overseas Airlines, N.Y.Sup.Ct. 23 July 1947 (1947) U.S.Av.616; 25 Oct.1951, (1951) U.S.Av.527; (App.Div. 16 Dec.1952) 281 App.Div.105, 117 N.Y.S.2d 276, (1952) U.S.& Can.Av.486, 3 Av.Cas.18,057; aff'd, (Ct.App. 14 July 1953) 305 N.Y.838, 114 N.E.2d 379, (1953) U.S.& Can.Av.503, IATA L.P.№ 12, note FENSTON, 1 McGILL L.J.231 (1953); cert.denied, 346 U.S.874, 74 Sup.Ct.124, 4 Av.Cas.17,186.

W Hitts v. American Overseas Airlines, S.D.N.Y. 18 Jan.1949, (1949) U.S.Av.65,140; (2d Cir.1951) 97 F.Supp.457, (1951) U.S.Av.101.

W Ulen v. AmericanAirlines, D.C.District Ct. 20 April 1948, (1948) U.S.Av.161; aff'd (D.C.Cir. 26 Sept.1949), 186 F.2d 529, (1949) U.S.Av.338, 2 Av.Cas.14,990.

W Atlantic Fish & Oyster Co. v. PAA, Illinois Circuit Ct. 29 Nov.1948, (1950) U.S.Av.23.

W Wanderer v. SABENA, N.Y.Sup.Ct. 10 Feb.1949, (1949) U.S. Av.25.

W Kraus v. KLM, N.Y.Sup.Ct. 4 Oct.1949, 122 N.Y.L.J.704 (1949), (1949) U.S.Av.306, 2 Av.Cas.15,017; aff'd (App.Div.) 278 App. Div.811, 105 N.Y.S.2d 351.

W Pekelis v. TWA, S.D.N.Y. 11 June 1950, (1950) U.S.Av.296; (2d Cir. 15 Feb.1951) 187 F.2d 122, (1951) U.S.Av.1, 3 Av. Cas.17,440; cert.denied, 341 U.S.951, 71 Sup.Ct.1020, (1951) U.S.Av.531.

W Salamon v. KLM, N.Y.Sup.Ct. 8 Nov.1950, 100 N.Y.S.2d 702, (1950) U.S.Av.505, 3 Av.Cas.17,355; N.Y.Sup.Ct.(Special Term, 28 Sept.1951) 107 N.Y.S.2d 768, (1951) U.S.Av.378, 3 Av.Cas. 17,768; aff'd, (App.Div. 1 April 1955) 281 App.Div.965, (1955) U.S.& Can.Av.80, 4 Av.Cas.17,624, note DE DONGO 22 J.AIR L.& COM.353 (1955); leave to app.denied, 282 App.Div.683; rearg. denied, 282 App.Div.837.

W Grey v. American Airlines, S.D.N.Y. 21 Dec.1950, 95 F.Supp. 756, 3 Av.Cas.17,404, (1950) U.S.Av.507; 21 Feb.1955, 4 Av. Cas.17,572; aff'd, (2d Cir. 7 Nov.1955), 227 F.2d 282, (1955) U.S.& Can.Av.60,626, 4 Av.Cas.17,811, IATA L.R.№ 30; cert. denied 12 March 1956, 350 U.S.989, 76 Sup.Ct.476, (1956) U.S. Av.140.

W Mayers Co. v. KLM, N.Y.Sup.Ct. 28 Feb.1951, 108 N.Y.S.2d 251, (1951) U.S.Av.428, 3 Av.Cas.17,929.

W Finne v. KLM, S.D.N.Y. 15 March 1951, 11 F.R.D.336, (1951) U.S.Av.365.

W Philios v. TWA, N.Y.City Ct. June 1951, (1953) U.S.& Can.Av. 479, IATA L.R.№ 18, note 21 J.AIR L.& COM.479 (1954) NOWAK.

W Supine v. Air France, S.D.N.Y. 28 Sept.1951, 100 F.Supp.214, (1951) U.S.Av.448, 3 Av.Cas.17,707; 4 May 1954, 4 Av.Cas. 17,377; 8 June 1955, 4 Av.Cas.17,691.

W Komlos v. Air France, S.D.N.Y. 14 July 1952, 111 F.Supp.393, (1952) U.S.& Can.Av.310, 3 Av.Cas.17,969; (2d Cir. 30 Dec.1953) 209 F.2d 436, (1953) U.S.& Can.Av.471, 4 Av.Cas.17,281; cert. denied 14 Oct.1954, 348 U.S.820, 75 Sup.Ct.31; petition for

rehearing denied 26 Feb.1955, 209 F.2d 440, (1954) U.S.& Can. Av.347,454, 4 Av.Cas.17,283, note 47 AM.J.INT'L L.713 (1953); (sub.nom.Royal Indemnity Co. v. Air France) S.D.N.Y. 29 June 1955, 18 F.R.D.363, (1955) U.S.& Can.Av.358, 4 Av.Cas.17,739.

W Glenn v. Compañía Cubana de Aviación S.A., S.D.Florida 1 Feb. 1952, 102 F.Supp.631, (1952) U.S.& Can.Av.182, 3 Av.Cas.17,836.

W Werkley v. KLM (also sub.nom.Branyan et al. v. KLM), S.D.N.Y. 1952, 111 F.Supp.299, (1953) U.S.& Can.Av.194; 20 Jan.1953, 13 F,R.D.425, 3 Av.Cas.18,219.

W Vandenburg v. French Sardine Co., Calif.Superior Ct. 29 Oct. 1953, (1953) U.S.& Can.Av.423, 4 Av.Cas.17,189.

W Dunning v. PAA, D.C.District Ct. 7 Jan.1954, (1954) U.S.& Can. Av.70, 4 Av.Cas.17,394.

W Rugani v. KLM, N.Y.City Ct. 20 Jan.1954, (1954) U.S.& Can.Av.74, 4 Av.Cas.17,257, IATA L.R.№ 25; aff'd,(N.Y.Ct.App.) 309 N.Y.810.

Reed v. Northwest Airlines, N.D.Illinois 10 Feb.1954, (1954) U.S.& Can.Av.45, 4 Av.Cas.17,279.

W Nicolet v. TWA, S.D.N.Y. 17 June 1954, (1954) U.S.& Can.Av.177, 4 Av.Cas.17,394.

W American Smelting & Refining Co. v. Philippine Airlines, N.Y. Sup.Ct. 21 June 1954, (1954) U.S.& Can.Av.221, 4 Av.Cas.17,413; aff'd, (App.Div.) 285 App.Div.1119, 141 N.Y.S.2d 818, (1955) U.S.& Can.Av.385; aff'd, (Ct.App.) 1 N.Y.2d 866, (1956) U.S.& Can.Av.385, 4 Av.Cas.18,234, (1957) UNIDROIT 405.

W Orlove Co. v. Philippine Airlines, S.D.N.Y. 25 Oct.1957, (1958) U.S.& Can.Av.611, 5 Av.Cas.17,621, IATA L.R.№ 43; aff'd, (2d Cir. 25 July 1958) 257 F.2d 384, 5 Av.Cas.18,103; cert.denied 8 Dec.1958, 358 U.S.909.

W Woolf v. Aerovías Guest S.A., N.Y.City Ct. Oct.1954, (1954) U.S.& Can.Av.399.

W Chutter v. KLM, S.D.N.Y. 27 June 1955, 132 F.Supp.611, (1955) U.S.& Can.Av.250, 4 Av.Cas.17,733, note CATDIK 23 J.AIR L.& COM.232 (1956), (1956) UNIDROIT 1.323.

'W' DaCosta v. Caribbean International Airways Ltd., S.D.Florida 30 June 1955, (1955) U.S.& Can.Av.481, 4 Av.Cas.17,792, (1956) UNIDROIT I.331.

W Scarf v. TWA, S.D.N.Y. 2 Sept.1955, (1955) U.S.& Can.Av.669, 4 Av.Cas.17,795; 27 Oct.1955, (1956) U.S.& Can.Av.28, 4 Av. Cas.17,828; appeal dismissed,(2d Cir. 2 May 1956) 233 F.2d 176, (1956) U.S.& Can.Av.232, 4 Av.Cas.18,076, note GAZDIK 23 J.AIR L.& COM.232 (1956), (1956) UNIDROIT I.329.

W Rashap v. American Airlines, S.D.N.Y. 13 Oct.1955, (1955) U.S. & Can.Av.593, IATA L.R.№ 28.

W Berner v. United Airlines, N.Y.Sup.Ct. 30 Jan.1956, 2 Misc.2d 260, 149 N.Y.S.2d 335, (1956) U.S.& Can.Av.134, 4 Av.Cas.17, 924. IATA L.R.№ 36; aff'd, (App.Div.1956) 3 App.Div.2d 9, 5 Av.Cas.17,169; aff'd, (Ct.App.) 3 N.Y.2d 1003, 157 N.Y.S.2d 884, (1957) U.S.& Can.Av.477.

W Bochory v. PAA, N.Y.Sup.Ct. 23 April 1956, (1956) U.S.& Can. Av.209, 4 Avi 18,072; aff'd, (App.Div. 26 June 1957), (1957) U.S.& Can.Av.180, (1957) UNIDROIT 403.

W In re Hoover's Estate, Pennsylvania Orphan's Ct. 8 July 1957, 11 Pa.D.& C.2d 9, (1957) U.S.& Can.Av.366, 5 Av.Cas.17,528.

W Dumarkin v. PAA, New Jersey Superior Ct. 20 June 1956, (1956) U.S.& Can.Av.383, 4 Av.Cas.18,152, IATA L.R.№ 35, (1957) UNI-DROIT 407.

W Noel v. linea Aeropostal Venezolana, S.D.N.Y. 22 August 1956, 144 F.Supp.359, 4 Av.Cas.18,204, (1956) U.S.& Can.Av.314,381; 29 Nov.1956, 154 F.Supp.162, 5 Avi 17,125; aff'd, (2d Cir. 9 August 1957) 247 F.2d 677, (1957) U.S.& Can.Av.274, 5 Av. Cas.17,544; (1957) UNIDROIT 410; cert.denied 16 Dec.1957, 78 Sup.Ct.334, (1957) U.S.& Can.Av.487; S.D.N.Y. 18 Sept.1958, 5 Av.Cas.18,176; note 4 N.Y.L.FORUM 361 (1958), note 3 VILLA-NOVA L.REV.571 (1958).

W Mason v. BOAC, S.D.N.Y. 15 Nov.1956, 5 Av.Cas.17,121.

W Manhattan Novelty Co. v. Seabord & Western Airlines, N.Y.Sup. Ct. 25 Jan.1957, 137 N.Y.L.J.(№ 18) 6 (1957), (1958) U.S.& Can.Av.311, 5 Av.Cas.17,229, IATA L.R.№ 58.

W Gorter v. Northwest Airlines (also sub.nom. In re Waldrep's Estate), Wash.Sup.Ct. 28 Jan.1957, (1958) U.S.& Can.Av.222, 5 Av.Cas.17,267; rev'd, (9th Cir. 28 March 1958) 254 F.2d 652, (1958) U.S.& Can.Av.534, 5 Av.Cas.17,878.

Overstreet v. Canadian Pacific Airlines, S.D.N.Y. 21 May 1957, 152 F.Supp.838.

W Winsor v. United Airlines, E.D.N.Y. 25 June 1957, 153 F.Supp. 244, (1957) U.S.& Can.Av.466, 5 Av.Cas.17,509; Delaware District Ct. 30 Jan.1958, 159 F.Supp.856, (1960) U.S.& Can.Av.33, 5 Av. Cas.17,736; Delaware Superior Ct. 12 Sept.1958, (1960) U.S.& Can.Av.39, 5 Av.Cas.18,170.

W Pierre v. Eastern Airlines, New Jersey District Ct. 27 June 1957 (1957) U.S.& Can.Av.431, 5 Av.Cas.17,515, IATA L.R.№ 54.

W Holzer Watch Co. v. Seaboard & Western Airlines, N.Y.City Ct. 30 Sept.1957, 138 N.Y.L.J.(№ 89) 6 (1957), (1958) U.S.& Can.Av. 142, 5 Av.Cas.17,854, IATA L.R.№ 55.

W Parke,Davis & Co. v. BOAC, N.Y.City Ct. 30 Jan.1958, 170 N.Y. S.2d 385, (1958) U.S.& Can.Av.122, 5 Av.Cas.17,838.

W United States v. Flying Tiger Line, U.S.Court of Claims 11 Feb. 1959, 107 F.Supp.422, (1959) U.S.& Can.Av.112, 6 Av.Cas.17,291, IATA L.R.№ 66.

W Riediger v. TWA, N.Y.Sup.Ct. 17 March 1959, (1959) U.S.& Can. Av.44, 6 Av.Cas.17,315.

Pignataro v. United States, E.D.N.Y. 9 April 1959, (1961) U.S.& Can.Av.121.

W Pilgrim Apparel Inc. v. National Union Fire Insurance Co., N.Y. City Ct. 18 Nov.1959, 142 N.Y.L.J.(№ 97) 13 (1959), (1960) U.S. & Can.Av.373, 6 Av.Cas.17,733.

W Sherman v. TWA, N.Y.Sup.Ct. 12 April 1960, (1960) U.S.& Can.Av. 297, 6 Av.Cas.18,025.

Green v. El Al Israel Airlines, E.D.N.Y. 24 May 1960, (1960) U.S.& Can.Av.312.

Bergeron v. KLM, S.D.N.Y. 14 Nov.1960, 188 F.Supp.594, (1961) U.S.& Can.Av.17.

W Coultas v. KLM, S.D.N.Y. 17 April 1961, (1961) U.S.& Can.Av.199.

W Tuller v. KLM,(D.C.District Ct.1960), note (1960) PROCEEDINGS A.B.A. SEC.INT'L & COMP.L.68; aff'd, (D.C.Cir. 23 June 1961) 292 F.2d 775, (1961) U.S.& Can.Av.181, 7 Av.Cas.17,544.

W Galli v. REAL Brazilian International Airlines, N.Y.Sup.Ct. 31 Jan.1961, (1961) U.S.& Can.Av.

b) United Kingdom.

W Grein v. Imperial Airways, King's Bench Div. 23 Oct.1935, 7 J.AIR L.128 (1936), (1936) U.S.Av.184, note 7 AIR L.REV.129 (1936); Court of Appeal,13 July 1936, (1937) 1 K.B.50, 55 Lloyd's List L.R.318, 106 L.J.R.109, (1936) U.S.Av.211, 1 Av.Cas.622, 8 J.AIR L.101 (1937), 7 AIR L.REV.447 (1937).

W Westminster Bank v. Imperial Airways, King's Bench Div. 27 May 1936, 55 Lloyd's List L.R.242, (1936) U.S.Av.39, 1 Av.Cas.618, 7 J.AIR L.616 (1936).

Kidston v. Lufthansa, Court of Appeal 14 Oct.1936, 38 Lloyd's List L.R.1.

W Philippson v. Imperial Airways, King's Bench Div. 8 June 1937, (1938) U.S.Av.42; Court of Appeal 3 March 1938, (1938) U.S.Av.55; House of Lords 2 March 1939, (1939) U.S.Av.63.

W Horabin v. BOAC, Queen's Bench Div. 6 Nov.1952, (1952) All.E.R. 1016, (1952) U.S.& Can.Av.549, note GAZDIK 20 J.AIR L.& COM.324 (1953).

W Rotterdamsche Bank v. BOAC, Queen's Bench Div. 18 Feb.1953, 71 Lloyd's List L.R.154,(1953) U.S.& Can.Av.163.

W Preston v. Hunting Air Transport Ltd., Queen's Bench Div. 30 Jan. 1956, (1956) 1 All E.R.443, (1956) U.S.& Can.Av.1, 4 Av.Cas. 18,010, note GAZDIK 23 J.AIR L.& COM.234 (1956), note NEILL 19 MODERN L.REV.548 (1956), (1956) UNIDROIT I.346.

c) Singapore:

W Borneo Co. v. Braathens South American & Far East Air Transport A.S., Court of Appeal 30 Sept.1959, 25 MALAYAN L.J.253 (1959), note CAPLAN:J.BUS.L.(April 1960) 213.

d) Canada:

W Stratton v. Trans Canada Airlines, Brit.Columbia Sup.Ct. 9 Feb. 1961, 27 D.L.R.2d 670, 34 West.Weekly R.(n.s.) 183, (1961) U.S. & Can.Av.246; aff'd,(B.C.Ct.App. 21 Feb.1962) 37 West.Weekly R. (n.s.) 577.

2. Civil Law Countries.

a) France:

W Csillag v. Air France, Tribunal Civil de Toulouse 10 Feb.1938, note LEMOINE, TRAITE DE DROIT AERIEN № 825 fn.2 (Paris 1947).

W Attias v. Air Afrique, Cour d'Appel d'Alger 24 Dec.1943, 10 REV.GEN.AIR 464 (1947),note LE GOFF 467, 2 REV.FRANC.DR.AER. 107 (1948),note 109.

W Clasquin Transports Co. v. Socotra Co., Tribunal de Commerce de la Seine 17 Jan.1949, 3 REV.FRANC.DR.AER.204 (1949),note 207, 13 REV.GEN.AIR.1131 (1950),note LACOMBE 1135.

W Nordisk Transport Co. v. Air France, Tribunal de Commerce de la Seine 22 Dec.1949, 13 REV.GEN.AIR 952 (1950),note LACOMBE 954; rev'd, (Cour d'Appel de Paris 28 Feb.1953), 7 REV.FRANC.DR.AER. 105 (1953),note 121, 16 REV.GEN.AIR 180 (1953), note 20 J.AIR L.& COM.324 (1953), IATA L.R.№ 4.

W Fuller Bros. v. Air Algérie (also sub.nom.Cotaufruits Co. v. Fuller Bros.), Tribunal de Commerce de la Seine 10 Jan.1950, 5 REV.FRANC.DR.AER.437 (1951), 14 REV.GEN.AIR 393 (1951),note LACOMBE 395; Cour d'Appel de Paris 8 Nov.1951, 5 REV.FRANC.DR. AER.433 (1951),note 436, 14 REV.GEN.AIR 535 (1951),note LACOMBE 537; aff'd, Cour de Cassation (Ch.Civ.,Sec.Com.) 22 Feb.1956,

10 REV.FRANC.DR.AER.220 (1956),note GEORGIADES 222, 19 REV.GEN. AIR 182 (1956), note GULDIMANN 23 J.AIR L.& COM.347 (1956), (1956) UNIDROIT I.334.

W Rey v. Fuller Bros., Cour de Montpellier 23 Nov.1951; Cour de Cassation (Ch.Civ.,Sec.Com.) 22 Dec.1955, 10 REV.FRANC.DR.AER. 319 (1956), (1956) UNIDROIT I.333.

W Terrasson Co. v. Messageries Nationales (also sub.nom. Neuchâteloise Co. v. Aéro-Cargo Co.), Cour d'Appel de Lyon 12 Nov. 1951, 5 REV.FRANC.DR.AER.440 (1951),note 446; Cour de Cassation (Ch.Civ., Sec.Com.) 11 June 1956, 11 REV.FRANC.DR.AER.31 (1957), note GEORGIADES 32.

W Hennessy v. Air France (also sub.nom. Broche-Hennessy v. Air France), Tribunal Civil de la Seine 24 April 1952, 6 REV.FRANC. DR.AER.199 (1952),note CHAUVEAU 239, 15 REV.GEN.AIR 162 (1952), note TRICAUD 171; aff'd, Cour d'Appel de Paris 25 Feb.1954, 28 Semaine Juridique II.8041 (1954),note DE JUGLART, 8 REV.FRANC. DR.AER.45 (1954),note CHAUVEAU 67, 17 REV.GEN.AIR 80 (1954),note DE LA PRADELLE 83, note 21 J.AIR L.& COM.367 (1954), IATA L.R. № 21.

W Munier v. Divry, Tribunal Civil de la Seine 27 Nov.1953, 8 REV. FRANC.DR.AER.76 (1954),note 78, note GULDIMANN 21 J.AIR L.& COM.369 (1954), IATA L.R.№ 19.

W Gallais v. Aéro-Maritime Co., Tribunal Civil de la Seine 28 Apr. 1954, 8 REV.FRANC.DR.AER.184 (1954),note 190, 17 REV.GEN.AIR 415 (1954), note GULDIMANN 22 J.AIR L.& COM.99 (1955).

W Del Vigna v. Air France, Tribunal Civil de la Seine 2 July 1954, 8 REV.FRANC.DR.AER.191 (1954),note COMBEAU 199, note BOLLA 21 J.AIR L.& COM.476 (1954); Cour d'Appel de Paris 27 May 1959, 14 REV.FRANC.DR.AER.83 (1960), note DE JUGLART 13 REV.TRIM.DR. COM.664 (1960).

W Caisse Parisienne de Réescomptes,v. Air Liban, Tribunal Civil de la Seine 14 Jan.1955, 9 REV.FRANC.DR.AER.439 (1955),note GEORGIADES 443, 18 REV.GEN.AIR 61 (1955),note 64, note GULDIMANN 23 J.AIR L.& COM.88 (1956); Cour d'Appel de Paris 31 May 1956, 10 REV.FRANC.DR.AER.320 (1956),note GEORGIADES 324, 19 REV.GEN.AIR 291 (1956),note 295, 30 Semaine Juridique II.9511 (1956), (1956) UNIDROIT I.337.

Lafayette Laboratories v. PAA, Tribunal de Commerce de la Seine 14 Jan.1955; aff'd, Cour d'Appel de Paris 9 Nov.1956, 11 REV.FRANC.DR.AER.146 (1957),note GEORGIADES 148, 19 REV. GEN.AIR 377 (1956),note 379.

W Della Roma v. Air France, Tribunal de Commerce de Marseille 3 Nov.1955, 10 REV.FRANC.DR.AER.93 (1956),note 102, note GULDIMANN 23 J.AIR L.& COM.237 (1956), (1956) UNIDROIT I.340; sub.nom. Caisse Régionale de Sécurité Sociale du Sud-Est v. Air France, Cour d'Appel d'Aix-en-Provence 13 March 1959, 13 REV.FRANC.DR.AER.175 (1959), 22 REV.GEN.AIR 194 (1959), note BORRICAND 197, (1959) U.S.& Can.Av.427.

French State Treasury v. Air Atlas, Tribunal Civil de la Seine 9 Jan. 1956 12 REV.FRANC.DR.AER.307 (1958), note DE JUGLART 9 REV.TRIM.DR.COM.144 (1956); Cour d'Appel de Paris 29 May 1958, note DE JUGLART 12 REV.TRIM.DR.COM.529 (1959).

W Missirian v. Air France, Tribunal Civil de la Seine 11 Jan. 1956, 16 REV.GEN.AIR 67 (1956),note DE JUGLART 72, note MACBRAYNE 23 J.AIR L.& COM.235 (1956), IATA L.R.№ 34.

W? Air Fret, Cie.Générale, v. TWA, Tribunal de Commerce de la Seine 23 Feb.1956, 10 REV.FRANC.DR.AER.324 (1956),note GEORGIADES 326, 19 REV.GEN.AIR 375 (1956),note 377.

(W) French State Treasury v. Air Laos, Tribunal Civil de la Seine 4 March 1958, note DE JUGLART 13 REV.TRIM.DR.COM.435 (1960); aff'd, Cour d'Appel de Paris 17 June 1960, 35 Semaine Juridique II.12158 (1961), note DE JUGLART, 15 REV.FRANC.DR.AER. 276 (1961),note 278.

W French State Treasury v. Aigle Azur Co., Tribunal de Grande Instance de la Seine 1 Feb.1960, 14 REV.FRANC.DR.AER.214 (1960) note 216, 88 JOURNAL DU DROIT INTERNATIONAL 1105 (1961).

W Transports Mondiaux Co. v. Air France, Cour d'Appel de Paris 14 March 1960, 14 REV.FRANC.DR.AER.317 (1960),note GEORGIADES 321.

W Emery v. SABENA Tribunal de Grande Instance de la Seine 25 May 1960, 14 REV.FRANC.DR.AER.421 (1960), 23 REV.GEN.AIR 379 (1960),note DE LA PRADELLE 386.

W Robert-Houdin v. Panair do Brasil, Tribunal de Grande Instance de la Seine 9 July 1960, 24 REV.GEN.AIR 285 (1961), note SUNDBERG 290, note DE JUGLART 13 REV.TRIM.DR.COM.925 (1960).

W Boulat v. Air France, Tribunal de Grande Instance de la Seine 14 April 1961, 15 REV.FRANC.DR.AER.198 (1961),note 200.

W Maché v. Air France, Tribunal de Grande Instance de la Seine 2 June 1961, 15 REV.FRANC.DR.AER.283 (1961),note 288, 24 REV. GEN.AIR 292 (1961),note DE LA PRADELLE 298.

b) Switzerland:

Airtrafic A.G. v. Transocean Airlines, Handelsgericht Zürich 19 Dec.1951; aff'd, Bundesgericht 16 May 1952, 3 Z.LUFTRECHT 309 (1954), (1953) ANNUAIRE DE DROIT SUISSE 357, note GULDIMANN 21 J.AIR L.& COM.109 (1954).

Engeli v. Swissair, Tribunal de Première Instance de Genève 8 March 1953, 9 REV.FRANC.DR.AER.335 (1955),note LACOUR 345, 22 J.AIR L.& COM.473 (1955), (1956) UNIDROIT I.349.

W Kamil v. SABENA, Bezirksgericht Zürich 1955; Obergericht des Kantons Zürich 11 April 1957; rev'd, Kassationsgericht des Kantons Zürich 18 Feb.1958; Obergericht des Kantons Zürich 4 June 1959; Bundesgericht (1.Ziv.Kammer) 28 June 1960, (1960) ASDA-BULL.(№ 3) 7, 10 Z.LUFTRECHT 133 (1961).

'W' Djabbarzade v. Linee Aeree Italiane, Tribunal de Première Instance de Genève 26 March 1957, (1957) ASDA-BULL.(№ 1) 13, 12 REV.FRANC.DR.AER.190 (1958),note 194, 24 J.AIR L.& COM.359 (1957); Obergericht des Kantons Zürich 15 Jan.1958, (1958) ASDA-BULL.(№2) 8, 7 Z.LUFTRECHT 426 (1958), 13 REV.FRANC.DR. AER.95 (1959),note GEORGIADES 103.

W Froidevaux v. SABENA, Obergericht des Kantons Zürich 23 Jan. 1958, (1958) ASDA-BULL.(№3) 4, 8 Z.LUFTRECHT 55 (1959), 13 REV.FRANC.DR.AER.189 (1959).

Election, Nouvelle Fabrique, Co. v. PANAGRA, Bezirksgericht Zürich 20 Dec.1957; Obergericht des Kantons Zürich 3 March 1959; Bundesgericht (1.Ziv.Kammer) 14 July 1959, 85 Entscheidungen des Bundesgerichts II.209 (1959), (1959) ASDA-BULL.(№3) 8, 9 Z.LUFTRECHT 100 (1960),note GULDIMANN 121, note GULDIMANN 26 J.AIR L.& COM.392 (1959).

W Style v. Braun, Tribunal de Première Instance de Genève 9 Dec. 1958, (1959) ASDA-BULL.(№2) 10, 13 REV.FRANC.DR.AER.405 (1959), 24 REV.GEN.AIR 284 (1961).

W Concorde Insurance Co. v. Swissair, Cour de Justice de Genève 10 April 1959;:Bundesgericht (1.Ziv.Kammer) 22 Sept.1959, 85 Entscheidungen des Bundesgerichts II.267 (1959), (1961) ASDA-BULL.(№1) 9, 15 REV.FRANC.DR.AER.202 (1961),note 207.

c) Germany:

W G.& L.Berufsgenossenschaft v. DERULUFT, Landgericht Berlin 1937; Kammergericht Berlin 28 July 1938, 8 A.LUFTRECHT 295 (1938), 1 Z.LUFTRECHT 373 (1952), 8 REV.GEN.DR.AER.300 (1939), note LORENZ 11 J.AIR L.261 (1940); aff'd, Reichsgericht 5 July 1939, 9 A.LUFTRECHT 172 (1939), 1 Z.LUFTRECHT 370 (1952), 161 Entscheidungen des Reichsgerichts in Zivilsachen 76 (1939).

W Flohr v. KLM, Landgericht Frankfurt (Main) 8 March 1939, 9 A.LUFTRECHT 180 (1939),note SCHLEICHER 189, note LORENZ 11 J.AIR L.262 (1940).

W Wucherpfennig v. SAS, Amtsgericht Hamburg 3 June 1954; rev'd, Landgericht Hamburg 6 April 1955, 4 Z.LUFTRECHT 226 (1955),note MEYER 232, note GULDIMANN 22 J.AIR L.& COM.352 (1955), (1957) UNIDROIT 395.

W Nittka v. Lufthansa, Landgericht Köln; Oberlandesgericht Köln; Bundesgerichtshof (7.Ziv.Sen.) 17 April 1958, 27 Entscheidungen des Bundesgerichtshofs in Zivilsachen 101 (1958), 7 Z.LUFTRECHT 421 (1958), 13 REV.FRANC.DR.AER.195 (1959).

W Blumenfeld v. BEA, Landgericht Berlin 26 Nov.1959; rev'd, Kammergericht Berlin 11 March 1961, 11 Z.LUFTRECHT 78 (1962).

W? Huetzen v. Deutsche Flugdienst G.m.b.H., Amtsgericht Frankfurt (Main) 3 Feb.1961, 10 Z.LUFTRECHT 203 (1961),note RUDOLF 204.

d) Italy:

W Palleroni v. Società Anonima di Navigazione Aerea, Tribunale di Roma 17 Feb.1936, 10 RIV.DIR.AERONAUT.293 (1936); aff'd, Corte di Appello di Roma 23 Feb.1937, 11 RIV.DIR.AERONAUT.25 (1937); rev'd, Corte di Cassazione (Roma) 31 March 1938, 4 RIV. DIR.NAV. II.171 (1938),note DONATI, 8 A.LUFTRECHT 155 (1938), 8 REV.GEN.DR.AER.309 (1939).

W Calcio Torino Association v. Avio Linee Italiane, Tribunale di Torino 12 July 1950, 15 Sept.1950; aff'd, Corte di Appello di Torino 7 June 1951, 23 Jan.1952, (1952) Foro Italiano I.219; aff'd, Corte Suprema di Cassazione (3a Cam.Civ.) 9 March 1953, 4 July 1953, (1953) Foro Italiano I.1087, 20 RIV.DIR.NAV. II. 201 (1954), 4 Z.LUFTRECHT 70 (1955),note REEMTS, 9 REV.FRANC. DR.AER.352 (1955), note CUIDIMANN 22 J.AIR L.& COM.99 (1955).

W? Società Italiana Costruzioni Edili Stradali Idrauliche (SICESI) v. TWA, Tribunale di Roma 1953; aff'd, Corte di Appello di Roma 30 April 1954, 21 RIV.DIR.NAV. II.230 (1955),note ROMANELLI.

Italian-Libya:

W Primatesta v. Ala Littoria, Tribunale di Tripoli 2 April 1937, 14 August 1937, 12 RIV.DIR.AERONAUT.52,303 (1938),note AMBROSINI, 5 RIV.DIR.NAV. II.84 (1939),note SPASIANO, 8 A.LUFTRECHT 303 (1938); rev'd, Tribunale di Tripoli 28 April 1939, 13 RIV. DIR.AERONAUT.127 (1939).

e) Netherlands:

Young v. KLM, (also sub.nom. "Coievaar"-case), Arrondissementsrechtsbank 's-Gravenhage 28 Feb.1935, (1936) Nederlandse Jurisprudentie 314,№164; aff'd, Gerechtshof 's-Gravenhage 17 Feb. 1936, (1936) Nederlandse Jurisprudentie 757,№433; 1 Feb.1937, (1937) Nederlandse Jurisprudentie 749,№549; rev'd, Hooge Raad (Civ.Ch.) 18 March 1938, (1939) Nederlandse Jurisprudentie 113, №69,note MEIJERS 116, note VAN GORKUM (1939) THEMIS 152.

Amstelhoedenfabriek N.V. v. PAA, Arrondissementsrechtsbank Amsterdam 7 Jan.1953 (№2833/1951), note DRION, LIMITATION OF LIABILITIES IN INTERNATIONAL AIR LAW 245(№202) fn.3 (The Hague 1954), IATA L.R.№14.

W Stichting, Rotterdamsche Diergaarde, v. Air France, Arrondissementsrechtsbank Amsterdam 15 June 1956, (1957) Nederlandse Jurisprudentie 1115,№551, note DE JUGLART 12 REV.TRIM.DR.COM. 216 (1959).

f) Belgium:

W Fischer v. SABENA, Tribunal de Première Instance de Bruxelles 6 May 1950, 4 REV.FRANC.DR.AER.411 (1950),note GARNAULT 425, 14 REV.GEN.AIR 160 (1951),note LACOMBE 177, (1950) U.S.& Can. Av.367.

W Collet v. SABENA, Tribunal de Première Instance de Bruxelles 17 April 1958, 12 REV.FRANC.DR.AER.411 (1958),note GEORGIADES, note GULDIMANN 26 J.AIR L.& COM.88 (1959).

Belgian-Congo:

W Moutafis v. SABENA, Tribunal de Première Instance de Léopoldville 18 March 1953; rev'd, Cour d'Appel de Léopoldville 16 March 1959, 13 REV.FRANC.DR.AER.178 (1959),note 188.

g) Austria:

(W) Gonano v. KNA, Oberster Gerichtshof Wien 5 Oct.1955, 23 Evidenzblatt der Rechtsmittelentscheidungen N407, 10 ÖSTERREICHISCHE JURISTENZEITUNG 672 (1955),note STANZL 673.

(W) Heitz v. Allgemeine Unfallversicherungsanstalt, Oberster Gerichtshof Wien, 15 Dec.1961, 11 Z.LUFTRECHT 150 (1962).

h) Hungary:

'W' A.gy v. WALERT, Budapest Tribunal 1935; rev'd, Budapest Royal Court of Appeal 2 April 1936, 7 A.LUFTRECHT 79 (1937),note VON APÁTHY 81, 6 REV.GEN.DR.AER.300 (1937).

i) Lebanon:

W Bâloise Insurance Co. v. Air France, Tribunal Civil de Beyrouth 3 Oct.1958, 14 REV.FRANC.DR.AER.92 (1960), note DE JUGLART 13 REV.TRIM.DR.COM.664 (1960).

3. Scandinavian Countries.

Sweden:

W Jonker v. Nordisk Transport Co., Stockholm City Court 20 June 1956; rev'd, Svea Court of Appeal 20 May 1959, 1 ARKIV FOR LUFTRETT 272 (1961), (1961) U.S.& Can.Av.230.

II. Table of 'Contacts' 665/.

Cases as listed in the preceding table, arranged in alphabetical order (names of parties abbreviated). Symbols concerning nature and date of damaging event, read as follows:

p/k	= passenger killed	g/l	= goods lost
p/i	= passenger injured	b/l	= baggage lost
p/d	= passenger delayed666/	g/d	= goods delayed

Localizing factors (place of contracting, etc.) are self-explanatory, cf. supra text at n.606/ ff. (place of destination in brackets = agreed stopping-place on round-trip).

Law applied = choice of law by the court (brackets ='crypto-choice', cf. supra text at n.567/ ff.). For symbols concerning Warsaw Convention, cf. supra p.70.

Case:	(1)place of contract.	(2)place of destin.	(3)place of depart.	(4)carr's pr.pl. of business	(5)pass's (shipp.) domicile	(6) flag	(7)place of accident	(8) forum	law applied	
A.gy MALERT b/l 1934	Hung'y	U.K.	Hung'y	Hung'y	Hung'y	Germ'y	Czech.	Hung'y	Czech	'W'
Air Fret TWA g/d 1951	France	Vietnam	France	U.S.A.	France	U.S.A.		U.S.A.	France	W?
Airtrafic TOA p/d	Switz.	(W.Indies)	Switz.	U.S.A.	Switz.	U.S.A.		Switz.	Swiss	
Am Smelt Phil AL g/l 1947	U.S.A.	HongKong	U.S.A.	Phil.	U.S.A.	U.S.A.	HongKong	U.S.A.		W
Amstelh PAA g/l	N.L.	South Africa	N.L.	N.L.	N.L.	U.S.A.	Senegal			
Atl Fish PAA p/d	U.S.A.	South Africa	U.S.A.	U.S.A.	U.S.A.	Belgium	Bel.Congo	U.S.A.		W

Case:	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	Law applied:	
Attias A Afrique p/k 1938	Algeria	Algeria Tunisia	Algeria			France	Algeria	Algeria	French	W
Bâloise A France g/l 1951	Switz.	Switz. Lebanon	Switz. France			Lebanon	Lebanon			W
Bergeron KLM p/k 1954		Ireland U.S.A.	U.S.A. N.L.			HighSea N.L.	U.S.A.		Dutch	
Berner United AL p/k 1953	U.S.A.	U.S.A. (Austral.)	U.S.A. Austral.			U.S.A. Austral.	U.S.A.			W
Blumenf. BEA p/i	Germ'y	Germ'y Greece	Germ'y U.K.			Germ'y U.K.	Germ'y		(German)	W
Bochory PAA p/k 1952			U.S.A. U.S.A.			U.S.A. U.S.A.	Brazil U.S.A.		(U.S.)	W
Borneo C. Braathens g/l 1951		Switz. Singap.	Norway			Norway	Singapore			W
Boulat A France p/i 1950		Vietnam France	France France			France France	Bahrein I. France			W
Cais.Par. A France g/l 1951	Switz.	Switz. Lebanon	Switz. France			Lebanon Lebanon	Lebanon France			W
Calc.Tor. ALI p/k 1949		Portug. Italy	Italy Italy			Italy Italy	Italy Italy		(Ital.)	W
Choy PAA p/k	U.S.A.		U.S.A. U.S.A.			U.S.A. U.S.A.	HighSea U.S.A.		U.S.	W
Chutter KLM p/i	U.S.A.	U.S.A. Greece	U.S.A. N.L.			U.S.A. N.L.	U.S.A. U.S.A.		(U.S.)	W
Clasquin Socotra g/d 1948		Vietnam				France	France			W

Case:	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	Law applied:	
Collet SABENA p/k 1953					Belgium		Germ'y Belgium	Belgium		W
Concorde Swissair £/l 1953	France Switz.		France Switz.		France Switz.		Switz. Switz.	Swiss Switz.	Swiss	W
Coultas KLM p/k 1954	U.S.A.		N.L.	N.L.		N.L.	Ireland	U.S.A.		W
Csillag A France p/i 1937	France		Spain France		France		France France	France		W
DaCosta Carib.AL p/i 1953	W.Indies W.Indies		W.Indies W.Indies		U.S.A. U.K.		W.Indies U.S.A.	W.Indies	W.Indies	'W'
DellaRoma AirFrance p/k 1951					France		Brit.Cameroon France	France		W
Del Vigna AirFrance p/k 1950	France		Vietnam France		France		Bahrein I. France	France		W
Djabbarz. LAI £/d 1954	Turkey		Switz. Italy		Italy		Italy	Switz.	Swiss	'W'
Dunning PAA p/ 1951	Portug. (South Afr.)		Portug. U.S.A.		U.S.A.		Liberia U.S.A.	U.S.A.		W
Elect'n PANAGRA £/l 1955	Switz. Chile		Switz.	N.L.	Switz.	U.S.A.	Bolivia	Switz.	Swiss	
Emery SABENA p/k 1955					Belgium		Italy	France	French	W
Engeli Swissair £/d 1951	Switz. Turkey		Switz.	Switz.	Switz.			Switz.	Swiss	
Finne KLM p/k 1948					N.L.	N.L.	Scotland	U.S.A.	Scots	W

Cases:	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	Law applied:	
Fischer SABENA p/k 1946				Belgium		Canada Belgium		Belgium	Belg.	W
Flohr KLM p/i 1935	Germ'y		Germ'y (Italy)		N.L.	Italy N.L.		Germ'y		W
FrenchTr. Aig Azur p/k 1953		Laos	Vietnam	Laos	France	Laos France		France		W
FrenchTr. Air Atlas p/k 1950				Morocco	France	Spain France		France	(French)	
FrenchTr. Air Laos p/k 1953		Laos	Vietnam	Laos	France	Laos France		France		(W)
Froidevaux SABENA 1953				Belgium		Switz.		Switz.		W
Froman PAA p/i 1943	U.S.A.		U.S.A. (Portugal)		U.S.A. U.S.A.	Portug. U.S.A.		U.S.A.		W
Fuller A Algérie c/d 1948		U.K.	Algeria	Algeria		France		France	(French)	W
G&L Beruf. DERULUFT p/k 1935	Germ'y		Germ'y (Danzig)	Germ'y	Germ'y	Germ'y Germ'y		Germ'y	German	W
Gallais Aéromarit. p/k 1952		Lebanon	Fr.Tchad	France		Fr.Tchad France		France	French	W
Galli REAL p/i 1957	Brazil		Brazil (U.S.A.)	Brazil		HighSea Brazil		U.S.A.		W
Garcia PAA p/k 1943	U.S.A.		U.S.A. (Portug.)	U.S.A.		Portug. U.S.A.		U.S.A.	U.S.A.	W
Glenn Cubana p/k			U.S.A. (Cuba)	Cuba	U.S.A.	U.S.A. Cuba		U.S.A.		W

Cases:	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	Law applied:	
Goepp AOA p/k 1946	U.S.A.		U.S.A.				Canada			W
		Germ'y		U.S.A.		U.S.A.		U.S.A.		
Gonano BEA p/d 1950	Austria		Austria				Brazil		Austrian	(W)
		(Brazil)		U.K.				Austria		
Gorter NW AL p/k 1952			U.S.A.		U.S.A.		Canada		(U.S.)	W
		Japan		U.S.A.		U.S.A.		U.S.A.		
Green EL AL p/i			Israel			Israel		U.S.A.		
Grein Imperial p/k 1933	U.K.		U.K.				Belgium			W
		(Belgium)		U.K.		U.K.		U.K.		
Grey American p/k 1949		. .	U.S.A.			. .	U.S.A.			W
		Mexico		U.S.A.		U.S.A.		U.S.A.		
Heitz AllgUnf. p/i 1960	Austria		Austria				Turkey		Austrian	(W)
		(Egypt)		Sweden		Norway		Austria		
Hennessy AirFrance p/k 1949			France		France		Port.Azores		French	W
		U.S.A.		France		France		France		
Holzer Seab.&WA g/l			U.S.A.					U.S.A.		W
Hoover's p/k 1952					U.S.A.		Brazil		(U.S.)	W
				U.S.A.		U.S.A.		U.S.A.		
Horabin BOAC p/k 1947	U.K.		U.K.				U.K.			W
		Nigeria		U.K.		U.K.		U.K.		
Huetzen D.Flugd.	Germ'y		Germ'y		Germ'y		Switz.		(German)	W?
		Spain I.		Germ'y		Germ'y		Germ'y		
Indemn. PAA p/k 1943	U.S.A.		U.S.A.				Portug.			W
		(Portug.)		U.S.A.		U.S.A.		U.S.A.		
Jonker Nordisk g/d			N.L.							W
		Sweden		Sweden		Sweden		Sweden		

Case:	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	Law applied:	
Kamil SABENA p/k 1953					Belgium		France Belgium	Switz.		W
Kidston Lufth. b/l 1929	U.K.	N.L.	U.K.	Germ'y	U.K.	Germ'y	U.K.	U.K.		
Komlos AirFrance p/k 1949	U.S.A.		France	France	U.S.A.	France	Port.Az.	U.S.A.	Portug.	W
Kraus KLM g/l				N.L.		N.L.		U.S.A.		W
Lafayette PAA g/ 1952	France	U.S.A.	France	U.S.A.	France	U.S.A.		France	French	
Maché AirFrance p/i 1958	Spain		France	France		France	Spain	France		
Manhat.N. Seab.& W g/l				U.S.A.	U.S.A.			U.S.A.		W
Mason BOAC p/i	U.S.A.	(W.Indies)	U.S.A.	U.S.A.		U.K.	W.Indies	U.S.A.		W
Mayers KLM g/l 1948	Switz.	U.S.A.	Switz.	N.L.		N.L.	Scotland	U.S.A.		W
Missirian AirFrance p/k 1952				France		France	France	France		W
Moutafis SABENA p/k 1948				Belgium		Belgium	Bel.Congo	Bel.Congo	Bel.Congo	WW
Munier Divry p/k 1950	France			U.S.A.	France	U.S.A.	Egypt	France	French	W
Nicolet TWA p/ 1950	Greece	U.S.A.	U.S.A.	U.S.A.		U.S.A.		U.S.A.	U.S.	W

Case:	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	Law applied:	
Nittka Lufthansa p/i 1944	Germ'y	Norway	Germ'y	Germ'y	Germ'y	Germ'y	HighSea	Germ'y	German	W
Noel LAV p/k 1956		Venezuela	U.S.A.	Venezuela	U.S.A.	Venezuela	HighSea	U.S.A.	U.S.	W
Nordisk AirFrance c/l 1948		Vietnam		France		France		France	(French)	W
Orlove Phil AL c/l 1947	U.S.A.	HongKong	U.S.A.	Phil.	U.S.A.	U.S.A.	HongKong	U.S.A.		W
Overstr. CPA p/i				Canada		Canada	Canada	U.S.A.		
Palleroni SANA p/k 1934	Libya	(Malta)	Libya	Italy	Italy	Italy	Malta	Italy	(Ital.)	W
Parke-D. BOAC c/l		U.S.A.	India	U.K.	U.S.A.	U.S.A.		U.S.A.		W
Pekelis TWA p/k 1946				U.S.A.		U.S.A.	Ireland	U.S.A.		W
Philios TWA p/i 1948	U.S.A.	(Greece)	U.S.A.	U.S.A.	U.S.A.	U.S.A.	Greece	U.S.A.		W
Philipps. Imperial c/l 1935	U.K.	Belgium	U.K.	U.K.	Belgium	U.K.		U.K.		W
Pierre Eastern				U.S.A.		U.S.A.		U.S.A.		W
PilgrimA. Nat.U.Fire c/l				SouthAm.				U.S.A.		W
Pignataro U.S. p/i		Ethiopia	Saud.Arab.	U.S.A.	U.S.A.	U.S.A.	Saud.Arab?	U.S.A.	Saud.Arab.?	
Preston Hunting p/k 1952	U.K.	(France)	U.K.	U.K.	Kenya	U.K.	Italy	U.K.		W

Case:	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	Law applied:	
Primatesta Ala Litt. p/k 1934	It.Libya	It.Libya (Malta)	Italy	Italy		Malta	It.Libya	(Ital.)		W
Rashap American p/k		U.S.A. Mexico	U.S.A.	U.S.A.		U.S.A.	U.S.A.			W
Reed NW AL p/k			U.S.A. U.S.A.	U.S.A.	Japan		U.S.A.			
Rey Fuller g/d		Algeria U.K.	Algeria	France		France				W
Riediger TWA	U.S.A.	U.S.A. (France)	Belgium	U.S.A.		U.S.A.				W
Ritts AOA p/k 1946	U.S.A.	U.S.A. N.L.	U.S.A.	U.S.A.		Canada	U.S.A.			W
Rob.Houd. Panair B. p/d	France	Italy Portug.	France	France		Brazil		France		W
Rotterd. BOAC g/l	U.K.	N.L. FrenchSomali	Aden	N.L.		U.K.	Aden	U.K.		W
Rugani KLM g/l 1952	U.S.A.	U.S.A. Switz.	N.L.	N.L.		U.S.A.		U.S.A.		W
Salamon KLM p/k		N.L. U.S.A.	U.S.A. N.L.	N.L.		Canada?		U.S.A.	Can.?	W
Scarf TWA p/i		Austral. Spain	U.S.A.	U.S.A.		Canada		U.S.A.		W
Sheldon PAA p/k 1946		Mexico U.S.A.	U.S.A.	U.S.A.		Mexico		U.S.A.		W
Sherman TWA p/k				U.S.A.		Italy		U.S.A.	(U.S.)	W
SICESI TWA p/k 1950		India Italy	U.S.A.	Italy		U.S.A.	Egypt	Italy	(Ital.)	W

Case:	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	Law applied:	
Stichting AirFrance g/l	Ethiopia N.L.	Ethiopia	N.L.	France	FrenchSomali France			(N.L.) N.L.		W
Stratton TCA p/k 1956	U.S.A. (Canada)	U.S.A.	U.S.A. Canada		Canada Canada			Canad. Canada		W
Style Braun g/l 1951	HongKong							Swiss Switz.		W
Supine AirFrance p/k 1949	U.S.A.	France	France		France		Port.Azores U.S.A.		Portug.	W
Terrasson Fess.Nat. g/l 1948			Swiss France		France France		France			W
Transp.M. AirFrance g/d 1957	France	Germ'y	France Germ'y		Germ'y		France			W
Tuller KLM p/k 1954			U.S.A. N.L.		N.L.	Ireland	U.S.A.	(U.S.)		W
Tumarkin PAA p/d	U.S.A. (Cuba)	U.S.A.	U.S.A. U.S.A.		Cuba		Cuba	U.S.A.		W
Ulen American p/k 1945	Mexico	U.S.A.	U.S.A. U.S.A.		U.S.A.			U.S.A.		W
U.S. Fly'gTig. g/l 1954	U.S.A. Japan	U.S.A.	U.S.A. U.S.A.		U.S.A.	HighSea U.S.A.		U.S.A.		W
Vandenbg. Fr.Sard. p/i	Mexico	U.S.A.	U.S.A. U.S.A.		U.S.A.	Mexico U.S.A.		U.S.A.		W
Vila PAA			U.S.A.					U.S.A.		W
Wanderer SABENA p/i 1946	Belgium U.S.A.	Belgium	Belgium		Belgium	Canada Belgium		U.S.A.		W

Case:	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	Law applied:	
Werkley KLM p/k			U.S.A. (Indonesia)		U.S.A. N.L.		India N.L.		Indian U.S.A.	W
Westm.Bk. Imperial £/l 1935	U.K.		U.K. France		U.K. U.K.		U.K. U.K.			W
Winsor United p/k 1955	Canada		Canada U.S.A.		Canada U.S.A.		U.S.A. U.S.A.			W
Woolf Guest A. p/i	U.S.A.		U.S.A. (Mexico)		U.S.A. Mexico		Mexico		U.S.A.	W
Wucherpf. SAS £/d 1952	Germ'y		Germ'y Italy		Germ'y Sweden		Italy		(German) Germ'y	W
Wyman PAA p/k 1938			U.S.A. HongKong		U.S.A.		HighSea U.S.A.		U.S. U.S.A.	W
Young KLM p/k	Thailand		Thailand U.K.		France N.L.		Thailand N.L.		Thailand	

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4/ E.g., see Panel: Choice-of-Law Problems and International Contracts, 5 PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW 49 (1960); Aubert, Les contrats internationaux dans la doctrine et la jurisprudence suisse, 51 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVE 19 (1962).

5/ E.g., see Albucher, in Nordisk Transport v. Air France, 7 REV. FRANC.DR.AER.105, 111 (1953), speaking of the "contractual character of diplomatic treaties"; cf. Chauveau, note on Hennessy v. Air France, 8 REV.FRANC.DR.AER.67, 68 (1954).

6/ In Grein v. Imperial Airways, see (1936) U.S.Av.184, 245; infra, text at n.13/.

7/ Infra, text at n.27/.

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10/ See Riese, Internationalprivatrechtliche Probleme des Luftrechts 7 Z.LUFTRECHT 272, 279 (1958); cf. RIESE, LUFTRECHT 389 (Stuttgart 1949).

11/ Cf. SHAWCROSS & BEAUMONT, AIR LAW 23 (2d ed. London 1951); CHAUVEAU, DROIT AÉRIEN № 215 (Paris 1951); Lemoine, Le transport international par air, Cours de l'Institut des Hautes Etudes Internationales 73 (Paris 1955); LUREAU, LA RESPONSABILITÉ DU TRANSPORTEUR AÉRIEN: LOIS NATIONALES ET CONVENTION DE VARSOVIE 238 (Paris 1961).

12/ McNAIR, THE LAW OF THE AIR 150 (2d ed. London 1953).

13/ Grein v. Imperial Airways, (1936) U.S.Av.184, 245.

14/ McNair, op.cit. n.12/ at 149.

15/ Verplaetse, Sources of Private International Air Law, 7 INT'L & COMP.L.Q.405 (1958); in general cf. Thompson, Air Law: Conflict of Laws and International Carriage, (1947) INS.L.J.579, 1077, (1948) INS.L.J.627, 973.

16/ Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 Oct.1929 (in effect 13 Feb.1933), 137 League of Nations Treaty Series 11, № 3145; U.S.Treaty Series № 876; 49 U.S.Stat.3000; (1934) U.S.Av.239. - In general, see Ripert, La Convention de Varsovie du 12 octobre 1929 et l'unification du droit privé aérien, 57 JOURNAL DU DROIT INTERNATIONAL 94 (1930); Riese, Zum Warschauer Luftprivatrechtsabkommen, 4 RABELS Z. 244 (1930), transl. in: Observations sur la Convention de Varsovie relative au droit privé aérien, 14 DROIT AÉRIEN 216 (1930); Sack, International Unification of Private Law Rules on Air Transportation and the Warsaw Convention, 4 AIR L.REV.345 (1933); BLANC-DANNERY, LA CONVENTION DE VARSOVIE ET LES RÈGLES DU TRANSPORT AÉRIEN INTERNATIONAL (Thesis Paris 1933); GOEDHUIS, LA CONVENTION DE VARSOVIE (The Hague 1933); GOEDHUIS, NATIONAL AIRLEGISLATIONS AND THE WARSAW CONVENTION (The Hague 1937); BOROS, ZUR HAFTUNG DES LUFTTRANSPORTEURS BEI DER PERSONENBEFÖRDERUNG NACH DEM WARSCHAUER LUFTTRANSPORTABKOMMEN VOM 12. OKTOBER 1929 (Thesis Königsberg 1935); KOFFKA & BODENSTEIN & KOFFKA, LUFTVERKEHRSGESETZ UND WARSCHAUER ABKOMMEN (Berlin 1937); VON RIEBEN, DIE HAFTUNG DES LUFTFRACHTFUEHRERS NACH DEM WARSCHAUER ABKOMMEN (Thesis Würzburg 1937); AFTAL, LA CONVENTION DE VARSOVIE ET LA RÉGLEMENTATION DU TRANSPORT AÉRIEN INTERNATIONAL (Thesis Paris 1949); RABUT, LA CONVENTION DE VARSOVIE, (Paris 1952); Lureau, op.cit. n.11/.

17/ E.g., see MICHAELI, INTERNATIONALES PRIVATRECHT 334 (Stockholm 1947); RAAPE, INTERNATIONALES PRIVATRECHT 480 (5th ed. Berlin 1961).

18/ Verplaetse, op.cit. n.15/ at 408.

19/ Shawcross & Beaumont, op.cit. n.11/ at 310.

20/ Meyer, note on Wucherpfennig v. SAS, 4 Z.LUFTRECHT 226, 232 (1955) (translation supplied)

21/ Grein v. Imperial Airways, (1936) U.S.Av.184, 241; cf. the "mischief rule" of English statutory interpretation as established in Hoyden's Case (Exchequer 1584), 3 Co.72, 76 E.R.637.

22/ SCERNI, IL DIRITTO INTERNAZIONALE PRIVATO MARITTIMO ED AERONAUTICO 18 ff. (Padova 1936). Cf. a proposal by WILBERFORCE to redefine article 1 of the Warsaw Convention so that "the Convention applies to all carriage which is governed by the law of a contracting state;" see Beaumont, Some Problems involved in Revision of the Warsaw Convention, 16 J.AIR L.& COM. 14, 15 (1949).

23/ MALINTOPPI, DIRITTO UNIFORME E DIRITTO INTERNAZIONALE PRIVATO IN TEMA DI TRASPORTO 56 ff. (Milan 1955).

24/ ROMANELLI, IL TRASPORTO AEREO DI PERSONE 201 №138, 205 (Padova 1959).

25/ Riese, op.cit. n.16/ at 260 (transl.: at 227).

26/ Or if an 'agreed stopping place' is situated outside (any other state) of the territory of the High Contracting Party where the flight begins.

27/ For a discussion of this definition, see Grein v. Imperial Airways, (1936) U.S.Av.184; Philippson v. Imperial Airways, (1939) U.S.Av.63; Stratton v. Trans Canada Airlines, (1961) U.S.& Can. Av.246; Gallais v. Aéro-Maritime Co., 8 REV.FRANC.DR.AER.184 (1954); French State Treasury v. Aigle Azur Co., 88 JOURNAL DU DROIT INTERNATIONAL 1105 (1961).- In general, cf. Guinchard, La notion du "Transport international" d'après la Convention de Varsovie, 10 REV.FRANC.DR.AER.14, 21 (1956); de Juglart, comment, 9 REV.TRIM.DR.COM.342 (1956). But cf. the critique by WILBERFORCE of article 1 of the Convention, ("unsound in theory and practice"), (1947) INTERNATIONAL LAW QUARTERLY 498, 502.

28/ Afghanistan, Albania, Bolivia, Chile, Columbia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Iran, Iraq, Korea, Outer Mongolia, Nicaragua, Panama, Paraguay, Peru, Saudi-Arabia, Thailand, Turkey, Uruguay, Yemen. - The adherence of the Chinese People's Republic and of the German Democratic Republic is not recognized by a number of states; the membership of the German Federal Republic is not recognized by Rumania.

29/ See Engeli v. Swissair, 9 REV.FRANC.DR.AER.335 (1955), involving carriage from Switzerland to Turkey; Election Co. v. PANAGRA, 9 Z.LUFTRECHT 100 (1960) (Switzerland-Chile); in Djabbarzade v. Linee Aeree Italiane, 12 REV.FRANC.DR.AER.190 (1958) (Switzerland-Turkey), the rules of the Warsaw Convention were held applicable because of a Swiss statute of 1952, extending them to non-Warsaw carriage (infra n.192/).

30/ Including 'grand cabotage', i.e., carriage between overseas territories and metropolitan territory, as in Wilson v. Transocean Airlines, (N.D.California 15 April 1954) 121 F.Supp.85 (carriage from Guam Island to U.S.A.); Higa v. Transocean Airlines, (D.Hawaii 1 Oct.1954) 124 F.Supp.13 (Wake Island to Hawaii); Attias v. Air Afrique, 2 REV.FRANC.DR.AER.107 (1948) (Algeria-Tunisia); French State Treasury v. Air Atlas, 12 REV. FRANC.DR.AER.307 (1958) (Morocco-France); Vizioz v. Air France (Tribunal Civil de Bordeaux 29 June 1953), 7 REV.FRANC.DR.AER. 381 (1953), 27 Semaine Juridique II.7698 (note DE JUGLART), 16 REV.GEN.AIR 279 (1953) note DE JUGLART 282; aff'd, Cour d'Appel de Bordeaux 10 Nov.1954, 8 REV.FRANC.DR.AER.420 (1954), 18 REV.GEN.AIR 50 (1955) note DE JUGLART 59; Cour de Cassation (Ch.Civ., 2d Sec.) 23 Jan.1959, 13 REV.FRANC.DR.AER.282 (1959), 22 REV.GEN.AIR 100 (1959), - (carriage from Martinique Island to France). - In general, see MEYER, LE CABOTAGE AÉRIEN (Paris 1948).

31/ E.g., carriage from West-Germany to West-Berlin is not performed by German carriers, but reserved to foreign airlines, such as in Blumenfeld v. BEA, 11 Z.LUFTRECHT 78 (1962).

32/ E.g., see Scott v. American Airlines, 3.D.L.R.27 (1944), involving carriage from Michigan to New York with an accident in Canada; L. v. X-Airlines (Reichsgericht Germany 19 May 1927) 117 Entscheidungen des Reichsgerichts in Zivilsachen 102, - involving German domestic carriage with an accident in Switzerland.

33/ Lemhöfer, Die Beschränkung der Rechtsvereinheitlichung auf internationale Sachverhalte, 25 RABELS Z. 401, 430 (1960), proposes to include into the Warsaw Convention a choice-of-law rule for cabotage.

34/ LEMOINE, TRAITÉ DE DROIT AÉRIEN 390 (Paris 1947).

35/ Additional Protocol to the Warsaw Convention. The reservation has been used by Canada, Ethiopia, Pakistan, Portugal and the United States.

36/ Shawcross & Beaumont, op.cit. n.11/ at 79.

37/ Lemoine, loc.cit. n.34/.

38/ Komlos v. Air France, (1952) U.S.& Can.Av.310, 322.

39/ Fuller v. Air Algérie, 10 REV.FRANC.DR.AER.220, 222 (1956).

40/ Calcio Torino Association v. Avio Linee Italiane, 4 Z.LUFTRECHT 70, 71 (1955).

41/ Beaumont, op.cit. n.22/ at 18; Beaumont, Need for Revision and Amplification of the Warsaw Convention, 16 J.AIR L.& COM. 395, 408 (1949); Mankiewicz, Le sort de la Convention de Varsovie en droit écrit et en Common Law, 2 Mélanges en l'honneur de Paul Roubier 105, 110 (Paris 1961), speaks of the "connex questions that were not the object of international reglementation" (transl.supplied).

42/ Bin Cheng, Centrifugal Tendencies in Air Law, 10 CURRENT LEGAL PROBLEMS 200, 222 (1957).

43/ Riese, Paper delivered at the International Conference of Comparative Law in Trier (1961), Une juridiction supranationale pour l'interpretation du droit unifié, 13 REVUE INTERNATIONALE DE DROIT COMPARÉ 717, 719 (1961). - Cf. Williams, Language and the Law, 61 L.Q.REV.71, 302 (1945): "Since the law has to be expressed in words, and words have a penumbra of uncertainty, marginal cases are bound to occur. Certainty in law is thus seen to be a matter of degree."

44/ Including questions of "form", "statutes of fraud", etc.

45/ "All necessary measures to avoid the damage" (article 20). In a note: Admiralty Jurisdiction in Wrongful Death Actions Arising from Airplane Crashes into the High Seas, 25 J.AIR L. & COM.102, 105 (1958), it was suggested to apply the standards of care of the place of injury. But in Tuller v. KLM, (1961) U.S.& Can.Av.181, the court held compliance with the safety regulations of the place of accident not a sufficient excuse, citing Horabin v. BOAC (1952) U.S.& Can.Av.549.

46/ The question whether the carrier is liable for accidents not directly connected with operation of the aircraft (such as the shooting of a passenger by another passenger during the flight) has been answered in the affirmative by ABRAHAM, DER LUFTBEFÖRDERUNGSVERTRAG 48 (Stuttgart 1955), and SCHWEICKHARDT, SCHWEIZERISCHES LUFTTRANSPORTRECHT 45 (Zürich 1954); in the negative by GOEDHUIS, LA CONVENTION DE VARSOVIE 166 (The Hague 1933), RIESE, LUFTRECHT 443 (Stuttgart 1949), and Bülow, Book Review, 20 RABELS Z. 558 (1955). Cf. Beaumont, Warsaw Convention as Amended by Protocol Signed at The Hague, 22 J.AIR L.& COM.414, 417 (1955).

47/ Article 26 §4; see Fuller v. Air Algérie, 10 REV.FRANC.DR. AER.220, 222 (1956).

48/ At the 1931 International Conference on Air Navigation at The Hague, a proposal was made "to complete the Warsaw Convention" by adding a provision on passenger insurance. See Kaftal, Liability and Insurance, 5 AIR L.REV.157, 274 (1934). Cf. Resolution B of the Hague Conference (1955), infra n.388/; Meyer, Probleme des internationalen und nationalen Schadenersatzrechtes der Luftfahrt, 16 VERSICHERUNGSSCHAU 276 (1961); Heitz v. Allgemeine Unfallversicherungsanstalt, 11 Z.LUFTRECHT 150, 152 (1962).

49/ The limitation of liability of the Warsaw Convention has been extended to the carrier's servants and agents in Wanderer v. SABENA, (1949) U.S.Av.25; Chutter v. KLM, (1955) U.S.& Can. Av.250 (period of limitation); Coultas v. KLM, (1961) U.S.& Can.Av.199; Tuller v. KLM, see comment, (1960) PROCEEDINGS 68, A.B.A. Section of Int'l and Comp.L.; cf. Lemoine, op.cit. n.34/ at № 840. - Such an extension has been denied in Pierre v. Eastern Airlines, (1957) U.S.& Can.Av.431, and in Stratton v. Trans Canada Airlines, (1961) U.S.& Can.Av.246; cf. Riese, op.cit. n.46/ at 440, Schweickhardt, op.cit. n.46/ at 51, and ABRAHAM, DAS RECHT DER LUFTFAHRT I 357 (Cologne 1960). - For the Hague amendments of 1955, see infra n.389/.

50/ Blanc, La portée de l'application des lois nationales dans les premières conventions internationales de droit privé aérien, 5 REV.GEN.DR.AER.386, 389 (1936) (translation supplied)

51/ De Visscher, F., Les conflits de lois en matière de droit aérien, 48 RECUEIL DES COURS DE L'ACADÉMIE DE DROIT INTERNATIONAL 294, 332 (1934).

52/ "Any action for damages, however founded" (article 24 §1). On the controversy about tort or contract action, see infra n.477/ ff.

53/ "Without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights" (article 24 §2). On conflicting views and cases see Mankiewicz, op.cit. n.41/ at 134.

54/ In Blumenfeld v. BEA, 11 Z.LUFTRECHT 78, 80 (1962), the court said that the way of compensation for damages is "not settled by the Warsaw Convention but left to the legislation of the individual states." (transl.supplied). There is considerable divergence as to 'consequential damages', 'moral damages', etc.; see Drion, op.cit. n.9/ at 126, and e.g., Payne, Foresight and Remoteness of Damages in Negligence, 25 MODERN L. REV.1 (1962). In Re Hoover's Estate, 5 Av.Cas.17,524, stated that the Warsaw Convention failed to distinguish between damages recoverable under a Wrongful Death Act and a Fiduciaries Act. - Drion, op.cit. n.9/ at 126, points out that in the Rome Convention on Surface Damage (infra n.391/) of 1952 no agreement was reached on the measure of damages, "so that even the question as to which law shall apply is governed by municipal law."

55/ Article 33, which is the legal basis of the IATA conditions, infra n.434/.

56/ See article 8 (f) of the Convention, and article IX of the Hague Protocol, amending article 15. Cf. minutes of the Warsaw Conference 1929, ICAO-Doc.7838, at 106,169,187,198, 204; cf. Mankiewicz, op.cit. n.41/ at 110.

57/ During the 3rd drafting session of CITEJA (Madrid 1928), the Rapporteur DE VOS stated that "it had been understood that the personal effects which the traveller retained in his custody would not come under the system of liability of the Convention." Translation by Calkins, in 26 J.AIR L.& COM.224 (1959). Cf. A.gy v. MALERT, 7 A.LUFTRECHT 79 (1937).

58/ "Abandoned": Ambrosini, Fletamente y transporte, Instituto de Derecho Aeronáutico de Buenos Aires (№ 9) 3 (1951); Drion, op.cit. n.9/ at 133; GRÖNFORS, AIR CHARTER AND THE WARSAW CONVENTION 11 (Stockholm 1956); REBER, BEITRAG ZUR FRAGE DER MIET- UND CHARTERVERTRÄGE IM LUFTRECHT 149 §3 (Thesis Lausanne, Solothurn 1957). - "Inadvertently omitted": COQUOZ, LE DROIT PRIVÉ INTERNATIONAL AÉRIEN 90, 126 (Thesis Fribourg, Paris 1938); Sundberg, op.cit. n.8/ at 200 fn.318.

59/ In Degranges v. I.L.O., the Administrative Tribunal of the International Labour Organization (judgment № 11, 1953) said that "one of the fundamental tenets of all legal systems is that no court may refrain from giving judgment on the grounds that the law is silent or obscure." See JESSUP, TRANSNATIONAL LAW 89 (1956). In general, see De Visscher, Ch., Le déni de justice en droit international, RECUEIL DES COURS DE L'ACADÉMIE DE DROIT INTERNATIONAL 369 (1936 II).

60/ "The law of the court seized of the case" includes, according to Moutafis v. SABENA, 13 REV.FRANC.DR.AER.178, 181 (1959), both the statute law and the common law of the forum ("les règles traditionnelles et la jurisprudence"). Guldimann, note on Hennessy v. Air France, 22 J.AIR L.& COM.369 (1954), submits that it also includes the conflict rules of the forum which in turn might designate another law as applicable. But cf. Malintoppi, op.cit. n.23/ at 203; Riese, op.cit. n.46/ at 397 fn.19; Abraham, op.cit. n.49/ at 358; Mankiewicz, op. cit. n.41/ at 135, citing cases: - "lex fori" references in the Warsaw Convention are to substantive law, not to conflicts law of the forum.

61/ Blanc, op.cit. n.50/ at 388, speaking of "la loi saisie" (the law seized) instead of "le tribunal saisi".

62/ Van Gorkum, De clausula betreffende uitsluiting van aansprakelijkheid, (1939) RECHTSGELEERD MAGAZIJN THEMIS 152, 157.

63/ Lureau, op.cit. n.11/ at 242 fn.9.

64/ RABEL, 3 CONFLICT OF LAWS 306 (1950).

65/ Wucherpfennig v. SAS, 4 Z.LUFTRECHT 226, 230 (1955).

66/ Komlos v. Air France, (1952) U.S.& Can.Av.310, 322, discussing the question who had the right to bring suit. Cf. Sack, op.cit. n.16/ at 386, suggesting that the words of the Convention "probably mean that these questions are left to the lex fori."

67/ Noel v. Linea Aeropostal Venezolana, 4 Av.Cas.18,205.

68/ The exact nature of that option, which introduces a subjective element into the objective jurisdiction rule of article 28, is far from being clear; cf. Beaumont, op.cit. n.22/ at 18. In Berner v. United Airlines, 4 Av.Cas.17,926, it was interpreted as a "consent" by the carrier "to be sued in the forums specified in article 28 at plaintiff's option." In Djabbarzade v. Linee Aeree Italiane, 7 Z.LUFTRECHT 426, 429 (1958), the "principle of international law contained in article 28" was defined as "facilitating the task of the plaintiff who wants to put forward against the carrier his claims for damages sustained in an international carriage, - in particular by offering him a choice between various jurisdictions different from those of national law." (translation supplied).

69/ For the term of "forum conveniens" see Jessup, op.cit. n.59/ at 107 ; cf. EHRENZWEIG, 1 CONFLICT OF LAWS 119 ff. (1959).

70/ In the British translation "where the carrier is ordinarily resident", see Schedule, Carriage by Air Act, 22 & 23 Geo.5, c.36 (1932). On the differences in translations, see infra n.226/.

71/ British text: "establishment by which the contract was made."

72/ In general, cf. Goldberg, Jurisdiction and Venue in Aviation Accident Cases, 36 CALIF.L.REV.41 (1948); Colclaser, Jurisdiction in Private International Air Law Cases, 49 MICH.L. REV.1163 (1951); De Andrade, Fora for Actions under the Warsaw Convention, Unpublished Paper, McGill Univ. Institute of Air & Space Law (Montreal 1957); Zoghbi, Zur Bedeutung der Wahl der Gerichte im internationalen Luftrecht, (1961) INTERNATIONALE TRANSPORTZEITUNG 4077; ROHANG, ZUSTÄNDIGKEIT UND VOLLSTRECKBARKEIT IM INTERNATIONALEN UND SCHWEIZERISCHEN LUFTPRIVATRECHT 48 ff. (Winterthur 1958).

73/ The original draft of CITEJA (Madrid 1928) contained as a 5th forum, in the case of non-arrival of the aircraft, the court having jurisdiction at the place of accident; see translation by Calkins, 26 J.AIR L.& COM.222 (1959). After British objections, this forum was deleted at the Warsaw Conference; see Warsaw Minutes (ICAO-Doc.7838) 77 ff. - For the Hague Conference in 1955, see infra n.392/.

74/ But in A.gy v. MALERT, 7 A.LUFTRECHT 79 (1937), a Hungarian court applied the Warsaw Convention, although Hungary at the time was not a member state. It seems that the carrier's condition of carriage contained a reference to the Convention; see 6 REV.GEN.DR.AER.300 (1937).

75/ On various abortive proposals to insert a provision to this effect, see Goedhuis, op.cit. n.46/ at 234; Riese, op.cit. n.16/ at 259; Riese, op.cit. n.46/ at 416, 471. For similar attempts at the Hague Conference, see infra n.394/. - Garnault, L'exécution des jugements à l'étranger en droit aérien, Report of the 46th Conference of the International Law Association (Edinburgh 1954) 302, 303, points out that the Bern Conventions on Carriage by Rail (infra n.77/) contain such a provision. However, admission to the Bern Conventions may be refused to states not having an administration of justice sufficient to permit execution of their judgments abroad (article 52, 55 §1). By contrast, the Warsaw Convention is 'open' to adherence by any state; cf. Romang, op.cit. n.72/ at 216. - The Rome Convention of 1952 (infra n.391/) provides for the enforcement of foreign judgments in Contracting States, (article 20 §4) but there seems to be reluctance to ratify this treaty.

76/ De La Pradelle, Rapport N° 1 sur la Conférence de Droit Aérien Privé, Paris 1925, 1 Z.GES.LUFTRECHT (Suppl.) 5 (1927-28).

77/ International Conventions Concerning the Carriage of Goods by Rail (C.I.M.), and the Carriage of Passengers and Luggage by Rail (C.I.V.), signed at Bern on 23 Oct.1924, as amended at Rome on 23 Nov.1933, and at Bern on 25 Oct.1952; in effect since 1 March 1956.

78/ English text, Cmds.9064, 9065 (1954).

79/ Warsaw Minutes (ICAO-Doc.7838) 91-92, 210.

80/ Convention for the Unification of Certain Rules Relating to Bills of Lading, Signed at Brussels on 25 August 1924, (1931) Treaty Series № 17; see also the (1957) Brussels Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships, 59 DROIT MARITIME FRANÇAIS 580 (1957), which in turn is largely based on the Warsaw Convention.

81/ See Yiannopoulos, Bills of Lading and the Conflict of Laws, 7 AM.J.COMP.L.516 (1958); Yiannopoulos, Conflicts Problems in International Bills of Lading, 18 LA.L.REV.609 (1957-58).

82/ E.g., see the report by RIPERT on the draft French aviation legislation in 1921, 17 BULLETIN DE LA SOCIÉTÉ D'ÉTUDES LÉGISLATIVES 261 (1921).

83/ Ripert, L'Unification du Droit aérien, 1 REV.GEN.DR.AER.251, 258 (1932), (transl.supplied).

84/ Comment, (1957) J.BUS.L.214.

85/ Yiannopoulos, op.cit. n.81/ at 518. - On the practice of interpreting the Hague Rules, as developped by national courts, see infra n.578/ ff.

86/ MARKIANOS, DIE UEBERNAHME DER HAAGER REGELN IN DIE NATIONALEN GESETZE UEBER DIE VERFRACHTERHAFTUNG, 219 (Hamburg 1960); see infra n.228/.

87/ Morris, The Choice-of-Law Clause in Statutes, 62 L.Q.REV.170, 177 (1946).

88/ II Conférence Internationale de Droit Privé Aérien 4-12 Octobre 1929 Varsovie (Warsaw 1930), reprint ICAO-Doc.7838 (Montreal).

89/ Warsaw Minutes 44,(translation by Calkins, 26 J.AIR L.& COM. 233 (1959).

90/ ibid.

91/ ibid.; see also Sundberg, op.cit. n.8/ at 243.

92/ Calkins, The Cause of Action under the Warsaw Convention, 26 J.AIR L.& COM.217, 232 (1959), referring to art.21.

93/ Ripert, op.cit. n.83/ at 267.

94/ In general, see ROPER, LA CONVENTION INTERNATIONALE DU 13 OCTOBRE 1919, PORTANT RÉGLEMENTATION DE LA NAVIGATION AÉRIENNE (Paris 1930).

95/ Fauchille, Le domaine aérien et le régime juridique des aérostats, 8 REVUE GENERALE DE DROIT INTERNATIONAL PUBLIC 414 (1901). - Cf. COOPER, THE RIGHT TO FLY (1947).

96/ RABEL, 1 CONFLICT OF LAWS 10 (2d ed.1958).

97/ Blanc, op.cit. n.50/ at 386.

98/ Ripert, op.cit. n.83/ at 258. But cf. Knauth, Renvoi and Other Conflict Problems in Transportation Law, 49 COLUM.L.REV.1, 20 (1949), referring to the "two fruitful approaches" for the setting up of an internationally uniform scheme of law. Riese, Aktuelle Betrachtungen zur internationalen Vereinheitlichung des Luftrechts, 1 Z.LUFTRECHT 29, 40 (1952), considers substantive unification of law as superior to choice of law, but adds: "It is admitted, however, that there are cases which are not suited for this method, and where an agreement on the applicable law would already constitute an important step forward." (translation supplied); cf. Riese, Réflexions sur l'unification internationale du Droit aérien, 5 REV.FRANC.DR. AER.131 (1951).

99/ RIESE and BABIŃSKI, who were both influenced by the 'modern' school of conflicts law initiated by LEWALD, DAS DEUTSCHE INTERNATIONALE PRIVATRECHT AUF GRUNDLAGE DER RECHTSPRECHUNG, (Leipzig 1931). See Riese, op.cit. n.10/ at 272; BABIŃSKI, ZARYS WYKŁADU PRAWA MIĘDZYNARODOWEGO PRYWATNEGO, I (Warsaw 1935).

100/ As quoted by Riese, op.cit. n.16/ (transl.supplied).

101/ Goedhuis, op.cit. n.46/ at 220, (emphasis supplied).

102/ Shawcross & Beaumont, op.cit. n.11/ at 24.

103/ Supra, text at n.28/ ff.

104/ Caplan, The Law versus Science, 65 JOURNAL OF THE ROYAL AERONAUTICAL SOCIETY 451, 463 (1961).

105/ Sundberg, op.cit. n.8/ at 242.

106/ Calkins, Grand Canyon, Warsaw and The Hague Protocol, 23 J. AIR L.& COM.255, 257 (1956).

107/ RABEL, 2 CONFLICT OF LAWS 342 (2d. ed.1960).

108/ Wucherpfennig v. SAS, 4 Z.LUFTRECHT 226, 230 (1955).

109/ See the interpretations of article 28 given in Djabbarzade v. Linee Aeree Italiane, 7 Z.LUFTRECHT 426 (1958); Dunning v. PAA (1954) U.S.& Can.Av.70; Gorter v. Northwest Airlines, (1958) U.S.& Can.Av.222; Rotterdamsche Bank v. BOAC, (1953) U.S.& Can. Av.163; Scarf v. TWA, (1955) U.S.& Can.Av.669; Winsor v. United Airlines, (1960) U.S.Av.33; Woolf v. Guest Aerovías, (1954) U.S.& Can.Av.399.

110/ Ehrenzweig, op.cit. n.69/ at 76; cf. Romang, op.cit. n.72/ at 61, 79 ff., on the doubts concerning the interpretation of the "place of business through which the contract was made", and the "place of destination". In general, see Makarov, Réflexions sur l' interprétation des circonstances de rattachement dans les règles de conflit faisant partie d'une Convention internationale, I Mélanges offerts à Jacques Maury 207 (Paris 1960).

111/ See Smirnoff, L'exécution des jugements des tribunaux étrangers en droit aérien, 10 REV.FRANC.DR.AER.17 (1956); cf. the (unsuccessful) proposals by Garnault, op.cit. n.75/, and in Report of the 47th Conference of the International Law Association (Dubrovnik 1956) 176.

112/ "I do not see how such a limitation can be administered if multiple actions may be brought by different parties." Rifkind, D.J.,in Indemnity Insurance Co. v. PAA, 1 Av.Cas.1246; cf. Riese, op.cit. n.16/ at 259; Goedhuis, op.cit. n.46/ at 220; Romang, op.cit. n.72/ at 73 ff.

113/ Chauveau, as quoted by De Juglart, 8 REV.TRIM.DR.COM.423(1955).

114/ Sundberg, op.cit. n.8/ at 242.

115/ Lureau, op.cit. n.11/ at 237 (transl.supplied).

116/ Supra n.10/.

117/ Makarov, in VOPROSSY VOZDYUSHNOGO PRAVA I.139 (Moscow 1927), transl.; Die zwischenprivatrechtlichen Normen des Luftrechts, 1 Z.GES.LUFTRECHT 180, 186 (1927-28) (translation supplied).

118/ Riese, op.cit. n.16/ at 257.

119/ Goedhuis, op.cit. n.46/ at 220.

120/ MUELLER, DAS INTERNATIONALE PRIVATRECHT DER LUFTFAHRT 110 (Thesis Kiel, Dortmund 1932).

121/ Coquoz, Les perspectives d'avenir du Droit Privé International Aérien, 7 REV.GEN.DR.AER.29, 40 (1938). The term of the "supra-national nature of the Convention" is also used by Chauveau, note on Hennessy v. Air France, 8 REV.FRANC.DR.AER. 67 (1954).

122/ Chauveau, Conventions for Uniform Laws, 83 JOURNAL DU DROIT INTERNATIONAL 571, 581 (1956).

123/ "Materiell internationales Recht": Meyer, note on Wucherpfennig v. SAS, 4 Z.LUFTRECHT 226, 232 (1955).

124/ The United Kingdom enacted the Convention in its Carriage by Air Act, 22 & 23 Geo.5 c.36 (1932), even before the treaty came into effect (13 Feb.1933).

125/ As of 1 April 1961, the Convention was in effect in 57 independent states and in more than 60 dependent territories. Cf. 27 J.AIR L.& COM.375 (1960); (1960) U.S.& Can.Av.,Treaty Data xii.

126/ Cf. the definition given by Shawcross & Beaumont, op.cit. n.11/ at 21, citing SCH ARZENBERGER.

127/ See articles 39-41; cf. articles XXIV-XXVI of the Hague Protocol and articles XV-XVI of the Guadalajara Convention, infra n.385/ ff.

128/ Poland (depositary rights and duties, articles 36-39) and France (duty to prepare, upon request, a new international conference for revision of the Convention, art.41); cf. the corresponding provisions of the Hague Protocol (XXI-XXVII) and of the Guadalajara Convention (XII-XVI,XVIII).

129/ The Convention "shall come into force" (art.37 §2), "shall remain open for accession by any state" (art.38 §1), "shall remain open for signature" (art.41); accessions and denunciations "shall take effect, etc." (arts.38 §3, 39 §2). Cf. arts.XIX-XXIV of the Hague, and arts.XI-XVII of Guadalajara.

130/ Cf. ROUSSEAU, DROIT INTERNATIONAL PUBLIC APPROFONDI 30 (Paris 1958); HYDE, 2 INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 1429 (2d ed.1947) defines ratification as "the formal confirmation and approval of the written instrument." - According to Lord ATKINS, in Philippson v. Imperial Airways, (1939) U.S.Av.63, 92, "there is no obligation of any kind to ratify, and even after ratification there was complete freedom to 'denounce', i.e., to withdraw from the Convention."

131/ Garcia v. PAA, (1945) U.S.Av.39, 44.

132/ Glenn v. Compañía Cubana de Aviación, (1952) U.S.& Can.Av. 182, 184.

133/ "The international code of law expressed in the Convention overrides and supplants any contrary local law as to the legality of limiting a carrier's liability." Froman v. PAA, (1949) U.S.Av.168, 175. Cf. Garcia v. PAA, (1945) U.S.Av.39, 43; American Smelting and Refining Co. v. Philippine Airlines (1954) U.S.& Can.Av.221, 223; Berner v. United Airlines, 4 Av.Cas.17,925.

134/ Rousseau, op.cit. n.130/ at 63.

135/ This is a consequence of the dualist theory of international law, which is generally followed in diplomatic practice. Cf. Riese, op.cit. n.46/ at 60.

136/ Mankiewicz, Rechtsnormenkonflikte zwischen dem Warschauer Abkommen und dem Haager Protokoll, 5 Z.LUFTRECHT 246, 249 (1956) translated: Conflits entre la Convention de Varsovie et le Protocole de la Haye, 19 REV.GEN.AIR 239 (1956).

137/ "It was generally agreed that all Conventions on the unification of private law obliged the states only to transform the rules into national law as was expressly said in Article 1 of the Rome Convention of 1933." Rinck, at the Hague Conference (1955) to amend the Warsaw Convention; see Minutes I, (ICAO-Doc.7636) 291. Cf. article 1 of the 1938 Rome Convention, and article XV of the 1948 Geneva Convention on the International Recognition of Rights in Aircraft (ICAO-Doc.7620)

138/ In the United States, "When the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, /the treaty adresses itself to the political, not to the judicial department; and the legislature must execute the contract before it can become a rule for the Court." Foster v. Neilson (Sup.Ct.1829) 2 Pet.253, 7 L.Ed.415; cf. Ehrenzweig, op.cit. n.69/ at 25. - In France, certain treaties such as commercial treaties and conventions modifying legislative provisions must be approved by the legislature. See De Laubadère, La Constitution française de 1958, 20 ZEITSCHRIFT FUER AUSLAENDISCHES OEFFENTLICHES RECHT UND VOLKERRECHT 506, 550 (1959-60). - In Germany, article 59 §2 of the 1949 Federal Constitution provides: "Treaties which regulate the political relations of the Federation or relate to matters of federal legislation shall require the consent or participation in the form of a federal law, of the bodies competent in any specific case for such legislation." - For similar limitations on the treaty-making power of the Executive in Austria, see Pfeifer, Die parlamentarische Genehmigung von Staatsverträgen in Österreich: Ihre innerstaatliche Wirkung, 12 ÖSTERREICHISCHE ZEITSCHRIFT FUER OFFENTLICHES RECHT 1(1962)

139/ See the definition given by Chief Justice MARSHALL in Foster v. Neilson, 2 Pet.(27 U.S.) 253, 314 (1829): "Whenever it operates of itself, without the aid of any legislative provision."

140/ Indemnity Insurance Co. v. PAA, (1945) U.S.Av.52, 54; citing Foster v. Neilson (1829) 2 Pet.253, 314, 7 L.Ed.415; and BUTLER, TREATY MAKING POWER, sec.296.

141/ Indemnity Insurance Co. v. PAA, loc.cit., quoting Chief Justice STONE's concurring opinion in Aguilar v. Standard Oil Co. (Sup.Ct.1943), 318 U.S.724, 738, 63 S.Ct.930, 937, 87 L.Ed. 1107.

142/ Ratification by statute of 16 Sept.1931, promulgation by decree of 12 Dec.1932; cf. Vizioz v. Air France, 8 REV.FRANC. DR.AER.420, 427 (1954), French State Treasury v. Aigle Azur, 14 REV.FRANC.DR.AER.214, 216 (1960). In general, see Dehaussy, Les conditions d'application des normes conventionnelles sur le for interne français, 87 JOURNAL DU DROIT INTERNATIONAL 702 (1960).

143/ "Approved" by statute of 7 April 1936, published on 24 Sept. 1936; cf. Fischer v. SABENA, 4 REV.FRANC.DR.AER.411, 412 (1950). Declared applicable to the Belgian Congo on 6 Jan. 1937; cf. Loutafis v. SABENA, 13 REV.FRANC.DR.AER.178 (1959).

144/ "Ratified" by statute of 19 May 1932; cf. Palleroni v. SANA, 8 REV.GEN.DR.AER.309, 311 (1939); Romanelli, op.cit. n. 24/ at 207.

145/ See Ebner, Österreich und das Warschauer Abkommen, 1 ZEITSCHRIFT FUER VERKEHRSRECHT 149 (1956); cf. Heitz v. Allgemeine Unfallversicherungsanstalt, 11 Z.LUFTRECHT 150, 152 (1962).

146/ Carriage by Air Act, 22 & 23 Geo.5, c.36 (1932). In the United Kingdom a treaty, "though internationally binding, does not thereby alone become part of the law of the land." BRIERLY, THE LAW OF NATIONS 86 (5th ed.Oxford 1955). The need for special legislation in the United Kingdom is discussed in Indemnity Insurance Co. v. PAA, (1945) U.S.Av.52, 55, citing U.S. v. Rauscher, (Sup.Ct.1886) 119 U.S.407, 417, 7 S.Ct.234 30 L.Ed.425.- Cf. on the British system of transformation, RIESS, DIE STAATSRECHTLICHE INKORPORIERUNG VON STAATSVERTRÄGEN IN ENGLAND (Leipzig 1929).

147/ E.g., the Canadian Carriage by Air Act, (1952) Rev.Stat., c.45; cf. Stratton v. Trans Canada Airlines, (1961) U.S.& Can.Av.246. - See also the Australian and Indian Acts.

148/ Air Navigation and Transport Act of 14 August 1936 (№ 40).

149/ E.g., the Swedish Act on Carriage by Air, of 5 March 1937, (1937) Svensk Författningssamling (№ 73) 189; cf. Åkander, Lag om befordran med luftfartyg, (1938) NYTT JURIDISK ARKIV. See Jonker v. Nordisk Trans ort Co., (1961) U.S.& Can.Av.230.

150/ Durchführungsgesetz zum Warschauer Abkommen (Act Implementing the Warsaw Convention) of 15 Dec.1933, (1933) Reichsgesetzblatt I.1079.

151/ Air Transport Act, of 10 Sept.1936, (1936) Staatsblad № 523; translation in 5 REV.GEN.DR.AER.564 (1936).

152/ See Lissitzyn, The Legal Status of Executive Agreements on Air Transportation, 17 J.AIR L.& COM.1, 444 (1950), citing Robertson v. General Electric Co., 32 F.2d 495 (1929).

153/ U.S.Constitution, article VI, cl.2.

154/ "There is no enabling act vesting the ownership of the cause of action stated by the Warsaw Convention nor even stating who may be thought to be injured by a death and, though the liability stated in Article 17 is part of the treaty which was adopted, we do not understand how it can be defined or enforced without statutory assistance which it has not as yet received." Clancy, D.J., in Choy v. PAA, (1942) U.S.Av. 93, 98.

155/ "The right to any recovery in this action thus must depend on some statute." Wyman v. PAA, (1943) U.S.Av.1, 4.

156/ "As I read the treaty and particularly the provisions pleaded in the answer I construe them to be self-executing." Rifkind, D.J., in Indemnity Insurance Co. v. PAA, (1945) U.S.Av. 52, 54.

157/ "The provisions of the treaty do not require implementation and may be enforced in the same manner as if enacted by statute." Garcia v. PAA, (1945) U.S.Av.39, 44.

158/ "While there was at first some doubt as to whether the Convention was self-executing to any extent (Choy v. PAA), there is no doubt at this time that at least insofar as the Convention creates a rebuttable presumption of liability upon the happening of the accident (Art.17) and a limitation thereof except upon the showing of wilful misconduct (Art.25) that it is self-executing." Noel v. Linea Aeropostal Venezolana, 4 Av.Cas.18,205.

159/ Cf. RHYNE, AVIATION ACCIDENT LAW 260 (1947).

160/ Greenberg, J., in Salamon v. KLM, (1955) U.S.& Can.Av.80, 85. Cf. Edelstein, D.J., in Chutter v. KLM, 4 Av.Cas.17,734, distinguishing actions "founded on the Warsaw Convention or on New York law" (emphasis supplied).

161/ Citing article VI cl.2 of the U.S.Constitution, Indemnity Insurance Co. v.PAA, (1945) U.S.Av.52, 55; Garcia v. PAA, (1945) U.S.Av.39, 43; American Smelting & Refining Co. v. Philippine Airlines, (1954) U.S.& Can.Av.221, 223; Berner v. United Airlines, 4 Av.Cas.17,923; Holzer v. Seabord & Western Airlines, 5 Av.Cas.17,854; Pilgrim Apparel v. National Union Fire Insurance Co., (1960) U.S.& Can.Av.373.

162/ Florida: see DaCosta v. Caribbean International Airways, 4 Av.Cas.17,794. - New York: see Bochory v. PAA, 4 Av.Cas. 18,072 ("It is not disputed that the Warsaw Convention is the law both of Brazil and this state..").

163/ G.& L. Berufsgenossenschaft v. DERULUFT, 161 Entscheidungen des Reichsgerichts in Zivilsachen 76, 82; Mucherpfennig v. SAS, 4 Z.LUFTRECHT 226, 230 (1955). But cf. Guldimann, note on the latter case, in 22 J.AIR L.& COM.353 (1955): "Declaring the Warsaw Convention as a part of German internal law is a mistake, to put it mildly." - It is respectfully submitted that Dr. GULDIMANN is wrong, to put it mildly.

164/ Froidevaux v. SABENA, 8 Z.LUFTRECHT 55, 56 (1959).

165/ Lord Justice GREENE, in Grein v. Imperial Airways, (1936) U.S.Av.184, 235.

166/ Ro anelli, op.cit. n.24/ at 207, citing PEDOZZI; DIRITTO INTERNAZIONALE PRIVATO 316 (Padova 1939, 2d ed.).

167/ See Garcia v. PAA, (1945) U.S.Av.39, 44; supra n.157/. In general, cf. BATTIN, PRINCIPES DE DROIT INTERNATIONAL PRIVÉ 97 (Paris 1930); GUGGENHEIM, LEHRBUCH DES VÖLKERRECHTS 88 ff. (1947-51); MOSLER, DAS VÖLKERRECHT IN DER PRAXIS DER DEUTSCHEN GERICHTE 13 ff. (Karlsruhe 1957); VERDROSS, VÖLKERRECHT 68, 126 (Vienna, 4th ed.1959).

168/ Cf. Saporta, L'élaboration du droit international aérien, 15 REV.GEN.AIR 413, 415 (1952).

169/ Cf. Bloomfield, La Convention de Varsovie dans une optique canadienne, (1961) THEMIS (Université de Montréal, N° 37) 7, 22.

170/ E.g., see Csillag v. Air France, as quoted by Lemoine, op. cit. n.34/ at N° 825 fn.2.

171/ Chauveau, op.cit. n.122/ at 575.

172/ Gallais v. Aéro-Maritime Co., 8 REV.FRANC.DR.AER.184, 186 (1954). Cf. LACOMBE, note on Nordisk Transport v. Air France, 13 REV.GEN.AIR 952, 955 (1950) ("this is a principle which was never disputed"); DUPIN, Av.Gén., in Hennessy v. Air France, 8 REV.FRANC.DR.AER.48 (1954); note on Munier v. Divry 8 REV.FRANC.DR.AER.76, 79 (1954). - A similar status is attributed to treaties by Article 66 of the Netherlands Constitution of 1956; "this, however, has been restricted to the so-called 'self-executing' international agreements." Erades, 6 NEDERLANDS TIJDSCHRIFT VOOR INTERNATIONAAL RECHT 408 (1959).

173/ Cf. BATIFFOL, TRAITÉ ÉLÉMENTAIRE DE DROIT INTERNATIONAL PRIVÉ 43 (3rd ed.Paris 1959).

174/ ibid. at 44 fn.72; cf. BATIFFOL, ASPECTS PHILOSOPHIQUES DU DROIT INTERNATIONAL PRIVÉ 131 (Paris 1956).

175/ In Indemnity Insurance Co. v. PAA, (1945) U.S.Av.52, 54, the court examined and affirmed the constitutionality of the Warsaw Convention.

176/ "No treaty may authorize what the Constitution forbids." Pierre v. Eastern Airlines,(citing cases) 5 Av.Cas.17,516; cf. Bishop, Unconstitutional Treaties, 42 MINN.L.REV.773 (1958).

177/ Cf. the cases cited by Ehrenzweig, op.cit. n.69/ at 25, by Hyde, op.cit. n.130/ at 1463 ff., and by Lissitzyn, op.cit. n.152/ at 440; cf. Aufricht, Supersession of Treaties in International Law, 37 CORNELL L.Q.655 (1952).

178/ Since Steenworden v. Société des Auteurs, Compositeurs et Editeurs de Musique (1933) 59 Entscheidungen des Bundesgerichts II.331, (1935-37) Ann.Dig.№ 4; cf. Riese, op.cit. n.46/ at 64; FLEINER-GIACOMETTI, SCHWEIZER BUNDESRECHT 830 (1949); Rathgeb, Professio Juris et Convention Internationale (1958) RECUEIL DES TRAVAUX DE L'UNIVERSITÉ DE LAUSANNE 79,85; Looper, The Treaty Power in Switzerland, 7 AM.J.COMP.L.178, 186 (1958): "This would appear to make the Swiss constitutional doctrine on this point coincide with the well-settled rule in the United States."

179/ See Jägerskjöld, Folkrättsliga Plikter och Inomstatliga Avgöranden, (1961) SVENSK JURISTTIDNING 689, 691, and authors there cited.

180/ Article 10 §1 of the Italian Constitution of 1947 only states that the Italian legal order will conform with the "generally recognized rules" of international law; cf. PERASSI, LA COSTITUZIONE E L'ORDINAMENTO INTERNAZIONALE (1952). But Romanelli, op.cit. n.24/ seems to admit the possibility of the Warsaw Convention being 'explicitly' abrogated by subsequent legislation.

181/ See Article 9 of the Austrian Federal Constitution, as cited by Verdross, op.cit. n.167/ at 67.

182/ Article 25 of the Federal Constitution of 1949 gives precedence to "the general rules of public international law" over legislation. Preuss, The Execution of Treaty Obligations through Internal Law, 45 PROCEED.GROTIUS SOC'Y 82, 94 (1951), interprets this article as applicable to treaties as well. However, the Federal Constitutional Court considered treaties as equivalent to acts of the legislature; e,g., decision of 30 July 1952, 1 Entscheidungen des Bundesverfassungsgerichts 396, 411; cf. Mosler, op.cit. n.167/ at 13 ff.; PIGORSCH, DIE EINORDNUNG VÖLKERRECHTLICHER NORMEN IN DAS RECHT DER BUNDESREPUBLIK DEUTSCHLAND 81, 89 ff. (Hamburg 1959). - In G.& L. Berufsgenossenschaft v. DERULUFT, 161 Entscheidungen des Reichsgerichts in Zivilsachen 76, 82, the appellant complained of a dictum of the inferior court "that the individual states should or would have the right to amend the Warsaw Convention by domestic law." The Supreme Court merely rejected the complaint on this point, as misrepresenting the holding of the inferior court.

183/ "When a State, by ratifying the Convention, undertook to transform it into its national law, that State consequently undertook not to amend this national law later on and not even to enact conflicting national laws." RINCK, at the 1955 Hague Conference, Minutes I (ICAO-Doc.7636) 291; cf. Riese, op.cit. n.46/ at 63.

184/ Riese, op.cit. n.46/ at 64. - There are, of course, no financial sanctions against member states for a breach of the Warsaw Convention; Mankiewicz, op.cit. n.136/ at 249. However, the other High Contracting Parties may request immediate repeal of the legislation in violation of the treaty; cf. BERBER, VÖLKERRECHT I 106 (Munich 1960). In case of non-compliance they may declare the Convention inapplicable in their relations with the state that is violating it. Such a sanction has been exercised (for different reasons) by the United States against Chinese adherence to the Warsaw Convention; cf. (1960) U.S.& Can.Av., Treaty Data xii; and against Mexico and Chile, because of certain reservations to the 1948 Geneva Convention; see (1952) U.S.& Can.Av.433.

185/ Goedhuis, op.cit. n.46/ at 263; cf. Blanc. op.cit. n.50/ at 389.

186/ Rabel, op.cit. n.64/ at 306, referring to the British supplementation in the Carriage by Air Act, supra n.146/.

187/ Calkins, op.cit. n.92/ at 336,says that article 24 of the Convention "permits the contracting states to restrict the persons who may sue and share in the recovery, but imposes no treaty obligation on them to do so." Yet, assuming that failure to determine these persons would render the treaty inoperative in some state (supra n.152/), such an obligation to legislate is conceivable; cf. supra n.137/.

188/ See Carriage by Air Act, supra n.146/, Schedule 2; cf. Shawcross & Beaumont, op.cit. n.11/ at 691.

189/ See the Canadian, Australian and Indian Acts referred to supra n.147/, Schedule 2; Irish Act referred to n.148/.

190/ See Durchführungsgesetz, supra n.150/.

191/ See Act referred to supra n.151/, particularly articles 24 §2, 26, 31.

192/ Termed 'Warsaw Acts' by Sundberg, op.cit. n.8/ at 242, 250; e.g., the United Kingdom Carriage by Air (Non-International Carriage) Order, (1952) Stat.Instruments № 158; the French

Loi N° 57-259 sur la responsabilité du transporteur aérien, JOURNAL OFFICIEL of 3 March 1957, applied in Thouvard v. Guignard, Tribunal de Grande Instance de Gap 9 Feb.1961, 15 REV.FRANC.DR.AER.293 (1961) note J.R.301; - the Swiss Lufttransportreglement of 3 Oct.1952, (1952) Amtliche Sammlung der eidgenössischen Gesetze 1060, applied in Jacquet v. Club Neuchâtelois d'Aviation, Bundesgericht 12 March 1957, 83 Entscheidungen des Bundesgerichts II.231, 12 REV.FRANC. DR.AER.82 (1958) note 88, 7 Z.LUFTRECHT 259 (1958) note RIESE 265, 25 J.AIR L.& COM.344 (1958) note GULDIMANN, (1957) UNIDROIT 413. - In general, see Guinchard, L'influence de la convention de Varsovie sur les règles de droit interne relatives à la responsabilité du transporteur aérien, 11 REV. FRANC.DR.AER.189 (1957); Mankiewicz, op.cit. n.41/. Lureau, op.cit. n.11/ at 200 ff., does not seem to distinguish clearly between national legislation on Warsaw and non-Warsaw carriage.

193/ Schweickhardt, op.cit. n.46/ at 18, presents the Swiss Act concerning non-Warsaw carriage (supra n.192/) as an 'interpretation' of article 17 of the Warsaw Convention. This opinion was strongly criticized by Riese, Book Review, 20 RABELS Z. 559, 560 (1955). - Similarly, in Emery v. SABENA 23 REV.GEN.AIR 379, 383 (1960), article 25 of the Warsaw Convention was interpreted in the light of the French statute on non-Warsaw carriage (supra n.192/). This decision was severely criticized ("disorder and confusion") by DE LA PRADELLE, note in 23 REV.GEN.AIR 386 (1960). It is particularly surprising to find that the statute referred to, only came into effect two years after the accident occurred, which according to the rule established in the Swiss case of Engeli v.Swissair, 9 REV.FRANC.DR.AER.335, 339 (1955), would have excluded its application to the case. In general, see Roubier, De l'effet des lois nouvelles sur les procès en cours, 2 Mélanges offerts à Jacques Maury 513 (Paris 1960).

194/ Georgiadès, note on Djabbarzade v. Linee Aeree Italiane, 13 REV.FRANC.DR.AER.103 (1959).

195/ As to the Hague Protocol and the Guadalajara Convention, see infra n.398/ ff.

196/ In Belgium, Canada, Haiti, Luxemburg, Switzerland, and a few African states, French is admitted as one of several official languages.

197/ Sundberg, op.cit. n.8/ at 246. - On the problem of language in international conventions see in general: Métall, Fremdsprachige Staatsverträge, 9 ZEITSCHRIFT FUER ÖFFENTLICHES RECHT 357, 381 (1930); Gutteridge, The Comparative Aspects of Legal Terminology, 12 TUL.L.REV.401 (1938); Grönfors, Om konventionstolkning, (1957) SVENSK JURISTTIDNING 19; Dölle, Zur Problematik mehrsprachiger Gesetzes- und Vertragstexte, 26 RABELS Z. 4, 24 (1961), revised reprint from: 20th Century Comparative and Conflicts Law, Legal Essays in Honor of Hessel E.Yntema (Leiden 1961).

198/ Sundberg, op.cit. n.8/ at 248. It would appear that the quotations at fn.27, ibid., would not bear out reference to French legal language, but to continental European law in general.

199/ Romanelli, op.cit. n.24/ at 200 fn.136/; cf. Fedozzi, Note minime circa la traduzione delle convenzioni internazionali, 2 DIRITTO ■ 1-2 (1906).

200/ Primatesta v. Ala Littoria, 5 RIV.DIR.NAV. II.84, 94 (1939).

201/ Fischer v. SABENA, 4 REV.FRANC.DR.AER.411 (1950),(transl.).

202/ Froidevaux v. SABENA, 8 Z.LUFTRECHT 55 (1959),(transl.suppl.).

203/ Djabbarzade v. Linee Aeree Italiane, see 24 J.AIR L.& COM. 359, 361 (1957). For the statute applied, see supra n.192/.

204/ Sundberg, op.cit. n.8/ at 245 fn.12.

205/ ibid., at 249.

206/ Warsaw Minutes (supra n.88/) 60-62.

207/ ibid. at 137. This would seem to rule out the analogy to arbitration cases such as the Standard Oil Tankers case cited by Sundberg, op.cit. n.8/ at 248.

208/ Sundberg, op.cit. n.8/ at 249.

209/ Compare the French decisions in Hennessy v. Air France, 6 REV. FRANC.DR.AER.199 (1952), Gallais v. Aéro-Maritime Co., 8 REV. FRANC.DR.AER.184 (1954), and Emery v. SABENA, 14 REV.FRANC.DR. AER.421 (1960), to the Belgian decisions in Fischer v. SABENA, 4 REV.FRANC.DR.AER.411 (1950), and Collet v. SABENA, 12 REV.FRANC.DR.AER.411 (1958), to the Belgian-Congo decision of Moutafis v. SABENA, 13 REV.FRANC.DR.AER.178 (1959), or to the French-Canadian concept of "inconduite volontaire" (sic) used by Bloomfield, op.cit. n.169/ at 24.

210/ ROUSSEAU, PRINCIPES GENERAUX DU DROIT INTERNATIONAL PUBLIC 710 (Paris 1944), describes this as the ordinary international practice, "for there is a presumption that this was the meaning adopted by the drafting authors" (transl.supplied), citing cases. - Certain international instruments have been explicitly based on a particular national law at the time of signature, e.g., the Convention establishing the Bank for International Settlements in Switzerland 1930; see British Cmd.3484 (1930) 110; 24 AM.J.INT'L L.(Suppl.) 323 (1930); cf. SCHLOSS, THE BANK FOR INTERNATIONAL SETTLEMENTS (Amsterdam 1958).

211/ DE JUGLART, note on Stichting v. Air France, 12 REV.TRIM .DR. COM.216, 217 (1959), criticizes the court for interpreting the Warsaw Convention by the liability standards of 1929 without taking into account "thirty years of progress spectacular in every respect." (transl.supplied).

212/ Drion, Towards a Uniform Interpretation of the Private Air-Law Conventions, 19 J.AIR L.& COM.421, 424 (1952).

213/ Supra n.188/ ff.

214/ Pekelis v. TWA, 3 Av.Cas.17,441 fn.1, citing 49 U.S.Stat. at L., Part 2, 3014 ff.

215/ Tuller v. KLM, 292 F.2d 775, 779 fn.2, citing 49 U.S.Stat. 3020 (1934), and 78 CONG.REC.11580 (1934).

216/ Holzer v. Seabord & Western Airlines, (1958) U.S.& Can.Av.142.

217/ Ulen v. American Airlines, (1949) U.S.Av.338, 344.

218/ U.S. v. Flying Tiger Line, (1959) U.S.& Can.Av.112, 117.

219/ Sundberg, op.cit. n.8/ at 248.

220/ Articles 36-41, supra n.126/ ff.

221/ Sundberg, op.cit. n.8/ at 249.

222/ Makarov, op.cit. n.117/ at 187.

223/ "We have to bear in mind that generally words are vague and that their meaning will be more precise only in a given context. The usage of the language varies from group to group." Schmidt, Model, Intention, Fault, 4 SCANDINAVIAN STUDIES IN LAW, 203 (1960).

224/ "No matter how precise an expression may be, the meaning of a man's thought is never fixed in an absolute way by the terms in which that thought is formulated; because the ideas and the facts which by these terms are brought to the mind, as well as their relations between each other, depend on a mental context which is far too complex ever to be entirely explained." MALIEUX, L'EXÉGÈSE DES CODES ET LA NATURE DES RAISONNEMENTS JURIDIQUES 86; as quoted by Batiffol, op.cit. n.174/ at 138 fn.1 (transl.supplied).

225/ Ripert, op.cit. n.83/ at 259.

226/ On the divergencies of these texts, see (1934) U.S.Av.245, 26 J.AIR L.& COM.260 (1959). Shawcross & Beaumont, op.cit. n.11/ at 83 (g), say that "it is not always easy to make the 'English' text conform adequately with American nomenclature and methods of expression." In Preston v. Hunting, 4 Av.Cas. 18,012, Lord ORMEROD said that the words of the British and American translations are "substantially the same"; but in Holzer v. Seabord & Western Airlines, 5 Av.Cas.17,854, RIVERS, J., said that the American court was bound by the American translation "without regard to the British translation." Cf. supra n.216/.

227/ By some miracle, the three German-speaking delegations of the Warsaw Conference (Germany, Austria, Switzerland) managed to agree on a common German translation drafted at Budapest in 1930; see SCHWEICKHARDT, comment, (1959) ASDA-BULL.(№ 13) 18.

228/ Markianos, op.cit. n.86/ at 219 (transl.supplied).

229/ Jessup, op.cit. n.59/ at 2: "I shall use, instead of 'international law', the term 'transnational law' to include all law which regulates actions or events that transcend national frontiers."

230/ Supra n.35/.

231/ Supra n.188/ ff. Thus, in the United Kingdom the Warsaw Convention is effective without reservation, in the official British translation, supplemented by British legislation; in Canada it is effective with reservation, in both the French text and the British translation, supplemented by Canadian legislation; in Ireland, without reservation, in the official Irish translation, supplemented by Irish legislation; in the United States, with reservation, in the official American translation, without supplementary legislation.

232/ See Grein v. Imperial Airways, (1936) U.S.Av.184, 235: "By 'unification of certain rules' is clearly meant, 'the adoption of certain uniform rules', that is to say, rules which will be applied by the Courts of the High Contracting Parties in all matters where contracts of international carriage by air come into question." Cf. ALBUCHER, Av.Gén., in Nordisk Transport v. Air France, 7 REV.FRANC.DR.AER.105, 111 (1953) ("une loi uniforme, universellement applicable"); Chauveau, op.cit. n.122/; DE LA PRADELLE, note on Emery v. SABENA, 23 REV.GEN.AIR 379, 392 (1960) ("Convention internationale portant loi uniforme en matière de Droit privé aérien").

233/ See Ekeberg, The Scandinavian Co-Operation in the Field of Legislation, in: Unification of Law 321 (Rome 1948); Malmström, Die Zusammenarbeit der nordischen Staaten auf dem Gebiete der Gesetzgebung, in: Europäische Zusammenarbeit im Rechtswesen 18, (Tübingen 1955); Matteucci, The Scandinavian Legislative Cooperation as a Model for European Cooperation, Liber Amicorum for Algot Bagge (1956). - In the field of air law, see Nylen, Scandinavian Cooperation in the Field of Air Legislation, 24 J.AIR L.& COM.36 (1957); Bahr, The New Norwegian Air Code and the Nordic Cooperation in the Field of Air Legislation, Paper Delivered at the Institute of Air & Space Law (Montreal 1961).

234/ See Nadelmann, Uniform Legislation versus International Conventions, Paper delivered at the 10th Conference of the Inter-American Bar Association in Buenos Aires (1957), INTERNATIONAL TRADE ARBITRATION (1958); Nadelmann and Reese, The American Proposal at the Hague Conference on Private International Law to Use the Method of Uniform Laws, 7 AM.J.COMP. L.239 (1958); Amram, Uniform Legislation as an Effective Alternative to the Treaty Technique, (1960) PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW 62; Droz, La Conférence de la Haye de Droit international privé et les méthodes d'unification du droit: traités internationaux ou lois modèles?, 13 REVUE INTERNATIONALE DE DROIT COMPARÉ 507 (1961).

235/ Supra n.137/; it would appear that this is not a necessary difference, since certain Scandinavian 'uniform laws' also seem to be enacted on a basis of reciprocity, i.e., an obligation to legislate.

236/ Riese, op.cit. n.146/ at 31, points out that incomplete or incorrect 'transformation', if skilfully drafted, will be so hard to prove for other Contracting States that there will be no remedy of international law against such violations of the treaty obligation. In general, see BERTHOUD, LE CONTRÔLE INTERNATIONALE DE L'EXÉCUTION DES CONVENTIONS COLLECTIVES (Thesis Geneva 1946).

237/ Malintoppi, Mesures tendant à prévenir les divergences dans l'interprétation des règles de droit uniforme, (1959) UNIDROIT 249, 264, 266, suggests s system of controlling the national translations of conventions, and of supervising the subsequent legislative measures to supplement the conventions, through an international body; cf. International Labour Organisation, Memorandum on the Differences in the Interpretation of Uniform Law, (1959) UNIDROIT 299.

238/ Wankiewicz, op.cit. n.41/ at 109.

239/ Makarov, op.cit. n.117/ at 187; cf. Kahn, Gesetzeskollisionen, 30 IHERING JAHRBUECHER 1 (1891), reprint: ABHANDLUNGEN ZUM INTERNATIONALEN PRIVATRECHT 1, 92 (Munich 1928). - On the similar situation under the 'Hague Rules' (supra n.80/), see Stoodter, Zur Statutenkollision im Seefrachtvertrag, Liber Amicorum for Albot Bagge 220 (1956).

240/ In general, see Vallindas, L'evoluzione dottrinale intorno al problema dell'interpretazione delle convenzioni internazionali di diritto privato e di diritto internazionale privato, 14 ANN.DI DIR.COMP.E DI ST.LEG.381 (1940); Vallindas, International Uniform Law, (1957) BULLETIN OF THE ASSOCIATION OF ATTENDERS AND ALUMNI OF THE ACADEMY OF INTERNATIONAL LAW (№ 27) 28; Mann, The Interpretation of Uniform Statutes, 62 L.Q.REV.278 (1946); CALLATAY, ETUDE SUR L'INTERPRÉTATION DES CONVENTIONS (Brussels 1947); Chauveau, op.cit. n.122/; Malintoppi, op.cit. n.237/; Nadelmann, Uniform Interpretation of 'Uniform' Law, (1959) UNIDROIT 383.

241/ The Eurymedon, (1938) 1 All E.R.122, 134.

242/ See Drion, op.cit. n.212/; International Civil Aviation Organisation, Note on the Question of the Divergencies in the Interpretation of Uniform Law and of the Appropriate Means to Avoid Such Divergencies, (1959) UNIDROIT 315.

243/ 39th Session of the Governing Council, Rome; see (1959) UNIDROIT 41.

244/ WOLFF, PRIVATE INTERNATIONAL LAW 51 (2d ed.Oxford 1950), as quoted in ICAO Note, op.cit. n.242/ at 322.

245/ Kaftal, Quelques réflexions au sujet d'une Convention internationale concernant le transport par aéronefs des personnes, des bagages et des marchandises, 11 REVUE JURIDIQUE INTERNATIONALE DE LA LOCOMOTION AÉRIENNE 129, 135 (1927); cf. Schreiber, Der Entwurf eines internationalen Abkommens über die Haftung des Unternehmers bei internationalen Lufttransporten, 1 Z.GES.LUFTRECHT 22, 25 (1927-28).

246/ Recommendation E, Final Act, Minutes and Documents of the Hague Conference (ICAO-Doc.7686) II.31.

247/ ibid.

248/ E.g., see DE LA PRADELLE, P., note on Emery v. SABENA, 23 REV.GEN.AIR 379, 392 (1960).

249/ E.g., see Chauveau, Rapport sur la Création d'une Cour internationale pour la solution des difficultés nées de l'interprétation et de l'application des conventions internationales en matière de droit aérien, 9 REV.FRANC.DR.AER.465 (1955).

250/ E.g., see Drion, op.cit. n.212/; cf. ICAO Note, op.cit. n.242/ at 322, and discussions in the ICAO Legal Committee, ICAO-Doc. 7157-LC/130, 367; 7379-LC/134, I.263, II.56,61.

251/ E.g., see the discussion of CHAUVEAU's proposals (supra n.249/ in the International Law Association; Reports of the 47th and 48th Conferences (Dubrovnik 1956, New York 1958); cf. Rinck, Ein internationaler Gerichtshof für Angelegenheiten des Luftprivatrechts?, 7 Z.LUFTRECHT 33 (1958).

252/ Riese, op.cit. n.43/ at 735; suggesting an agreement on a court for air law matters and other 'uniform law' within the European Economic Community (Common Market).

253/ Nadelmann, op.cit. n.240/ at 386.

254/ In 1913 the National Conference of Commissioners on Uniform State Laws appointed a permanent Committee on Uniformity of Judicial Decisions. According to the 1956 recommendations, the task of the committee was: a) to inform the courts of the Uniform Acts and of the explanatory comments, b) to study the court decisions and to report on the necessity of amendments to correct the causes of conflict; see Nadelmann, op.cit. n.240/ at 387.

255/ Nadelmann, op.cit. n.240/ at 388, points out that periodic reexamination of uniform laws was first advocated by LEVI, COMMERCIAL LAW I, xi (1850).

256/ A proposal to appoint an advisory body composed of judges or legal experts for the interpretation of uniform Scandinavian laws failed; see Report on Measures to Counteract Differences in the Interpretation of Common Legislation, (1959) UNIDROIT 217.

257/ See Draft Rules on the Interpretation of International Private Air Law (Rome 1933), CITEJA-Doc.239; cf. a Swiss proposal cited by GIANNINI, NUOVI SAGGI DI DIRITTO AERONAUTICO I, 90 (Milan 1940).

258/ CITEJA-Doc.298; draft convention (1937) CITEJA-Docs. 347, 355, 357.

259/ Particularly from the United States; see CITEJA-Doc.230.

260/ CITEJA-Doc.381.

261/ Convention on International Civil Aviation, signed at Chicago on 7 Dec.1944, ICAO-Doc.7300/2 (2d ed.1959), 15 U.N.Treaty Series 295, see articles 37, 54 (l-m), 90. In general, see Jones, Amending the Chicago Convention and its Technical Annexes, 16 J.AIR L.& COM.185 (1949); Mankiewicz, L'adoption des annexes à la Convention de Chicago par le Conseil de l'O.A.C.I., Beiträge zum internationalen Luftrecht, Festschrift für Alex Meyer 82 (Düsseldorf 1954); Le Goff, Les Annexes Techniques à la Convention de Chicago, 19 REV.GEN.AIR 146 (1956); Ljoestad, Chicago-Konvensjonens Tekniske Annekser, 1 ARKIV FOR LUFTRETT 43 (1958); Wijesinha, Legal Status of the Annexes to the Chicago Convention (Thesis Montreal 1960).

262/ Saporta, op.cit. n.168/ at 413 ff.

263/ States are presumed to agree to the adoption and amendments of the Annexes by the Council of ICAO, unless a notification to the contrary is made ("notified departures"); no ratification is required. Cf. Malintoppi, La fonction normative de l'O.A.C.I., 12 REV.GEN.AIR 1050 (1949); Ros, Le pouvoir législatif international de l'O.A.C.I., 16 REV.GEN.AIR 25 (1953).

264/ The Technical Annexes mainly contain rules of the administrative law of air navigation ("standards" and "recommended practices"), which are usually approved by the states; to date, none of the Annexes or Amendments has been disapproved by a majority or even by a large number of states; see MEMORANDUM ON ICAO 23 (Montreal 1960). "Notified departures" would, however, become the rule rather than the exception, as soon as contracts of carriage would have to be "standardized" by an international legal body.

265/ SCELLE, MANUEL DU DROIT INTERNATIONAL PUBLIC 21 (Paris 1944); cf. Kopelmanas, La théorie du dédoublement fonctionnel et son utilisation pour la solution du problème dit du conflit de lois, 2 Études Scelle 753 (1951); [illegible] BEITRAG ZUR LEHRE VOM [illegible] FUNKTIONELLEN VERDOPPELUNG INNERHALB EINER UNIVERSALISTISCHEN [illegible] DES INTERNATIONALPRIVAT- UND VÖLKERRECHTS, (1952).

266/ In general, on the functions of national courts interpreting treaties, see McNAIR, THE LAW OF TREATIES 345 ff. (2d ed.Oxford 1961). Cf. Basdevant, Le rôle du juge national dans l'interprétation des traités diplomatiques, 38 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVÉ 413 (1949); Benoist, L'interprétation des traités diplomatiques par les tribunaux judiciaires, 27 Semaine Juridique I.1132 (1953); Bayer, Auslegung und Ergänzung international vereinheitlichter Normen durch staatliche Gerichte, 20 RABELS Z. 603 (1955); Batiffol, L'interprétation des traités diplomatiques par les tribunaux judiciaires, 19-20 TRAVAUX DU COMITE FRANCAIS DE DROIT INTERNATIONAL PRIVE 99 (Paris 1960).

267/ Supra n.126/ ff.

268/ This is constant practice of the Cour de Cassation (Chambre Civile) since a decision rendered in 1839, Sirey I.577. On the rather difficult distinction made between "questions of private interest", and "questions of international public policy", see Bartin, op.cit. n.167/ at 98 ff.; Batiffol, op. cit. n.173/ at 39 ff.; cf. Wachtrieb, Internal Approaches to Treaties in France, Unpublished Paper, University of California School of Law at Berkeley (1958).

269/ French State Treasury v. Aigle Azur Co., 14 REV.FRANC.DR.AER. 214, 215 (1960).

270/ Governmental interpretation must fulfill certain form requirements: e.g., a simple 'circulaire' of the Ministry of Foreign Affairs was held not to be binding on the courts; Cour de Cassation (Ch.Civ.) 22 Dec.1931, (1932) Dalloz Jurisprudence I.131; Batiffol, op.cit. n.173/ at 46 fn.78.

271/ Phillipson v. Imperial Airways, (1939) U.S.Av.63.

272/ See the Carriage by Air (Parties to Convention) Orders, (1939 to date), S.R.O.1939 n. 733; cf. Shawcross & Beaumont, op.cit. n.11/ at 33.

273/ Djabbarè de v. Linee Aeree Italiane, 7 Z.LUFTRECHT 426, 429 (1958).

274/ Heitz v. Allgemeine Unfallversicherungsanstalt, 11 Z.LUFTRECHT 150, 152 (1962).

275/ The explanatory report on the Warsaw Convention by the German Ministry of Justice does not appear to have been relied upon in courts: Das erste (Warschauer) Luftprivatrechtsabkommen, Die Haftung des Luftfrachtführers und die Beförderungsscheine im internationalen Luftverkehr, (1933) AMTLICHE SONDERVERÖFFENTLICHUNGEN DER DEUTSCHEN JUSTIZ N 1.

276/ Letter from Secretary of State HULL to President F.D.ROOSEVELT, preparatory to the transmission of the Warsaw Convention to the U.S.Senate, 73rd Cong. 2d Sess.(1934), Sen.Doc. Ex.C, 3, (1934) U.S.Av.240; quoted in Fronan v. PAA, (1949) U.S.Av.168, 176; Komlos v. Air France, (1952) U.S.& Can.Av. 310, 320; Noel v. Linea Aeropostal Venezolana, 5 Av.Cas. 17,546.

277/ Hyde, op.cit. n.130/ at 1484, citing cases.

278/ See (1960) U.S.& Can.Av., Treaty Data xii.

279/ Brades, Promulgation and Publication of International Agreements and Their Internally Binding Force in the Netherlands, Varia Juris Gentium, Liber Amicorum for J.P.Adrien François 93, 99 (Leiden 1959).

280/ Wucherpfennig v. SAS, 4 Z.LUFTRECHT 226, 230 (1955).

281/ Blumenfeld v. BEA, 11 Z.LUFTRECHT 78, 79 (1962).

282/ Attias v. Air Afrique, 10 REV.GEN.AIR 464, 466 (1947).

283/ Gallais v. Aéro-Maritime Co., 8 REV.FRANC.DR.AER.184, 186 (1954).

284/ Nadelmann, op.cit. n.240/ at 386.

285/ Batiffol, op.cit. n.266/ at 108 (transl.supplied).

286/ Williams, op.cit. n.43/ at 302.

287/ Bayer, op.cit. n.266/ at 637.

288/ Rousseau, op.cit. n.130/ at 118; except for cases where foreigners are discriminated against. Cf. MUSTATHIADES, LA RESPONSABILITE INTERNATIONALE DE L'ETAT POUR LES ACTES DES ORGANES JUDICIAIRES (Thesis Paris 1936).

289/ Riese, op.cit. n.46/ at 60; but cf. Chauveau, op.cit. n.122/ at 581, speaking of "the engagement undertaken on the international plane by each of the governments at the time of the ratification to accept the law and to assure its proper application"; cf. CHAUVEAU, note on Hennessy v. Air France, 8 REV.FRANC.DR.AER.67, 68 (1954), implying that court decisions might violate "the international discipline and obligations assumed at the moment of ratification" (transl.supplied).

290/ In the 'Warsaw' Subcommittee of the ICAO Legal Committee; cf. Drion, op.cit. n.212/ at 421.

291/ Recommendation B, op.cit. n.246/.

292/ Riese, at the Hague Conference; see Minutes (ICAO-Doc.7686) I.343.

293/ Schweickhardt, comment, (1961) ASDA-BULL.(N 2) 9, 11.

294/ Cf. FAUTZ, Substitut, in Emery v. SABENA, 14 REV.FRANC.DR. AER.421, 423 (1960); CHAUVEAU, note on Hennessy v. Air France 8 REV.FRANC.DR.AER.67 (1954).

295/ OPPENHEIM, 1 INTERNATIONAL LAW: PEACE 950 (8th ed. by Lauterpacht,London 1955); but cf. Lauterpacht, 43 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 368 (1950).

296/ See the bibliography in Oppenheim, op.cit. n.295/ at 950.

297/ Adopted at Granada on 19 April 1956; see 46 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 364 (1956), cf. Sundberg, op.cit. n.8/ at 247.

298/ Georgiades, Quelques réflexions sur l'affrètement des aéronefs et le projet de convention de Tokyo, 13 REV.FRANC.DR. AER.113, 120 (1959): "We do not see how one could pretend that a text so clear and precise as is article 1 of the Warsaw Convention /permits any characterization, and justifies any liability of the carrier, other than contractual" (translation supplied, emphasis supplied). But cf. the delictual characterization by Common Law jurists, as illustrated by KEAN, at the Tokyo conference of the ICAO Legal Committee, Minutes (ICAO-Doc.7921-LC/143) I.14. - While both French and English courts usually reserve their right to ascertain

whether or not a text is clear, the United States Supreme Court seemingly regards the fact of uncertainty as made apparent by the divergency of views of opposing litigants, not withstanding the form of the text; Hyde, op.cit. n.130/ at 1482.

299/ De Visscher, Ch., Remarques sur l'interprétation dite textuelle des traités internationaux, Varia Juris Gentium, Liber Amicorum for Jean Pierre Adrien François 383, 390 (Leiden 1959).

300/ Bayer, op.cit. n.266/ at 624 (emphasis supplied).

301/ Chauveau, note on Hennessy v. Air France, 8 REV.FRANC.DR.AER. 67 (1954).

302/ ibid., at 68.

303/ Romanelli, op.cit. n.24/ at 209.

304/ Grönfors, op.cit. n.58/ at 14.

305/ Sundberg, op.cit. n.8/ at 306.

306/ Supra n.37/.

307/ Sundberg, op.cit. n.8/ at 246; cf. FAUTZ, Substitut, in Emery v. SABENA, 14 REV.FRANC.DR.AER.421, 425 (1960): "Nevertheless, not withstanding the interpreter's willingness to observe the requirements of the international order proposed by the Warsaw Convention, he will sometimes find himself in trouble." (transl.supplied).

308/ Malintoppi, Proceedings of the International Institute for the Unification of Private Law, (1959) UNIDROIT 457.

309/ Level, La publication en tant que condition d'application des traités par les tribunaux nationaux, 50 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVE 83, 97 (1961).

310/ Hennessy v. Air France, 6 REV.FRANC.DR.AER.199, 214 (1952); Nordisk Transport Co. v. Air France, 7 REV.FRANC.DR.AER.105, 119 (1953).

311/ Fisscher v. SABENA, (1950) U.S.Av.367, 376; Collet v. SABENA, 12 REV.FRANC.DR.AER.411, 413 (1958).

312/ Palleroni v. SANA, 8 REV.GEN.DR.AER.309, 316 (1939).

313/ Flohr v. KLM, 9 A.LUFTRECHT 180 (1939); cf. Lorenz, German Air Law: A Case History, 11 J.AIR L.262, 263 (1940).

314/ Stichting v. Air France, (1957) Nederlands Jurisprudentie 1115, № 551; cf. note De Juglart, 12 REV.TRIM.DR.COM.216, 217 (1959).

315/ E.g., see FAUTZ in Emery v. SABENA, 14 REV.FRANC.DR.AER.421, 424 (1960).

316/ GUTTERIDGE, COMPARATIVE LAW 116 (2d ed.1949): "This is the crucial point, and it is impossible to exaggerate its importance."

317/ The U.S.Supreme Court does not exclude the use of preparatory works; see Hyde, op.cit. n.130/ at 1482. Cf. Radin, A Short Way with Statutes, 56 HARV.L.REV.388, 395 (1942); for similar tendencies in English courts, cf. McNair, L'application et l'interprétation des traités d'après la jurisprudence britannique, 43 RECUEIL DES COURS DE L'ACADEMIE DE DROIT INTERNATIONAL 251, 267 (1933).

318/ Ulen v. American Airlines, (1949) U.S.Av.338, 344.

319/ Komlos v. Air France, (1952) U.S.& Can.Av.310, 322.

320/ Tuller v. KLM, 292 F.2d 775, 779 fn.2 (1961).

321/ Similarly, the Hague Protocol (1955) was drafted by the ICAO Legal Committee, of which several ratifying states are not members (e.g., the Soviet Union). In general, see Soubeyrol, The International Interpretation of Treaties and the Consideration of the Intention of the Parties, 85 JOURNAL DU DROIT INTERNATIONAL 687, 715 (1958); but cf. Bayer, op.cit. n.266/ at 632.

322/ De Juglart, 12 REV.TRIM.DR.COM.216, 217 (1959); cf. n.211/.

323/ In Advisory Opinion of the ICJ on Admission to the United Nations, ICJ (1950) Reports 30.

324/ McNair, op.cit. n.266/ at 411.

325/ Association of the Bar of the City of New York, Committee on Aeronautics, Report on the Warsaw Convention as Amended by the Hague Protocol, presented at the State Meeting of the Association (1959), 26 J.AIR L.& COM.255, 263 (1959).

326/ Bayer, op.cit. n.266/ at 625.

327/ LE GOFF, MANUEL DE DROIT AÉRIEN: DROIT PRIVÉ 461 (Paris 1961): "This is a unique example of the authority of international decisions." (translation supplied).

328/ Supra, text at n.121/ ff.

329/ See Tripathy, Foreign Precedents and Constitutional Law, 57 COLUM.L.REV.319 (1957).

330/ Hennessy v. Air France, 8 REV.FRANC.DR.AER.45, 65 (1954); referring to Common Law cases on 'wilful misconduct'.

331/ Fischer v. SABENA, 4 REV.FRANC.DR.AER.411, 421 (1950); referring to Common Law cases on 'wilful misconduct'.

332/ Preston v. Hunting, 4 Av.Cas.18,012; citing Grey v. American Airlines.

333/ Stratton v. Trans Canada Airlines, 27 D.L.R.2d 670, 672; citing Pierre v. Eastern Airlines.

334/ Borneo Co. v. Braathens, 25 MAL.L.J.253, 254 (1959); citing Indemnity Insurance Co. v. PAA and Sheldon v. PAA.

335/ Garcia v. PAA, (1945) U.S.Av.39, 43 (citing Grein v. Imperial Airways); Dunning v. PAA, (1954) U.S.& Can.Av.70, 72 (citing Rotterdamsche Bank v. BOAC); American Smelting & Refining Co. v. Philippine Airlines, (1954) U.S.& Can.Av.221, 224 (citing Grein v. Imperial Airways).

336/ Collet v. SABENA, 12 REV.FRANC.DR.AER.411, 415 (1958); citing the British Trustee Act of 1925, Halsbury's Statutes of England, for a definition of 'wilful misconduct'.

337/ Goepp v. American Overseas Airlines, (1952) U.S.& Can.Av.486 (citing Shawcross & Beaumont); American Smelting & Refining Co. v. Philippine Airlines, (1954) U.S.& Can.Av.221, 224 (citing Shawcross & Beaumont, and Goedhuis).

338/ Style v. Braun, 13 REV.FRANC.DR.AER.405 (1959).

339/ Fischer v. SABENA, (1950) U.S.Av.367, 374 (citing Goedhuis); Collet v. SABENA, 12 REV.FRANC.DR.AER.411, 415 (1958), citing SNELL's Principles of Equity, and JENK's English Civil Law.

340/ Froidevaux v. SABENA, 8 Z.LUFTRECHT 55, 56 (1959), citing Chauveau.

341/ Fischer v. SABENA, (1950) U.S.Av.367, 374; citing Lemoine.

342/ GAZDIK, note on Preston v. Hunting, 23 J.AIR L.& COM.234, 235 (1956).

343/ Malintoppi, op.cit. n.308/.

344/ See the cases cited in n.332/-334/, and Dunning v. PAA, cited in n.335/. - Similarly, the references by American courts to foreign writings on air law may be ascribed to the fact that there is no recent authoritative text-book on international air law in the United States.

345/ Giles, 28 SOLICITOR 152, col.1 (1961), as quoted by Sundberg, op.cit. n.8/ at 245 fn.13.

346/ The persuasive influence of American and English cases was one of the reasons which led to a decisive change in French and Belgian interpretation of the Warsaw Convention (see the cases cited in n.330/, 331/, 336/): while "faute lourde équivalente au dol" originally included unintentional gross or criminal negligence, the plaintiff in France and Belgium will now have to prove intentional wrongdoing of the carrier under article 25 of the Convention. - This success of the carriers' comparative interpretation in Continental courts ultimately found its expression in the amendments of article 25 in the Hague Protocol of 1955.

347/ It is significant that the only international case reporting system in Air Law has been the IATA LAW REPORTER, issued for the exclusive use of member airlines of the International Air Transport Association. This Reporter is selective - and it would be naïve to believe that the IATA Legal Office will distribute a collection of cases unfavourable to carriers.

348/ See pleadings for defendant in Vizioz v. Air France, 8 REV. FRANC.DR.AER.421 (1954); cf. the same logics by CHAUVEAU, note on Hennessy v. Air France, 8 REV.FRANC.DR.AER.67, 69 (1954). - It does not seem to have occurred to the plaintiffs to cite the interpretation of article 25 under Swiss, German, Dutch, and Scandinavian law, which still includes uninten-

tional gross negligence (cf. the express terms of "grove schuld", "grobe Fahrlässigkeit", etc., in the translations of the Warsaw Convention in these European countries). If the logics of AIR FRANCE were applied accordingly, the French judge would have placed the national air transport industries of these countries "at a competitive disadvantage" with the French carriers by rendering judgment for defendant. In general, see Guldimann, Zur Auslegung von Artikel 25 des Warschauer Abkommens, 4 Z.LUFTRECHT 204 (1955); Abraham, Die Grade des Verschuldens des Luftfrachtführers in ihrer Auswirkung auf seine Haftung aus Beförderungsverträgen, 4 Z. LUFTRECHT 255 (1955).

349/ See Eliescu, Système et limites de la responsabilité civile en droit aérien, national et international, Paper delivered at the 5th International Conference on Comparative Law in Brussels (1958), I RAPPORTS GÉNÉRAUX 531, 578 (Brussels 1960).

350/ Gutteridge, op.cit. n.316/ at 111 ff.

351/ Kisch, Statutory Construction in a New Key: 'Harmonizing Interpretation', 20th Century Comparative and Conflicts Law, Legal Essays in Honor of Hessel E. Yntema, 262 (Leiden 1961); cf. Sundberg, op.cit. n.8/ at 249.

352/ International Institute for the Unification of Private Law, see (1959) UNIDROIT 43; Nordic Council, see (1959) UNIDROIT 21.

353/ Out of date: Abraham, Die internationale Rechtsprechung zum Warschauer Abkommen, 2 Z.LUFTRECHT 75 (1953), 3 Z.LUFTRECHT 71 (1954); Abraham, Aus der neueren frachtrechtlichen Rechtsprechung zum Warschauer Abkommen, (1954) TRANSPORT-DIENST 2269; ICAO, CASES ON THE WARSAW CONVENTION 1929-1955, (Montreal 1955); Le Goff, La jurisprudence des Etats-Unis sur l'application de la Convention de Varsovie, 19 REV.GEN.AIR 339 (1956), 20 REV.GEN.AIR 352 (1957); GUERRIERI, AMERICAN JURISPRUDENCE ON THE WARSAW CONVENTION (Montreal 1960). - Incomplete (because covering national cases only, with occasional regard to foreign decisions): U.S.& Can.Av., Av.Cas., REV.FRANC.DR.AER., REV.GEN.AIR, RIV.DIR.NAV., Z.LUFTRECHT, ASDA-BULL., ARKIV FOR LUFTRETT. - The "Card Index of Inter-

national Air Law Cases" (Cologne) quotes 'holdings', but does not report cases in full text; on the IATA L.R. supra n.347/. Some of the decisions were also reported in the 1956 and 1957 Yearbooks of the Institute for the Unification of Private Law (UNIDROIT).

354/ Fischer v. SABENA, 4 REV.FRANC.DR.AER.411, 421 (1950).

355/ Drion, op.cit. n.212/ at 424.

356/ Georgiades, note on Fuller v. Air Algérie, 10 REV.FRANC.DR. AER.220, 225 (1956).

357/ Froman v. PAA, (1949) U.S.Av.168, 176, citing cases; American Smelting & Refining Co. v. Philippine Airlines, (1954) U.S.& Can.Av.221, 223, citing cases; Scarf v. TWA, 4 Av.Cas.17,795, citing cases.

358/ Final Act of the Warsaw Conference, supra n.16/; cf. Shawcross & Beaumont, op.cit. n.11/ at 564.

359/ Supra, n.331/.

360/ Supra, n.336/, at 413.

361/ Grein v. Imperial Airways, (1936) U.S.Av.184, 236.

362/ Supra, text at n.102/ ff.

363/ In Collet v. SABENA, 12 REV.FRANC.DR.AER.411, 413 (1958), the court found it "difficult to reconcile with the aim of unification that the authors of the Convention, in a matter as important as is the extent of the carrier's liability, would have adopted a rule likely to vary according to national laws" (transl.supplied). Batiffol, op.cit. n.173/ at № 39, submits that "it would certainly be contrary to the intention of the Contracting Parties, if the treaty were subject to a different interpretation in each country." (transl.supplied) - But not withstanding their intention, this treaty is subject to different interpretations!

364/ Drion, op.cit. n.9/ 41.

365/ Nadelmann, 1 INTER-AMERICAN L.REV.136 (1959).

366/ Berner v. United Airlines; 4 Av.Cas.17,926

367/ Froidevaux v. SABENA, 8 Z.LUFTRECHT 55, 57 (1959) ("einer der hauptsächlichsten Zwecke dieses Abkommens").

368/ Noel v. Linea Aeropostal Venezolana, 5 Av.Cas.17,546; citing Orr, The Warsaw Convention, 31 VA.L.REV.423 (1945); Comment, Air Passenger Deaths, 41 CORNELL L.Q.243, 255 (1956), and FIXEL, THE LAW OF AVIATION §23 (1948).

369/ Grein v. Imperial Airways, (1936) U.S.Av.184, 249; see supra n.361/.

370/ Grein v. Imperial Airways, (1936) U.S.Av.184, 228.

371/ Froman v. PAA, (1949) U.S.Av.168, 175.

372/ Froman v. PAA, (1949) U.S.Av.168, 189.

373/ SCHWARZENBERGER, MANUAL OF INTERNATIONAL LAW 73 (3rd ed.London 1952).

374/ Guerreri, op.cit. n.353/ at 4.

375/ ibid.

376/ Bayer, op.cit. n.266/ at 609 fn.29.

377/ Le Goff, op.cit. n.327/ at 154; Le Goff, 20 REV.GEN.AIR 352 (1957).

378/ Schreiber, op.cit. n.245/ at 25.

379/ Yiannopoulos, op.cit. n.81/ at 516.

380/ Lureau, op.cit. n.11/ at 168.

381/ Bin Cheng, op.cit. n.42/.

382/ Mankiewicz, op.cit. n.41/ at 109 ff., and at end (transl. supplied).

383/ FAUTZ, Substitut, in Emery v. SABENA, 14 REV.FRANC.DR.AER. 421, 423 (1960).

384/ Knauth, Aviation Law and Maritime Law, 35 CHICAGO BAR RECORD 199 (1954).

385/ Signed at The Hague on 28 Sept.1955; ICAO-Doc.7632, (1955) U.S.& Can.Av.521. In general, see Beaumont, op.cit. n.46/; Giannini, Il protocollo de L'Aja 1955 per la revisione della convenzione di Varsavia 1929 sul trasporto aereo, 21 RIV.DIR. NAV. I.179 (1955); Sidenbladh, Luftbefordringskonventionen

Ändrad (konferens i Haag 1955), (1955) SVENSK JURISTTIDNING 664; Mankiewicz, The Hague Protocol to Amend the Warsaw Convention, 5 AM.J.COMP.L.78 (1956); FitzGerald, Comment, 34 CAN.BAR REV.326 (1956); Calkins, op.cit. n.106/; Reiber, Ratification of the Hague Protocol, 23 J.AIR L.& COM.272 (1956); Verplaetse, Proposed Changes in the Law of Carriage by Air, (1956) MUS.L.REV.95; Garnault, Le Protocole de la Haye, 10 REV.FRANC.DR.AER.6 (1956); Riese, Die internationale Luftprivatrechtskonferenz im Haag zur Revision des Warschauer Abkommens, 5 Z.LUFTRECHT 4 (1956); Babiński, Rewizja Konwencji Warszawskiej o międzynarodowych przewozach lotniczych, 9 PRZEGLĄD USTAWODAWSTWA GOSPODARCZEGO 257 (1956); Whitehead, Some Aspects of the Warsaw Convention and The Hague Protocol to Amend, (1957) PROCEEDINGS 37, A.B.A. Sec.of Insurance, Negligence and Compensation Law; Association of the Bar of the City of New York, op.cit. n.325; Forrest, Carriage by Air: The Hague Protocol, 10 INT'L & COMP.L.Q.726 (1961).

386/ Signed at Guadalajara on 18 Sept.1961, ICAO-Doc.8181; cf. Riese, Die internationale Luftprivatrechtskonferenz und das Charterabkommen von Guadalajara (Jal., Mexico), vom 18.September 1961, 11 Z.LUFTRECHT 1 (1962).

387/ Supra n.37/ ff.

388/ Thus, the question of the negotiability of the air waybill (supra n.56/), of passenger insurance (supra n.48/; cf. resolution B, Final Act of the Hague Conference), and of the rights and duties of contracting carrier and actual carrier between themselves (see article X of the Guadalajara Convention) were deliberately "left open".

389/ See article XIV of the Hague Protocol (amended article 25A), and article V of the Guadalajara Convention.

390/ Guadalajara Convention; in general, see Sundberg, op.cit. n.8/ at 388 ff.; Mankiewicz, Charter and Interchange of Aircraft and the Warsaw Convention, 10 INT'L & COMP.L.Q.707 (1961).

391/ Cf. Romang, op.cit. n.72/ at 53, 77 ff.; the "single forum" which had been rejected at the Warsaw Conference in 1929 (Minutes 84), was adopted for the 1952 Rome Convention

on Damage Caused by Foreign Aircraft to Third Parties on the Surface (article 20), ICAO-Doc.7364, 310 U.N.Treaty Series 181 (№ 4493), 19 J.AIR L.& COM.447 (1952); cf. TOEPPER, THE SINGLE FORUM METHOD AND THE UNIFICATION OF INTERNATIONAL PRIVATE AIR LAW (Thesis McGill Univ.Montreal 1955).

392/ See Hague Minutes (ICAO-Doc.7686) I.263, II.227; cf. Romang, op.cit. n.72/ at 217 ff.

393/ Article VIII; but see the critique by the British delegate, Sir Richard Wilberforce; cf. Riese, op.cit. n.385/ at 29.

394/ See Hague Minutes (ICAO-Doc.7686) I.259-260.

395/ RIESE & LACOUR, PRÉCIS DE DROIT AÉRIEN INTERNATIONAL ET SUISSE 276 (Paris 1951).

396/ VAN HOUTTE, J., RESPONSABILITÉ CIVILE DANS LES TRANSPORTS AÉRIENS INTÉRIEURS ET INTERNATIONAUX 94 (Louvain 1940).

397/ Cf. the objections by the United States delegate Calkins: see Hague Minutes (ICAO-Doc.7686) I.261, II.227.

398/ Supra n.226/.

399/ Garnault, op.cit. n.385/ at 10.

400/ Rousseau, op.cit. n.210/ at 721.

401/ See McNair, op.cit. n.266/ at 435.

402/ Archdukes of Habsburg-Lorraine v. Polish State Treasury, Sąd Najwyższy 16 June 1930, (1929-30) Ann.Dig.365 (№ 235). The case did not involve the exceptions of Part I or XIII of the treaty.

403/ McNair, op.cit. n.266/ at 435. Cf. the decision on the same treaty by the Austrian Constitutional Court, 12 Oct.1920, Z.B.15/20, 2 Sammlungen der Erkenntnisse des österreichischen Verfassungsgerichtshofs № 60: "The translation of the St. Germain Peace Treaty into the German language, as contained in the Official Gazette (Staats-Gesetzblatt) № 303 ex 1920, must be valid as the authentic legal text for the Austrian courts and government agencies. The words used therein must be deemed to have the meaning which they have acquired in Austrian legal language." (transl.supplied).

404/ Supra, text at n.195/ ff.

405/ Supra n.220/.

406/ Grein v. Imperial Airways, (1936) U.S.Av.184, 241; see supra n.21/; cf. Shawcross & Beaumont, op.cit. n.11/ at 23; Lemhöfer, op.cit. n.33/ at 406.

407/ See Hague Minutes (ICAO-Doc.7686) I.290-292.

408/ 13th Sesion of the ICAO Legal Committee (Montreal 1960), see ICAO-Doc.8137-LC/147, I.125-127, II.25; Guadalajara Conference 1961, cf. Riese, op.cit. n.386/ at 34.

409/ Verplaetse, op.cit. n.15/ at 411.

410/ Garnault, op.cit. n.385/ at 9; but cf. Malintoppi, La revisione delle convenzioni in materia di trasporto, 2 Scritti di diritto internazionale in onore di Tomasino Perassi 65, 76 fn.18 (Milan 1957).

411/ Mankiewicz, op.cit. n.136/ ; DE LA PRADELLE, note on Maché v. Air France, 24 REV.GEN.AIR 292, 298 (1961).

412/ See Wolff, Choice of Law by the Parties in International Contracts, 49 JURID.REV.110 (1937); Yntema, 'Autonomy' in the Choice of Law, 3 ACTA ACADEMIAE UNIVERSALIS JURISPRUDENTIAE COMPARATIVAE (Part V) 53, 1 AM.J.COMP.L.341 (1952); Batiffol, Sur la signification de la loi désignée par les contractants, 1 Scritti di diritto internazionale in onore di Tomasino Perassi 181 (Milan 1957); LORENZ, VERTRAGSABSCHLUSS UND PARTEIWILLE IM INTERNATIONALEN OBLIGATIONENRECHT ENGLANDS (Heidelberg 1957).

413/ Batiffol, op.cit. n.174/ at 249;(transl.supplied); cf. Drion De ratio voor toepassing van vreemd recht in zake de onrechtmatige daad,in het buitenland, (1949) RECHTSGEEERD TIJDSCHRIJN UTRECHT 3, 27, citing an example by HUSSON, LES TRANSFORMATIONS DE LA RESPONSABILITÉ 112 (Paris 1947).

414/ Makarov, Conflits de lois en matière de droit aérien, 48 I Annuaire de l'Institut de Droit International 359, 385, 421 (1959).

415/ Founded at The Hague in 1919, as "International Air Traffic Association", refounded in Havana 1945, incorporated in Montreal, 20th Parl. 9 Geo.6, 1st Sess.(1945). - In general, see COHEN, IATA: [illegible] (Montreal 1949); Forbs, L'Association internationale des transports aériens, (1946) INTERAVIA (№ 1) 81; Morand, L'Association du transport aérien international, 1 REV.FRANC.DR.AER.132 (1947); Hildred, IATA: Organization and Activities, 5 U.N.TRANSPORT & COMMUNICATIONS REV.11 (1952); Guinchard, International Air Transport Association, (1956) ANN.AIR.FRANÇAIS DE DROIT INTERNATIONAL 666; De Boursac, L'I.A.T.A. et le transport aérien international, 21 REV.GEN.AIR 224 (1958).

416/ The U.S.Civil Aeronautics Board described IATA as "an all-embracing international cartel"; see Report on Airlines, H. R.85th Cong., 1st Sess., 234 (1957). - Cf. Gazdik, Rate-Making and the IATA Traffic Conferences, 16 J.AIR L.& COM. 298 (1949); Yager, International Airline Collaboration, 18 J.AIR L.& COM.197 (1951).

417/ General Conditions of Carriage, adopted at the Vienna meeting on 18 Feb.1927. - In general, see Döring, Les tâches juridiques de l'I.A.T.A., 15 REV.AÉRONAUTIQUE INTERNATIONALE 68 (1935); Lemoine, Standardizing the Conditions of Carriage, IATA-BULLETIN (№ 15) 60 (1952); Gazdik, Uniform Air Transport Documents and Conditions of Contract, 19 J.AIR L.& COM. 184 (1952).

418/ Schweickhardt, Die neuen Beförderungsbedingungen der IATA für den Luft- Personen- und -Gepäckverkehr, Beiträge zum internationalen Luftrecht, Festschrift für Alex Meyer 117, 119 (Düsseldorf 1954).

419/ Abraham, op.cit. n.49/ at 416.

420/ Honolulu meeting on 22 Nov.1953, resolution № 311/030 Annex A; cf. Schweickhardt, op.cit. n.418/; Lemoine, Vers une uniformisation du contrat de transport aérien international, 8 REV.FRANC.DR.AER.103 (1954).

421/ The Legal Committee of IATA eventually proposed to drop resolution № 311/030; the terms of Annex A recur, however, in the conditions of carriage of several European airlines (e.g. BEA, BOAC, Lufthansa, SAS).

422/ See IATA Manual of Traffic Conference Resolutions, Series 275 (b), (5th issue 2 March 1959); cf. Gazdik, The New Contract between Air Carriers and Passengers, 24 J.AIR L.& COM. 151 (1957).

423/ See IATA Manual of Traffic Conference Resolutions, Series 600 (b), (2d issue 2 March 1960).

424/ In general, see Isaacs, The Standardizing of Contracts, 27 YALE L.J.34 (1917); PRAUSNITZ, THE STANDARDIZATION OF COMMERCIAL CONTRACTS IN ENGLISH AND CONTINENTAL LAW (1937); Friedmann, Changing Functions of Contract in the Common Law, 9 U.TORONTO L.J.15, 23 (1951); Grzybowski, From Contract to Status, 11 SEMINAR 60 (1953); AMOUIAI & others, LA TENDANCE A LA STABILITÉ DU RAPPORT CONTRACTUEL (Paris 1960).

425/ See Kessler, Contracts of Adhesion: Some Thoughts about Freedom of Contract, 43 COLUM.L.REV.629 (1943).

426/ Schweickhardt, op.cit. n.418/ at 135 ff., enumerates the following rights of the parties to alter the standard contract: a) the individual passenger may request cancellation, rerouting, change of carrier, change of class (the author adds that these alterations are "as a rule" granted, which conveys the impression of an 'ex gratia' act by the carrier), b) the individual carrier may make cancellation, rerouting, change of carrier, change of aircraft.

427/ FRIEDMANN, LAW IN A CHANGING SOCIETY 124 (1959).

428/ Lederer-Lador, Paper delivered at the 4th International Conference on Comparative Law in Paris (1954), as quoted by FRIEDMANN & VAN TIJMAAT, ANTITRUST LAWS 481 (Toronto 1956). - Cf. Cribbett, IATA's Quasi Public Role, (1955) IATA-BULLETIN (N° 21) 92.

429/ Morand, op.cit. n.415/ at 135.

430/ Drion, op.cit. n.9/ at 194. - The expression reminds of Max WEBER's term "gewillkürtes Recht", i.e., the process of creating law by the will of the partners in a primitive society (absence of legislator); see WEBER, WIRTSCHAFT UND GESELLSCHAFT, (2d ed.1925), as translated by RHEINSTEIN, MAX WEBER ON LAW IN ECONOMY AND SOCIETY 140 (1954). Such a

'primitive' situation exists, or at least existed for a considerable time, in the field of international carriage by air, where "airlines could draft their tariffs and conditions of carriage almost indisturbed by governmental interference"; Sundberg, op.cit. n.8/ at 461. This private autonomy is being gradually reduced, but national laws still leave to airlines a "liberté assez grande" in the regulation of the carriage; SAINT-ALARY, LE DROIT AÉRIEN 150 (Paris 1955). - In general, cf. Jaffé, Law Making by Private Groups, 51 HARV. L.REV.201 (1937).

431/ GAZDIK, ANALYSIS OF CERTAIN ASPECTS OF THE LAW OF CONTRACTS RELATING TO INTERNATIONAL CARRIAGE OF GOODS BY AIR 40 (Thesis McGill Univ. Montreal 1950); cf. Gazdik, IATA Participation in the Development of International Private Air Law, Studi in onore di Antonio Ambrosini 209 (Milan 1957).

432/ Cohen, op.cit. n.415/ at 34.

433/ Antwerp meeting on 10 Sept.1930; see Cohen, op.cit. n.415/ at 35.

434/ Antwerp Conditions, in effect since 13 Feb.1933; text see Shawcross & Beaumont, op.cit. n.11/ at 1151 ff.; cf. Döring, Convention concernant le contrat de transport aérien: avant-propos et commentaires, 14 DROIT AÉRIEN 415 (1930).

435/ Bermuda Conditions, in effect since 29 March 1949.

436/ Thus, instead of presuming the carrier's liability as under the Warsaw Convention, they require proof of negligence: see article 4 (b) of the Passenger Ticket (supra n.422/), and article 4 (a) of the Air Waybill (supra n.423/).

437/ E.g., by Le Goff, op.cit. n.327/ at 226.

438/ Saint-Alary, op.cit. n.430/ at 151; Riese & Lacour, op.cit. n.395/ at 245; Lureau, op.cit. n.11/ at 183.

439/ Friedmann, op.cit. n.427/ at 308.

440/ See Warsaw Minutes (ICAO-Doc.7838) 117. But cf. article 32, which limits this possibility of additional regulation, to contracts on carriage of goods; cf. Pittard, Rapport № 2 sur la Conférence de Droit aérien privé, 1 Z.GES.LUFTRECHT (Supplement) 12 (1927-28), on the importance of excluding a prorogation of the forum. In passenger carriage prorogation

appears to be possible only after the damage occurred. IATA was opposed to this restriction: "there seems to be no reason to limit arbitration to cargo claims." ICAO-Doc.7450-LC/136, II.111. According to Schweickhardt, op.cit. n.46/ at 97 ff., article 32 would have to be interpreted as prohibiting only the designation of a jurisdiction not bound by the Warsaw Convention; but cf. Romang, op.cit. n.72/ at 71 fn.91.

441/ Drion, op.cit. n.212/ at 428.

442/ See Shawcross & Beaumont, op.cit. n.11/ at 1164; cf. article 21 §4 (1) of the conditions for carriage of goods.

443/ See Döring, op.cit. n.434/. In Young v. KLM, (1936) Nederlandse Jurisprudentie 314, 316, the Dutch court explained that the IATA conditions were based on the drafts by DÖRING and BEAUMONT.

444/ Döring, Die Neugestaltung des Luftbeförderungsvertrages im europäischen Luftverkehr, 2 A.LUFTRECHT 1, 5 (1932); cf. Müller, op.cit. n.120/ at 111.

445/ Supra n.422/-423/; cf. the Bermuda conditions of 1949, n.435/.

446/ See Riese, op.cit. n.46/ at 393, 423; Koffka & Bodenstein & Koffka, op.cit. n.16/ at 242; cf. De Visscher, op.cit. n.51/ at 335.

447/ Article 11 (supra n.422/); cf. article 29 §2 of the Warsaw Convention.

448/ De Juglart, note on Vizioz v. Air France, 16 REV.GEN.AIR 282, 288 (1953),(translation supplied).

449/ ibid.

450/ Verplaetse, o .cit. n.15/ at 406.

451/ ibid.

452/ Friedmann, op.cit. n.427/ at 102.

453/ The International Chamber of Commerce, which exercises some consultative influence in IATA, is composed of both aircraft users and carriers; its Committee on Air Transport is frequently headed by an airline representative.

454/ The situation in the field of contractual conditions is similar to the rate tariff situation, investigated by the CELLER Committee of the U.S.Congress: "IATA's activities /have resulted in the substitution of monopolistic price-fixing for the principle of free competition." Report on Airlines, op. cit. n.416/ at 233.

455/ OERTMANN, INTERESSE UND BEGRIFF IN DER RECHTSWISSENSCHAFT (1931), as translated in THE JURISPRUDENCE OF INTERESTS (Harvard 20th Century Legal Philoso hy Series, 1948) 51, 63.

456/ Riese & Lacour, op.cit. n.395/ at 245; cf. MEYER, 1 INTERNATIONALE LUFTFAHRTABKOMMEN 159 (Cologne 1953). (transl.suppl.)

457/ Abraham, op.cit. n.46/ at 74; cf. Riese, Book Review, 8 NEUE JURISTISCHE WOCHENSCHRIFT 1023 (1955).

458/ See MAZEAUD, preface for DE JUGLART, LA CONVENTION DE ROME DU 7 OCTOBRE 1952,VI (Paris 1955).

459/ Morand, op.cit. n.415/ at 135, describes the rôle of IATA as "a qualified expert, uniquely anxious to make the benefits of air transport available to the largest number of people" (translation supplied). But cf. LAILE, REGARDS NEUFS SUR L'AVIATION COMMERCIALE 28 (Paris 1959), a sarcastical comment on IATA's successful efforts of presenting itself as something "close to an association of philanthropists, united by the most tender mutual affection, and ruining itself in the service of humanity, in order to let man roam around the globe faster and faster, and cheaper and cheaper." (translation sup lied).

460/ Siegelman v. Cunard White Star Ltd., 221 F.2d 189, 206 (2d Cir.1955).

461/ De Juglart, note on Vizioz v. Air France, 16 REV.GEN.AIR 282, 286 (1953); cf. Lemoine, op.cit. n.34/ at N° 863; Müller, op. cit. n.120/ at 117; Romanelli, op.cit. n.24/ at 215 (commenting on certain points of the IATA conditions which appear to be contrary to Italian law) 216 fn.177.

462/ Robert-Houdin v. Panair do Brasil, 24 REV.GEN.AIR 285, 289 (1961), invalidating a clause of exoneration for delay, which is part of the IATA conditions of contract (article 7 of the Passenger Ticket, supra n.422/).

463/ Lemoine, op.cit. n.34/ at 402; citing the "jurisprudence des gares principales" of the French Cour de Cassation; cf. GARNAULT, ICAO-Doc.7450-LC/136, I.243.

464/ Riese & Lacour, op.cit. n.395/ at 223; cf. Romang, op.cit. n.72/ at 88 ff.

465/ Kidston v. Lufthansa, 38 Lloyd's List L.R.1, 2 (1938).

466/ See Ehrenzweig, op.cit. n.2/ at 973 ff.

467/ Ehrenzweig, Adhesion Contracts in the Conflict of Laws, 53 COLUM.L.REV.1072, 1090 (1953); cf. Yntema, op.cit. n.412/ at 353 (standardized contracts classified among the limitations on the principle of 'party autonomy' in choice of law), citing NIBOYET, 5 TRAITÉ DE DROIT INTERNATIONAL PRIVÉ FRANÇAIS 60 (Paris 1948).

468/ C.A.B.Order E-1590, 18 May 1948; information courtesy of B.R.GILLESPIE, Chief, Tariffs Section, C.A.B.Bureau of Economic Regulation (letter of 23 June 1961).

469/ Gazdik, op.cit. n.422/ at 158.

470/ Supra n.21/, 406/.

471/ Ficker, Internationales Handelsrecht, 4 RECHTSVERGLEICHENDES HANDWÖRTERBUCH 459, 487 (Berlin 1933).

472/ Wuchermfennig v. SAS; 4 Z.LUFTRECHT 226, 230 (1955), (transl. supplied), citing Achtnich, Luftrechtliche Betrachtungen anlässlich des Absturzes eines Flugzeuges der KLM am 22.März 1952 bei Frankfurt a.M., 1 Z.LUFTRECHT 323, 333 (1952).

473/ De Visscher, op.cit. n.51/ at 332 (translation supplied).

474/ Luftfahrt-Gesetz, 21 Dec.1948, (1950) Amtliche Sammlung der Eidgenössischen Gesetze I.471 (translation supplied).

475/ Riese, op.cit. n.46/ at 32.

476/ On the terminology used, see Cormack, Renvoi, Characterization, Localization and Preliminary Questions in the Conflict of Laws, 14 SO.CAL.L.REV.221 (1941), and Lorenzen, The Qualification, Classification, or Characterization Problem in the Conflict of Laws, 50 YALE L.J.743 (1941); ROBERTSON, CHARACTERIZATION IN THE CONFLICT OF LAWS (1940).

477/ See the contradictory opinions of GEORGIADES and KEAN, cited supra n.298/.

478/ See the cases cited by Mankiewicz, op.cit. n.41/ at 115 ff.; cf. Kean, op.cit. n.298/ at 14: "he had been brought up in English law and had thought of the Warsaw Convention primarily as regulating liability in tort or delict of the carrier."

479/ E.g., see the German case of G.&L.Berufsgenossenschaft v. DERULUFT, 161 Entscheidungen des Reichsgerichts in Zivilsachen 76 (1939); the Swiss case of Jacquet v. Club Neuchâtelois d'Aviation, 83 Entscheidungen des Bundesgerichts II. 231 (1957); and the French case of Munier v. Divry, 8 REV. FRANC.DR.AER.76, 77 (1954), where the contractual characterization was even justified from the French Constitution! Cf. Georgiades, op.cit. n.298/ at 120: "The Warsaw Convention established, whether one might wish it or not, the rule of contractual liability of the carrier." (as translated by Calkins, op.cit. n.92/ at 217).

480/ See Patterson v. American Airlines, (1953) U.S.& Can.Av.301; in Kilberg v. Northeast Airlines,(N.Y.Ct.App.12 Jan.1961),7 Av.Cas.17,150, there is a dictum that a contractual action for bodily injury would be available under New York law. CHARLESWORTH, NEGLIGENCE 552 (London,3rd.ed.1956), says that a breach of contract causing death is an "act, neglect or default" within the meaning of the Fatal Accidents Act (Lord CAMPBELL's Act), citing a dictum by Justice GREER in Grein v.Imperial Airways, (1937) 1 K.B.50. Cf. Calkins, op.cit. n.92/; Clancy, Fatalities in Aircraft Crashes: A Contractual Basis of Recovery?, 27 J.AIR L.& COM.262 (1960); in general, see PROSSER, The Borderland of Tort and Contract, SELECTED TOPICS ON THE LAW OF TORT 380 ff. (1953).

481/ See Young v. KLM, (1939) Nederlandse Jurisprudentie 113, 115; Ripert, Responsabilité du transporteur aérien, 7 REVUE JURIDIQUE INTERNATIONALE DE LA LOCOMOTION AÉRIENNE 353, 358 (1923) said that he had always fought against the idea of contractual liability in passenger carriage. The Warsaw Convention

has been interpreted as creating a liability "ex lege", by NIEMEYER, note in 65 JURISTISCHE WOCHENSCHRIFT 1429 (1936); Coquoz, op.cit. n.58/ at 69; Litvine, PRÉCIS ÉLÉMENTAIRE DE DROIT AÉRIEN 131 (Brussels 1953); and MATELSCO, DROIT AÉRIEN AÉRONAUTIQUE 220 (Paris 1954).

482/ See Salamon v. KLM, 3 Av.Cas.17,355: "The defendant's liability cannot be enlarged by suing for breach of the defendant's agreement safely to transport the decedent." (emphasis supplied). Cf. Clancy, op.cit. n.480/.

483/ The limitation of liability contained in the contract would not bind the deceased passenger's de endents; cf. Hennessy v. Air France, 8 REV.FRANC.DR.AER.45 (1954); Della Roma v. Air France, 13 REV.FRANC.DR.AER.175 (1959).

484/ Leaving aside the question of "full faith and credit", the conflict problems of U.S.inter-state carriage by air are the same as in international carriage. E.g., in the 'domestic' case of Merrill v. United Airlines, (S.D.N.Y.1959), (1959) U.S.& Can.Av.185, the contract of carriage was made in New York between a resident of Maine and an airline incorporated in Delaware, for carriage from New York to Utah; the accident occurred in Wyoming (1955) and was judged by a federal court sitting in New York. - In general, see Frominski, Wrongful Death in Aviation: State, Federal, and Warsaw, 15 U.MIAMI L.REV.50 (1960).

485/ Hartford Accident & Indemnity Insurance Co. v. Eastern Airlines, (S.D N.Y.1957), (1957) U.S.& Can.Av.481; Pearson v. Northeast Airlines, (S.D.N.Y.1959), (1959) Am.Mar.Cas.532, (1959) U.S.& Can.Av.532; Trauth v. Northeast Airlines, (S.D. N.Y.1959), (1959) U.S.& Can.Av.530, 6 Av.Cas.17,756; Wallan v.Rankin, (9th Cir.1949) 173 F.2d 488, 2 Av.Cas.14,887; Kilberg v. Northeast Airlines, N.Y.Sup.Ct.(App.Div.) 12 April 1960, 198 N.Y.S.2d 679, (1960) U.S.& Can.Av.294; N.Y.Ct.App. 12 Jan.1961, 9 N.Y.2d 133, 172 N.E.2d 526, 7 Av.Cas.17,150. - Cf. the international cases of Chow v. PAA, (1942) U.S.Av. 93; Indemnity Insurance Co. v. PAA, 1 Av.Cas.1244 ("the rule is well established"); Finne v. KLM, (1951) U.S.Av.365; Salamon v.KLM, 3 Av.Cas.17,355; Komlos v. Air France, 4 Av.Cas. 17,282 fn.1.

486/ First National Bank of Chicago v. United Airlines,(7th Cir. 1951), 190 F.2d 493, 3 Av.Cas.17,675; rev'd, U.S.Sup.Ct., 3 March 1952, 342 U.S.396, 72 S.Ct.421, (1952) U.S.& Can.Av. 39, 3 Av.Cas.17,834.

487/ Vigderman v. United States, (E.D.Pennsylvania 1950), (1959) U.S.& Can.Av.336; Faron v. Eastern Airlines,(N.Y.Sup.Ct.1948) 193 Misc.395, 84 N.Y.S.2d 568, 2 Av.Cas.14,792, (1948) U.S. Av.640; Maynard v. Eastern Airlines, (2d Cir.1949), 178 F.2d 139, 13 A.L.R.646, (1949) U.S.Av.191, 449, 2 Av.Cas.15,062,

488/ State of Maryland v. Eastern Airlines (also sub.nom.Chrysler v. Eastern Airlines), (D.C.District Ct.1948) 81 F.Supp.345, 2 Av.Cas.14,805; Richards v. United States, (10th Cir.1960), 7 Av.Cas.17,116 (via 'renvoi'). - Cf. the international case of Reed v. Northwest Airlines, (1954) U.S.& Can.Av.45.

489/ D'Aleman v. PAA, (S.D.N.Y.1957), (1957) U.S.& Can.Av.252. - Cf. the international case of Supine v. Air France, (1951) U.S.Av.448, 450, ("the rule in New York accords with the general Conflict of Laws rule that the place where the injuries were caused determines the existence of a right of action for wrongful death").

490/ Goldberg v. American Airlines, (N.Y.Sup.1960), (1960) U.S.& Can.Av.201; Herman v. Eastern Airlines, (E.D.N.Y.1957), (1957) U.S.& Can.Av.81; Merrill v. United Airlines, (S.D.N.Y. 1959), (1959) U.S.& Can.Av.185; Riley v. Capital Airlines, (N.Y.Sup.Ct.1960), 24 Misc.2d 457, 199 N.Y.S.2d 515, 6 Av. Cas.18,159; Shabel v. Northeast Airlines, (S.D.N.Y.1959), (1959) U.S.& Can.Av.391; Taylor v. United States, (6th Cir. 1956), (1956) U.S.& Can.Av.443; Estate of Weiss, (N.Y.Surr. Ct.1959), (1959) U.S.& Can.Av.349.

491/ Federal Tort Claims Act (1946), 28 U.S.C.§1346(b), Suppl.1956 and Death on the High Seas Act, 46 U.S.C.A. §761; Richards v. United States, (10th Cir.1960), 7 Av.Cas.17,116 (but 'renvoi', cf. n.488/); Union Trust Co. v. United States, (D.C. District Ct.) 221 F.2d 62, 4 Av.Cas.17,546; Rogow v. United States, (S.D.N.Y.1959), (1959) U.S.& Can.Av.494; Noel v. Airponents (D.New Jersey 1958), 169 F.Supp.348, 351, (1959) U.S. & Can.Av.314, 6 Av.Cas.17,343.

492/ Wilson v. Transocean Airlines, (N.D.Calif.1954) 121 F.Supp. 85; Lavello v. Danko, (S.D.N.Y.1959), (1959) U.S.& Can.Av. 244; In re Reilly's Estate, (N.M.1958) 319 P.2d 1069, (1958) U.S.& Can.Av.598; see the "place of harm" rule of the Restatement, Conflict of Laws, §377: "The place of wrong is in the state where the last event necessary to make an actor liable for an alleged tort takes place." - Cf. the international case of Wyman v. PAA, (1943) U.S.Av.1, 3:("where the "force impinged' causing injuries and death").

493/ See Cohn, Death Resulting from Air Crashes at Sea: A Survey of the Law, 26 J.AIR L.& COM.344 (1959); for an exhaustive legislative history of the Death on the High Seas Act, see Wilson v. Transocean Airlines, (N.D.Calif.1954) 121 F.Supp. 85.

494/ Goldberg v. American Airlines (N.Y.Sup.Ct.1960), (1960) U.S. & Can.Av.201, 202 (dictum).

495/ Conklin v. Canadian Colonial Airways, (N.Y.Ct.App.1935), 194 N.E.692, 694; cf. 266 N.Y.244, (1935) U.S.Av.97, 1 Av.Cas.571.

496/ In general, see Robertson, The Preliminary Question in the Conflict of Laws, 55 L.Q.REV.365 (1939); Gotlieb, The Incidental Question in Anglo-American Conflict of Laws, 33 CAN.B. REV.523 (1955); cf. Lagarde, La règle de conflit applicable aux questions préalables, 49 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVÉ 459 (1960).

497/ E.g., the statute of limitation: Gorman v. Transocean Airlines, (D.Conn.1957), 158 F.Supp.339, 5 Av.Cas.17,690; (1958) U.S.& Can.Av.668, 5 Av.Cas.17,951; - the burden of proof: Vigderman v. United States, (E.D.Pennsylvania 1950), (1959) U.S.& Can.Av.336; - "res ipsa loquitur" (treated as a rule of evidence): Lobel v. American Airlines, (2d Cir.1951), 192 F.2d 217; Barger v. Capital Airlines, (Tenn.Ct.App.1960), (1960) U.S.& Can.Av.277; - proportion of recovery: Estate of Weiss, (N.Y.Surr.Ct.1959), (1959) U.S.& Can.Av.349; - measure of damages (treated as "procedural or remedial"): Kilberg v. Northeast Airlines (N.Y.Ct.App.1961), 7 Av.Cas. 17,150; - all substantive questions, in the absence of case law at the place of accident: Vigderman v. United States, supra.

498/ Djabbarzade v. Linee Aeree Italiane, 24 J.AIR L.& COM.359, 360 (1957); Concorde v. Swissair, 85 Entscheidungen des Bundesgerichts II.267;(1959); Election v. PANAGRA, 85 Entscheidungen des Bundesgerichts II.209 (1959); Munier v. Divry, 8 REV.FRANC.DR.AER.76, 77 (1954); cf. Engeli v. Swissair, 9 REV.FRANC.DR.AER.335, 339 (1955), and GULDIMANN, note on Airtrafic Co. v. Transocean Airlines, 21 J.AIR L.& COM.109 (1955).

499/ Article 36 of the Austrian Civil Code, cited in Gonano v. BEA, 10 ÖSTERREICHISCHE JURISTENZEITUNG 672, 673 (1955), and in Heitz v. Allgemeine Unfallversicherungsanstalt, 11 Z.LUFTRECHT 150, 152 (1962); Lafayette Laboratories v. PAA, 11 REV. FRANC.DR.AER.146, 147 (1957).

500/ Article 26 of the Montevideo Treaty on International Commercial Navigation Law, of 19 March 1940; see HUDSON, 8 INTERNATIONAL LEGISLATION 467, 470 (1938-41). The treaty applies to air transport (article 43), between Argentina, Bolivia, Columbia, Paraguay, Peru, and Uruguay (the four latter states are not members of the Warsaw Convention). - Batiffol, op. cit. n.173/ at 660, believes that the lex loci solutionis is also applied by German courts in air carriage cases. There exists no decision to this effect; by contrast, in Nittka v. Lufthansa, 7 Z.LUFTRECHT 421, 422 (1958), the Federal Supreme Court applied German law to a contract of air carriage from Germany to Norway.

501/ Article 285 §1 of the Bustamante Code on Private International Law, adopted by the 6th Pan-American Conference in Havana on 13 Feb.1928, but not ratified by all member states of the Conference; cf. BUSTAMANTE Y SIRVEN, DERECHO INTERNACIONAL AEREO 54 (1945): but the article does not apply to contracts of adhesion, infra n.505/.

502/ Agy v. MALERT, 7 A.LUFTRECHT 79, 80 (1937).

503/ Article 10 of the Italian Code of Navigation (1942); cf. Romanelli, op.cit. n.24/ at 201. - Semble: French State Treasury v. Air Atlas, see DESANGLES, Av.Gén., 12 REV.FRANC.DR. AER.296 (1958), and DE JUGLART, note in 12 REV.TRIM.DR.COM. 529 (1959).

504/ Airtrafic Co. v. Transocean Airlines, 21 J.AIR L.& COM.109 (1954): but in the absence of definite knowledge of that law, the lex fori applies, cf. infra n.506/.

505/ Article 186 of the Bustamante Code (n.501/) as regards contracts of adhesion.

506/ Wucherpfennig v. SAS, 4 Z.LUFTRECHT 226, 230 (1955). - Cf. article 68 §2 of the Brazilian Code of the Air (1938), and article 120 of the Code of Aeronautical Legislation of Uruguay (1942). - In Switzerland, the lex fori applies as a substitute, if the court has no definite knowledge of the foreign law; GULDIMANN, note in 21 J.AIR L.& COM.109 (1954).

507/ Cf. Lemoine, op.cit. n.34/ at 391; de Visscher, op.cit. n.51/ at 324; Riese, op.cit. n.10/ at 279.

508/ Supra n.13/.

509/ Wilson v. Transocean Airlines, (N.D.Calif.1954), 121 F.Supp. 85.

510/ As quoted by Riese, op.cit. n.10/ at 272.

511/ Babiński, Conflits de lois en matière de droit aérien, 48 I ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 430, 431 (1959), (Observations).

512/ GULDIMANN, note on Hennessy v. Air France, 21 J.AIR L.& COM. 369 (1954).

513/ See the national and international codifications of conflicts rules, cited supra n.499/-506/.

514/ The Conflict of Laws rules of New York were referred to in Supine v. Air France, (1951) U.S.Av.448, 450 (supra n.489/), and in Komlos v. Air France, (1952) U.S.& Can.Av.310, 322, and 4 Av.Cas.17,282 fn.1; - the Conflict of Laws rules of Florida, in DaCosta v. Caribbean International Airways, 4 Av. Cas.17,793. - The Swiss conflicts rules were referred to in Airtrafic Co. v. Transocean Airlines, 21 J.AIR L.& COM.109 (1954), in Engeli v. Swissair, 9 REV.FRANC.DR.AER.335, 339 (1955), and in Djabbarzade v. Linee Aeree Italiane; 24 J.AIR L.& COM.359, 360 (1957).

515/ In Choy v. PAA, (1942) U.S.Av.93, 98, the court quoted what EHRENZWEIG calls "that grand and dangerous experiment of the American Law Institute, the so-called Restatement of the Law of Conflict of Laws." Ehrenzweig, Miscenegation in the Conflict of Laws; Law and Reason versus the Restatement, 45 CORNELL L.Q.659 (1960).

516/ In Garcia v. PAA, (1945) U.S.Av.39, 43, the Warsaw Convention was said to supersede "the usual doctrine" of conflict of laws. But Komlos v. Air France, 4 Av. Cas.17,282, has been said to have "clearly held that the lex loci delicti was to be applied by the District Court even though the Warsaw Convention was applicable." Noel v. Linea Aeropostal Venezolana 4 Av.Cas.18,205 (emphasis supplied). - Romanelli, op.cit. n.24/ at 201, points out that the conflicts rule of the Italian Code of Navigation (article 10) applies supplementary to the Warsaw Convention. The supplementary application of the court's own conflict rules to the Warsaw Convention is also confirmed by Koffka & Bodenstein & Koffka, op.cit. n.16/ at 239; Riese, op.cit. n.46/ at 390; and REEMTS, note on Calcio Torino Association v. Avio Linee Italiane, 4 Z.LUFTRECHT 70, 74 (1955).

517/ Ehrenzweig, op.cit. n.2/ at 974.

518/ Infra, p.85, n.665/.

519/ NUSSBAUM, PRINCIPLES OF PRIVATE INTERNATIONAL LAW 37 (1943).

520/ Reed v. Northwest Airlines, (1954) U.S.& Can.Av.45, refusing jurisdiction over a wrongful death in Japan, relying on c.70 §2 of ILLINOIS REV.STAT. (1957 Suppl.now). This statute had been declared unconstitutional (i.e., inapplicable) in U.S. interstate carriage, but not as regards international carriage See First National Bank of Chicago v. United Airlines, (U.S. Sup.Ct. 3 March 1952), (1952) U.S.& Can.Av.39; distinguished in the Reed case.

521/ Overstreet v. Canadian Pacific Airlines, (S.D.N.Y.1957), 152 F.Supp.838; but cf. DaCosta v. Caribbean International Airways, (1955) U.S.& Can.Av.481, where plaintiff was a U.S. resident, but all other 'contacts' as foreign as in the Overstreet case.

522/ Dunning v. PAA, (1954) U.S.& Can.Av.70.

523/ Galli v. REAL Brazilian International Airlines, (1961) U.S.& Can.Av.

524/ Choy v. PAA, (1942) U.S.Av.93, applied the U.S.Federal Death on the High Seas Act (1920); cf. supra n.491/.

525/ Wyman v. PAA, (1943) U.S.Av.1; supra n.155/.

526/ Airtrafic Co. v. Transocean Airlines, 21 J.AIR L.& COM.109; supra n.506/; on application of the lex fori as a substitute in U.S.interstate carriage, cf. Vigderman v. United States, supra n.497/, citing the Restatement, Conflict of Laws, §622.

527/ Noel v. Linea Aeropostal Venezolana; 5 Av.Cas.18,177. The co court first arrived at Venezuelan law (Venezuelan aircraft over the High Seas), then applied the 'English' renvoi ("will the foreign law accept?") and had to conclude that the extra-territorial effect of article 5 of the Civil Aviation Law of Venezuela was "impossible to ascertain" without expert witnesses. In the connected case of Noel v. Airponents (D.New Jersey 1958), 169 F.Supp.348, 350, a Venezuelan lawyer made it clear that there was no cause of action under the foreign law, upon which the court was "of the opinion that there cannot be a slavish adherence to this principle" (viz., the law of the flag), and returned to the lex fori via a different localization of the tort under the Death on the High Seas Act.

528/ Djabbarzade v. Linee Aeree Italiane, 24 J.AIR L.& COM.359, 360 (1957).

529/ Concorde v. Swissair, 85 Entscheidungen des Bundesgerichts II.267 (1959).

530/ Election Co. v. PANAGRA, (1959) ASDA-BULL.(№ 3) 8, 9: the defendant had originally relied on Dutch law (as the law of the contracting carrier), but eventually agreed to the application of Swiss law.

531/ Munier v. Divry, 8 REV.FRANC.DR.AER.76, 77 (1954).

532/ Cf. Auten v. Auten, (N.Y.Ct.App.1954), 308 N.Y.155, 124 N.E.2d 99, which 'introduced' this doctrine in U.S. conflicts law. But cf. Ehrenzweig, op.cit. n.2/ at 974.

533/ G.&L.Berufsgenossenschaft v. DERULUFT; see note by LORENZ, 11 J.AIR L.261 (1940): "The contract of carriage was made in Germany between a German airline and a German passenger for a flight from and to German air orts and the accident happened in Germany. The Kammergericht quoted all those facts for its finding that German laws were to be applied." (The carrier was a joint German-Russian enterprise, and the accident happened en route to an agreed stopping-place abroad = Danzig).

534/ Engeli v. Swissair, 9 REV.FRANC.DR.AER.335, 339 (1955), "since the shipper and the carrier, i.e., the two contracting parties are domiciled in Switzerland, and the contract was concluded in this country." (transl.supplied). The place of destination was abroad.

535/ Nittka v. Lufthansa, 7 Z.LUFTRECHT 421, 422 (1958): "The legal relationship established between the parties has its center of gravity clearly in Germany. Both parties are German, the place of contracting is in Germany, the contract was to be performed partly in Germany by the defendant, and wholly in Germany by the plaintiff." Place of destination and place of accident were abroad.

536/ Lafayette Laboratories v. PAA, 11 REV.FRANC.DR.AER.146, 147 (1957).

537/ Gonano v. BEA, 10 OESTERREICHISCHE JURISTEN ZEITUNG 672, 673 (1955).

538/ Heitz v. Allgemeine Unfallversicherungsanstalt, 11 Z.LUFTRECHT 150, 152 (1962).

539/ Supra text at n.60/; particulary article 25 of the Convention.

540/ Nicolet v. TWA, (1954) U.S.& Can.Av.177.

541/ Fischer v. SABENA, (1950) U.S.Av.367.

542/ Callais v. Afro-Maritime Co., 8 REV.FRANC.DR.AER.184 (1954).

543/ Hennessy v. Air France, 8 REV.FRANC.DR.AER.45 (1954).

544/ Moutafis v. SABENA, 13 REV.FRANC.DR.AER.178 (1959).

545/ Emery v. SABENA, 14 REV.FRANC.DR.AER.421 (1960).

546/ Style v. Braun, 13 REV.FRANC.DR.AER.405 (1959).

547/ Garcia v. PAA, (1945) U.S.Av.39, 43: "Its provisions supersede the usual doctrine that the right and measure of recovery are governed by the Lex loci and not by the lex fori."

548/ Wucherpfennig v. SAS, 4 Z.LUFTRECHT 226, 230 (1955). First the court decided that contracts of carriage subject to the Warsaw Convention are governed by the lex fori, viz. German law. Then it found out that the German law applicable to the case was the Warsaw Convention (sic); after this discovery it did not mention the conflict of laws any more.

549/ Komlos v. Air France, (1952) U.S.& Can.Av.310, 322. First the court said that the question as to who may bring suit is determined by the law of the forum, viz. New York (322). It went on to explain that under New York law this was a matter of substantive law which had to be decided by the lex loci delicti, viz. Portugal (323). When it found out that under the law of Portugal the person entitled to sue is determined by the law of the forum, viz. New York (327), the court apparently decided to stop the game and not to look at the conflicts rule of New York again. - BUZZATI, 30 JOURNAL DU DROIT INTERNATIONAL 485 (1903) once called this the "international lawn tennis."

550/ Yeung v. KLM, (1939) Nederlandse Jurisprudentie 113, 116. The court applied Siamese law and stated that the result reached was not contrary to the "openbare orde" of the Netherlands; on this continental concept of "ordre public" as compared to "public policy", see Husserl, Public Policy and Ordre Public, 25 VA.L.REV.37 (1938).

551/ Indemnity Insurance Co. v. PAA, 1 Av.Cas.1244, stating the "well-settled" rule that "rights, having their foundation in the law of a foreign state, will be enforced unless enforcement would offend the public policy of the forum." The court then quoted CARDOZO's qualification of the public policy concept in Loucks v. Standard Oil Co., 224 N.Y.99, 111 (1918). But cf. the tendency to make a more extensive use of the public policy of the forum, in Kilberg v. Northeast Airlines, (N.Y.Ct.App.1961), 7 Av.Cas.17,150.

552/ Salamon v. KLM, (1955) U.S.& Can.Av.80.

553/ Finne v. KLM, (1951) U.S.Av.305.

554/ Supine v. Air France, (1951) U.S.Av.448.

555/ Werkley v. KLM, (1953) U.S.& Can.Av.194.

556/ DaCosta v. Caribbean International Airways, (1955) U.S.& Can. Av.481.

557/ Pignataro v. United States, (1961) U.S.& Can.Av.121.

558/ Bergeron v. KLM, (1961) U.S.& Can.Av.17.

559/ A.gy v. KALERT, 7 A.LUFTRECHT 79 (1937).

560/ The cases dealing with 'domestic' carriage, and the cases dealing with the sole question of jurisdiction, are disregarded in this number.

561/ McNair, op.cit. n.12/ at 149, states with surprisal that "there are no reported English decisions dealing with questions of choice of law in the sphere of the aviation." Lemoine op.cit. n.11/ at 73, finds the jurisprudence on choice of law in air transport to be "inexistent".

562/ Cf. the 'lex specialis proposition', supra, text at n.305/ ff.

563/ French State Treasury v. Air Atlas, note De Juglart in 12 REV. TRIM.DR.COM.529 (1959).

564/ ibid. (translation supplied).

565/ Calcio Torino Association v. Avio Linee Italiane, 20 RIV.DIR. NAV. II.201 (1954).

566/ GULDIMANN, note in 22 J.AIR L.& COM.99 (1955).

567/ The Italian Civil Code is cited in Palleroni v. SANA, 8 REV. GEN.DR.AER.309, 316 (1939); Calcio Torino Association v. Avio Linee Italiane, 4 Z.LUFTRECHT 70, 72 (1955); SICESI v. TWA, 21 RIV.DIR.NAV. II.230 (1955). - The German Civil Code is cited in Huetzen v. Deutsche Flugdienst, 10 Z.LUFTRECHT 203 (1961)

568/ The French Commercial Code, in Fuller v. Air Algérie, 14 REV. GEN.AIR 393, 395 (1951); the German Code of Civil Procedure, in Huetzen v. Deutsche Flugdienst, 10 Z.LUFTRECHT 203 (1961); the New York Civil Procedure Act, in Sherman v. TWA, (1960), U.S.& Can.Av.297.

569/ See French cases cited in Nordisk Transport v. Air France, 13 REV.GEN.AIR 952, 953 (1950), and in Fuller v. Air Algérie, 14 REV.GEN.AIR 393, 395 (1951); - German cases cited in Blumenfeld v. BEA, 11 Z.LUFTRECHT 78, 80 (1962); - American cases cited in Chutter v. KLM, 4 Av.Cas.17,734; in Gorter v. Northwest Airlines, (1957) U.S.& Can.Av.538; in Sherman v. TWA, (1960) U.S.& Can.Av.297; and in Tuller v. KLM, 292 F.2d 775, 785 fn.9.

570/ In re Estate of Hoover, 5 Av.Cas.17,528.

571/ ibid. at 17,529.

572/ Bartin, op.cit. n.167/ at 105 (translation supplied).

573/ MAURY, REGLES GENERALES DES CONFLITS DE LOIS 111 (Paris 1937), (translation supplied).

574/ Batiffol, op.cit. n.173/ at 41 (transl.supplied), citing cases

575/ ibid. at 42.

576/ Wolff, op.cit. n.244/ at 51.

577/ Mann, op.cit. n.240/ at 284,(critically).

578/ Gosse Millard v. Canadian Merchant Marine, (1929) A.C.223, 230 (per Lord Hailsham), 237 (per Viscount Sumner): "Where a word is used in the Schedule to the Act in a context in which it had been judicially construed previously, /it will be assumed that the Legislature intended to give it the same meaning as that which the Courts had already given it." - A more liberal position was taken in Stag Line v. Foscolo Mango, (1932) A.C.328, 342 (per Lord Atkin, and Lord MacMillan), but without any visible effect on the interpretation of the Hague Rules.

579/ Riverstone Meat Co.Pty.Ltd. v. Lancashire Shipping Co.Ltd., (1961) A.C.807.

580/ Shawcross & Beaumont, op.cit. n.11/ at 84: adding that uniform interpretation would be "desirable" on principle.

581/ United States v. Flying Tiger Line, (1959) U.S.& Can.Av.112,

582/ ibid. at 117.

583/ Bochory v. PAA, 4 Av.Cas.18,072, citing Garcia v. PAA.

584/ Ehrenzweig, The Lex Fori in the Conflict of Laws: Exception or Rule?, 32 ROCKY MT.L.REV.13, 14 (1959); cf. Currie, On the Displacement of the Law of the Forum, 58 COLUM.L.REV.964 (1958); Traynor, Is This Conflict Really Necessary?, 37 TEXAS L.REV.657 (1959); Ehrenzweig, The Lex Fori: The Basic Rule in the Conflict of Laws, 58 MICH.L.REV.637 (1960).

585/ Drion, op.cit. n.9/ № 230.

586/ Raape, op.cit. n.17/ at 468.

587/ Quoting Lord STOWELL's words in The Johan & Sigmund, (1810) Edw.242: "What may be the law of Hamburg, I cannot tell," Knauth, Air Carrier's Liability in Com arative Law, 7 AIR L. REV.259 (1936), says: "Some modern judge may feel moved to apply Lord Stowell's remark to an aviation litigation."

588/ LACOMBE, note on Fuller v. Air Algérie, 14 REV.GEN.AIR 393, 398 (1951).

589/ Drion, op.cit. n.212/ at 424.

590/ CHAUVEAU, as quoted by FAUTZ, Substitut, in Emery v. SABENA, 14 REV.FRANC.DR.AER.421, 423 (1960).

591/ CORBEAU, note on Hennessy v. Air France, 8 REV.FRANC.DR.AER. 199 (1954).

592/ Currie, op.cit. n.584/ at 1027.

593/ Young v. KLM, (1939) Nederlandse Jurisprudentie 113 (№ 69).

594/ Meijers, note ibid. at 116.

595/ Nussbaum, op.cit. n.519/ at 42.

596/ Batiffol, op.cit. n.174/ at 293.

597/ Georgiades, note on Fuller v. Air Algérie, 10 REV.FRANC.DR. AER.220, 225 (1956).

598/ Supra n.69/ ff.

599/ Drion, op.cit. n.413/ at 49, 62.

600/ However, this guarantee only exists under the Warsaw Convention and its "natural fora" limitation. The general statement by Loussouarn, op.cit. n.24/ at 390, that the choice-of-law solutions found for Warsaw carriage will be equally valid for other international carriage, would appear to be in need of qualification on this point.

601/ "Prinzip der Prinziplosigkeit"; Kahn, Abhandlungen aus dem Internationalen Privatrecht, 40 IHERING JAHRBUECHER I.84 (1901), as quoted by FRESE, HAGEN DES INTERNATIONALEN PRIVATRECHTS DER LUFTFAHRT 28 (Thesis Cologne 1940); cf. Louis-Lucas, Conflict of Methods as Regards Conflict of Laws, 83 JOURNAL DU DROIT INTERNATIONAL 775, 795 (1956).

602/ CARDOZO, THE PARADOXES OF LEGAL SCIENCE 67 (1928).

603/ As quoted by Drion, op.cit. n.413/ at 66.

604/ SCELLE, 1 PRECIS DE DROIT DES GENS: PRINCIPES ET SYSTEMATIQUE 5 (Paris 1932).

605/ Rabel, op.cit. n.107/ at 350.

606/ Ripert, op.cit. n.481/ at 363; Makarov, op.cit. n.117/ at 180; Dennis, Warsaw Minutes (ICAO-Doc.7838) 44; Van Houtte, op.cit. n.396/ at 38; Shawcross & Beaumont, op.cit. n.11/ at 311; Pabut, op.cit. n.16/ at 19; McNair, op.cit. n.12/ at 135; TAPIA SALINAS, LA REGULACIÓN JURÍDICA DEL TRANSPORTE AÉREO 293 (Madrid 1953); Schweickhardt, op.cit. n.46/ at 16 fn.31; note 19 REV.GEN.AIR 377, 379 (1956).

607/ Koffka & Bodenstein & Koffka, op.cit. n.16/ at 241; Achtnich, op.cit. n.472/ at 334; Abraham, op.cit. n.49/ at 255; cf. McNair, op.cit. n.12/ at 135 (for contracts unlawful under the lex loci solutionis).

608/ Peçanha, Warsaw Minutes (ICAO-Doc.7838) 83; Lemoine, op.cit. n.34/ at 399, and op.cit. n.11/ at 75; cf. Rabel, op.cit. n.64/ at 307, who takes it as "a hint in favor" of the law of the country of departure that the air consignment note is regularly printed in one of the official languages of that country; Bustamante y Sirven, op.cit. n.501/.

609/ De Visscher, op.cit. n.51/ at 325 (for non-Warsaw Carriage); GOEDHUIS, NATIONAL AIR LEGISLATIONS AND THE WARSAW CONVENTION 271 (The Hague 1937); BATIFFOL, CONFLITS DE LOIS EN MATIERE DE CONTRATS 262 (Paris 1938); Frese, op.cit. n.601/ at 31; Bustamante y Sirven, op.cit. n.501/ at 54 (for contracts of adhesion); Riese, op.cit. n.46/ at 397, and op.cit. n.10/ at 281; Makarov, op.cit. n.414/ at 386, 422.

610/ Schreiber, op.cit. n.245/ at 48, claiming that application of the national law of the deceased passenger, to determine the persons who have a right to sue, "corresponds to a generally recognized principle." - Brooklyn Bar Association, resolution № 3 of 9 Feb.1960, requesting the application of U.S. law to air passenger contracts of international carriage concluded by U.S. residents; see 9 Z.LUFTRECHT 313, 315(1960).

611/ Desanges, Av.Gén., in 12 REV.FRANC.DR.AER.296 (1958); De Juglart, comment, 12 REV.TRIM.DR.COM.529 (1959); Romanelli, op.cit. n.24/ at 201.

612/ The "place of harm" rule of BEALE,(Restatement, Conflict of Laws §377) in the United States is "apparently assumed to be necessarily applicable in both international and interstate cases." Ehrenzweig, op.cit. n.69/ at 20 fn.26. - LAPAJNE, 1 Melanges Streit 531 ff. (1939), appears to be the only Continental writer favouring application of the lex loci delicti in cases of concurring claims from tort and contract.

613/ De Visscher, op.cit. n.51/ 325, and Riese, op.cit. n.46/ at 397 (for Warsaw carriage); Schleicher, note, 9 A.LUFTRECHT, 180, 189 (1939); Litvine, op.cit. n.481/ at 146, and Mateescu, op.cit. n.481/ at 222 (for the measure of damages); Van Houtte, op.cit. n.396/ at 38 (public policy exception).

614/ The conflicts rules of maritime law (law of the flag) were applied to the claims of an employee (stewardess)against an airline in Fernandez v. Linea Aeropostal Venezolana, (S.D.N.Y.1957), 156 F.Supp.94, (1957) U.S.& Can.Av.369, 5 Av.Cas. 17,634, IATA L.R.№ 51, note 52 AM.J.INT'L L.785, note 67 IALL I.J.1445 (1958). - Article 1 of the Italian Code of Navigation (1942), and article 26 of the Montevideo Treaty (1940, supra n.500/), provide for a conflicts rule common to air and sea transportation (law of the flag, law of the place of destination); cf. Abraham. op.cit. n.49/ at 255, citing maritime cases and text-books. - But cf. Shawcross & Beaumont, op.cit. n.11/ at 79 (b): "It is submitted with confidence that the rules relating to ships have no general application to aircraft," citing McNAIR; cf. Riese, op.cit. n.46/ at 13.

615/ Conflicts cases on carriage by rail were cited in Wyman v. v. PAA, (1943) U.S.Av.1; Supino v. Air France, (1951) U.S. Av.448; Komlos v. Air France, (1953) U.S.& Can.Av.471; cf. the U.S.interstate case of Conklin v. Canadian Colonial Airways, (N.Y.Ct.App.1935), (1935) U.S.Av.97. - But cf. the rejection at the Warsaw Conference in 1929, of a proposal to make the corresponding provisions of the Bern Conventions on Carriage by Rail applicable to air carriage, supra n.79/. Cf. Milwid, Is the Air Age Confined by Land-Locked Law?, 47 YALE L.J.23 (1961).

616/ RODIÈRE, 2 DROIT DES TRANSPORTS 62 (Paris 1955), citing through-carriage as a practical reason.

617/ Letter, Possible Simplification of the Warsaw Convention Liability Rules, 15 J.AIR L.& COM.1, 3 (1948); cf. IATA-BULLETIN (N 21) 62, 63 (1955).

618/ Makarov, op.cit. n.414/,draft resolutions, preamble.

619/ See Alessandrone-Gamburdella, L'autonomie substantielle et formelle du droit aérien, 3 REV.FRANC.DR.AER.256 (1949); De Juglart, Le droit aérien actuel est-il un droit autonome? (1954) Dalloz Chronique 117; Riese, Ueber die Autonomie des Luftrechts und die Vereinheitlichung des Verkehrsrechts, Studi in onore di Antonio Ambrosini 157 (Milan 1955).

620/ Supra, text at n.511/ ff.

621/ Le Goff, THE PRESENT STATE OF AIR LAW, 24 (The Hague 1950).

622/ Heck, Review of VON BAR's HANDBUCH DES INTERNATIONALEN PRIVATRECHTS (1861), 38 ZEITSCHRIFT FÜR HANDELSRECHT 305. Heck described his Jurisprudence of Interests as "a method designed to serve the practical ends of law. It aims at finding those principles which judges should follow in deciding cases." HECK, INTERESSENJURISPRUDENZ (1933), as translated in THE JURISPRUDENCE OF INTERESTS 31, Harvard 20th Century Legal Philosophy Series (1948).

623/ Francescakis, Droit naturel et Droit international privé; 1 Mélanges offerts à Jacques Maury 113, 119 (Paris 1960).

624/ Rabel, op.cit. n.96/ at 97: "This is pioneer ground. Now the interests of the states, of the parties, of third persons in good faith, of commerce or trade in general, are to be valued against each other in various situations and best reconciled with the postulate of certainty, needs renewed and detailed deliberation. For the time being, it would be entirely premature to try to enumerate or to analyze such considerations in a general way."

625/ See Neuner, Policy Considerations in the Conflict of Laws, 20 CAN.BAR REV.479 (1942); Wengler, Die allgemeinen Rechtsgrundsätze des internationalen Privatrechts und ihre Kollisionen, 23 ZEITSCHRIFT FUER OEFFENTLICHES RECHT 473 (1943-44), revised transl.: Les principes généraux du droit international privé et leurs conflits, 41 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVÉ 595,(1952), 42 REV.CR.DR.INT.PR.37 (1953); Zweigert, Die dritte Schule im internationalen Privatrecht, Festschrift Raape 49 (1948); Beitzke, Betrachtungen zur Methodik im Internationalprivatrecht, Festschrift Smend 1 (1952); Vischer, Der Richter als Gesetzgeber im internationalen Privatrecht, 12 SCHWEIZER JAHRBUCH FUER INTERNATIONALES RECHT 75 (1955); Batiffol, op.cit. n.174/; Harper, Policy Bases of the Conflict of Laws, 56 YALE L.J.1156 (1947); Kegel, Begriffs- und Interessenjurisprudenz im internationalen Privatrecht, Festschrift Lewald 259 (Basel 1953); Yntema, The Objectives of Private International Law, 35 CAN.BAR REV.721 (1957); Braga, Kodifikationsgrundsätze des internationalen Privatrechts, 23 RABELS Z. 421 (1958).

626/ Lemoine, Essai sur les perspectives d'avenir du droit aérien international, 2 REV.FRANC.DR.AER.133 (1948).

627/ Letter, op.cit. n.617/.

628/ Ripert, op.cit. n.23/ at 251.

629/ The carrier usually has no knowledge or proof of these facts at the moment of contracting. In some countries, informations about origin and destination of passengers are collected for statistical reasons; e.g..see U.S.Dept.of Justice, (1961) Annual Report of the Immigration and Naturalization Service.

630/ The passenger or shipper usually has no definite knowledge of the nationality of the aircraft by which the carriage will be performed, since a high percentage of air routes is operated on the basis of pooling agreements, charter and interchange of aircraft, etc.; cf. DUTOIT, LA COLLABORATION ENTRE COMPAGNIES AÉRIENNES: SES FORMES JURIDIQUES (Lausanne 1957). - The SCANDINAVIAN AIRLINES SYSTEM operates aircraft registered in three different states: 3/7 in Sweden, 2/7 in Denmark, and 2/7 in Norway; cf. article 6 of the SAS Consortium Agreement (1951), and Bahr, The Scandinavian Airlines System (SAS), 1 ARKIV FOR LUFTRETT 223 (1961).

631/ Entirely fortuitous, depending on the territory overflown; cf. Calkins, op.cit. n.106/, and Kilberg v. Northeast Airlines (N.Y.Ct.App.1961), 7 Av.Cas.17,150.

632/ Depending on the option of the plaintiff, supra n.68/.

633/ The "locus contractus" is controversial: e.g., French courts will usually localize it at the place where the offer was made, - Italian, Belgian, Polish courts at the place where the offer was received; in the United States, there is the "mail-box theory" of the Restatement, Conflict of Laws §314. In general, see BAHAT, DE REGEL 'LOCUS REGIT ACTUM' IN HET INTERNATION (The Hague 1936); Nussbaum, op.cit. n.519/ at 166; Zweigert, Zum Abschlussort schuldrechtlicher Distanzverträge, Festschrift für Ernst Rabel (Munich 1954). - It must be added that a great number of contracts on air carriage are concluded through agents. Thus, in 1960 BEA only sold 22% of its ticket total in the United Kingdom through its own offices, and only 18% of its tickets abroad; whereas 72% of the BEA tickets in the U.K., and 56% of the BEA tickets abroad, were sold by travel agents; and another 6% of BEA tickets in the U.K., and 26% of BEA tickets abroad were sold by other airlines. See (1961) BULLETIN DE L'INSTITUT DU TRANSPORT AERIEN (№ 3) 101.

634/ The contract of air carriage consists of several obligations with different places of performance (e.g. payment of the price by the passenger); cf. Müller, op.cit. n.120/ at 73.

635/ The SCANDINAVIAN AIRLINES SYSTEM "has no nationality, and it is subject to the laws of all the three Scandinavian countries." Bahr, op.cit. n.630/ at 199. - On the other hand, see Zepos, Dual Nationality in Airline Business, 25 J.AIR L.& COM. 95 (1958). - On various definitions of the carrier's place of business, see Djabbarzade v. Linee Aeree Italiane, 7 Z.LUFTRECHT 426 (1958), and 24 J.AIR L.& COM.359, 361 (1957); Winsor v. United Airlines, (1957) U.S.& Can.Av.466, 470.

636/ On the problem which law determines nationality of a person, cf. the Nottebohm case of the International Court of Justice (1955) I.C.J.Reports 20-24 (the "genuine link" doctrine); on the determination of domicile, see Barbosa de Magalhaes, La doctrine du domicile en droit international privé, 23 RECUEIL DES COURS DE L'ACADEMIE DE DROIT INTERNATIONAL 32 (1928); cf. Makarov, op.cit. n.110/.

637/ On the problem of determining the position of an aircraft at the moment of the accident, cf. Makarov. op.cit. n.414/ at 368; on conflicts of localization, see supra n.485/ ff.; on accidents on the High Seas, supra n.493/.

638/ The shipper (consignor of goods) has the right to alter the consignee named in the air waybill, thus altering the place of destination (article 12 §1 of the Warsaw Convention); cf. Frese, op.cit. n.601/ at 28 ("unbearable incertitude").

639/ The carrier has the right to substitute without notice alternate carriers or aircraft; see IATA conditions of contract, passenger ticket article 7 (supra n.422/) and air waybill article 5 (supra n.423/).

640/ Although theoretically only "common carriers" are under an obligation to carry the first comer, no airline in practice "chooses" its passengers freely; it would appear to place an unjustified burden on the carrier if the contract were subject to each passenger's or shipper's law. - On the common carrier obligation in the United States, see WILLISTON, A TREATISE ON THE LAW OF CONTRACTS 2986 (2d ed.1936); but cf. for the United Kingdom Shawcross & Beaumont, op.cit. n.11/ at 314.

641/ In practice no passenger chooses the aircraft's flag; see Frese, op.cit. n.601/ 62 ff. - Even though a passenger may have made such a "national" choice under some "Fly American" program (but cf. the difficulties in the case of Scandinavian flags, supra n.630/), he may find himself flying under a quite different flag, due to the carrier's right to substitute (supra n.639/).

642/ The passenger may be considered as being favoured by his right of option where to bring the action (supra n.68/).

643/ The passenger or shipper regularly exercises a free choice of his contracting carrier. He is free to take into consideration the advantages or disadvantages which the carrier's law offers to aircraft users. - It should be clear that the choice of law is not a choice of the jurisdiction where the action must be brought (such as in the former IATA clause, supra n.442/ ff.).

644/ CASPERS, INTERNATIONALES LUFTTRANSPORTRECHT 12 (Thesis Berlin 1930); Riese, op.cit. n.10/ at 280 (translation supplied).

645/ Müller, op.cit. n.120/ at 74. The mere fact of travelling on board the same aircraft does not appear to call for subjecting a passenger to the same law as his seat-neighbour, whose contract of carriage may have been concluded elsewhere with another carrier, another place of departure and destination, etc.

646/ Whether a contract is'governed' by the lex loci contractus, lex loci solutionis, etc., is irrelevant for the competitive situation of the airlines among themselves. So far no problem of "cheap flags" has arisen in air transportation, so that even application of the law of the flag would not seem to create discriminations.

647/ Since the 'localizing factor' of a conflicts rule always depends on a factual element (conclusion of a contract, departure of an aircraft), it will always "favour" the states in which most of these facts occur.

648/ On principle, each state has a right to exclude the application of foreign law (i.e., part of foreign sovereignty) to a case that has a connection with its own law; this would follow from the negative (exclusive) content of sovereignty,(the "exclusivism", Rousseau, op.cit. n.130/ at 135). - Since multiple-contacts cases are frequent, this absolute principle is unpracticable, and must be replaced by some equitable distribution of cases: this is precisely the function of conflicts rules.

649/ If the positive content of sovereignty is the "right to command" -see MICHOUD, 2 THEORIE DE LA PERSONNALITE MORALE 60, as quoted by BASDEVANT, DICTIONNAIRE DE LA TERMINOLOGIE DU DROIT INTERNATIONAL 574 (Paris 1960)- , i.e., the right to require allegiance from persons, the corresponding negative content must be the protection of these persons from foreign claims for allegiance (e.g., foreign law). It is essentially a protection of persons, nationals or residents.

650/ (a) and (b) will usually be the same state. There are states, however, which have a higher proportion of carrier contracts ("carrier states", e.g., the Netherlands), and others with a higher proportion of passenger and shipper contracts (Germany until 1955 had no carriers, and played necessarily the rôle of a "passenger state" in international air transport).

651/ "Utilité sociale"; Scelle, op.cit. n.604/.

652/ Coquoz, op.cit. n.121/ at 31.

653/ Saporta, La crise de croissance du droit international aérien, 18 REV.GEN.AIR 191 (1955).

654/ Caplan, op.cit. n.104/ at 474.

655/ De Visscher, op.cit. n.51/ at 280 ff.; Riese, op.cit. n.46/ at 42; Riese, op.cit. n.10/ at 281; cf. resolution № 4 of the Naples Air Law Conference in 1954, 17 REV.GEN.AIR 398 (1954).

656/ See draft resolutions of the Neuchâtel meeting in 1959; Makarov, op.cit. n.414/.

657/ Prosser, op.cit. n.1/ at 133.

658/ THE HARVARD LAW REVIEW ASSOCIATION, A UNIFORM SYSTEM OF CITATION (10th ed.1958-1960).

659/ See the cases cited in n.192/ supra, dealing with the Warsaw Rules as applied to domestic carriage, by statute.

660/ E.g., see the case cited in n.614/ supra, concerning the action of a stewardess against the airline.

661/ Contractual clause referring to the Convention: DaCosta v. Caribbean International Airways, Agay v. LALERT (supra n.74/) Statute extending the Warsaw rules to non-Warsaw carriage: Djabbarzade v. Linee Aeree Italiane, (supra n.192/).

662/ Not self-executing: Choy v. PAA, Wyman v. PAA, (supra n.154/) Not 'Warsaw carriage': Stratton v. TCA, Attias v. Air Afrique

663/ Diplomatic reasons: French State Treasury v. Air Laos (supra n.269/); constitutional reasons: Gonano v. BEA, Heitz v. Allgemeine Unfallversicherungsanstalt.

664/ See Georgiades, note on Air Fret v. TWA, 10 REV.FRANC.DR.AER. 326 (1956); Rudolf, note on Huetzen v. Deutsche Flugdienst, 10 Z.LUFTRECHT 204 (1961); Romanelli, note on SICESI v. TWA, 21 RIV.DIR.NAV. II.230 (1955). - There are other cases, in which the Warsaw Convention was not applied, for unknown reasons: e.g., Reed v. Northwest Airlines, Green v. El Al, Bergeron v. KLM, Lafayette v. PAA.

665/ Cf. supra n.518/ and text. Unfortunately, most cases did not give a full statement of the relevant facts, i.e., of the factual connections of the contract with foreign laws; thus, the information had to remain fragmentary in many respects. Information about the nature of the damage sustained has been added, in order to illustrate the possible characterizations of the action (tort or contract, supra n.477/ ff.). The date of the accident is sometimes important for application of the Warsaw Convention.

666/ Including refusal to carry (Gonano v. BEA, Tumarkin v. PAA).

ALPHABETICAL TABLE OF CASES.

In order to facilitate citation, airlines are named as second parties ("defendant"), even where the position in the case and/or on appeal was the reverse. References are to pages (p.) and footnotes (n.); underlined references give full citation of the case (case history).