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Aviation

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AVIATION

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HIJACKING

An emergency meeting of ICAO took place in Montreal June, 1970 at the special request of eleven Western European member nations to discuss the growing problem of hijacking and sabotage. Briefs submitted by the delegations differed over what measures should be adopted to prevent air piracy. The most evident disagreement concerned extradition of hijackers; the U.S. called for firm agreements on extradition between all member countries, while Canada and Cuba recommended that extradition be effected through bilateral treaties. The recommendation by Israel that sanctions be taken against governments harboring hijackers and saboteurs met with little approval among the delegates.

After an address by the Chief Counsel of Interpol emphasizing the need for airlines to increase time spent on the ground to inspect baggage and survey passengers more carefully, the delegates split into two committees. One reviewed the legal aspects of hijacking while the other discussed detection and screening devices as well as confidential matters.

The final resolution of the meeting, though strongly worded and nearly unanimously adopted fell short of having a binding effect on the member nations. Instead it proposed (1) no sanctions against countries not meeting recommended security standards, (2) that each country should enact national laws to increase airport and flight security while awaiting the results of later conventions on the subject. The resolution recommended the following specific actions by governments: maximum segregation and special guarding of aircraft during stopovers; security patrols during refueling; high and illuminated fences equipped with alarms around airport premises; careful identification and screening of passengers, employees and visitors in departure areas; close inspection of baggage and parcels, at least on a sample basis.

The Montreal Conference will serve as a prelude to a new Convention which may resolve many of the international problems posed

by air piracy. ICAO's standing legal committee will meet in London in the Fall, 1970 to draft an extradition treaty to be discussed at a conference on armed attack and sabotage in 1971. Extradition will also be emphasized in an upcoming ICAO diplomatic conference in the Hague in December, 1970. This last conference will hopefully update the Tokyo Convention of 1963 by providing for extradition of hijackers. The Tokyo Convention did not provide for jurisdiction over hijackers of aircraft; Article II provides only for return of aircraft and crew. Also to be discussed in the Hague next December are changes in the Warsaw Convention raising the ceiling on damages recoverable from carriers and the provisions for absolute liability of carriers for death and injury to passengers. While preparations for upcoming meetings take place, the ICAO Council is preparing a manual on security describing procedures and techniques to protect civil aircraft.

Since January 1, 1970 there have been 32 hijackings and eight separate incidents of sabotage resulting in the death of 90 persons and the injury of 23. While world-wide diplomatic action is taking place to meet the hijacking problem, airports and airlines officials around the world are taking steps to prevent the hijacker from boarding or taking over aircraft.

The U.S. FAA may soon require the implementation of its twofold anti-hijacking system at most U.S. airports; many airlines have adopted similar systems individually. The FAA's screening system consists of a metal detector costing about \$600 which can detect hidden guns and knives. In addition, trained observers and airline personnel are strategically placed to spot people with certain behavioral characteristics common to hijackers. Though the systems are not infallible, they have isolated potential hijackers and discovered people with hidden metallic objects. A further measure of interest is a bill introduced in the U.S. Congress which proposes a federal subsidy of 50% of the installation cost of such anti-hijack systems.

Finally, the FAA may propose a rule requiring airlines to install bulletproof material over the cockpit door which has also been recommended by pilot organizations and Interpol. While this would not provide an answer to the problem, it could protect passengers by keeping control of aircraft solely in the pilots' hands during hijacking attempts.

The U.S. and Spain have signed an extradition treaty dealing with airline hijackers. This treaty recognizes that air piracy is a crime and not within the class of political crimes normally excluded from extradition procedures.

AIRCRAFT NOISE

Recent U.S. cases indicate that airport noise is becoming more open to legal attack either by damage suits or by injunction. *In Stagg v Los Angeles*, a California Court of Appeals held that it was within the statutory power of a municipality to regulate use of its airport during certain hours (11 P.M. — 7 A.M.) to alleviate noise. A New Jersey Superior Court held in *Township of Hanover/et al v. Airport Commission*, that equity is an inadequate remedy to use in enjoining airport expansion plans. After finding that no adequate remedy existed at law for noise abatement, the court found that an injunction was not warranted. However, in his decision, the Judge required for the public protection: (1) a public log of take-offs and landings (2) use of noise suppression and attenuation devices and facilities, (3) specified hours of testing and repair, (4) shields and baffling in certain areas, (5) prohibited take-off and landings during certain hours.

In Los Angeles, two recent cases in a Superior Court filed by homeowner's groups have led to new developments which could have legal consequences elsewhere. In the first suit, the city was found liable for damages in excess of \$1 million for airport noise to owners of 589 parcels of land from the 750 who filed. The owners not receiving damages were ruled "not substantially affected" by the noise. However, in a similar suit by a different group, the city used a third party action to bring 21 airlines and 4 manufacturers into the suit for possible indemnification. The pretrial ruling held that there were sufficient questions on ultimate liability that should the city be found liable, a suit for indemnification could follow.

The new generation of large bodied jets like the 747 and the DC-10 and L-1011 recently introduced are quieter than present airliners, but an overall noise increase will result as movements increase at airports.

The SST, however, poses a severe noise problem in addition to its exhaust pollution problems. The noise level of an SST on take-off is now expected to equal that of 50 jumbo jets. The SST in flight allegedly will leave a massive trail of sonic booms which could be intolerable over populated areas and could have adverse effects on any area beneath. The FAA has given notice of a proposed rule making aimed at regulations that would limit permissible noise from the SST. The probable result of such a rule would be the banning of overflights of SST over the U.S. Several European countries have announced similar intentions.

AIRPORT SECURITY

Mail and cargo thefts from airports are increasing steadily and the problem has become acute in the New York metropolitan area where thefts from airports have led to governmental action. The U.S. Post Office has warned airlines to take more precautions in guarding against mail theft or face fines up to \$1,000 for each piece of stolen mail. The Post Office insisted that mail be transported on the ground in closed carts and that mail must never be left unattended while in airline custody.

The CAB recently approved agreements of members of the Airport Security Council designed to establish procedures necessary to make the Council an effective deterrent to airport theft. The resolutions prescribed and required adherence by ASC members to definitive procedures in areas such as air cargo, employee identification, required gate security, cargo terminal parking area limits, release of air cargo and shipping documents, and specific customs forms to be used at New York's Kennedy Airport. Also established were uniform reporting procedures for recording thefts and air cargo losses. While the Board found that these measures would provide extra security for New York area airports, such an organization may provide the best means of reducing theft at international airports.

The subject of Airport Security will be covered at depth at the VIII Inter-American Aviation Law Conference to be sponsored by the Schools of Law of the Universities of Miami, Panama and Uruguay in April 1971 in Miami, Florida.

U.S. CIVIL AERONAUTICS BOARD

The CAB has, with Presidential approval, enacted a new regulation which will allow it to restrict the number of flights by foreign carriers into U.S. cities. The rule is aimed at countries which have operated unrestricted schedules into the U.S. while unilaterally restricting the number of U.S. airline flights into their cities. The CAB emphasized that under the Bermuda Agreement, airline management should be free to determine operating frequencies, subject to ex post facto review only. The CAB may accomplish its objective through modifications to foreign air carrier permits and require foreign carriers to file for prior approval of on-route charters, as they presently must do for off-route charters. This measure would allow the Board to regulate the charter activities of countries which restrict U.S. charter operations.

In the domestic charter field, the CAB is attempting to tighten its charter flight regulations with proposed rules limiting charter flight

eligibility to groups of no more than 20,000 members buying no more than 2,000 airplane tickets in a calendar year. These guidelines would exclude many larger, previously qualified organizations. A charter-worthy organization would also need to have its officers elected by its members at least every two years, further, it could not have more than one class of membership with different dues. These new criteria are being contested by NACA, the organization of charter carriers. Congressional hearings have been scheduled by the House Interstate and Foreign Commerce Committee.

The entire air transport section of the recent Postal Reform Bill was deleted before its passage by the House. That portion called for elimination of the CAB as a rate making agency for mail carried by air, giving the authority to the Post Office to negotiate individually with the carriers, subject to CAB approval. The deletion of this provision ended a jurisdictional dispute and ensured that the CAB will retain its mail-rate making authority.

In other actions, the CAB approved renewal of the 10-airline mutual aid pact that requires member airlines to pay their "windfall profits" to a struck airline. The agreement was amended to allow an airline to recover a greater share of its strike losses. The Board also moved to tighten enforcement of regulations governing oversales, issuing cease and desist orders against two U.S. airlines. The Board has required each carrier involved to establish priority rules to decide which passengers holding tickets shall be denied space. The orders against the carriers were for failure to comply with regulations stating that passengers must be given a written statement explaining the terms and conditions under which they may be compensated for denial to board the aircraft.

FARES

A six percent fare increase granted last September by the CAB to U.S. airlines was recently ruled illegal by a U.S. Court of Appeals. A group of 32 Congressmen filed the suit claiming that the public was excluded from the meetings in which the rates were discussed. However, the present fares will remain in effect for at least 90 days from the ruling, while airlines file new proposals for fares. The amount of the prior fare increase was not held illegal, only the method by which it was reached.

Another important development which will increase current fares is the recent passage of the Airport/Airways Revenue Act of 1970. This bill will utilize a series of user taxes to provide over \$600 million annually for airport and airways development and modernization through 1975. The

certification of airports which meet FAA standards is also provided for in the bill. Federal matching funds of 50% will be provided for airport development grants, and up to 82% matching funds will be provided for safety equipment procurement. Terminal development will not be funded through this bill, which is aimed at creating new modernized airports and automated navigational aids to meet the anticipated growth of the industry.

Most significant among the new user taxes is the increase in the domestic passenger tax from 5 to 8%. This tax alone should raise over \$500 million. One provision included within the passenger tax has already caused a controversy. Ticket agents are subject to a \$100 fine if they disclose the amount of the tax to passengers. They may disclose the gross ticket price only. The American Society of Travel Agents (ASTA) is planning legal action against the alleged "hidden tax" and it appears that several travel agencies will test the disclosure provision by showing the amount of the tax on the ticket.

Other sources of revenue for the bill will be a \$3 international head tax on flights abroad and to Alaska and Hawaii; a 7c gallon tax on general aviation fuel; a plane registration fee based on weight; a 5% waybill tax on air freight; and a tax on aviation tires and tubes.

To simplify the ticketing process under this bill and to aid the airlines' revenues, the CAB has also temporarily approved the use of fares rounded off to the next highest dollar. These "round" fares will raise the average ticket price 43 cents and raise over \$50 million in revenue for the airlines.

An IATA meeting will take place in September, in Honolulu, to discuss air fares, and to resolve the existing problem of confusing and differing rates on routes like the North Atlantic.

INTERNATIONAL AGREEMENTS

Argentina has adhered to the Tokyo Convention.

Mexico's Ministry of Communications and Transportation requested the Foreign Ministry to notify Cuba "that Mexico desires to end the air transport agreement, signed by both countries in 1954." The Foreign Ministry agreed and announced that it had denounced this particular bilateral agreement with Cuba.

SST

The controversy over the SST has increased with the possibility that contrails from the aircraft could adversely affect the weather. Scientists from the Environmental Science Services Administration (ESSA) research laboratories have found that exhaust pollution from a fleet of SST's could cover the earth with a "global veil" of particles that ultimately would reflect sunlight away from the surface of the earth, lowering its temperature. The exhaust of a fleet of SST's would release over 150,000 tons of water vapor into the atmosphere daily. These ice particles would remain for years as artificial clouds reflecting away sunlight. In addition to frozen water vapor, other exhaust particles and gases would be released into the stratosphere. These clouds would not disperse rapidly at such altitudes; they could remain for years, reducing sunlight beneath by 13% and lowering surface temperatures. The effect of water vapor on the ozone in the upper atmosphere, which shields the earth from the sun's ultra-violet rays, has been discounted as a threat by a recent study, though more research in all areas will take place.

The U.S. Department of Transportation (DOT) will sponsor the research into the ecological effects of the SST. It has established an Environmental Advisory Council and an SST Community Noise Council, each headed by a noted scientist, to study noise and pollution effects of the SST. Also established is an interagency program of research to coordinate the above and other studies. The Chief of SST Development for the Department of Transportation has minimized the harmful effects of SST pollution stating that it is unlikely to cause climactic changes or significant reductions in the surface temperature of the earth.

Opponents of the SST have formed a "Coalition Against SST," and have been joined by the Environmental Defense Fund. Recent studies by M.I.T. and Williams College in the United States have supported most of their views. These groups are asking the DOT to apply existing noise standards to the SST and to consider minimum environmental standards to govern certification of the aircraft, but DOT has not yet issued a detailed statement under Section 102 of the National Environmental Policy Act of 1969. Under this act, before any "major federal action significantly affecting the quality of the human environment" is undertaken, a complete statement of the environmental impact of the action must be prepared by that agency. Formal proceedings are provided for in the act to hear evidence and find facts.

Financing of the SST project in the United States will soon undergo a key vote in the Senate; \$290 million has been approved by the House.

Critics of the SST are alarmed by this appropriation when the U.S. government will spend less than \$186 million on air pollution and mass transit combined. There is also the fear that noise and other problems of the airplane make its use impossible over land and uneconomic in general. It is also possible that the expected 130 passenger payload may not be achieved until advanced engines are developed for the plane, and this will make the plane less profitable than originally expected. Cost overruns of \$76 million have also occurred on the U.S. project in the last six months. All the above makes the future of the SST a highly questionable matter.

LATIN AMERICAN CARGO FLEET

Aereolneas Peruanas, Aereolneas Argentinas, LAN of Chile, CEA of Ecuador, Lloyd Aereo Boliviano, Avianca of Colombia and VIASA of Venezuela have established a joint cargo fleet. Representatives of the above airlines crystallized a long standing idea in Lima in May 1970, and have forwarded their conclusions to the respective governments for approval where such authorization is required. The joint effort is deemed by its proponents to be in line with the overall integration movement of Latin America.

TURBULENCE

Two new types of devices are being developed to detect clear air turbulence (CAT). Both devices are currently in experimental stages. Pan Am is testing an infrared detector system, while NASA is experimenting with the carbon dioxide laser as a warning system for both clear air turbulence and aerial vortices.

COLLISION AVOIDANCE

The FAA has proposed a new rule which could require all powered United States civil aircraft to be equipped with approved high intensity (strobe) flashing red or white aviation lights for night operation. The new device would also provide higher intensity standards for anti-collision lights on newly certified aircraft.

A new low-cost anti-collision device has been developed which would respond to the infrared energy emitted by proposed required strobe lights mounted on other aircraft. The device would give a distinct tone (described as irritating) as a warning signal as well as a sectoral display of the location of the other aircraft on a display panel. The cost of this system is estimated at approximately \$1500.

STATE TAX

The state of Ohio is attempting to levy its new four percent gross receipt tax on every airline doing business in Ohio. The tax is an excise tax on gross receipts from passengers and freight carried within Ohio, as computed by the portion of revenue derived from business done in Ohio. The ATA, which represents the airlines involved, has labeled the tax as a gross receipts tax on interstate commerce, and has indicated it would appeal to the Supreme Court, if necessary, to invalidate the tax, which could become a model for other states.

IBERO-AMERICAN INSTITUTE

The Ibero-American Institute of Air and Space Law held its fourth meeting in Quito, Ecuador, June 21-25, 1970. Over one hundred delegates from Latin America, Europe, and the United States attended the five day session during which Ecuatoriana de Aviacion served as the host airline and the Central University of Ecuador as the co-sponsoring organization. Four main subjects were discussed. Airline Pools; Utilization Contracts; the Ibero-American Air Code; and Satellite Communications. Excellent and learned papers were contributed by the *ponentes* and the ensuing discussions were marked by the high caliber of the interventions.

The Institute held a business session immediately following the meeting during which Dr. F. Videla Escalada of Argentina and Dr. R. C. Benitez of the United States were awarded the Institute's Medal of Honor.