

THE AIR NAVIGATION COMMISSION
OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION
A Study of its Functions and Powers and
an Outline of its Main Fields of Activity

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TABLE OF CONTENTS

Acknowledgments.....	11	
Key to Symbols of ICAO Documents listed in footnotes..	v	
Introduction.....	1	
CHAPTER I. THE AIR NAVIGATION COMMITTEE		
A. General.....	6	
B. The Status of the Air Navigation Committee.....	8	
C. The Composition of the Air Navigation Committee....	9	
D. The Functions and Powers of the Air Navigation Committee.....	12	
E. The Committee in the Exercise of its Functions and Powers.....	17	
F. Conclusions.....	21	
CHAPTER II. THE AIR NAVIGATION COMMISSION		
A. Constitutional Provisions.....	23	
B. The Status of the Air Navigation Commission.....	24	
C. The Composition of the Air Navigation Commission...	26	
D. Control of the Council over the Commission.....	32	
E. The Nature of the Powers and Functions of the Commission.....	34	
CHAPTER III. THE TECHNICAL WORK PROGRAMME.....		39
CHAPTER IV. THE TECHNICAL MEETINGS		
A. General.....	44	
B. The Divisions and the Commission.....	52	

C. Special Meetings.....	55
D. The Air Navigation Conference.....	57
E. Panels.....	58

CHAPTER V. THE AIR NAVIGATION REGIONS

A. Regional Organization.....	62
B. The Regional Air Navigation Meeting.....	64
C. The Regional Offices.....	75
D. The Regional Plan.....	79

CHAPTER VI. TECHNICAL REGULATORY MATERIAL

A. Annexes.....	93
B. Procedures for Air Navigation Services(PANS).....	109
C. Supplementary Procedures(SUPPS).....	111

CONCLUSIONS.....	115
BIBLIOGRAPHY.....	120

v

Key to the Symbols of ICAO Documents listed in footnotes

A	- Assembly
AN, ANC	- Air Navigation Commission
C	- Council
Doc	- Document
P	- Plenary Session
Rec.	- Recommendation
TE	- Technical Commission of Assembly
WP	- Working Paper

A combination of the above symbols should be interpreted as illustrated in the following examples:

A1-1	- First Assembly Resolution 1
A4-Rec.4	- Fourth Assembly Recommendation 4
A10-WP/20, TE/6	- Tenth Assembly Working Paper, Technical Commission, sixth meeting
A10-WP/148, P/15	- Tenth Assembly Working Paper, number 148, fifteenth plenary meeting
C-WP/2040	- Council Working Paper 2040

Minutes of the Air Navigation Commission are designated as Working Papers:

AN-WP/MIN, X-20	- Air Navigation Commission Minutes, Tenth Session, twentieth meeting
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INTRODUCTION

When man first conquered the air, only a few could foresee all the implications involved in such an act. Within less than half a century, flight became as common as any other medium of transportation, with almost unlimited potentialities. The aircraft became capable of spanning continents and oceans in a matter of hours, reaching every spot on the globe. Geographical distance had shrunk until few areas remained inaccessible.

The speed and range of aircraft made international collaboration a vital necessity for aviation progress. The full utilization of the aircraft could be attained only by extensive worldwide planning and coordinated efforts made by all nations concerned.

It was not enough to have a swift medium of transportation. It had to be made safe as well. With aviation becoming the possession of the many, the necessity for regulating and establishing supporting services emerged as a primary step in the facilitation of aerial transportation on a global scale. For it is one thing to repeat the act of the Wright brothers and another to make the aircraft a vehicle of public transportation.

Civil aviation may be divided into two complementary

fields. One is that of facilitating the actual flight of the aircraft, while the other is that of facilitating the movement of passengers and cargo from one point to another by air. The terms more commonly used to describe these two fields are 'air navigation' and 'air transport'. While the potentialities of the aircraft could not be fully realized without improvements in the field of air transport, the lack of developments in the field of air navigation would have been highly detrimental to the progress of civil aviation.

Air navigation, apart from the science of aeronautical engineering and the manufacture of aircraft, deals with all aspects of the flight of the aircraft and the services with which it is to be provided while in the air and on the ground, so as to make its use safe and efficient. Hence the development of facilities and services, such as aerodromes, telecommunications, meteorological reports, traffic control and so forth, is a prime concern of air navigation.

The qualities of the aircraft make it the most efficient instrument of international transportation. Often an aircraft in flight from one point to another crosses the skies of many states with divergent air navigation facilities, services and regulations. Flight is basically a process whereby movement from one place to another is made more efficient and simplified. The diversity of facilities, services and regulations existing between states tends to complicate

and deter efficient aerial transportation. In such a situation operators of aircraft had to comply with different national laws while performing a single international flight. The crew of aircraft had to familiarize themselves with various sets of regulations, procedures, facilities and services.

This situation called for international cooperation in matters of civil aviation. The establishment of uniform facilities, services and regulations to govern air navigation on a worldwide basis became the goal of international civil aviation. The attainment of uniformity in international air navigation was considered as important for the safe and efficient operation of aircraft as the improvement of the aircraft itself.

The achievement of worldwide uniformity in international air navigation required effective international organization and legislation. Hence the implementation of these aims was undertaken by the International Civil Aviation Organization. International legislative action took the form of Annexes to the Convention on International Civil Aviation and other regulatory material promulgated by the Organization and adopted by contracting States.

The importance of this regulatory material lay not only in the fact that substantial uniformity was thus achieved,

but in that it enabled operators to learn where the uniform regulations were not adopted and wherein lay the differences between states' regulations and those of the ICAO.

The nerve centre of the activities of the ICAO in the field of air navigation is the Air Navigation Commission. Its scope of work embraces practically any matter related to air navigation, and its function is to mastermind and coordinate the activities of the ICAO in this field.

This paper is an attempt to survey and portray the main activities of this Commission. It consists of a discussion of the Air Navigation Committee which preceded the Commission, an analysis of the Commission and of its functions and powers and a description of the most important elements in its scope of activity. This survey does not purport to be exhaustive or comprehensive but only an introduction to the activities of the ICAO in the field of air navigation as carried out through the Air Navigation Commission. Thus the elements constituting the main activities of the Organization in air navigation are discussed with a view to showing how these activities are related to the work of the Commission. Hence the technical meetings, regional organization of air navigation and the main types of regulatory material are also discussed. Admittedly, each of these subjects is broad enough to justify a separate paper and certainly deserves a more

extensive discussion than that allotted to it here. My approach, however, is to explore the above subjects to the extent that will enable the reader to grasp the problems encountered by the Air Navigation Commission, with emphasis placed on the role of the latter in the handling of these problems.

The following survey is almost wholly based on documentation of the International Civil Aviation Organization, including working papers and minutes of meetings of ICAO's bodies. The exclusive use of ICAO material was dictated by the scarcity of any other works on the Air Navigation Commission. In effect there is no single work wholly devoted to the Commission.

Should this paper stimulate further research into the activities of the ICAO and the Commission, then the following exposition of one of the best examples of fruitful international collaboration will have served its purpose.

CHAPTER I. THE AIR NAVIGATION COMMITTEE

A. GENERAL

The Air Navigation Committee was the forerunner of the Air Navigation Commission. It ceased to exist at the time the Commission was established pursuant to Chapter X of the Convention on International Civil Aviation.¹ The Committee, although being an interim body, operated for over a year after the establishment of the permanent Organization of Civil Aviation, laying much of the ground for the orderly functioning and current practices of the Air Navigation Commission. Regardless of the measure of success and efficiency the Committee attained, the experience it gained was an invaluable asset of the ICAO.

Through a process of trial and error, the Committee established the patterns for the carrying out of much of the technical work of the Organization. Its very existence contributed greatly to the promotion of the technical legislation in the field of air navigation. When the Air Navigation Commission was constituted, the Second Assembly took cognizance of the importance of the experience gained by the Committee stating : "That the change from the Committee to the Commission structure be accomplished...in so far as practicable and legally

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Signed at Chicago on December 7, 1944. ICAO Doc 7300.

permissible, without sacrificing the experience gained in the functioning of the...Committee during the life of the Interim and Permanent Organizations."²

In spite of the structural and constitutional defects inherent in the Committee, strong sentiments were voiced in the Council for its continuation, intact or on a revised basis. Although the majority of the representatives on the Council voted for the replacement of the Committee by an Air Navigation Commission as provided for by the Convention, the Council, in its report to the Second Assembly, submitted two proposals regarding the replacement of the Committee. The first proposal was in conformity with the provisions of the Convention, while the second proposal was in effect a compromise between the Committee's status and structure and that of the Air Navigation Commission as envisaged by the Convention.³

The Second Assembly logically concluded that the Air Navigation Commission should be established pursuant to the Convention.⁴ Had the other proposal been adopted, a revision of the Articles of the Convention dealing with the Air Navigation Commission would have been necessary. Thus the Committee became a chapter in the history of international

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Resolution A2-8, paragraph 2, ICAO Doc 7670(1956), p. 73.

3

ICAO Doc A2-P/9(20/4/48), pp. 3-14.

4

Resolution A2-8.

civil aviation, but its significance in a study of the Air Navigation Commission is more than historical. As stated above, many of the characteristics of the present Commission can be traced back to the Committee, providing important material for a comparative study of the two bodies.

B. THE STATUS OF THE AIR NAVIGATION COMMITTEE

The Committee was established as part of the Provisional International Civil Aviation Organization (PICAO), and as such was also intended to be a provisional body. The Interim Agreement on International Civil Aviation reads as follows:

The powers and functions of the Council shall be to:

...
5. Provide for the establishment of any subsidiary working groups which may be considered desirable, among which there shall be the following interim committees:

...
b. A Committee on Air Navigation....⁵

Hence the following elements constituted the status of the Air Navigation Committee:

- (a) The establishment of the Committee was made a mandatory function of the Interim Council.
- (b) The Committee was a subsidiary body of the Interim Council.
- (c) The Committee being a part of the PICAO and established under the Interim Agreement was to be abolished with the coming into force of "...a new permanent convention on international

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Interim Agreement on International Civil Aviation (Chicago 1944), Article III, Section 5, Department of State Publication 2820, International Organization and Conference Series IV, I, 135.

civil aviation...."⁶

Hence the similarity between the Committee and the later Commission lay in the provisions that made their establishment obligatory. The main dissimilarity between the status of the two bodies was the fact that the Committee was a subsidiary body of the Council, while the Commission, though extensively under the control of the Council, is not, under the terms of the Chicago Convention, a 'committee of the Council'.

C. THE COMPOSITION OF THE AIR NAVIGATION COMMITTEE

The Committee was designed in order to carry out work in the field of air navigation. The work it was originally intended to perform was basically of a technical nature requiring substantial scientific knowledge and qualifications. Nothing, however, in the provisions of the Interim Agreement dealing with the Committee required any technical qualifications from its members. This fact was actually one of the major handicaps in the work of the Committee. In reality it was not a technical committee although the material it had to deal with posed often highly complicated technical problems. The composition of the Committee made it unable to fulfill its original functions of acting as an advisory body examining the very substance of technical problems related to air navigation. The result was that the

⁶

Ibid., Article I, Section 3, p. 132.

Committee had to re-interpret its functions so as to reconcile them with its technical ability. The consequences were that the Committee became a coordinating body rather than a source wherefrom technical regulatory material originated.⁷ The Committee approached with much hesitation technical drafts it was presented with by the Divisions, imposing on itself a doctrine of inviolability of divisional recommendations.⁸ Such an interpretation of the Committee's functions was inevitable in view of the drawbacks inherent in its composition. However, it would be unjust to say that the Committee had always avoided dealing with the substance of technical problems. It would be more correct to assert that this was rather the trend but not the rule.

The Committee, unlike its successor, was unlimited as to the number of its members.⁹ The Interim Agreement provided that: "If a member State so desires, it shall have the right to appoint a representative on any such interim committee or working group."¹⁰

While a controversy exists with regard to the nature of membership of the Commission, no such controversy exists with respect to the members of the Committee. Committee members were not only nominated by contracting States but also

⁷ ICAO Doc 4507, AN/521(7/7/47), para. 7, and Doc 6158, AN/682 (29/9/48), para. 5.

⁸ ICAO Doc 5286, C/652(13/4/48), p. 3.

⁹ The Committee normally operated with eighteen members.

¹⁰ Interim Agreement, Article III, Section 5.

appointed by them. While it is not decidedly clear whether members of the Commission act as representatives of their respective States, or as appointees of the Council and in an individual capacity, no such problem existed with regard to Committee members who were appointed by their respective States and thus were national representatives. Consequently, the term of membership of Committee members was decided by their States¹¹ and not, as in the case of the Commission, by the Council. The only appointment made by the Council was¹² that of the Chairman of the Committee.

The fact that the Committee was an all-inclusive body, unlimited as to the number of its members, was in effect a factor detrimental to its efficiency. Technical problems, by their very nature, can be most effectively dealt with by a small group. The Committee was not such a group.

Nothing said above should be taken as a reflection on the integrity and ability of the individual members of the Committee. Their path-finding work and pioneering in the field of air navigation is most praiseworthy.

11

ICAO Doc A2-P/9, paragraph 8.3 .

12

ICAO Doc 1066, C/79(21/12/45), Section IV, paragraph 2.

D. THE FUNCTIONS AND POWERS OF THE AIR NAVIGATION COMMITTEE

The functions of the Committee were also laid down in the Interim Agreement reading as follows:

- (1) Study, interpret and advise on standards and procedures....
- (2) Recommend the adoption, and take all possible steps to secure the application of minimum requirements and standard procedures with respect to the subjects in the preceding paragraph.
- (3) Continue the preparation of technical documents, in accordance with the recommendations of the International Civil Aviation Conference approved at Chicago on December 7, 1944, and with the resulting suggestions of the member States, for attachment to the Convention on International Civil Aviation, signed at Chicago on December 7, 1944. 13

The above functions can be divided into several categories, all in the field of air navigation:

- (a) Research functions - the study and preparation of technical material and air navigation regulations.
- (b) Advisory functions - recommendations as to action to be taken with respect to air navigation matters.
- (c) Supervisory functions - the taking of "steps to secure the application" of air navigation regulations.

The Interim Agreement, however, did not specify how the Committee should perform these functions. The research functions assigned to the Committee implied a high degree of technical capability, which the Committee itself did not possess. The solution to this problem came in the form of the Divisions, which formally were 'sub-committees' of the Committee, though actually they were nothing less than periodical meetings

of experts in a specific field of air navigation, engaged in the formulation of technical regulatory material of ICAO. With the Divisions doing the research and originating air navigation regulations, a process of transformation took place whereby research functions of the Committee became in effect supervisory ones. Such a process was inevitable in view of the fact that the Committee members were not technical experts.

The organizational re-adjustments whereby functions originally assigned to the Committee were in effect exercised by the Divisions, made the latter, in practice, more than 'sub-committees' of the Committee. This situation was reflected in the Rules of Procedure of Technical Committees and Divi-¹⁴sions of the Interim Council which provided that "The Council shall establish any subsidiary working groups including any technical committees or divisions which it may consider¹⁵ desirable...." The same set of rules defined a Division as a¹⁶ "...technical committee of the Council." This approach to what were formally 'sub-committees' of the Air Navigation Committee was understandable in view of the fact that the Committee was actually a segment of the Council.

The Committee, however, was left with some powers enabling it to have some measure of control over the Divisions.

¹⁴ ICAO Doc 1066, C/79(21/12/45). See also Interim Agreement S.II(1).

¹⁵ Ibid., Section II, paragraph 1.

¹⁶ Ibid., Section I, paragraph 2.

It could, if it so wished, issue directives to the Divisions¹⁷ regarding matters within its range of functions. The lack of such directives would not have prevented Divisions from carrying out work on their own initiative since they were¹⁸ empowered to take independent action. The power of the Committee to issue directives to the Divisions was not exclusive,¹⁹ but was concurrently held by the Council.

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The terms of reference of the Committee provide a further clarification of its functions. Although the formulation of draft Annexes was left to the Divisions, it was the function of the Committee to submit such proposals to the Council for adoption.²¹ The Committee was also granted a wide field of discretion in making recommendations. It was entitled to submit to the Council recommendations necessary "...in order to promote safe, regular and efficient...²² air navigation." This provision actually empowered the Committee to act in its advisory capacity on a wide range of matters, including all the important aspects of air navigation.

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- 17 ICAO Doc 1066, C/79(21/12/45), Section II, paragraph 6.
 - 18 Ibid.
 - 19 Ibid.
 - 20 ICAO Doc 6808-C/791(June 1949), p. 19.
 - 21 Ibid., paragraph 2.1
 - 22 Ibid., paragraph 2.2

The terms of reference clarify also administrative functions of the Committee. It could make recommendations with respect to the establishment of Divisions²³ although, as²⁴ pointed out above, it could not establish them. It was also empowered to "...direct and coordinate the work of the divisions, recommend to the Council the places and times for their²⁵ meetings, and approve their agenda and plans for documentation." The power to approve the divisional agenda granted the Committee an invaluable means whereby it could exercise control over the range and scope of work of the Divisions.

The Committee was entitled to exercise powers similar to those mentioned above with respect to Regional Air Navigation Meetings and Special Meetings.²⁶ One formal difference, however, existed. The Committee was not empowered to direct and coordinate the work of such meetings. It could do so, in effect, through its power to approve the agenda of meetings.

Additional functions of the Committee included advising the Council on questions of "...training personnel who are²⁷ to operate air navigation services..." and on "...methods for ensuring the application and observance of standards and

²³ Ibid., paragraph 3.

²⁴ Supra, p. 13.

²⁵ ICAO Doc 6808-C/791 (June 1949), paragraph 3.

²⁶ Ibid., paragraph 4.

²⁷ Ibid., paragraph 9.

the provision and adequacy of aids to international air navigation.²⁸ It should be noted that this last function required a reporting machinery following up the implementation of the Organization's regulatory material. This work was undertaken by the Secretariat and its Regional Offices discussed later in a section devoted to the latter.

In the realm of international relations the Committee was given the task of recommending to the Council "...measures for the promotion of international collaboration in research and development of techniques of air navigation."²⁹

Finally, the Committee was entitled to make recommendations with reference to the technical provisions of the Chicago Convention. It could formulate and initiate "...proposals for amendments to the provisions of the Convention relating to air navigation."³⁰

These were the functions of the Committee. Not all of them were clear and easily definable, some of them beyond the capability of the Committee. How these functions were interpreted and carried out will be discussed in the next section.

28

Ibid., paragraph 5.

29

Ibid., paragraph 7.

30

Ibid., paragraph 10.

E. THE COMMITTEE IN THE EXERCISE OF ITS FUNCTIONS AND POWERS

Constitutions of international organizations are normally interpreted through the actions of the bodies established by them. Often an action of an international organization seems to overstep its powers as laid down by its constitutional statutes. Such a process of practical re-legislation is inevitable in the realm of international organizations, where legislation is slow to come and circumstances are fast changing.

As previously indicated, the Committee pursued a policy which amounted to a process of reconciling its functions and powers with its technical capabilities.

With respect to Divisions, Committee members regarded their powers as being "rarely creative"³¹ but as:

1. Supervisory - by ensuring that future agenda contained work that could be accomplished by the Organization.
2. Conciliatory - by attempting to reconcile national views. If this proved impossible the item should be referred again to the Division for further study.
3. Coordinating - by coordinating the activities of one Division with that of another to prevent over-lapping. If that could not be straightened out, no action should be taken. 32

Evidently, the Committee did not think that it could take direct action to change reports whenever its views

³¹ ICAO Doc 6158, AN/682(29/9/48), paragraph 5.

³² Ibid., paragraph 5.

conflicted with those expressed in divisional reports. The Chairman of the Committee stated the policy of the Committee, saying that "...the Committee had not in the past considered that it could materially alter the reports of Divisions.... (and that)...coordination was the main function of the Committee."³²

The function of coordination was most manifest when it came to the reviewing of divisional reports, especially those parts which dealt with Standards and Recommended Practices and Procedures. The reviewing procedure of the Committee consisted of:

...forwarding copies of the report to contracting States, asking for their comments on those of its sections which deal with Standards and Recommended Practices; (and)
...a review of the remaining sections by the...Committee with a view to early action thereon by the Council. 33

Although the Committee did not alter divisional reports, it had a few avenues of action open to it if it wished to effect changes. It could refer back to the Division any report which was inconsistent with its own views or those of contracting States. Alternatively, it could submit the report to the Council with recommendations reflecting such inconsistencies and disagreements, leaving it to the Council to decide which view should prevail.³⁴ The Committee

³²

ICAO Doc 4507, AN/521(3/7/47), paragraph 7.

³³

ICAO Doc 4474, AN/507(19/6/47), paragraph 1.

³⁴

ICAO Doc 6655, C/758(3/3/49), p. 3, paragraph 8.

could also defer action on a report until such time as agreement could be expedited.³⁵

Redrafting of divisional reports was not the function of the Committee but that of the Secretariat. Nevertheless, the Committee was careful not to let redrafts distort the original intentions of Divisions, and in cases where redrafts deviated from the original recommendations of Divisions, the Committee preferred to act on the original divisional report.³⁶

Recommendations of Regional Air Navigation Meetings were treated by the Committee similarly. When conflicting recommendations were made by such meetings, the Committee referred them back to member States concerned.³⁷ Reports of Regional Air Navigation Meetings were not always addressed to the Committee but rather to the Council since there was no clear rule about that. On the whole, the Committee acted with greater hesitation when it had to deal with regional recommendations than with respect to those of Divisions. One of the Committee members asserted that Regional Air Navigation Meetings were of the same status as that of the Divisions.³⁸ The Committee, however, agreed that "...urgent matters

35

ICAO Doc 6138, AN/676(16/9/48), paragraph 2.

36

ICAO Doc 6218, AN/707(19/10/48), in reference to redraft.

37

ICAO Doc 4507, AN/521(3/7/47), paragraph 7.

38

ICAO Doc 4776, AN/555(3/10/47), paragraph 3.

arising out of the Regional Meetings, should be dealt with directly by Council, or by the President authorized by Council or by the President with a select committee authorized by Council."³⁹ As in the case of Divisions, the main function of the Committee with regard to Regional Air Navigation Meetings was that of coordination. The Committee had to examine the over-all effect of regional activities with a view to facilitating universal uniformity wherever and whenever possible.

The Divisions and the Regional Air Navigation Meetings could be considered as the main 'work contractors' of the Committee. Problems referred to the Committee by the Council were usually of too wide a scope to be of a detailed technical nature, being primarily administrative aspects of international air navigation. The Council had constant control on the Committee, with the latter reporting exclusively to the former.⁴⁰ The Council could also put the Committee into action, at any given time, by referring air navigational problems to it.⁴¹

The agenda of the Committee was made up of items proposed by a variety of entities. It included items proposed by Divisions(their reports automatically considered agenda items), Regional AN Meetings, the President of the Council, the Secretary General, member States, and of course the

³⁹

ICAO Doc 5415, AN/624(4/5/48), paragraph 6.

⁴⁰

Interim Agreement, Section 6, paragraph 4.

⁴¹

ICAO Doc 6808-C/791(June 1949), p. 19, paragraph 1.

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Assembly and the Council. The lack of a filtering machinery resulted in the Committee being constantly behind its schedule. A contributing factor to the Committee's lagging behind its schedule was the size of its membership.⁴³

F. CONCLUSIONS

The harshest of critics cannot deny that the Air Navigation Committee had a substantial share in the success of the ICAO. It operated through the formative years of the Organization and had a deep impact on its successor, the Air Navigation Commission. Many of the established practices of the Commission can be traced back to the Committee. The Committee facilitated the adoption of extremely important Annexes and considerably promoted uniformity in the field of air navigation.

The basic deficiency in the Committee's work was the lack of a bold approach to the problems of air navigation. The Committee suffered from justified under-confidence, resulting in a re-interpretation of its functions and improvised adjustments. Criticism of the Committee was often voiced in Council meetings, but little, in a constructive way, was done to remedy the situation. The process of delegating powers

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ICAO Doc 1066, C/79(21/12/45), Section V, paragraph 1.

43

Usually eighteen members. Compare with Article 56 of the Chicago Convention providing that the Air Navigation Commission comprise twelve members.

affecting air navigational matters became meaningful only after the establishment of the Air Navigation Commission, and it is regretful that the Council did not fully utilize this method with respect to the Committee so as to compensate for its technical shortcomings.

On the whole, the ICAO, international aviation and contracting States benefited greatly from the work of the Committee, and bearing in mind all circumstances, the Air Navigation Committee more than justified its existence.

CHAPTER II. THE AIR NAVIGATION COMMISSION

A. CONSTITUTIONAL PROVISIONS

The Air Navigation Commission was established pursuant to the provisions of the Convention on International Civil Aviation signed at Chicago on December 7, 1944.

Article 54(e) of this Convention imposed upon the ICAO council the duty to "Establish an Air Navigation Commission in accordance with the provisions of Chapter X;".

Chapter X of the Convention consists of Articles 56 and 57, the first dealing with the structure and composition of the Commission, the second dealing with its duties. Article 56 provides that:

The Air Navigation Commission shall be composed of twelve members appointed by the Council from among persons nominated by contracting States. These persons shall have suitable qualifications and experience in the science and practice of aeronautics. The Council shall request all contracting States to submit nominations. The President of the Air Navigation Commission shall be appointed by the Council.

Article 57 reads as follows:

The Air Navigation Commission shall:

- (a) Consider, and recommend to the Council for adoption, modifications of the Annexes to this Convention;
- (b) Establish technical subcommissions on which any contracting State may be represented, if it so desires;
- (c) Advise the Council concerning the collection and communication to the contracting States of all information which it considers necessary and useful for the advancement of air navigation.

Another provision of the Convention with a direct bearing on the Commission is Article 55(b) of the Convention.

This Article provides that the Council may expand the Commission's functions by delegating to it duties additional to those included in Article 57 of the Convention.

A further source listing in greater detail the functions and powers of the Commission, may be found in the Commission's Terms of Reference,⁴⁴ which shall be dealt with in the section analyzing the powers and functions of the Commission.

B. THE STATUS OF THE AIR NAVIGATION COMMISSION

The Commission is one of the representative bodies of the ICAO. It is a somewhat unusual body, not being a committee of the Council nor its subsidiary body, yet it is extensively under the control of the Council. The Commission is under duty to "...report directly and exclusively⁴⁵ to the Council." The above quoted Article 57 also provides that the recipient of the Commission's advice would be the Council.

The duty of establishing the Commission and appointing its members resides wholly in the hands of the Council⁴⁶ and it is not clear whether Commissioners are national

⁴⁴

ICAO Doc(revised) 7162, C/825(4/7/51).

⁴⁵

Rules of Procedure of the Air Navigation Commission, ICAO Doc 6901, C/800(8/9/49), Section II, paragraph 1.

⁴⁶

Convention, Art. 54(e) and Assembly Res. A2-8, Doc 7670, p. 73.

representatives or act in an individual capacity.⁴⁷

Although it is the Council which lays down the terms of reference of the Commission, it is doubtful whether the Council can legally revoke or modify powers assigned to the Commission by the Convention.

It would be difficult to define clearly the status of the Commission. Nevertheless it is fair to assume, judging by its functions, that the Commission is a subservient body of the Council, while the Council is under duty to establish such an entity and to entrust it with at least the functions listed in Article 57 of the Convention.

The special status of the Commission is evident when compared with that of the Air Transport Committee provided for in Article 54(d) of the Convention reading:

The Council shall:

... (d) Appoint and define the duties of an Air Transport Committee, which shall be chosen from among the representatives of the members of the Council, and which shall be responsible to it;".

The differences between the Air Transport Committee and the Air Navigation Commission are clear. The definition of the duties of the Air Transport Committee lies completely within the discretion of the Council. The Committee is plainly a subsidiary body of the Council, being composed of Council members. No special qualifications are required from members of

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For further discussion of this matter see next section.

the Air Transport Committee, and as Council members, they are chosen to serve as national representatives and not in an individual capacity.

Attention should also be drawn to a provision making it mandatory upon the Council to "Consider recommendations of the Air Navigation Commission for amendment of Annexes.⁴⁸...." This provision ensures the Commission that its recommendations with respect to Annexes will receive proper consideration.

C. THE COMPOSITION OF THE AIR NAVIGATION COMMISSION

The Air Navigation Commission, as envisaged by the Convention,⁴⁹ is a limited body of twelve members. Although the number of members is set at twelve, the Commission has been operating with only nine members at best. The failure of the Council to appoint the full number of members prescribed by the Convention was partly a consequence of a resolution passed by the Second Assembly, directing the Council to establish the Commission⁵⁰ and stating that the Council "...appoint to the Air Navigation Commission persons from among the nominees of Council Member States;⁵¹". The Council, in pursuance with the above directive, issued invitations to all contracting States, as it was required to do under the Convention when

⁴⁸

Chicago Convention, Article 54(m).

⁴⁹

Ibid., Article 56.

⁵⁰

Resolution A2-8, ICAO Doc 7670, pp. 72-73.

⁵¹

Ibid., paragraph 3.

proceeding to establish the Air Navigation Commission, but at the same time drew the attention of contracting States to Resolution A2-8. By so doing, the Council, in effect, told contracting States that their nominees stood no chance of being appointed to the Commission unless their respective States were Council Members.⁵³ It seems that both the Assembly and the Council acted in contradiction of Article 56 of the Convention. Indeed, this Article empowers the Council to exercise its discretion in the appointment of Commissioners, but only on the grounds of suitable qualifications and experience of nominees. Article 56 states that the Council make appointments from among persons nominated by contracting States and implies discrimination based only on qualifications and experience of nominees. To interpret this Article as permitting the Council to limit appointments to Council Member States only, would be to breach, if not the letter, then at least the spirit of the Convention. It is further contended that the above mentioned paragraph of Resolution A2-8 of the Assembly is inconsistent with the first paragraph of the same Resolution stating that the Council implement Article 56. One cannot implement Article 56 and at the same time impose the restrictions specified in the above Resolution, without breaching the Article. It would be reasonable to assume that, to the extent to which Commissioners had been appointed

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Chicago Convention, Article 56.

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ICAO Doc 6544-C/742(Feb. 1949), p. 74.

pursuant to Resolution A2-8, the appointments were legally invalid and void and the Commission improperly constituted.

The Council, however, did embark upon the road prescribed by the above Resolution, and concluded the appointment of nine Commissioners. Having no nominees from contracting States which were not Council Member States, the Council encountered difficulties in filling the three remaining vacancies. With no other choice left, the Commission has been operating as an incomplete body, constituting another case of disaccord with Article 56 of the Convention. The legality of establishing the Commission with only nine members was questioned in the Council,⁵⁴ but the Council felt that the Commission was legally constituted since the Council was taking action to secure three more appointments.⁵⁵ The filling of the three remaining vacancies required a change of policy, this time in the right direction, and the Assembly, apparently having second thoughts as to the legality of Resolution A2-8, remedied the situation with a new resolution.⁵⁶ Resolution A4-4 directed the Council to secure nominations from all contracting States and "...not to discourage in any way non-Council Member States from making nominations."⁵⁷ Although

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ICAO Doc 6575, C/748(21/2/49), pp. 3-9.

⁵⁵

Ibid.

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Fourth Assembly, Resolution A4-4, ICAO Doc 7670(1956), p. 133.

⁵⁷

Ibid., see also ICAO Doc 6576, C/749(21/2/49), pp. 2-10.

the legal basis was thus laid down for the proper appointment of Commissioners, the Commission is still short of complete membership and the Assembly had to resolve again:

To urge all contracting States, particularly those not represented on the Council, to make further efforts to nominate candidates for membership in the Commission, in order that the Commission may attain full strength when it reconvenes after the Tenth Session of the Assembly, special attention to be drawn to the advisability of wider geographical representation through the presentation of nominations by contracting States in regions not now represented in its membership.... 58

As stated above, the only grounds for discrimination between nominees are their qualifications and experience in the science of aeronautics. The Convention does not specify the qualifications required, and it is left to the Council to decide what the proper qualifications are. One representative on the Council indicated the trend as to appointment of Commissioners in defining the Commission as "...a body of men of very high scientific culture, with practical experience in air navigation but not specialists in any field of aeronautical science."⁵⁹ A view expressed six years later repeated the same approach as follows: "While Commissioners might be specialists in particular fields, they had been appointed because of their general knowledge of aviation matters which qualified them for the very diversified work of the Commission."⁶⁰

58

Tenth Assembly, Resolution A10-9, clause (1), ICAO A10-WP/148, P/15(16/7/56), p. 6.

59

ICAO Doc 6131, C/689(8/9/48), paragraph 79, p. 13.

60

ICAO Doc 7490-4, C/873-4(5/10/54), paragraph 33, p. 49.

The Air Navigation Commission was designed to deal with a great variety of air navigational matters, therefore the approach of the Council to the question of qualifications required from Commissioners is very sound. The Commission is not a panel of specialists but a body of people who can understand the conclusions arrived at by specialists, approaching such conclusions with constructive criticism.

The status of a Commissioner is one of the points still unclear. This problem has been a subject of controversy in the Council. The Convention does not shed any light on this matter. One view held that, while nominations for membership in the Commission were submitted by States, the Council appointed the national nominees as individuals, and once appointed, the latter did not serve as representatives of their States but as qualified individuals appointed by an international body, that is, the Council.⁶¹ The opposing view, apparently held by the representative of the United States, was that the Commissioners act as representatives of their respective States.

The President of the Council, surveying this problem, summarized what was in the mind of those responsible for the drafting of the provisions of the Convention relating to the Air Navigation Commission as follows:

⁶¹

ICAO Doc 7177-7, C/828-7(16/10/51), paragraph 78 and ICAO Doc 7037-4, C/814-4(22/9/50), paragraph 21, p.50.

There had not been complete unanimity at Chicago among those who favoured the Commission. Some had thought it should have been made fully international, with its members paid by the Organization. The majority, however, did not consider that there was necessarily any conflict between the status of the Commission as an international body and the payment of its members from national funds by the States by which they were nominated....It had not been expected, as he had understood the views held at Chicago, that the members of the Commission would act in a purely international capacity. They would have a dual responsibility, national to the States which had nominated them and international to the whole group of States represented by the Council which had elected them. 62

It would be difficult to expect Commissioners to detach themselves from national interests. On the other hand, it should be mentioned that the Commission succeeded in developing a commendable spirit of international cooperation, the Commissioners rarely acting as national representatives, but rather as members of a body devoted to the promotion of air navigation internationally. It should be added that the Chairman of the Commission is elected by the Council,⁶³ hence he at least may be considered a representative of the international community rather than as a national representative. The Chairman's election is, in effect, a double act by the Council, which elects him first as a Commissioner, and then as a Chairman.

62

ICAO Doc 5286, C/652(13/4/48), paragraph 4, p. 2.

63

ICAO Doc 7162(revised), C/825(4/7/51), paragraph 6.

D. CONTROL OF THE COUNCIL OVER THE COMMISSION

We have seen above that the Commission has a peculiar status in the Organization, not being a subsidiary body of the Council, and yet extensively under its control.

The Council exercises control over the work of the Commission through its power to approve or disapprove the agenda⁶⁴ and work programme of the Commission. It should be noted here that, although the Commission was granted the power to approve the Technical Work Programme of the Organization,⁶⁵ it has to submit its own agenda to the Council for approval.

A further control, of a more basic nature, is the power of the Council over the terms of reference of the Commission. Paragraph 12 of these terms reads: "The Council shall from time to time examine the functions and terms of reference of the Air Navigation Commission and may amend such functions and terms of reference at any time."⁶⁶ This should not be interpreted as enabling the Council to strip the Commission of the powers entrusted to it by the Convention, but a look at Article 57 will convince us that the Commission can achieve practically nothing without action by the Council on its recommendations. The Council has also full control over the

⁶⁴ ICAO Doc 6901, C/800(8/9/49), Rules of Procedure of the Air Navigation Commission, Section VII, paragraph 2.

⁶⁵ ICAO C-WP/2040, Appendix 'A', as amended and approved by the Council on November 22, 1955(C-XXVI-12), paragraph 5.2.

⁶⁶ ICAO Doc 7162, C/825(4/7/51), Terms of Reference, para. 12.

Rules of Procedure of the Commission and may suspend or amend⁶⁷ them at any time.

A very important factor in making the Commission an effective body is the practice which the Council has employed of delegating some of its powers to the Commission. Such delegations of authority are completely within the discretion of the Council and can be revoked by it at any time.⁶⁸

The over-all control which the Council has over the Commission is indicated by the very fact that the Commission is primarily not an action-taking body but an advisory organ. The Commission is under duty to "...report directly and exclusively to the Council, except when otherwise determined by the Council."⁶⁹

As mentioned above, the Council extended the powers of the Commission by delegating to it authority in certain matters. The Commission, however, has imposed upon itself two important restrictions with respect to delegated authority: (a) When a subject, falling within the Commission's delegated powers, is controversial, or when the opinions of States and the opinions of the Commission regarding this subject are

⁶⁷ ICAO Doc 6901, C/800(8/9/49), Section 12, paragraph 1.

⁶⁸ Chicago Convention, Article 55(b).

⁶⁹ ICAO Doc 6901, C/800, (8/9/49), Section II, paragraph 1.

divided, the Commission will refer the matter to the Council.⁷⁰

(b) The Commission agreed that it should not be granted powers enabling it to impose obligations upon States, recognizing⁷¹ that such powers should rest with the Council.

The relation between the Council and the Commission will be further clarified when the different functions and powers of the Commission are reviewed later in this paper.

E. THE NATURE OF THE POWERS AND FUNCTIONS OF THE COMMISSION

There are several ways in which the powers and functions of the Commission may be classified. These include classification by source, and classification by nature of action.

(a) Classification by Source

This classification is the broadest of all, consisting of two categories of powers:

(i) Powers granted to the Commission by the instrument providing for its establishment, embodied in Article 57 of the Convention.

(ii) Powers granted to the Commission by the Council under Article 55(b) of the Convention.

Article 57 of the Convention enumerates two types

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ICAO AN-WP/MIN, XX-21(21/11/55), p. 113.

⁷¹

ICAO AN-WP/MIN, XX-3(3/10/55), paragraph 6, p. 12.

of powers, advisory and organizational. The advisory powers are those with respect to modification of Annexes and collection and dissemination of information concerning air navigation. The organizational powers include the establishment⁷² of technical subcommittees, better known as Divisions. However, this last power is of no great significance at present since the Divisions have already been established.⁷³ This situation was reflected in the change of the terms of reference of the Commission. While the original terms of reference of the Commission specified that the Commission may "...recommend to the Council the establishment of technical divisions...",⁷⁴ the terms of reference replacing the original ones omitted this⁷⁵ erroneous provision substituting for it a provision empowering the Commission to make recommendations for the convening of Divisions.⁷⁶ It is contended that the original provision was legally indefensible since Article 57(b) of the Convention granted the Commission the power to establish Divisions, not merely to recommend their establishment. The Council, however, has restricted the Commission's power to establish Divisions, by providing that the "Technical subcommissions of the Commission, called 'Divisions', may be established by the

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ICAO Doc 1016-C/77(12/12/45), Ninth Meeting and ICAO Doc 6901, C/800(8/9/49), Section VI, paragraph 1.

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The only Division which has come into existence, following the establishment of the Commission, is the AIS Division.

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ICAO Doc 6544-C/742(Feb. 1949), p. 71.

⁷⁵

ICAO Doc 7162(revised), C/825(4/7/51).

⁷⁶

Ibid., paragraph 1.3.3 .

Commission, subject to approval by the Council."⁷⁷

Delegated authority, pursuant to Article 55(b) of the Convention, constitutes a substantial part of the Commission's range of powers. The Commission's terms of reference⁷⁸ consist partly of delegated authority and partly of amplifications of the powers prescribed by Article 57 of the Convention. Other delegations of authority were made through separate resolutions of the Council. A cumulative statement of matters on which the Commission is authorized to take⁷⁹ action was approved by the Council on November 22, 1955.

It is noteworthy that some of these delegated powers enable the Commission to take action which is more than advisory, some of them involving definitive action on regulatory⁸⁰ material in its final form. Other delegated powers deal with new forms of deliberative bodies, administrative functions and the utilization of the Secretariat.

It should be mentioned here that the Commission deliberately imposed upon itself two restrictions of principle with respect to delegated powers, as stated previously.⁸¹

⁷⁷ ICAO Doc 6901, C/800(8/9/49), Section VI, paragraph 1.

⁷⁸ ICAO Doc 7162, C/825(revised)(4/7/51),

⁷⁹ ICAO A.N.C. Procedural Documents(Montreal 1956), p. III-1.

⁸⁰ Ibid., paragraphs 3.6 and 4.1 .

⁸¹ Supra,, p. 33.

(b) Classification by Nature of Action

The Commission, though not a subsidiary body, is a subservient body of the Council, constantly advising and guiding it in matters of air navigation.⁸² In the most important matters, those concerning the adoption of technical Annexes, the responsibility lies with the Council.⁸³ The other matter upon which the Council takes action, is the approving of directives to Divisions, and the dates and sites of sessions of the Divisions.⁸⁴ The powers of the Commission in these matters consist of taking action of an advisory nature. Although all the provisions of the Commission's terms of reference deal with such powers, the delegated authority covers matters on which the Commission is permitted to take definitive action,⁸⁵ including organizational action, as with respect to the establishment of panels and Regional Air Navigation Meetings,⁸⁶ consequential amendments of secondary regulatory material,⁸⁷ and publication of technical guidance material.

The Commission also exercises, by virtue of delegated authority, extensive control over Technical Meetings and their

⁸² ICAO C-Draft Minutes, XIV(3)(22/10/51), p. 33.

⁸³ Chicago Convention, Article 37.

⁸⁴ ICAO Doc 7162(revised), C/825(4/7/51), paragraph 1.3.3 .

⁸⁵ ICAO C-WP/2040, Appendix 'A', as amended by Council on November 22, 1955(C-XXVI-12), paragraphs 1 and 3.

⁸⁶ Ibid., paragraphs 4.1 and 3.6 .

⁸⁷ Ibid., paragraph 4.2

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scope of work. The Commission is the recipient of reports
of Technical Meetings and panels, before such reports are
submitted to the Council for action. It filters the reports
and takes action on those parts of the reports falling within
89
its jurisdiction.

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Ibid., paragraphs 1, 2, and 3.

89

Ibid., paragraphs 2 and 3.

CHAPTER III. THE TECHNICAL WORK PROGRAMME

The work of the International Civil Aviation Organization can be roughly divided into two categories. The first category, which does not fall within the scope of this paper, concerns matters relating to air transport. The term 'air transport' should not be taken as synonymous with the term 'aviation', since it explains only a part of the latter term. By 'air-transport' I refer to those matters directly related to the moving of cargo and people by air from one point to another. Essentially these matters are of an economical and administrative character, dealing with passengers, cargo, immigration, customs, and so forth. It might be said that air transport matters deal with the utilization and exploitation of the instruments of civil aviation.

The second category, with which this paper is concerned, deals with matters related to air navigation. The term 'air navigation' refers to those matters dealing with technical aspects of aviation, matters that cover the aircraft and its equipment, its crew, and the facilities serving it.

The technical work of the Organization, concerned with matters of air navigation, constitutes the bulk of ICAO's work. Most of the regulatory material of the Organization, for example, deals with air navigation. The Secretariat is

largely a body of internationally recruited technical experts, and most of the meetings organized by the ICAO are of a technical nature.

Hence the task of organizing the technical work, reviewing and remedying technical shortcomings of international civil aviation, and classifying air navigational subjects and material, became a major concern of the Organization. The need for organizing the technical work called for a special framework, a system of reference and priorities, and an organizational file and reservoir from which topics are constantly drawn for study and subsequent action. These functions are fulfilled by the Technical Work Programme of the Organization.

The following passage describes clearly the composition and the nature of the Work Programme:

The Organization currently maintains a work programme called the "Technical Work Programme of ICAO" embracing all facets of the activities of ICAO in the air navigation field. The items of the Technical Work Programme are derived from the submissions made to ICAO by Contracting States individually, or collectively at air navigation meetings, by other deliberative bodies of the Organization and by the Secretariat. The programme contains only those items which have been approved for inclusion by the Council or by the Air Navigation Commission on delegated authority. When technical meetings are convened, appropriate recommendations of past meetings which are included as items in the Technical Work Programme, but on which action has not yet been completed, may be presented to such meetings for recommendation regarding any future action, including suggestions for possible additions. 90

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Directives to ICAO Technical Meetings and Rules of Procedure for their Conduct, ICAO Doc 7689(May 1956), Part II, paragraph 2, p. 5.

The role of the Commission in directing the technical work of the Organization is of the greatest importance. Authority has been delegated to the Commission by the Council to amend the Work Programme, provided the Council is informed of any substantial change.⁹¹ The Council, however, has not altogether relinquished its control over the Work Programme, exercising this control through its powers of discretion with respect to the approval of the sessional work programmes of the Commission and through budgetary powers.⁹² Furthermore, the Commission has a continuous function with regard to the Work Programme, reviewing it and deciding which items have achieved maturity so as to be discussed and acted upon.⁹³

The Commission had divided the Technical Work Programme into three categories, breaking it down into work programmes of specific bodies:

- (i) the Work Programme of the Commission;
- (ii) the Technical Work Programme of the Divisions, consisting of items approved by the Commission, and stemming from Council directives, and from proposals of the Commission, Regional Air Navigation Meetings, contracting States and the Secretary General; and
- (iii) subject list of topics not included in the above

⁹¹

ICAO Doc 7525-12, C/875-12(25/1/55), pp. 157-161.

⁹²

Ibid., paragraph 15, p. 158.

⁹³

ICAO Doc 7689, Part II, paragraph 3, p. 5.

94
two categories.

The above division of the Work Programme was replaced by a system of priorities. This classification also consists of the following three categories:

1. Category 'A': consisting of items considered "Active", such as items in the work programme of the Commission itself and other bodies, likely to require action by the ICAO in the foreseeable future.
2. Category 'B': consisting of items not mature enough to be included in Category 'A' at present, but likely to become so as a result of future development in international aviation.
3. Category 'C': consisting of items of secondary status calling for action by the Secretariat consequential to Council decisions. These items are also called 'Service
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Items'.

The Seventh Assembly limited the scope of the Work Programme by resolving:

(1) That the Council establish definite and strict criteria for the determination of items to be included in the work programmes of the Air Navigation Commission and its specialist activities, and in the agenda of air navigation conferences and Division meetings, the criteria being based on the existence of specific problems of an international character which are both worldwide in scope and sufficiently

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ICAO AN-WP/MIN, XVI-7(6/7/54), Appendix B, p. 42.

95

ICAO Doc 7525-12, C/875-12(25/1/55), pp. 157-161.

mature for discussion with a view to a positive solution;"⁹⁶ .

The limitations imposed by the above Resolution have had the effect of excluding from the Work Programme items that are of no immediate importance.

A rigid and literal interpretation of resolving clause(1) would mean that no problem, however urgent, can go on the technical work programme of the Organization or in agendas for international discussion, either at the Commission or Division level unless agreement on a solution can already be envisaged. 97

The Assembly, recognizing the damage caused by such restrictions, remedied the situation by a subsequent resolution reading:

- (a) That the technical work programme of the Organization may include any subject of an international character that falls within the competence of the Air Navigation Commission and the study of which appears likely
- (i) to produce a positive solution of a problem, or
 - (ii) to facilitate a subsequent solution of a problem, or
 - (iii) to supply contracting States with useful data; . 98 .

This provision greatly expands the scope of work of technical meetings, permitting them to consider and study potentially important subjects, even if no immediate action is to be recommended thereupon.

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Seventh Assembly, Resolution A7-7, clause(1), ICAO Doc 7670 (Montreal 1956), p. 207.

⁹⁷

ICAO A10-WP/15, TE/1, March 20, 1956, paragraph 27.1 .

⁹⁸

Tenth Assembly, Resolution A10-15, ICAO A10-WP/148, P/15, July 16, 1956, p. 9.

CHAPTER IV. THE TECHNICAL MEETINGS

A. GENERAL

The technical meetings of the Organization are undoubtedly a major factor in the success of the ICAO. The effectiveness and quality of ICAO's work in the technical field depend largely on the level of the deliberations in these meetings and the extent of agreement secured.

The primary technical meeting is that of the Division, the other types of technical meetings arising out of it as further developments. Hence the term 'Divisional Type Meetings' refers to Division Meetings, Special Meetings and Air Navigation Conferences. Consequently, the powers belonging to the Commission with respect to Divisions, have been extended to embrace also the newer forms of technical meetings.

The major objective of a technical meeting is:

...to contribute within the terms of reference established by its agenda, to the safety, regularity and efficiency of international civil aviation. This objective is achieved by:

- a) preparing recommendations for Standards and Recommended Practices and for Procedures for Air Navigation Services, or for amendments thereto;
- b) preparing other recommendations for action by Contracting States or the Organization;
- c) exchanging views on specific problems of current interest.

The technical meetings are deliberative entities made up of national experts "...with a view to arriving at the largest possible measure of technical agreement....At this level national views might be expressed, although preferably the expression of opinion should be purely that of experts."¹⁰⁰

The technical meetings may be divided into two categories, those dealing with worldwide air navigation matters and those limited to regional air navigation matters. Regional Air Navigation Meetings are discussed in the chapter devoted to regional organization. The following remarks, therefore, refer to the technical meetings dealing with worldwide air navigation matters. Before dealing with the different types of technical meetings, it would be worthwhile to sum up the elements common to all technical meetings, other than Regional Air Navigation Meetings.

Technical meetings have no corporate entity or continuous existence. The element of continuity is provided¹⁰¹ by the corresponding sections in the Secretariat.

The participation in the technical meetings is¹⁰² open to all contracting States. This arrangement partly

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ICAO Doc 6655, C/758(21/3/49), paragraph 66, p. 14.

101

ICAO Doc 7215-AN/858(1951), p.7 and the Report of the Secretary General, ICAO C-WP/597(23/3/50).

102

Chicago Convention, Article 57(b) and ICAO Doc 7689, p. 11.

103

compensates for the limited membership of the Commission and facilitates the promulgation of regulatory material based on preliminary agreement between contracting States.

Preparations for a technical meeting require meticulous planning far in advance of the actual convening of the meeting. Normally, advance planning starts about two years previous to the meeting.¹⁰⁴ The decision to convene a technical meeting is tightly connected with the degree of maturity achieved by subjects included in the Work Programme.¹⁰⁵

The nature and range of items recognized as mature enough for discussion and action determine the type of meeting to be convened, or may instead indicate that another method for discussing the subjects, for instance, correspondence with contracting States, should be employed.¹⁰⁶

The frequency of technical meetings is regulated by an Assembly Resolution reading:

...air navigation conferences and Division meetings shall not normally exceed two in number in any one calendar year, unless otherwise warranted by special circumstances, and, further, that in the scheduling of meetings, consideration

103

ICAO Doc 6544-C/742(Feb. 1949), p. 74.

104

ICAO Doc 7689(May 1956), Part II, paragraph 3.

105

Ibid.

106

Ibid.

at separate meetings within any period of twelve months of subjects falling within the same technical field should be avoided; 107.

The Commission plays a decisive role in the planning and the convening of technical meetings. From the initial consideration of items mature for discussion to the process of reviewing reports of technical meetings and recommending action thereupon to the Council,¹⁰⁸ the Commission has a constant responsibility in regard to technical meetings.

The initial step, which is one of the Commission's functions, is the determining and formally recognizing of those Work Programme items that have acquired maturity, thus making them eligible for consideration by a technical meeting of a specific type.¹⁰⁸ The recognition of such a situation would then become the basis for the Commission's recommendation to Council to convene a technical meeting at a given time and in a given place.¹⁰⁹ The final decision as to the convening of a meeting rests with the Council, but it is decisively affected by the Commission's recommendations.

The second step normally taken by the Commission is the assignment to the technical meeting of the work to be done by it. The agenda of the technical meeting is the

107

Tenth Assembly, Resolution A10-15, paragraph (3)(d).

108

ICAO Doc 7689, Part II, paragraph 3.

109

ICAO Doc 7162(revised), C/825(4/7/51), paragraph 1.3.3 .

instrument defining its scope and range of work, and it is the responsibility of the Commission to determine and approve¹¹⁰ this agenda. The preparation of a technical meeting agenda is a rather elaborate matter. Although discretion for the final approval of the agenda is vested in the Commission, the latter consults extensively with contracting States, soliciting their views on the agenda items and the order of¹¹¹ priority to be assigned to them. On the basis of these consultations, the Commission drafts a final agenda, submitting it to contracting States at least six months before¹¹² the convening of the meeting. The final agenda is accompanied by a document entitled "Explanation of Agenda Items" which, as is evident from its title, aims at clarifying and defining agenda items and specifying action expected from¹¹³ the technical meeting. This practice pursues and conforms to the policy adopted by the Assembly, which resolved:

That the Council study the methods of improving the work of the Divisions, particularly:

- (a) by establishing sufficiently precise terms of reference for each Division to indicate the scope of its work while ensuring that all air navigational problems are encompassed by the Organization;
- (b) by establishing each Division's agenda in a manner sufficiently explicit to define the problems that are to be studied and to indicate to States the kind of experts that they should send to a Divisional meeting; 114.

The functions of the Commission in regard to technical meeting:

110

Ibid.

111

ICAO Doc 7689(May 1956), Part II, paragraph 4.

112

Ibid.

113

Ibid.

114

Second Assembly, Recommendation A2-Rec.3, ICAO Doc 7670, p. 101.

agendas, which are also in effect their terms of reference, vest in the Commission a measure of considerable control over the outcome of the meetings. The Commission may also add items to the agenda of a technical meeting after sub-¹¹⁵mission of the final agenda, and may "...give directives for the conduct of the meeting additional to standing directives approved by Council."¹¹⁶

The Seventh Assembly imposed limitations on the scope of the agenda of technical meetings.¹¹⁷ These limitations severely impeded the conduct of studies of technical items by technical meetings, restricting these meetings to items whose solution was foreseeable. The Tenth Assembly realized that progress in air navigation required a liberal revision of this policy and resolved:

That the agenda of air navigation conferences, Division meetings, special meetings or panels of experts may include, or consist solely of, items limited to an exchange of views when discussion of such items would be profitable. Plans for the discussion of these items should be well organized and the time allotted should not be detrimental to the completion of items of higher priority; 118.

The substantial work of the Commission begins, however, with a review of the reports of technical meetings. As a matter of practice, these reports are addressed to the

115

ICAO Doc 7689(May 1956), Part II, paragraph 4 and Part III(6).

116

ICAO C-WP/2040, Appendix 'A', paragraph 1.3 .

117

Supra., pp. 42-43.

118

Tenth Assembly, Resolution A10-15, paragraph (3)(b).

the Commission. They are not considered definitive until¹¹⁹
 reviewed by the Commission and acted upon by the Council.

The power to take formal and definitive action with respect
 to these portions of the reports dealing with Standards and
 Recommended Practices and Procedures rests exclusively with¹²⁰
 the Council by virtue of the Convention, but the Commission
 is empowered to:

...examine the recommendations emanating from the meeting
 with a view to:

- (a) determining those upon which Council has not delegated
 authority to the Air Navigation Commission to act and
 proposing action accordingly, and¹²¹
- (b) initiating and/or completing action on the remainder.

The process of reviewing a report of a technical
 meeting and acting upon the recommendations therein, is
 often a lengthy and elaborate matter. Recommendations of
 technical meetings relating to Standards and Recommended
 Practices and Procedures assume a special place in the delibera-
 tions of the Commission, the latter consulting contracting¹²²
 States before submitting its recommendations to the Council.
 Although the Commission's recommendations have an important
 effect upon the deliberations in the Council, the Commission
 is normally inclined to preserve the original intentions
 and conclusions of the technical meeting when submitting

119

ICAO Doc 7689(May 1956), Part II, paragraph 8.

120

Chicago Convention, Article 54(1).

121

ICAO C-WP/2040, Appendix 'A', paragraph 1.4 .

122

ICAO Doc 7689(May 1956), Part II, paragraph 8.

the report and its recommendations for action to the Council. This enables the Council to have a complete picture of how and where the views of the Commission differ from those of the technical meeting. Hence the Commission's review of a technical meeting report normally consists of the following five phases:

1. The report is examined by the Commission so as to separate recommendations on which the Commission has authority to take action from those on which action rests with the Council.
2. The Commission considers comments and proposals for action with respect to recommendations upon which it is not itself empowered to act. These recommendations are usually related to Standards and Recommended Practices and Procedures (PANS).
3. The proposed Standards and Recommended Practices and Procedures, as modified in the light of the Commission's preliminary review, are transmitted for comment to contracting States as the Commission's proposals.¹²³
4. The Commission studies the comments of contracting States and "...wherever, in the opinion of the Commission there exists a sound basis for any proposed modifications, the relevant draft specification is revised accordingly."¹²⁴
5. The preparation of the final draft which is to be submitted to the Council for action.

¹²³

ICAO Doc 7689 (May 1956), Part II, paragraph 8, p. 9, see also ICAO AN-WP/MIN, IX-11 (19/3/52), paragraph 8, p. 48

¹²⁴

ICAO Doc 7689 (May 1956), Part II, paragraph 8, p. 9.

It would be fair to say that the technical meetings contributed the lion's share to the establishment of a world-wide system of air navigation regulations. Although the meetings were sometimes hampered by divergent national interests, they have emerged as very efficient instruments for the processing of regulatory material. The flexibility of the technical meetings have enabled the Organization to cope with developments in civil aviation.

B. THE DIVISIONS AND THE COMMISSION

'Division' is the title adopted to denote the basic type of technical meeting. Formally Divisions are subcommissions¹²⁵ of the Commission established under the Convention.

The Convention does not define the functions of the Divisions¹²⁶, but as pointed out above, these entities were assigned the function of originating Annexes and other technical regulations. Hence the Divisions acquired an importance of far greater proportion than the title 'subcommissions' suggests.

At present there are eleven Divisions in existence, each of them assigned to a specialized field of air navigation. Corresponding sections exist in the Secretariat providing the nucleus and element of continuity for the work of the Divisions.

¹²⁵

Chicago Convention, Article 57(b) and ICAO Doc 7215-AN/858 (1951), p. 6. See also ICAO Doc 7689(May 1956), p. 3.

¹²⁶

Supra, , p. 12-13.

The existing technical Divisions represent eleven specialized fields of air navigation classified as follows:

1. AGA - Aerodromes, Air Routes and Ground Aids Division.
2. AIG - Accident Investigation Division.
3. AIR - Airworthiness (including Aircraft Nationality and Registration Marks) Division.
4. COM - Aeronautical Telecommunications and Radio Aids to Air Navigation Division.
5. MAP - Aeronautical Maps and Charts Division.
6. MET - Meteorological Division.
7. OPS - Operations Division.
8. PEL - Personnel Licensing Division.
9. RAC - Rules of the Air and Air Traffic Control Division.
10. SAR - Search and Rescue Division.
11. AIS - Aeronautical Information Services Division.

127

Divisions normally report their recommendations to the Commission. In the past, such Divisions' reports were in effect draft Annexes, and their formulation required either efficient preparatory work prior to the convening of the Division, or an increased number of Division meetings. Reports of Divisions, before reaching the stage of adoption by Council, are extensively examined by the Commission and then submitted to the Council with appropriate recommendations. It should be noted that the Commission modifies these reports only when absolutely necessary, doing its utmost to reconcile its views

127

ICAO Doc 7689(May 1956), p. 3.

with those expressed by the Division.

The initial work of the Divisions was completed with the adoption of the technical Annexes, with the result that their convening became no longer an urgent necessity. The fact that Division meetings are highly specialized and confined to specific issues in the field of air navigation makes their convening too costly in the eyes of many States, especially in view of the fact that results are limited to a few specific problems. Hence representation of States in Division meetings was rather poor and irregular, and the Assembly was obliged to urge States to participate more regularly. Subsequently it was deemed necessary to develop a new type of technical meeting which would handle aspects of air navigation in a more comprehensive way and secure better State representation. The instrument considered most suitable to fulfill these requirements was the Air Navigation Conference. This development does not, however, mean that the Divisions are, for all practical uses, dispensed with. The Assembly explicitly stated that:

...while the air navigation conference concept is recognized as a desirable method of co-ordinating problems in related or associated technical fields, the Council continue to make use of Technical Division meetings...as most appropriate to the subject matter under consideration; 131 .

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ICAO AN-WP/MIN, IX-9(25/2/52), paragraph 11, p. 41, and Fourth Assembly Resolution A4-11, ICAO Doc 7670, p. 136.

129

First and Fifth Assembly Resolutions A1-24 and A5-4, ICAO Doc 7670, p. 21 and p. 156.

130

Seventh Assembly, Resolution A7-7, ICAO Doc 7670, p. 207.

131

Tenth Assembly, Resolution A10-15, ICAO A10-WP/148, p. 9.

Since subjects under consideration at present are not the formulation of new Annexes limited to specific problems, one cannot avoid presuming that there is a definite shift in favour of the use of Special Meetings and Air Navigation Conferences, with the result that the conventional Division meeting will not be employed in the future as extensively as it has been in the past. The change in emphasis and policy with respect to technical meetings is well illustrated in the following passage:

With the adoption and implementation of annexes and other sets of specifications prepared by the Divisions, the technical problems that subsequently arose within the sphere of air navigation were not always appropriate to the meeting of one particular Division. There was an increasing tendency for problems to arise which required consideration of aspects covered by more than one Division and the co-operation of experts specializing in different fields. The reference of such problems from one Division to another had often, in the past, resulted in delays and conflicting recommendations. On the other hand problems of a more specific character were sometimes encountered for which a Division Meeting was unwieldy and which could be solved only by the concentration of specialists upon the particular problem. 132

C. SPECIAL MEETINGS

The concept of Special Meetings was introduced to cover cases where an agenda of a technical meeting was "...of a limited scope relating to a particular subject within one or more technical fields."¹³³ This should not be interpreted¹³⁴ to mean joint meetings of two or more Divisions.

¹³²

ICAO Doc 7689(May 1956), Part I, p. 4.

¹³³

Ibid.

¹³⁴

ICAO AN-WP/MIN, V-29(27/11/50), paragraph 4, p. 236.
See also Assembly Resolution A4-11, ICAO Doc 7670, p. 136.

Although the Special Meeting employs specialists of two or more Divisions, the specialists do not owe any 'allegiance', so to speak, to the Divisions specializing in their respective fields. Rather, they confer on a different organizational basis.

A Special Meeting would be convened when the subject is limited but approachable from more than one angle. A complete study of the subject and its different aspects would require its examination by different groups of specialists, in order to provide an all-around coverage of the problem. Therefore, the solution expected from a Special Meeting is a comprehensive one.

Notwithstanding the fact that, technically, a number of Divisions can undertake the study of composite technical subjects, experience has indicated that resort to such a course is not profitable.¹³⁵

The technical Special Meeting should not be confused with a regional Special Meeting. The same term is used, on a regional basis, to describe a limited regional meeting convened to deal with a specific problem existing within the region and requiring urgent action.¹³⁶ A technical Special Meeting, like a Division meeting, deals only with

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Fourth Assembly, Resolution A4-11, ICAO Doc 7670, p. 136.

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ICAO AN-WP/MIN, XIV-3(19/10/53), paragraph 5, and Resolution A7-11, paragraph 6, ICAO Doc 7670, p. 210.

worldwide problems.

D. THE AIR NAVIGATION CONFERENCE

The Air Navigation Conference concept marks a further evolution of the Special Meeting, its creation promoted by virtue of the same reasons that dictated the establishment of Special Meetings. Like the Special Meeting, the Air Navigation Conference is a Division type meeting.

By definition, the Air Navigation Conference is a meeting which "...will normally be convened if the agenda indicates a number of inter-related problems falling within more than one technical field...."¹³⁷

For further clarification, a comparison with the Special Meeting concept is worthwhile. The Special Meeting, as indicated above, deals with a particular subject, while the Conference deals with a wider range of subjects. Their common element is that both types of meetings deal with subjects requiring the attention of more than one kind of specialist.

Because of the wider range of problems on its agenda, the Conference is a technical meeting with the largest representation of a senior nature.¹³⁸ This factor makes the

¹³⁷

ICAO Doc 7689(May 1956), p. 4.

¹³⁸

ICAO AN-WP/MIN, XII-4(4/2/53), p. 12.

Conference very effective. The Commission observed that "...conferences would prove to be more efficient than divisional meetings without increase in cost, one reason being that there would be increased representation from smaller States."¹³⁹

The Commission seemingly attributed more importance to Conferences than to any other technical meeting, holding the view that it could not reject recommendations emanating from an Air Navigation Conference, although it might interpret¹⁴⁰ them.

At one point, the view was voiced at the Council that the Conference concept "...was being superimposed on the old Divisional system."¹⁴¹ This, however, was not the intention in evolving the Conference concept, as the Assembly¹⁴² has made clear.

E. PANELS

Panels, although not in the category of technical meetings, are another device for the finding of solutions to air navigation problems. The Panel was devised to deal with particular problems requiring study by a group of highly specialized experts.

¹³⁹

Ibid., paragraph 6.

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ICAO AN-WP/MIN, XIV-22(3/12/53), paragraph 22, p. 100.

¹⁴¹

ICAO Doc 7390-4, C/861-4(5/8/53), paragraph 50, p. 54.

¹⁴²

Resolution A10-15, supra p. 54.

The following lines summarize the advantages of panels and the functions they fulfill:

The device of panels of experts appears to offer a very convenient and comparatively economical means of providing for the early consideration and assessment of future problems before they become acute and permits any State able and desiring to participate to be in at the beginning. Panels, however, are designed to accomplish the initial groundwork for later formal meetings and are not specifically directed towards the wide exchange of views. 143

The Commission holds wide powers with respect to panels. It exercises exclusive control over them, having authority:

- 2.1 To establish a Panel although Council should be notified when the ANC has decided to establish a panel.
- 2.2 To determine its terms of reference, including its scope and manner of operation and to give directives as necessary (C-XXII-4).
- 2.3 To approve the Agenda for meetings of the Panel, if any (C-XXII-4).
- 2.4 To convene, and to determine the date of a Panel meeting subject to integration with the Meeting Programme of the Organization made in consultation with the Secretary General.
- 2.5 To establish the place of meeting.
- 2.6 To examine the recommendations emanating from the Panel with a view to:
 - (a) determining those upon which Council has not delegated authority to the Air Navigation Commission to act and proposing action accordingly (C-XXII-4), and 144
 - (b) initiating and/or completing action on the remainder.

As evident from the above quoted provisions, the Commission has, with respect to panels, powers which it does not entertain with respect to technical meetings. The Commission does not have to effect action with regard to Panels

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ICAO A10-WP/15, TE/1(20/3/56), paragraph 28.2, p. 12.

144

ICAO C-WP/2040, Appendix 'A', as approved by the Council on November 22, 1955 (C-XXVI-12). See A.N.C. Procedural Documents (Montreal 1956), p. III-1.

by the exercise of advisory powers but can take direct action. Furthermore, the Commission is continuously informed by the¹⁴⁵ secretary of the Panel of the progress made by the Panel.

The Commission did not promulgate "...any rigid rules to govern the establishment and functioning of panels, believing that adequate freedom in devising the means and¹⁴⁶ methods for a study of a given problem must be preserved."

Participation in panels, as in technical meetings, is open to all contracting States. Although the type of expert required on the Panel is specified by the Commission in the State Letter announcing the establishment of a panel, it is completely within the discretion of the appointing State¹⁴⁷ to choose the expert. The fact that participation in a panel is thus open does not necessarily make it a body with extensive representation. Panels usually consist of a small number of experts of very high calibre, because not all the States can contribute experts competent enough to deal with¹⁴⁸ the highly specialized problems. In the case of panels, the limited representation is a blessing.

The Panel is very often utilized for preparatory

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- ¹⁴⁵ ICAO AN-WP/MIN, XIX-7(16/6/55), paragraph 13, p. 35.
¹⁴⁶ ICAO Doc 7490-4, C/873-4(5/10/54), paragraph 31, p. 48.
¹⁴⁷ Ibid.
¹⁴⁸ Ibid.

work on highly specialized problems prior to a convening of
¹⁴⁹
 a technical meeting. Thus utilization of panels greatly
 contributes to the efficiency of the work of technical meet-
 ings and also saves an appreciable amount of time.

The initial work of a panel is normally carried out
 by correspondence, with a member of the Secretariat acting as
¹⁵⁰
 rapporteur. The convening of a panel is not always required,
 but when a panel reaches the point at which it deems a meet-
 ing necessary, it proposes such a step to the Commission.
 If, in the opinion of the Commission, a meeting is justified,
¹⁵¹
 the Panel is convened.

The Panel, like technical meetings, reports to
 the Commission, and normally the latter will submit such
 a report to States for comment. The processing of panel
 reports is handled in very much the same way as reports of
 technical meetings. The organization and conduct of panels
 are not governed by the Directives to ICAO Technical Meet-
 ings, but its reports must conform with the regulations
¹⁵²
 governing reports of technical meetings.

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ICAO Doc 7255-20, C/840-20, (9/5/52), paragraph 69, p. 276.

¹⁵⁰

ICAO Doc 7490-4, C/873-4(5/10/54), paragraph 31, p. 48.

¹⁵¹

ICAO Doc 7689(May 1956), Part I, p. 4.

¹⁵²

Ibid.

CHAPTER V. THE AIR NAVIGATION REGIONS

A. REGIONAL ORGANIZATION

The work of the ICAO on a regional level ranks as one of its most important activities. Regional organization, that is, the grouping of contracting States by regions, was established in view of the fact that not all aviation problems are worldwide. Horizontal organization of this kind was believed essential to facilitate uniformity in international aviation, and whenever such uniformity could not be achieved, planning within the region would promote such aims. In effect, regional organization is a decentralization of the processing of air navigation matters on the basis of geographical peculiarity. At the same time, the Headquarters of the ICAO coordinate regional activities with a view to gradually eliminating the differences between the various regions.

This work is carried out by Regional Air Navigation Meetings which formulate a Regional Plan to be implemented by the States in the area concerned. The administrative nucleus of the region is the Regional Office.

The vast importance of regional meetings was recognized in the days of PICA0, the Resolution of the Interim Assembly reading as follows: "...the Assembly considers that regional meetings are an essential function of PICA0 in

facilitating the widespread acceptance of uniform standards,
practices and procedures in...air navigation activities...."¹⁵³

The Convention does not mention regional organization, but empowers the Council to "...create subordinate air transport commissions on a regional or other basis and define groups of states or airlines with or through which it may deal to facilitate the carrying out of the aims of this Convention."¹⁵⁴

Although no provisions of the Convention categorically provide for the establishment of regional organization, this was very much in the minds of those participating in the Chicago Conference in 1944. The Canadian draft Convention on International Aviation went as far as providing for the establishment of Regional Air Councils.¹⁵⁵

The Council, in establishing the regions, exercised its power to "...define groups of states...with or through which it may deal to facilitate the carrying out of the aims of this Convention."¹⁵⁶

Initially, ten regions were established, the number

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Interim Assembly Resolution Int-3 as reproduced in ICAO A10-WP/16, TE/2(20/3/56), p. 3.

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Chicago Convention, Article 55(a).

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Chicago Conference Doc 50, Proceedings of the International Civil Aviation Conference, The Department of State Publication 2820, Volume I, 577.

¹⁵⁶

Chicago Convention, Article 55(a).

reduced to eight in the years 1951-1952. The existing regions are the following:

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|---------------------------|---------------------------------|
| 1. North Atlantic | 5. South East Asia |
| 2. European-Mediterranean | 6. Pacific |
| 3. Middle East | 7. South America/South Atlantic |
| 4. Caribbean | 8. Africa-Indian Ocean. |

In practice, regional organization divided the globe "...into areas within which the international air routes are reasonably well defined and the problems distinct."¹⁵⁷

Since the subject of this paper is the Air Navigation Commission, it would be proper to discuss within it the Regional Air Navigation Meeting, the Regional Plan, the Regional Offices and their relation to the Commission. Regional technical legislation will be briefly examined in the chapter dealing with the technical regulatory material of the ICAO.

B. THE REGIONAL AIR NAVIGATION MEETING

A Regional Air Navigation Meeting is a technical meeting convened on a regional basis. It is an advisory body which cannot take definitive action, but may make

¹⁵⁷

ICAO A10-WP/17, TE/3(20/3/56), p. 1.

¹⁵⁸

Ibid.

¹⁵⁹

Directives for Regional Air Navigation Meetings, 2nd edition, ICAO Doc 7214-C/831/1(11/11/52), p. 5.

recommendations.

A Regional Air Navigation Meeting is convened when conditions in a region, with respect to air navigation, are such as not to enable States in the region to observe approved Standards and Recommended Practices and Procedures, or when specific conditions in the region require worldwide regulations to be supplemented by regional regulatory material.

Normally, the major factor in non-compliance with Annexes is the inadequacy of States to provide proper air navigation facilities. The reasons for this may be economical or technical, for instance, shortage in trained personnel capable of handling facilities. The Regional Air Navigation Meetings try to remedy such state of affairs by developing a Regional Plan to be implemented by the States in the region. It should be noted, however, that the Assembly has directed Regional Air Navigation Meetings not only to formulate Regional al Plans but also to check their implementation.

The participation in Regional Air Navigation Meetings is open to the contracting States invited by the Council. All other contracting States may participate only as observers

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For discussion of Regional Plans see next section.

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Fourth Assembly Recommendation A4-Rec.3, ICAO Doc 7670, p. 151.

162

ICAO Doc 7214-C/831/1(11/11/52), p. 5.

163

ICAO Doc 6763, C/779(18/5/49), paragraph 28, p. 6.

without the right of voting. The Council, in inviting contracting States to attend a Regional Air Navigation Meeting as members, normally bases its decisions on considerations such as those of States having territory in the region, or intending to operate or operating in the region, or States providing facilities for international air navigation in the region.¹⁶⁴ The Council has delegated the authority to invite States to its President.¹⁶⁵

The Air Navigation Regional Meeting formally reports to the Council.¹⁶⁶ The Council, however, has authorized the Commission to review the "...recommendations emanating from the meeting...."¹⁶⁷ The Commission then submits those parts of the regional report requiring action by the Council accompanied by its own recommendations.¹⁶⁸

The discretion of Regional Air Navigation Meetings in formulating Regional Plans is subject to three considerations:

(a) Geographical - recommendations of the Meeting may refer only to States within the region;¹⁶⁹

¹⁶⁴

ICAO Doc 6655, C/758(21/3/49), p. 7. See also C-Draft Minutes, XIV(2)(15/10/51), paragraph 60, p. 20.

¹⁶⁵

Ibid.

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ICAO Doc 7214-C/831/1(11/11/52, Part I, Section XIII.

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ICAO C-WP/2040, Appendix 'A', paragraph 3.5 .

¹⁶⁸

Ibid.

¹⁶⁹

ICAO ALO-WP/17, TE/3(20/3/56), p. 3.

(b) Regulatory - recommendations of the Meeting must conform with Standards and Recommended Practices and Procedures; and
 (c) Organizational - some Council members hold the view that Regional Air Navigation Meetings cannot reject decisions of the Council.¹⁷¹

In order not to hamper discussion in Regional Air Navigation Meetings and to promote exchange of frank views, the following provision was included in the 'Directives to Regional Air Navigation Meetings':

When recommendations require a Member to provide, develop or maintain and operate air navigation facilities, the acquiescence of the representative at the meeting shall not be considered binding on the Member. A recommendation shall only be considered a commitment after approval by Council and acceptance by the Member.¹⁷²

The States participating in a Regional Air Navigation Meeting are under statutory obligation to contribute, in so far as they find it practicable, to the promotion of air navigation by virtue of Article 28 of the Convention. Paragraph (a) of this Article refers to Standards and Recommended Practices and Procedures, while paragraphs (b) and (c) can easily be interpreted as referring also to recommendations of Regional Air Navigation Meetings adopted by Council. The adoption by Council of such recommendations might be considered

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ICAO Doc 7214-C/831(11/11/52), Part II, paragraph 2.

¹⁷¹

ICAO Doc 5704, C/675(24/6/48), paragraph 48, p. 9.

¹⁷²

ICAO Doc 7214-C/831(11/11/52), Part II, paragraph 4.3 .

action by the Council under Article 69 of the Convention.

The Regional Air Navigation Meeting is a more composite enterprise than the Division type meeting, having to face a variety of technical problems existing in the region. The following outline constitutes the normal structure for a full scale Regional Air Navigation Meeting:

1. The plenary meeting.
2. A general Committee.
3. Subcommittee (1).
4. A steering Committee.
5. AGA Committee.
6. Air Traffic Control Committee.
7. Communications Committee.
8. Meteorology Committee.
9. SAR Committee.

It should be noted that not all Regional Air Navigation Meetings follow this structure, some of them not being full scale meetings. In other cases additional committees, or committees other than those listed above, may be established. The Council has authority to instruct the general Committee to establish specific committees.

From a structural point of view, Subcommittee (1) is the most interesting body. It was devised pursuant to

¹⁷³

ICAO Doc 7214-C/831/L, Section IX, p. 7.

¹⁷⁴

Ibid., p. 8.

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an Assembly resolution. By the terms of this Resolution, Subcommittee (1) has a higher status than the technical committees, its terms of reference being:

...(a) to supply a co-ordinated plan for operational and technical requirements to specialist committees for their consideration and development in detail;

(b) to deal with matters that cannot adequately be dealt with by any specialist technical committee alone;

(c) to supply advice to technical committees on operational and navigational matters during the meeting;

(d) to ensure that the documents reaching the General Committee conform to a co-ordinated regional plan. 176

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Another Assembly resolution brought about a shift of emphasis which consequently resulted in a change of structure of Regional Air Navigation Meetings. The traditional Meeting with all its committees became less frequent, since it was found more appropriate to convene special Regional Air Navigation Meetings. The same factors that contributed to a change in the Division type meetings affected the concept of full scale Regional Air Navigation Meetings as well. The Assembly expressed this change in policy giving the following reasons: "...the standard current form of agenda and structure of major regional air navigation meetings were developed to provide for the initial preparation of regional plans...regional plans are now approaching a substantial

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measure of stability...." Hence the Assembly directed,

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First Assembly Resolution A1-36, ICAO Doc 7670, p. 29

176

Ibid.

177

Seventh Assembly Resolution A7-11, ICAO Doc 7670, p. 209.

178

Ibid., preamble

because of reasons of efficiency and economy, that:

...the Council continue to give emphasis to improving the efficiency of the regional planning activities of the Organization by:

(i) ensuring that the agenda of regional air navigation meetings is established on the basis of known or anticipated problems in the region;

(ii) ensuring that the need for, and the composition of, a regional air navigation meeting be determined in the light of the agenda so established;... 179

(iv) arranging to hold meetings of limited character....

This means that the scope of the meetings and of their committees would depend on the range of existing and anticipated problems. This arrangement makes Regional Air Navigation Meetings structurally very flexible, allowing them to vary from region to region and from meeting to meeting.

A further organizational development involved the convening of special meetings to deal with problems affecting more than one region. 180 These problems are not worldwide, but are similar in more than one region. In such cases a joint meeting would prevent unnecessary duplication of work and promote uniform solutions.

The powers and functions of the Commission with respect to Regional Air Navigation Meetings are not as wide as in the case of Division type meetings, but the Commission nevertheless retains a good deal of control. The doctrine of 'inviolability', practiced in the days of the Air

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Tenth Assembly Resolution A10-22, ICAO A10-WP/148, P/15 (16/7/56), paragraph (2)(b), p. 16. See also Resolution A7-11, ICAO Doc 7670, p. 209.

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Resolution A10-22, paragraph (2)(b)(v).

Navigation Committee with regard to Divisional reports, is still traceable in the Commission's attitude to Regional Air Navigation Meeting reports.

The Commission can determine the scope and structure of a Regional Air Navigation Meeting through its power to approve the agenda of the Meeting.¹⁸¹ The agenda approved by the Commission is usually the final one, with the following qualification: "Subject to the agreement of two-thirds of the Members present, the General Committee may add items to the agenda of the committees but the items shall be restricted to the accomplishment of the purpose of the meeting."¹⁸² As in the case of Division type meetings, the Commission initially draws up a provisional agenda. Since 1952, the Commission has normally submitted the provisional agenda to States for comments, and only after reviewing such comments has drawn up the final agenda of the Regional Air Navigation Meeting.

Additional functions of the Commission include the approval of the geographical area to be covered by the Meeting, issuing instructions regarding the documentation needed for the Meeting, and issuing directives "...for the conduct

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ICAO Doc 7162(revised), C/852(4/7/51), paragraph 1.3.4 .

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ICAO Doc 7214-C/831/1(11/11/52), Section X, p. 8. A parallel provision exists with respect to Technical Meetings: see Doc 7689, paragraph 6, p. 12. In neither case does this qualification restrict the power of the Commission, since these meetings may not omit agenda items.

of the meeting additional to the standing directives approved
by the Council.¹⁸³"

The need for and convening of a Regional Air Navigation Meeting are largely dependent upon the consideration of the Commission. Although the Commission is not authorized to convene any of the technical meetings, its terms of reference provide that it "Advise the Council on the need for regional and special meetings on the development and coordination of air navigation services, recommend times and places for such meetings; and approve their agenda and plans for documentation;"¹⁸⁴ The link between Regional Air Navigation Meetings and the Commission becomes even more significant in the matter of the Meeting's recommendations. Although the Meeting is under duty to submit its report to the Council,¹⁸⁵ it is the Commission that examines it prior to deliberations in the Council. The Commission may take action on the report only with respect to those parts on which it was authorized to do so by Council.¹⁸⁶ The Commission, however, cannot change recommendations but may only express its attitude towards them.¹⁸⁷ The Commission functions in an advisory capacity, very much in the same way as in the case of Divisional reports.

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ICAO C-WP/2040, Appendix 'A', paragraph 3, as amended by Council.

184

ICAO Doc 7162(revised), C/825(4/7/51), paragraph 1.3.4 .

185

ICAO Doc 7214-C/831/1(11/11/52), Section XIII, p. 10.

186

ICAO C-WP/2040, Appendix 'A', paragraph 3.5 .

187

ICAO AN-WP/MIN, XI-15(3/11/52), paragraph 22, p. 69.

In reviewing Regional Air Navigation Meeting reports, the Commission applies three principles as criteria for its recommendations. These principles are:

1. Coordination of the recommendations of Meetings of different regions. The philosophy underlying this approach is that one of the aims of the Organization is uniformity in air navigation. It is understandable, however, that complete uniformity is unattainable at present, as is indicated by the very existence of regions.
2. Determination of the action to be taken on the recommendations. The Commission then advises the Council accordingly.
3. Clarification of ambiguous recommendations. This is normally done by contacting States that participated in the Regional Air Navigation Meeting.

The reports of the Meeting's committees, reviewed by Subcommittee (1) and approved by the General Committee, make up the final report of the Meeting. Changes, however, are planned so as to make the final report a consolidated one and not merely a compilation of the committees' reports.

Although the Regional Air Navigation Meeting is

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- 188 ICAO Doc 6913-2, C/802-2(14/10/49), paragraph 18, p. 27.
- 189 Ibid.
- 190 Ibid.
- 191 ICAO Doc 7214-C/831/1(11/11/52), paragraph 6.2, p. 14.
- 192 ICAO A10-WP/17, TE/3(20/3/56), paragraph 12, p. 3.

primarily concerned with exclusively regional problems, its contribution to the worldwide organization of air navigation is of great importance. The procedures recommended by Regional Air Navigation Meetings often lead to the amendment of Annexes¹⁹³ by indicating the inadequacy of the latter. Regional procedures have also a definite effect on the worldwide Procedures for Air Navigation Services(PANS), the Supplementary Procedures¹⁹⁴ (SUPPS), in effect, being "...regional additions to PANS." Some of these regional procedures, with the elimination of differences between the regions, are gradually being evolved¹⁹⁵ into worldwide PANS.

Regional meetings organized for the purpose of implementation, and of a limited scope, may also be initiated and convened by the affected States. The Tenth Assembly was strongly in favour of such measures, resolving:

That the holding of meetings, whether initiated by contracting States or convened by the Council, which are confined to implementation problems affecting two or more States, should be encouraged where no other effective and timely means are available....¹⁹⁶

¹⁹³

ICAO C-WP/673(7/6/50), Appendix 'A', p. 7.

¹⁹⁴

ICAO Doc 6913-2(14/10/49), Annex 'A', paragraph 3, p. 45.

¹⁹⁵

ICAO C-WP/673(7/6/50), Appendix 'A', p. 7.

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Tenth Assembly Resolution A10-24, ICAO A10-WP/148, (P/15)(16/7/56), clause (5), p. 18.

C. THE REGIONAL OFFICES

The Regional Offices are, in effect, agencies of the Organization in the regions. The functions of the Regional Offices were broadly defined as follows:

...the activities of the Regional Offices should be directed primarily towards regional technical matters in the field of air navigation;
 ...the Council be authorized to agree...to the use of Regional Offices for other purposes, in so far as this would speed the study of regional questions and facilitate working co-operation between the Contracting States. 197

The Assembly itself expanded the functions of Regional Offices by providing "That the Regional Offices should participate in the information programme to the extent practicable without interference with the performance of their primary duties connected with air navigation matters...." 198

A more specific function of the Regional Offices was emphasized by the Assembly in another resolution, instructing the Council to further develop "...the technical resources of the Regional Offices with the object of giving States greater assistance with their implementation problems...." 199

A later resolution of the Assembly, superseding the above resolution, re-emphasized the primary function of Regional Offices to assist States in the region to solve their

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First Assembly Resolution A1-16, ICAO Doc 7670, p. 16.

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First Assembly Resolution A1-15, ICAO Doc 7670, p. 16.

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Seventh Assembly Resolution A7-12, ICAO Doc 7670, p. 211.

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 implementation problems. The implication in these resolutions
 is that the functions of the Regional Offices are primarily
 technical. Not all members of the Commission and of the
 Council, however, were in complete agreement as to the exclu-
 201
 siveness of these functions.

The representative of the United States on the
 Commission pointed out that full use of Regional Offices
 could be achieved only following their adequate staffing and
 202
 organization. Economical considerations and tendencies to
 centralize secretarial work were detrimental factors to the
 full utilization of Regional Offices. The Assembly recog-
 nized the necessity for a revision of policy and provided:

- (b) That the staff of the Regional Offices...should be enabled
 to carry out more frequent visits of adequate duration to
 States, when such visits are necessary or requested, to assist
 them with their implementation problems;
- (c) That the resources of...the Regional Offices...should be
 adequately distributed and strengthened.... 203

The Regional Offices, operated by the Secretariat,
 204
 receive their directions from the Secretary General. In
 matters of policy, however, the decisions are made by the
 Commission, Council and Assembly, and not by the Secretariat.

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Tenth Assembly Resolution A10-26, ICAO A10-WP/148, P/15
 (16/7/56), clause (2)(a), p. 20.

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ICAO AN-WP/MIN, XV-6(5/3/54), p. 26.

202

Ibid.

203

Tenth Assembly Resolution A10-26, clause (2).

204

ICAO AN-WP/MIN, XVIII-31(28/4/55), para. 3, p. 2.

Hence, the main function of Regional Offices is implementation of regulatory material and regional plans in the region. Regional Offices act as technical advisors to States in the region to which they are accredited. Within the broader function of assisting States in the implementation of regulatory material, the Regional Offices concentrate on the implementation of regulations concerning facilities, that is, technical regional plans.²⁰⁵ Though it is the function of Regional Offices to assist States in the implementation of worldwide regulatory material, such as Standards and PANS,²⁰⁶ "...the task of implementing regional plans for air navigation facilities and services should receive priority...."²⁰⁷ This approach conforms to the general approach of the Organization and its policy that technical legislation had come to a point of stabilization and that the accent should be put on implementation. The same trend is also evident with respect to Annexes.

At present, five Regional Offices are in existence. The areas covered by them do not coincide with the air navigation regions. The Regional Offices and their respective areas are as follows:

205

ICAO A10-WP/18, TE/4(20/3/56), para. 3, p. 2.

206

ICAO A10-WP/148, P/15(16/7/56), Resolution A10-27, p. 21.

207

Seventh Assembly Resolution A7-12, preamble, ICAO Doc 7670, p. 211. This Resolution was superseded by Tenth Assembly Resolution A10-26, ICAO A10-WP/148, P/15(16/7/56), p. 20.

European and African Office, Paris	- European-Mediterranean and North Atlantic
Middle East Office, Cairo	- Africa-Indian Ocean and Middle East
South American Office, Lima	- South America/South Atlantic
Far East and Pacific Office, Bangkok	- South East Asia and Pacific
North American and Caribbean Office, Montreal	208 - Caribbean.

The above division represents areas to which the Regional Offices are assigned for follow-up action and implementation of regional plans.

A Regional Office, in taking follow-up action on regional plans, acts in many cases as an agent of another Office. The following is an illustration of such a case:

Paris Office, for example, may consult with the States to which it is accredited on matters relating to any of the eight regional plans, but except in the case of the EUM and NAT Regional Plans, the results of such consultation will be passed to the Office primarily responsible for the regional plan concerned. Similarly the other four Regional Offices may deal with the States to which they are accredited on matters relating to any or all of the regional plans. 209

The initial reports of cases of non-implementation and serious deficiencies originate in the Regional Offices and constitute an important source for the reviews of the Commission under the 'Programme for the Isolation and Elimination

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ICAO A10-WP/18, TE/4(20/3/56), paragraph 4, p. 2.

209

Ibid.

210

of Serious Deficiencies in Implementation of Regional Plans'. Whenever a 'deficiency' is found by the Commission not to be serious enough to warrant special attention by the Secretary General or by the Council, it is normally referred to Regional Offices and brought to the attention of the States concerned. The study of deficiencies affects worldwide regulations as the following passage indicates:

...the Council should continue, and should make every effort to improve the effectiveness of, the programme for the isolation and elimination of serious deficiencies by:

(1) studying the deficiency reports with a view towards developing improvements in the Standards and Recommended Practices.... 211

D. THE REGIONAL PLAN

A Regional Plan is a plan developed by Regional Air Navigation Meetings and approved by the Council, listing the requirements in the region necessary to ensure safe, regular and efficient air navigation service and facilities.

Regional plans may be broadly divided into those parts that deal with facilities and services in the region, and those dealing with Supplementary Procedures (SUPPS). The Commission, however, agreed that the SUPPS are not a part of regional plans, since the latter are largely concerned with facilities as distinct from procedures. This lack of

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ICAO Doc 7361-9, C/858-9(26/3/53), Directives, para. 2.3 .

211

ICAO A10-WP/148, P/15(16/7/56), Resolution A10-25, p. 19.

212

ICAO AN-WP/MIN, XIX-2(20/5/55), para. 20, p. 8.

clarity in terminology does not create practical difficulties, since the amendment of SUPPS is governed by one set of rules, and those of Regional Plans by another, which is published separately. The SUPPS will be discussed separately in the chapter dealing with the Organization's technical regulatory material.

Regional Plans must be in conformity with Standards²¹³ and Recommended Practices and Procedures, and their purpose is to serve international air navigation within the region. However, the developments and improvements in air navigation facilities in the region have a definite affect upon the development of Standards and Recommended Practices and Procedures. Adversely, the latter provide the framework into which the Regional Plans must fit. The Assembly recognized this relationship in the following clause, resolving:

That the effect of changing requirements and of improved techniques on the Standards, Recommended Practices and Procedures be kept under review, and that these be amended as necessary to ensure, inter alia, that they provide a sound basis for the development of regional plans and the provision of facilities and services. 214

The Regional Plan recommendations provide governments in the region with the necessary guidance to assure "...that facilities and services furnished in accordance with the plan will form with those of other States an integrated system and will²¹⁵ be adequate for the foreseeable future."

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ICAO Doc 7214-C/831/1(11/11/52), Part II, para. 2 and 3.1 .

214

Tenth Assembly Resolution A10-16, ICAO A10-WP/148, P/15 (16/7/56), clause (3), p. 11.

215

ICAO A10-WP/17, TE/3(20/3/56), para. 2, p. 2.

The integration and coordination of air navigation facilities, important as these are, are not the prime objects at which the Regional Plan aims. It is rather a remedial plan designed to correct inadequacies or absence of facilities required for safe, regular and efficient air navigation within the region. The corrective measures recommended by the Regional Plan serve the cause of uniformity as well in international air navigation on a global scale.

Regional Plans constitute the major part of Regional Air Navigation Meeting reports, and as such are reviewed by the Commission. Then, accompanied by the Commission's recommendations, they are submitted to the Council for approval. Once a Regional Plan is approved by the Council, it assumes the status of a Council recommendation under Article 69 of the Chicago Convention. States are not even required to report non-compliance with the Regional Plan. Thus a heavier burden of following up the implementation of regional plans falls on the shoulders of the Organization, especially the Regional Offices.

The Regional Plans, requiring frequent modification, made it necessary to evolve a flexible method for their amendment. It could not be left to Regional Air Navigation Meetings, since such an approach would have made modification of the Regional Plans a difficult task, dependent upon the convening of Regional Air Navigation Meetings. Consequently,

a 'Procedure for the Amendment of the Facilities Portion of
²¹⁶ Approved Regional Plans' was introduced. The Programme provided for amendments by means of correspondence instead of meetings, with a limitation on the extent to which the amendments could go, in that they might not alter the basic plans
²¹⁷ or decrease their stability. Resolution A7-11 confined regional plan amendments to "...modifications such as those necessitated by changes in airline route pattern, major changes arising from the introduction of new equipment and
²¹⁸ techniques, and the correction of errors...." The Programme incorporates this provision. The Council added to this that "...it may be necessary to amend specific details in the regional plan, in order that the plan may continue to reflect
²¹⁹ the requirements for facilities and services." Resolution A7-11 was superseded by Resolution A10-22, which did not restate the restrictions quoted above on the amendment of Regional Plans, but instructed the Council to continue to encourage "...the use of correspondence as a method of keeping regional
²²⁰ plans current...." The fact that the Assembly, in the preamble of the same Resolution, recognized that "...the use of correspondence as a means of keeping regional plans current has

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Approved by the Council on 10 May 1956 (XXVIII-6), see the ICAO A.N.C. Procedural Documents (Montreal 1956), p. IV-1.

217

Ibid.

218

Seventh Assembly Resolution A7-11, clause (2), ICAO Doc 7670, p. 210.

219

Supra, footnote 216.

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ICAO A10-WP/148, P/15(16/7/56), p. 15.

221
 proved successful;" makes plausible the presumption that the limitations on amendments included in Resolution A7-11 are still applicable. However, for the sake of clarity, a re-statement of policy in this matter would have been beneficial.

Orderly implementation of Regional Plans calls for some measure of stability in the plans. The Assembly, recognizing this need, resolved "That the effect of changing requirements on regional plans be kept under review, and that these plans be amended when it becomes apparent that they are not well suited to established operational needs...."²²²

The procedure for effecting amendments to Regional Plans under the Programme calls for submission of properly documented amendments to a Regional Office accredited to the proposing contracting State. The Regional Office transmits the proposal for amendment to the Secretary General, and the latter circulates the proposed amendment to all the States in the region for comment. The Secretary General, however, is not required to circulate the proposal to States that are not affected by it. He may also refrain from circulating it in a case where "...the proposed amendment conflicts with established ICAO policy, or...raises questions which the

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Tenth Assembly Resolution A10-22, preamble, ICAO A10-WP/148, P/15(16/7/56), p. 16.

222

Tenth Assembly Resolution A10-16, ICAO A10-WP/148, P/15(16/7/56), clause (2), p. 10.

Secretary General considers should be brought to the attention of the Air Navigation Commission....²²³ The action to be taken in the latter cases is determined by the Commission. If a proposed amendment does not encounter opposition, the President of the Council is authorized to approve the amendment on behalf of the Council. If opposition from contracting States is encountered, the Secretary General consults further with the States concerned, and if the objection is not then removed, submits the proposed amendment to the Commission. The Commission, if it considers it acceptable, makes recommendations accordingly.²²⁴ Proposals submitted by IATA are treated in the same manner, except that, before circulating them to all interested States, the Secretary General ascertains that the proposal is adequately supported by the State or States most affected by it. Lack of such support again entails the Commission's consideration and decision. The Secretary General himself may also initiate proposed amendments²²⁵ which are treated in the same manner as IATA proposals.

Where amendments to a Regional Plan cannot be effected under the above procedure, the most practical solution is obtained by:

...arranging to hold meetings of limited character more frequently than in the past to deal with specific subjects,

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ICAO A.N.C. Procedural Documents, p. IV-1.

224

International Air Transport Association.

225

ICAO A.N.C. Procedural Documents, pp. IV-1 and IV-2.

particularly those requiring urgent solution, when such action will assist in maintaining regional plans in a current condition.... 226

The broadest amendments to Regional Plans are those resulting from full scale Regional Air Navigation Meetings. 227

A far more difficult problem concerns the implementation of Regional Plans. Article 28 of the Chicago Convention enumerates the duties which refer also to Regional Plans, reading:

Each contracting State undertakes, so far as it may find practicable, to:

(a) Provide, in its territory, airports, radio services, meteorological services, and other air navigation facilities to facilitate international air navigation, in accordance with the standards and practices recommended or established from time to time, pursuant to this Convention.... 228

Regional Plans, although not Standards and Recommended Practices in the sense of Annex material, are, nevertheless, Council recommendations under Article 69 of the Convention. Unlike Annexes, Regional Plans do not impose upon States the duty of reporting non-compliance.

Hence a method had to be evolved whereby cases of non-compliance with Regional Plans would be recorded and action taken thereupon. The 'Programme for the Isolation and Elimination of Serious Deficiencies in Implementation of Regional Plans' fulfills this task. Non-implementation of Regional Plans generally occurs "...in States where economic and

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Tenth Assembly Resolution A10-22, clause (2)(b)(iv).

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See Recommendation A4-Rec.3, ICAO Doc 7670, p. 151.

228

Chicago Convention, Article 28(a).

229

ICAO Doc 7361-9, C/858-9(26/3/53), Appendix 'A', p. 111.

technical problems deter action by the States....²³⁰ More specifically, the factors impeding satisfactory implementation of Regional Plans are:

...(a) lack of effective machinery within a State for administering civil aviation;
 (b) lack of funds;
 (c) lack of trained personnel, both at the directing and operational levels. ²³¹

The above deterrent factors are usually to be found in under-developed States.

The above Programme makes the Secretary General responsible for the study of the state of implementation of Regional Plans, including the isolation of serious deficiencies. In conducting his studies, the Secretary General is guided by the Commission. Action by the Secretary General is, however, not limited only to the conduct of such studies. He may also act in an executive capacity, being entrusted with the carrying out of Council's directives on the elimination of serious deficiencies recognized by the Council. The mechanics of the Programme are relatively simple and efficient. The Secretary General reviews annually the serious deficiencies in the air navigation regions. In collecting his information, the Secretary General is assisted by reports from States in the region, IATA and other international organizations, and, of course, the Regional Offices. The Secretary General utilizes all legitimate sources of information, including Regional Air Navigation Meetings. On the basis of

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Tenth Assembly Resolution A10-24, preamble, ICAO A10-WP/148, P/15(16/7/56), p. 18.

²³¹

ICAO A10-WP/18, TE/4(20/3/56), para. 24, p. 7.

all information collected and processed, the Secretary General submits to the Commission studies of the regions, listing deficiencies. The Commission considers these studies and lists in a report to the Council those deficiencies which it regards as serious and thus requiring further action. Once this report is approved by the Council, the Secretary General establishes contact with the affected States through State Letters, liaison with the States' representatives to ICAO, or follow-up trips from ICAO headquarters or from ICAO Regional Offices. The Secretary General assumes an even more decisive role subsequently, in submitting concrete recommendations to the Council for measures to correct specific deficiencies. As a complementary measure, the Secretary General submits to the Commission an annual progress report for each region, showing the extent and effect of remedial actions taken.²³²

Deficiencies which are not serious enough to warrant action by the Council are not left untouched. The Commission directs the Secretary General to emphasize them in his consultations with States, lest lack of early implementation might convert them into serious deficiencies.²³³ States were also urged to take a more active role in the Programme by reporting promptly any difficulties in implementation and serious deficiencies.²³⁴

²³² ICAO Doc 7361-9(open), C/858-9(26/3/53), Appendix 'A'.

²³³ Ibid., para. 2.10 .

²³⁴ Tenth Assembly Resolutions A10-24, clauses (3) and (4), and A10-25, clause (2)(b), A10-WP/148, P/15(16/7/56), pp. 18-19.

The term 'serious deficiency', in this context, must be understood as a case of non-implementation of a specific requirement included in the Regional Plan. It should be noted, however, that the deficiency might be in the Regional Plan itself, and often study by the Secretary General discovers such a deficiency. Remedial action in such a case is not effected under the above Programme. Once such an amendment is legitimately incorporated into the Regional Plan, its non-implementation is subject to the above procedure.²³⁵

The above measures for elimination of serious deficiencies are integrated by the Commission and the Secretary General with measures taken by Regional Air Navigation Meetings pursuant to Assembly Recommendation A4-Rec.3 instructing: That at future regional air navigation meetings greater emphasis should be given to the implementation of regional plans already formed, and deficiencies in the implementation of regional plans which are vital to the proper functioning of the plan should be segregated by the regional meeting and referred to Council for such special action as may be considered appropriate. 236

Hence, the burden with respect to serious deficiencies falls primarily on the Secretary General and the Commission. The Commission has "...a continuing responsibility with respect to the planning and implementation of plans for the provision of air navigation facilities and services, its

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ICAO Doc 7361-9(open), C/858-9(26/3/53), Appendix 'A', paragraph 2.11 .

236

Fourth Assembly Recommendation A4-Rec.3, ICAO Doc 7670, p. 151.

role being primarily that of monitor and guide.²³⁷"

A supplementary procedure was adopted, outlining the administrative steps to be employed under the Programme and clarifying the method to be employed by the Secretary General.²³⁸ Under this procedure, States' reports concerning lack of implementation are to be submitted to the Secretary General through the Regional Offices. The Regional Offices are authorized to exercise their discretion in analyzing States' reports, determining which cases of non-implementation of Regional Plans constitute a serious deficiency and are thus eligible for consideration under the Programme. The Regional Offices play their part also in taking remedial action under the direction of the Secretary General, prior to the submission of the study to the Commission. A serious deficiency is included in a report to the Commission only after such preliminary corrective action has failed to bear²³⁹ fruits.

The importance of implementing Regional Plans so as to avoid serious deficiencies was emphasized by the Assembly in the following Resolution:

(3) That when a contracting State, having explored all methods and means for implementing the regional plans with which it is concerned, pursuant to Article 28 of the Convention,

²³⁷

ICAO Doc 7361-9(Open), C/858-9(26/3/53), Appendix 'A', paragraph 1.1 ..

²³⁸

ICAO Doc 7617-1(Open), C/884-1(13/9/55), Appendix 'A'.

²³⁹

Ibid.

experiences difficulties which hinder implementation by that State, it should report accordingly to ICAO, and with respect to those items which might become serious deficiencies if not implemented it should request assistance from ICAO;

(4) That States should be urged to plan their internal implementation programmes so that priority is given to those items which are of such a nature that lack of implementation will likely result in serious deficiencies.... 240

An additional measure designed to secure compliance with Regional Plans is the Commission's comprehensive annual review of implementation in each region, consisting of three parts:

1. Consideration of a report on the status of implementation.
2. Consideration of a list of all reported deficiencies.
3. Consideration of a progress report on all serious deficiencies acted upon by the Council, including those eliminated. 241

The whole approach of the Commission and the Secretary General to the problem of serious deficiencies must be realistic and practical. The studies are expected to be limited in time in order not to render the results obsolete by the time the task is completed. 242

Should the implementation of Regional Plans encounter insurmountable difficulties, a prospective solution is provided

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Tenth Assembly Resolution A10-24, ICAO A10-WP/148, P/15 (16/7/56), p. 18.

241

ICAO Doc 7617-1(Open), C/884-1(13/9/55), Appendix 'A', paragraph 5.

242

ICAO Doc 7361-9(Open), C/858-9(26/3/53), paragraph 1.5 .

in Articles 70, 71 and 74, which enable States to utilize economic and technical assistance from the Organization, in order to establish the required facilities and thus overcome serious deficiencies. The Assembly restated this possibility in resolving:

(c) That the Council should continue, and should make every effort to improve the effectiveness of, the programme for the isolation and elimination of serious deficiencies by:
 ... (iii) employing, should the situation so require, the several means provided in Chapter XV of the Convention, as well as utilizing other available means of assisting States through the United Nations Expanded Programme of Technical Assistance, technical advice and expert assistance from the Regional Offices, and the training activities of the Air Navigation Bureau. 243

The systems evolved to secure implementation of Regional Plans were highly effective, but, as one report stated, "...it cannot be said that overall implementation is keeping pace with the development of international civil aviation...." 244

It is, therefore, evident that the Commission's powers with respect to Regional Plans are mostly of an advisory character. It is the Council which takes action wherever necessary, and Regional Plans formally gain status only after adoption by the Council. The Commission, however, exercises, within the framework of the Organization, powers which lead to internal action. It directs the Secretary General

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Tenth Assembly Resolution A10-25, ICAO A10-WP/148, P/15 (16/7/56), pp. 19-20.

244

ICAO A10-WP/18, TE/4(20/3/56), paragraph 23, p. 7.

in his efforts to secure implementation of Regional Plans, and determines what is to be considered a serious deficiency in implementation and submitted as such to the Council. It should be remembered that the list of serious deficiencies acted upon by the Council is the consequence of the exercise of discretion by the Commission. The power to determine what a serious deficiency is, in the sense of making it a recommendation to the affected State, lies exclusively with the Council. Nevertheless, the role of the Commission is almost decisive.

The annual review of implementation in each region conducted by the Commission constitutes a major effort to improve air navigation and it may rightly be said that the Commission carries the bulk of the work in the promotion of air navigation in the region at all stages. It has attained the necessary degree of flexibility essential in the fast changing world of aviation, gradually developing a long-sighted policy which will anticipate changes and stabilize the regional regulatory material of air navigation.

CHAPTER VI. TECHNICAL REGULATORY MATERIAL

A. ANNEXES

Annexes, that is, International Standards and Recommended Practices, are the Organization's regulatory material of the highest status. The adoption and promulgation of Annexes are governed by the Convention. Article 37 of the Convention provides for the promulgation of Annexes as follows:

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

To this end the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with:

- (a) Communications systems and air navigation aids, including ground marking;
 - (b) Characteristics of airports and landing areas;
 - (c) Rules of the air and air traffic control practices;
 - (d) Licensing of operating and mechanical personnel;
 - (e) Airworthiness of aircraft;
 - (f) Registration and identification of aircraft;
 - (g) Collection and exchange of meteorological information;
 - (h) Log books;
 - (i) Aeronautical maps and charts;
 - (j) Customs and immigration procedures;
 - (k) Aircraft in distress and investigation of accidents;
- and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate. 245

All but one of the above listed matters are in the field of air navigation; customs and immigration procedures may be considered matters of air transport. Hence Annexes are almost exclusively concerned with air navigation.

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Chicago Convention, Article 37.

Even Annexes developed to deal with matters not listed in the above Article are to fall within the category of air navigational material.

The responsibility with respect to Annexes rests with the Council, one of its mandatory functions being the adoption of Annexes and notification to all contracting States²⁴⁶ of the action taken.

The procedure for the adoption of Annexes is also laid down by the Convention as follows:

- (a) The adoption by the Council of the Annexes described in Article 54, subparagraph (1), shall require the vote of two-thirds of the Council at a meeting called for that purpose and shall then be submitted by the Council to each contracting State. Any such Annex or any amendment of an Annex shall become effective within three months after its submission to the contracting States or at the end of such longer period of time as the Council may prescribe, unless in the meantime a majority of the contracting States register their disapproval with the Council.
- (b) The Council shall immediately notify all contracting States of the coming into force of any Annex or amendment thereto.²⁴⁷

The obligations of contracting States with respect to Annexes are covered by Article 28 of the Convention applicable to all regulatory material referring to air navigation. Under this Article, contracting States undertake, in so far as they find practicable, to implement the technical legislation of the Organization. However, with regard to Standards, States are under obligation to report deviations, as indicated

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Chicago Convention, Article 54(1).

²⁴⁷

Chicago Convention, Article 90.

in Article 38 reading:

Any State which finds it impracticable to comply in all respects with any such international standards or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard. 248

The material of which Annexes are comprised is divided into two categories, that of Standards and that of Recommended Practices, which by definition have different status, although both of them are applicable in the same manner and call for the same procedures of adoption and amendment. A 'Standard' by definition is:

...any specification for physical characteristics, configuration, materiel, performance, personnel, or procedure, the uniform application of which is recognized as necessary for the safety or regularity of international air navigation and to which Member States will conform in accordance with the Convention; in the event of impossibility of compliance, notification to the Council is compulsory under Article 38 of the Convention. 249

A 'Recommended Practice' is defined in the very same terms with two crucial differences:

(1) A Recommended Practice is recognized as 'desirable' for the safety or regularity of international air navigation;

it is not recognized as 'necessary', as is a Standard; and

(2) States are required to "...endeavour to conform in accordance with the Convention." The compulsory notification under

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Chicago Convention, Article 38.

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First Assembly Resolution A1-31, ICAO Doc 7670, p. 26.

250

Ibid.

Article 38 of the Convention is not mentioned.

Thus, a Recommended Practice may be viewed as of somewhat lesser importance than a Standard, though both categories of specifications are embodied in one document termed 'Annex' to the Convention, for the sake of convenience.

Although Standards and Recommended Practices are designated as Annexes to the Convention, it should not be assumed, once approved and accepted, they acquire a status similar to the provisions of the Convention. The adoption of Annexes is a unilateral act of the Council, while international treaties are usually formulated by the signatory States. Furthermore, Annexes do not require formal ratification by States, their very nature demanding more flexible methods for their coming into force.

The Convention is not perfectly clear as to the status of Annexes. The present President of the Council briefly stated the problems involved in determining their status in this way:

The attachment of provisos on technical standards to an international agreement creates some interesting legal problems. The permanent Convention will have the form of a treaty; but nations could scarcely be expected to ratify a document which might be greatly changed without renewed reference to the ratifying authorities. Yet the arts of aircraft design and air navigation are constantly developing, and standards governing them must obviously be kept highly flexible. Hope of keeping the standards up to date would disappear if they were to be incorporated in the Convention and fresh ratification by all the participating governments were required whenever a change were made. The expedient chosen was to give the

permanent Council full power to adopt, amend or annul technical annexes to the Convention at any time by a two-thirds vote; but those annexes are not to be given compulsive force. There will be no binding obligation on any nation to keep to an international standard. 251

Evidently, Annexes are international regulations of an unusual character. The following elements with respect to Annexes should be noted:

- (1) Annexes are in no way international treaties requiring formal ratification.
- (2) Annexes are, in effect, recommendations of the greatest importance directed by the Council to contracting States.
- (3) The basic objective of Annexes is to achieve uniformity in measures promoting safety, regularity and efficiency in air navigation on a worldwide scale.
- (4) Although Annexes have no compulsive force, States are obliged to report to the Council any departures from Standards. It is doubtful whether the same obligation exists with respect to Recommended Practices.
- (5) Annexes may be annulled or amended by the Council unilaterally. This is another point indicating that Annexes are not international treaties, the latter not being instruments which can normally be revoked unilaterally by one of the parties.
- (6) Annexes come into force three months after being submitted to contracting States, "...or at the end of such longer period

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Edward Warner, "The Chicago Air Conference," Blueprint for World Civil Aviation, Publication 2348, Conference Series 70, Department of State (Washington, 1945), p.24.

of time as the Council may prescribe, unless in the meantime a majority of the contracting States register their disapproval with the Council.²⁵² It is noteworthy that disapproval of an Annex has to be actively demonstrated, and that lack of response from a State may be interpreted as tacit agreement. It is, however, not clear whether silence on the part of States implies acceptance of the Annex or whether disapproval of an Annex is the same as a departure under Article 38 of the Convention.

Let us examine first the question of when an Annex 'becomes effective' and what this term implies. Article 90 of the Convention presents a difficulty in this respect, since it is inconsistent semantically regarding the use of the term applying to the time an Annex becomes formally effective. Paragraph (a) of the Article uses the expression 'become effective', while paragraph (b) of the same Article decrees that "The Council shall immediately notify all contracting States of the coming into force of any Annex or amendment thereto."²⁵³ This discrepancy presents a problem as to the intention of the drafters of the Convention. Does the term 'become effective' in paragraph (a) mean that an Annex formally comes into force after the lapse of time specified in that paragraph, independently of Council notification to contracting States, or is such notification an essential

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Chicago Convention, Article 90(a).

²⁵³

Ibid., Article 90(b).

element? The Commission was of the opinion that both terms used were identical in their meaning.²⁵⁴ If this is the case, paragraph (b) has no effect on the validity of an Annex adopted by the Council pursuant to paragraph (a) of Article 90, constituting only a directive to the Council. The 'Revised Form of Resolution of Adoption of an Annex' adopted by the Council²⁵⁵ considers the terms 'become effective' and 'coming into force' identical, discarding the latter term and employing the former.²⁵⁶

The question of how and when contracting States should report to the Council departures from Standards was another point that required clarification and a practical solution. Article 38 provides that States "...shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard."²⁵⁷ The Article leaves us in darkness as to the meaning of the word 'immediate'. Does it mean that States should report differences promptly after adoption of an Annex by the Council, or only after the Annex becomes effective? The Council recognized the difficulties involved for contracting States by establishing an additional date, the date of applicability of the Standards and Recommended Practices included in the Annex.

²⁵⁴

ICAO AN-WP/MIN, VII-10(25/6/51), paragraph 23.

²⁵⁵

ICAO Doc 7361-15(Open), C/858-15(23/4/53), Appendix 'A', p. 199.

²⁵⁶

Ibid., paragraphs 2 and 4(1).

²⁵⁷

Chicago Convention, Article 38.

A different date of applicability might be set of each separate Standard and Recommended Practice. This method was devised in order to avoid the reporting of differences by States for the sole reason that the latter found the time allotted for implementation insufficient.

Article 38 of the Convention lists three cases of non-compliance requiring notification, as follows:

(a) Non-compliance resulting from a State finding it "...impracticable to comply in all respects with any such international standards or procedure...."²⁵⁸

(b) Non-compliance resulting from the inability of a State "...to bring its own regulations or practices into full accord with any international standard or procedure after the amendment of the latter...."²⁵⁹

(c) Non-compliance resulting from adoption by a State of regulations differing from those established by an International Standard.

Unfortunately, this important Article is worded in a way which renders it unclear. Case (b) above refers to amendments of International Standards and Recommended Practices, which are dealt with later in this section. Presumably, notification is required under cases (a) and (b) whenever a departure from 'international standard or procedure'

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Chicago Convention, Article 38.

²⁵⁹

Ibid.

occurs. Case (c) requires notification only where the departure occurs with respect to an 'international standard'. The Convention does not define international standards and procedures. Neither does it define Recommended Practices. Hence we must presume that their definition was left to the Organization. The Organization did adopt definitions of Standards and Recommended Practices and the question now arises whether we should read case (c) as implying that notification of differences is required only when the departure is from 'Standards' as defined by the Organization, or whether the term 'international standard' does not have any specific technical meaning but refers to technical regulations of the Organization in general. A practical solution was found by specifying which regulations required notification of differences and which differences should be reported. A further simplification was the introduction of a practice that makes notification a general requirement for Standards and Recommended Practices and Procedures for Air Navigation Services, whenever such departures affect the safety or regularity of international civil aviation. Even Supplementary Procedures require notification, though they cannot be considered as international in character.

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First Assembly Resolution A1-31, ICAO Doc 7670, p. 25, and see also supra p. 95.

261

ICAO Doc 7037-3, C/814-3(19/9/50), para. 34, p. 38, and ICAO Doc 7361-15(Open), C/858-15(23/4/53), Appendix 'A', para. 4(iii).

262

Tenth Assembly Resolution A10-24, ICAO A10-WP/148, P/15 (16/7/56), preamble, para. 2, and clause (3).

Pursuant to resolutions of the Assembly,²⁶³ simplified procedures for the reporting of differences were evolved. Annexes were to be accompanied by a memorandum "...analyzing the types of differences to be reported and indicating the form in which the notification of differences was desired."²⁶⁴

It should be stressed that the notification of differences, in itself, does not constitute a rejection of a Standard, but serves more as a point of information, enabling States and the Organization to learn to what extent uniformity exists and where, geographically, departures occur.

The question of notification of differences is closely connected with the implementation or non-implementation of ICAO's regulations. For some time the Organization adhered to the view that non-notification of differences should be interpreted as acceptance of its regulations.²⁶⁵ Although such an interpretation is correct in the case of registering disapproval with an Annex under Article 90 of the Convention, where lack of response from States may be taken to mean tacit acceptance, there is no reason to think that the same reasoning applies to Article 38. The Commission rightly emphasized this point in commenting that the "...present practice of accepting non-notification of

²⁶³

First Assembly Resolution A1-30, and Seventh Assembly Resolution A7-9, ICAO Doc 7670, pp. 24 and 208.

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ICAO Doc 7464-8, C/871-8(24/3/54), para. 38, p. 103.

²⁶⁵

ICAO Doc 7037-3, C/814-3(19/9/50), para. 34, p. 38.

differences as evidence of compliance with an Annex was
²⁶⁶
 regarded as unsound...." The Commission followed this ob-
 servation by evolving a procedure for the notification of
 differences which, at least with respect to Standards relating
 to facilities, required States to report compliance or non-
 compliance. "The Commission's view was that in respect of such
 Standards a State's obligation under Article 38 was merely
 to notify whether it intended to comply or not to comply...."²⁶⁷

Proposals for amendment of Annexes are accepted by
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 the Commission only after full agreement is secured, and
²⁶⁹
 involves extensive consultation with contracting States.

Acceptance of Standards and Recommended Practices
 does not necessarily imply their consequent implementation.
 States may wholeheartedly agree with the principles embodied
 in an Annex, yet find themselves unable to comply with them.²⁷⁰
 Sometimes States lack the knowledge of how to implement an
 Annex and to assess its economic and technical aspects. The
 following paragraph illustrates the case:

It is not always a simple matter for States with small adminis-
 trations, where one person often carries responsibilities in

²⁶⁶

Ibid.

²⁶⁷

ICAO Doc 7464-8, C/871-8(24/3/54), para. 38, p. 103. See
 also Tenth Assembly Resolutions A10-27 and A10-29, ICAO A10-WP/148,
 P/15(16/7/56), pp. 21 and 23.

²⁶⁸

ICAO AN-WP/MIN, V-5(11/10/50), para. 6, p. 40.

²⁶⁹

ICAO AN-WP/MIN, XVI-7(6/7/54), para. 6, p. 38.

²⁷⁰

ICAO Doc 7564, A9-P/2(27/4/55), p. 29.

several technical fields, to determine precisely what the various Annexes and Standards and Procedures involve in terms of the administration, provision and cost of technical personnel equipment and facilities. Perhaps more important, is the difficulty experienced in such States in assessing the trend of these requirements to avoid expenditures on facilities that may not have a clearly defined and adequate period of utilization. Uncertainty on any of these points causes a delay in implementation and is often a reason for failing to ask for assistance. 271

Difficulties which hamper States' implementation of Standards and Recommended Practices are the same as those that are detrimental to the implementation of Regional Plans.²⁷² The Organization's work does not stop with the promulgation of regulatory material, but is followed by a phase of assistance in implementation. The Assembly formulated a policy of priority in assistance, resolving:

That primary emphasis be placed upon assisting States in the application of Standards, Recommended Practices and Procedures in the fields of Aerodromes and Ground Aids, Communications, Meteorology, Air Traffic Services, Aeronautical Information Services and Search and Rescue, including the Personnel Licensing and Training aspects of those fields. 273

Assistance to States for the implementation of Standards and Recommended Practices comes mainly from the Air Navigation Bureau of the Secretariat and the Regional Offices. The policy for assistance was broadly outlined in an Assembly Resolution.²⁷⁴ The Convention also provides for economic and technical

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ICAO A10-WP/20, TE/6(20/3/56), para. 2.1.2, p. 3.

272

Supra p. 86.

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Seventh Assembly Resolution A7-10, clause (2), ICAO Doc 7670, p. 209.

274

Tenth Assembly Resolution A10-27, clause (1), ICAO A10-WP/148, P/15(16/7/56), p. 21.

assistance to be granted by the Organization upon the request
 of a State.²⁷⁵

The development of Annexes has been discussed in
 the chapter dealing with technical meetings.²⁷⁶ A few additional
 remarks, however, will serve to further clarify this matter.

An Annex is a product of careful and prolonged efforts
 on the part of several of the deliberative bodies of the
 Organization.²⁷⁷ It requires constant coordination between
 Divisions, where Annexes normally originate, the Commission,
 contracting States, the Secretariat, and finally the Council,
 the adopting agency of the ICAO.

The Annexes, developed and adopted through a pro-
 cess of meticulous and lengthy deliberations and examinations,
 frequently imposing costly economic and administrative bur-
 dens on contracting States, cannot be changed and revised
 often, lest its implementation never be effected. On the
 other hand, progress in aviation and air navigation cannot
 be conditioned by the state of the technical regulatory
 material adopted. The adverse is the case, for it is legis-
 lation which follows normally changing conditions. This
 situation breeds two tendencies which are seemingly in con-
 flict, the need for stability, and the inevitable changes

²⁷⁵ Chicago Convention, Articles 70, 71 and 74.

²⁷⁶ Supra p. 50.

²⁷⁷ ICAO Doc 7215-AN/858(1951), Introduction, p. 1.

278

and technical progress in international aviation.

Admittedly, this situation is something of a dilemma. Both tendencies have to be carefully weighed and the solution must be practical and attainable by contracting States.

The Seventh Assembly, stating that "...there is a need to maintain a correct balance between the stability of International Standards, Recommended Practices and Procedures and keeping their provisions up to date;" resolved:

- (1) That, pursuant to Recommendation A4-Rec.4 of the Fourth Session of the Assembly, amendments to International Standards, Recommended Practices and Procedures be limited to those significant to the safety, regularity, or efficiency or international air navigation and that editorial amendments be kept to the essential minimum;
- (2) That, with respect to amendments to International Standards, Recommended Practices and Procedures of a regulatory nature, the Council establish a programme for the application of such amendments, so that the relevant national aeronautical regulations of Contracting States will not require to be amended more frequently than at intervals of one year, and that departures from this policy be made only in exceptional circumstances. 280

Inclusion of material in an Annex is governed, as the above Resolution states with regard to amendments, by considerations of safety, regularity or efficiency, but it should be noted that, although the criteria are clear, no material would be considered for inclusion in an Annex unless it is

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For complete discussion of this matter, see ICAO A10-WP/19, TE/5(20/3/56).

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Seventh Assembly Resolution A7-8, ICAO Doc 7670, p. 208.

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Ibid.

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 deemed mature. Maturity of material can be a question of timing, economic practicability, political considerations, or good prospects of compliance. Often, material considered not yet mature enough for inclusion in Annexes would be included in secondary technical regulations such as Procedures 282 for Air Navigation Services or Supplementary Procedures.

Annexes, when developed on the Division level, constitute a compromise between different national views and economic capacities. Thus Annexes establish minimum requirements, often below the requirements laid down by national regulations of some States, but this is the price to be paid by the more developed countries for the sake of uniformity of air navigation. Progress in international air navigation implies that the less developed countries be given an opportunity to approach the level of the more advanced countries, so as to guarantee some degree of uniformity.

So far, fourteen technical Annexes have been adopted, covering all important aspects of air navigation. These are:

1. Personnel Licensing
2. Air Traffic Services
3. Meteorology
4. Aeronautical Charts
5. Dimensional Units

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ICAO AN-WP/MIN, VII-5(11/6/51), para. 5, p. 24.

282

ICAO Doc 7689(May 1956), Part IV, Section 2, p. 20.

6. Operation of Aircraft
7. Aircraft Nationality and Registration
8. Airworthiness
9. Aircraft Accident Investigation
10. Telecommunication
11. Rules of the Air
12. Search and Rescue
13. Aerodromes
14. Aeronautical Information.

These Annexes constitute a system by which international air navigation is governed and regulated, with the result that civil aviation is attaining levels of safety, regularity and efficiency not known hitherto. Although, at present, separate Annexes exist for different fields of air navigation, the trend is ultimately to combine all Annexes²⁸³ into an integrated system of regulations contributing to further uniformity and progress.

The efforts of the Organization in technical legislation would not have been as successful had they not won the complete cooperation of contracting States. The following passage makes this evident:

Experience has shown that contracting States take the obligations imposed by Article 37 of the Convention very seriously and accordingly view compliance with the international Standards that stem from Article 37 as a basic national policy. Although Article 38 of the Convention makes provision for

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ICAO AN-WP/MIN, IX-9(25/2/52), para. 13, p. 41.

any State which finds it impracticable to comply in all respects with an international standard to give notification to the organization of the differences between its own practice and that established by the international standard, contracting States view with disfavour the creation of any situation which would make it impracticable to comply with a standard. This attitude is entirely in keeping with the spirit of the Convention. 284

B. PROCEDURES FOR AIR NAVIGATION SERVICES (PANS)

Procedures for Air Navigation Services (PANS) are worldwide regulatory provisions, supplementing Standards and Recommended Practices and second to them in importance and status.

The Convention does not specifically provide for any technical legislation other than Annexes. Hence procedures for the promulgation of PANS had to be developed independently, and to some extent the methods for the promulgation and approval of PANS are modelled after those utilized with respect to Annexes. 285

The difference between Standards and Recommended Practices and PANS is clarified by the following passage:

Procedures for Air Navigation Services (PANS) are approved by the Council for worldwide application. They comprise, for the most part, operating procedures regarded as not yet having attained a sufficient degree of maturity for adoption as International Standards and Recommended Practices, as well as material of a more permanent character which is considered too detailed for incorporation in an annex, or is susceptible to frequent amendment, for which the processes of the Convention would be too cumbersome. 286

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ICAO A10-WP/19, TE/5(20/3/56), para. 4, p. 2.

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ICAO Doc 7215-AN/858(1951), Introduction, p. 2.

286

ICAO Doc 7689(May 1956), Part IV, Section 2, p. 20.

Since PANS are secondary to Standards and Recommended Practices, they must conform with the latter. Furthermore, PANS are promulgated with the intention of eventually incorporating them in Annexes.²⁸⁷

The processing of PANS is similar to the processing of Standards and Recommended Practices, and the same bodies engaged in the formulation of the latter are engaged in the formulation of PANS. PANS normally originate in technical meetings, are reviewed by the Commission, and, accompanied by its recommendations, are submitted to the Council for approval.

Although States are under no statutory obligation to report differences and departures from PANS, the Organization has extended this practice, when such differences affect the safety, regularity and efficiency of air navigation, to PANS.²⁸⁸ This is done in order to facilitate assistance in implementation and attain maximum uniformity.

PANS obligate States to the extent stated in Article 28 of the Convention. Their importance should not be minimized, since they constitute a definite step towards uniformity, enabling States to make systematic progress towards improved air navigation facilities and procedures.

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Fourth Assembly Resolution A4-7, ICAO Doc 7670, p. 135.

²⁸⁸

Ibid.

Approval of PANS and amendments thereto are functions of the Council, with one exception. The Commission has authority delegated to it by the Council to approve amendments of PANS consequential upon the adoption or approval of Standards and Recommended Practices and other sets of PANS.²⁸⁹ This procedure lessens the burden of the Council, since PANS have to be revised and amended whenever a change occurs in regulations of higher or similar status.

C. SUPPLEMENTARY PROCEDURES (SUPPS)

The third category of technical regulations consists of Regional Supplementary Procedures (SUPPS), which have a lower status than PANS and are limited to specific regions. SUPPS were rightly described as 'regional additions to PANS'²⁹⁰ since they vary from region to region, supplementing PANS and Annexes, in a manner designed to best cope with regional problems.

SUPPS are formulated by Regional Air Navigation Meetings.²⁹¹ It is not completely clear whether SUPPS are part of the Regional Plan or not. The Commission, however, has decided that there is a definite difference between SUPPS and Regional Plans, the latter being primarily concerned

²⁸⁹ ICAO C-WP/2040, Appendix 'A', para. 4.1, and ICAO Doc 7328-1, C/853-1(24/9/52), para. 8, p. 3.

²⁹⁰ ICAO Doc 6913-2(14/10/49), Annex 'A', para. 3, p. 45.

²⁹¹ ICAO Doc 7214-C/831(11/11/52), Part II, paragraphs 1 and 3, p. 11, and ICAO C-WP/673(7/6/50), Appendix 'A', p. 7.

292

with facilities, as distinct from procedures. The question has no practical significance since specific procedures govern the development and amendment of SUPPS. Nevertheless, it should be emphasized that the introduction of SUPPS constitutes a phase in regional planning, if not a formal part of the Regional Plan.

The Convention does not define SUPPS, and certainly says nothing about procedures applied on a regional basis. Nevertheless, this silence has no restrictive implications. The SUPPS have proven to be of great importance in gradually eliminating the procedural differences between regions, thus laying the ground for worldwide procedures. Often SUPPS are re-formulated as PANS for worldwide application.

SUPPS must conform with PANS and Annexes and must consist of procedures not included in ICAO's other regulatory material which has been given worldwide application.

SUPPS, like PANS and Annexes, are approved by the Council after review by the Commission. The Commission has no authority to approve SUPPS and amendments thereto.

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ICAO AN-WP/MIN, XIX-2(20/5/55), para. 20, p. 8.

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ICAO C-WP/673(7/6/50), Appendix 'A', p. 7.

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ICAO Doc 7214-C/831/1(11/11/52), Part II, para. 3.1, p. 11, and ICAO AN-WP/MIN, XI-16(2/11/52), para. 4, p. 71.

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ICAO C-WP/2040, Appendix 'B', para. 1.6 .

It has, however, authority to approve 'consequential amendments' to SUPPS whenever the approval of Standards and Recommended Practices and PANS requires revisions in SUPPS. The Commission's authority to effect consequential amendments, does not imply that it may add new substance to SUPPS, but merely that it may bring them into line with regulations of superior status.

The procedure for amendment of SUPPS aims at simplifying and facilitating such amendment without prolonged deliberations, whenever possible. Proposed amendments are submitted by contracting States to the Regional Offices, together with the facts which have led the States to conclude that amendment is necessary. The Secretary General circulates the proposal to all States considered affected by it, except when he considers the proposed amendment to be in conflict with established ICAO policy or to require the special attention of the Commission. In the latter case, it is the Commission which decides what action should be taken on the proposal. If no States raise objections to the proposal as circulated, and if no Commissioner desires formal discussion, the proposal is submitted to the President of the Council, who is authorized to approve the amendment on behalf of the Council. If States do raise objections, the proposal is referred to the

296

ICAO C-WP/2040, Appendix 'A', para. 3.6, and ICAO Doc 7328-1, C/853-1(24/9/52), para. 8, p. 3.

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ICAO AN-WP/MIN, XX-23(24/11/55), p. 119.

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ICAO A.N.C. Procedural Documents, p. V-1.

Commission, which, after study, submits it with appropriate recommendations to the Council.

Consequential amendments are drafted by the Secretary General, circulated to the Commission members, and automatically approved by the Commission. If, however, a Commissioner raises an objection or requests formal discussion, the Commission considers the proposal and approves it only after deciding that
299
the amendment is necessary.

The above procedure allows for great flexibility and constant adjustment of SUPPS, relieving the Council of an appreciable burden. As in the cases of Annexes, PANS and Regional Plans, it is the Regional Offices which check implementation of SUPPS and assist in the attainment of full compliance. It should be noted that the practice of notification of differences applies also to SUPPS, with the Regional Offices
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acting as monitors.

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Ibid.

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ICAO Doc 7464-8, C/871-8(24/3/54), para. 5(c), p. 96.

CONCLUSIONS

It is difficult to assess the work of the Air Navigation Commission without due regard to the activities of the ICAO as a whole. The Commission functions as an integral part of a larger machinery and its work constitutes only a segment of a wider range of activities. Nevertheless, the Commission's record is impressive.

With the accumulation of experience, the Commission has steadily expanded and consolidated its authority, and developed effective methods for the facilitation of safe and efficient civil aviation services. Within the framework of the Organization, the Commission has assumed an increasingly important role coupled with the undertaking of greater responsibilities. Consequently, the Council has come to rely heavily upon the advice of the Commission, with the latter, as a result, widening its autonomy.

The success achieved by the ICAO in the field of air navigation is inconceivable without the hard work and painstaking efforts of the Commission to ensure the finding of practicable solutions to innumerable problems within its field of operation. The practice of the Commission to seek, whenever necessary, the advice and views of contracting States, has successfully paved the way to international agreement on basic questions of air navigation. The same practice has

also served to make the Commission an instrument by which international collaboration is facilitated.

The task of the Commission has not always been easy. Political obstacles and economic difficulties have often deterred the Commission's efforts and desire to secure the best solutions to technical problems. States' policies have not always been in line with the essential interests of air navigation, making the task of the Commission rather difficult. The complexities of the international community often require the Commission to steer a course which has not always been purely technical in character. Compromise, however, is an integral part of international cooperation.

The increasing effectiveness of the Commission's work gradually brought about a change which has led to the conversion of some of its powers. Action-taking functions were added to the Commission's primary duty of advising the Organization, relieving the Council from discussing problems already explored and decided upon by the Commission. Since deliberations in the Council are basically an exchange of views between national representatives, the practice of the Commission to consult contracting States prior to arriving at a decision upon important matters made discussion of technical subjects in the Council less necessary.

The delegation of wider authority to the Commission, enabling it, in some cases, to take action and not merely to recommend it, proved to be profitable. Unnecessary delays were thus avoided, resulting in a greater measure of efficiency and flexibility in the development of air navigation.

The continuous improvements in the methods of operation of the Commission have been of substantial proportions. Yet there is still room for further improvement. Most of the work of the Commission is conducted by oral deliberations, examination of reports of technical meetings, secretarial studies, and conclusions of panels of experts. The Commission draws most of its information regarding the status of air navigation in contracting States, indirectly and from intermediary sources. Intercourse with States is maintained by correspondence or by liaison with representatives to the Organization. The situation in this respect suggests that Commissioners would do well to familiarize themselves personally with specific problems that different States are encountering in the field of air navigation, by visiting those States and studying the problems on the spot. Such a course would undoubtedly impose further strain on the tight work schedule of the Commission, but, on the other hand, it would facilitate the finding of solutions and promote understanding and good relations.

The changes in the membership of the Commission caused by the rotation of Commissioners has its obvious advantages and disadvantages. Commissioners returning home after the expiration of their term with the Commission, enrich with their experience civil aviation administrations in their respective States and promote cooperation with and understanding of the ICAO. On the other hand, changes in membership too frequently effected might bring about a state of affairs in which Commissioners would not stay long enough to gain sufficient experience and contribute fully to the work of the Commission. Such changes might also affect the functioning of the Commission as a highly integrated group. Hence it would seem desirable to make terms of membership long enough, in order to secure the necessary stability and prevent a state of flux in the Commission's membership.

The status of Commissioners is another point of extreme importance. Clarification of this matter is essential to the prestige of the Commission. Undoubtedly, the making of Commissioners international officers paid by the Organization would fortify the position of the Commission as an impartial and unbiased body, and would lend more weight to its decisions.

A further matter requiring urgent action is the filling of the remaining vacancies on the Commission. The

failure to secure the necessary nominations in order to appoint the full number of Commissioners required by the Convention, raises a fundamental legal question concerning the status and establishment of the Commission. It is suggested that if no further nominations are advanced by contracting States not represented on the Commission, an effort be made to secure further nominations from States already represented. Appointment of such nominees could be made on a provisional basis and with the understanding that their term of membership would expire shortly after appointment of nominees whose States are not yet represented.

In conclusion, the observation should be made that the Commission has demonstrated a remarkable spirit of cooperation and understanding between its members, serving as an excellent example of what nations can achieve and what progress mankind can make when guided by a sense of mutual respect and sincere collaboration.

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