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AIRCRAFT MORTGAGE IN THE WESTERN HEMISPHERE: RECENT DEVELOPMENTS

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More than any other branch of law aviation law is exposed to constant changes by the technical and economic developments in the industry. The changes not only reflect the increasing adoption of air transportation for the transportation of persons and goods but are determined by advances in aircraft construction, both in regard to speed and capacity. Even a less dramatic growth of the aviation industry would demand considerable financing, particularly on the part of the less developed countries which rely on foreign cooperation for the purchase of airplanes. The need for extensive financing becomes even more urgent with the advent of the larger and speedier types of jet aircraft, the so-called jumbo jets and the supersonic craft, of which the former is already in use and the latter only a short time away.

Most of the Western Hemisphere has bypassed the railroad stage, leaving an underdeveloped transportation system. Air transportation has now to bear the brunt of transporting persons and quality goods. In the United States, on the other hand, the aviation industry has developed overwhelming technical, financial and managerial resources, which present opportunities and generate tensions. In any case, the United States financial and industrial institutions will have to utilize more than ever before complex financial arrangements, including security devices, when marketing their products at home and abroad.

(I) SURVEY BY COUNTRIES

Generally speaking, most Latin American aviation codes of an early vintage have been replaced by newer codes, but without significant changes in the rules governing security interests in aircraft. On the contrary, in many instances these rules still rely on past formulas without taking into consideration present-day financing methods. The idea of unification of aviation law is kept alive by various academic and research

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institutions, but has found no response in industry or in government. Even the Geneva Convention of 1948 has been adopted by only a few Latin American countries. In the Caribbean the attitudes of the mother countries are still reflected even in those areas which during the past decade have reached independence.

In the United States, developments have moved toward further refinement of security arrangements available in the Federal Aviation Act of 1958. By contrast, in Canada attempts to open the national registry for registration of security interests in aircraft have unfortunately failed.

Limiting the present survey to developments during the last decade, the following picture emerges.¹

ARGENTINA

Compared with the Aviation Code of 1954,² the Aviation Code of 1967³ shows, in regard to mortgages, no fundamental changes. Nevertheless, some of them are significant enough to be noted.

One of the changes affects aircraft engines. Not only may they be inscribed in the *Registro Nacional de Aeronaves* (Art. 41) but they may also be mortgaged independently (Art. 45,2), with the understanding that the mortgagor will notify the mortgagee in what aircraft they will be installed and "what use will be made of them" (Art. 52,4). Once established, such security will continue valid regardless of the fact that the aircraft in which such engine has been installed is mortgaged in favor of another creditor (Art. 52,4). Another innovation prescribes the contents of the mortgage agreement (Art. 53,2). It must contain: (1) the name and domicile of the parties; (2) the immatriculation and serial number of the aircraft and its component parts; (3) insurance covering the assets mortgaged; (4) the amount of the secured debt, its maturity and place of payment; (5) provisions for aircraft under construction; and (6) in case of mortgaged engines, they must have been previously inscribed in the register and be properly identified (Art. 53,2).

In regard to security interests in foreign registered aircraft, the Code provides in general terms that the inscription of an aircraft in the domestic register confers Argentine nationality without affecting the "validity of juridical acts established previously" (Art. 38). While this provision appears to comply with the Geneva Convention ratified by Argentina, the Code deals only with one of the interests listed among those to be recognized, namely that of retained title pursuant to conditional sale. Such provision was deemed necessary not only in view of the fact that

Argentine law does not recognize conditional sales with retained titles, but also because Art. 48 of the Code requires that in order to be registered in the Argentine aviation register and obtain Argentine nationality, an aircraft must be owned by a physical person or a majority of co-owners, all domiciled in Argentina, or by a legal entity (e.g., corporation) constituted under the laws of Argentina with legal domicile there (Art. 48). In order to avoid these requirements in cases of security arrangements of the retained title type, the Code has, following in the footsteps of previous legislation,⁴ provided for provisional registration of an aircraft "acquired by contract of sale and subject to a condition or a credit or other contracts made abroad by which the seller reserves the title to the aircraft until the complete payment of the purchase price or until the performance of the respective condition." (Art. 42). Such inscription of the aircraft will be allowed provided (1) the contract complies with the law of the country of the aircraft's origin (*procedencia*) and is inscribed in the *Registro Nacional de Aeronaves*; (2) the contract has been made when the aircraft did not have Argentine nationality; and (3) the purchaser complies with the requirement for ownership as indicated above (Art. 42).⁵

Aircraft mortgages remain subject to a number of privileged claims (Art. 57), now listed in Art. 59 of the Code, which substantially repeats provisions of Art. 53 of the 1954 Code. Changes affect general taxes, which have been eliminated, while fees for the use of airport facilities and related services have been limited to one year (Art. 49, 2); claims arising from collision and assistance have been added (Art. 59, 3) and salaries of the crew include those for the last month and not for the last flight (Art. 59, 5).

Finally, the duration of a mortgage has been extended from three to six years with a possibility of renewal (Art. 56).

Argentina has adopted the Geneva Convention.⁶

BOLIVIA

The *Reglamento General Sobre el Tráfico Aereo en el Territorio Nacional*, enacted by *Resolución Suprema* of January 10, 1939,⁷ provides in Art. 34 that aircraft are "amenable to *hipoteca*" which, in order to take effect, must be annotated and registered in the book of matriculation of aircraft.

Presently a new aviation code is being drafted.⁸

BRAZIL

TheCodigo Brasileiro do Ar enacted in 1938⁹ was replaced in 1966 by a new code¹⁰ without changing significantly any of the previous provisions dealing with aircraft mortgages.

The new code repeats in Art. 5 the choice-of-law rule that interests *in rem* as well as privileged claims of a private nature are governed by the national law of the aircraft, adding that a change in nationality does not affect interests properly acquired. Changes¹¹ appear only in the list of privileged liens (Art. 21); stricken are judicial costs and salvage expenses, while taxes and claims for wages are added. Expanded as to amounts covered are expenses for conservation of the aircraft by striking the previous limitation "prior to judicial sale." A new rule provides that in case the claim secured by a mortgage is for the purchase price of the aircraft, no privileged lien will be given preference, except for employees' wages and claims by the state for taxes, or fees for the utilization of airports and related services (Art. 21). The privilege will attach to claims listed in Art. 21 for only 180 days after they accrued, subject to the laws regulating bankruptcy and labor; it is not clear, however, what happens to the privilege in cases where such claims are properly inscribed as mortgages during that period.

Brazil has ratified the Geneva Convention.¹²

BRITISH WEST INDIES

No special provisions are in force dealing with aircraft mortgages, nor is the Geneva Convention in force. The establishment of a chattel mortgage and its effects locally, including judicial sale, are governed by general principles of common law, implemented, in some jurisdictions, by one or another version of the bills of sales and chattel mortgage acts. The statutory and regulatory provisions dealing with administrative matters, including registration of aircraft, are contained in a number of enactments¹³ listed in the presentation below for Trinidad and Tobago and appear to be, with some modification, in force throughout this area.

The recognition of interests in foreign aircraft is governed by choice-of-law principles in force in the British Commonwealth.¹⁴

CANADA

The Aeronautics Act enacted in 1944¹⁵ and subsequently amended contains provisions regulating the registration of Canadian aircraft but

has no provisions for the registration of interests in aircraft, including mortgages.

A valiant attempt to enact legislation to provide for uniform registration of interests in aircraft was made in 1960 when an amendment to the Aeronautics Act was submitted to the House of Commons as Bill C-37. The proponent of the bill patterned after the respective provisions of the Federal Aviation Act of 1958 in force in the United States, Mr. Drysdale, explained forcefully its usefulness, particularly in regard to foreign financing.¹⁶ However, doubts as to the legislative power of the Canadian parliament in such matters coupled with a reluctance to take action prevented adoption.¹⁷ Mr. Drysdale repeated his attempt in 1962 by Bill C-35. In a well documented speech he again made a persuasive case for adoption. Again fears were expressed that such legislation may "infringe provincial rights". Even though both legislative attempts failed, the need for such legislation has been expressed by the legal profession and writers.¹⁸

Consequently, the matter of aircraft mortgages remains regulated by the various provincial statutes,¹⁹ particularly the bill of sales and chattel mortgage acts, which provide for registration of such security interests in the counties where the chattel is located or in a central provincial register. The province of Quebec until recently allowed nondispossessory pledges only within the scope of agricultural pledges. However, in 1962 the Civil Code was amended so as to make it possible for "a person carrying on a commercial business" to mortgage "machinery and equipment pertaining to his business, while retaining possession thereof" Art. 1479 e. Whether or not air carriers qualify as merchants remains doubtful in view of the ill defined notion of merchant and commercial transaction (business) prevailing in Quebec law.²⁰

CHILE

In spite of repeated attempts to codify aviation law, Decree No. 221 of 1931²¹ regarding air navigation is still in force. Aircraft are declared to be movables (Art. 3) and any transfer of title must, in order to take effect against third parties, be inscribed in the aircraft register (*Registro de Matricula*, Art. 5). However, this law does not provide for inscription of other interests in air craft, among them mortgages. This leaves open the question whether or not, under present Chilean law, there is any possibility to constitute nondispossessory mortgages in aircraft by relying on special enactments allowing this type of arrangement. The law regarding industrial pledge was held²² to be available for aircraft mortgages,

as well, provided particular requirements of the law are met, among them the inscription in the *Registro Especial de Prenda Industrial*.²³

After withdrawing its initial reservation, Chile has ratified the Geneva Convention.²⁴ It is clear, however, that Chile is bound under the Convention to recognize properly established interests in aircraft registered in other contracting countries, while the other contracting countries are under no duty, at least as far as this Convention is concerned, to recognize interests in Chilean aircraft listed in the Convention, because the special register provided for the *prenda industrial* is not a "public record of the Contracting State in which the aircraft is registered as to nationality (Art. I, 1, d, ii).

The most recent draft for an aviation code contains extensive provisions regulating aircraft mortgages in Arts. 224 to 231.²⁵

COLOMBIA

The *Ley sobre Aeronáutica Civil* (1938)²⁶ provides for inscription in the *Registro de Aeronáutica Nacional* "acts which encumber or limit the ownership of an aircraft" (Art. 11). Additional provisions have been issued by an administrative *Resolución* of July 16, 1962,²⁷ implemented, it seems, by the compilation *Manual de Reglamentos Aeronáuticos*, published by the *Departamento Administrativo de Aeronáutica Civil*.²⁸

The *Resolución* of 1962, which does not appear in the Manual, provides in regard to aircraft for eight particular registers, of which one, the *Libro de Registro Nacional de Hipotecas y Gravámenes*, is destined for the inscription of mortgages and other interests *in rem* (Art. 4). "Once inscribed in the Register of Public and Private Instruments according to No. 10 of Art. 2652²⁹ of the Colombian Civil Code", the instruments establishing an aircraft mortgage are "subject to the *Registro de Aeronaves*" (Art. 5 of the *Resolución*). The latter inscription gives the inscribed interest effect in courts (*fé en juicio*) as well as before any authority and public official (Art. 25). No instrument subject to inscription in the register will be effective in regard to third persons unless properly inscribed (Art. 26).³⁰

Presently a new Commercial Code is being drafted to include also aviation law.³¹

COSTA RICA

Developments in Costa Rica are characterized by three main factors.

First, the *Ley General de Aviación Civil* of 1949³² is still in force, including Arts. 109 to 116 regulating aircraft mortgages. Second, the *Ley de Prenda* of 1941,³³ which implemented this law, is no more in force, since it was abrogated by the Commercial Code in 1964.³⁴ Finally, during the last decade two attempts have been made to reform codified aviation law, first by a draft prepared in 1962 by the *Junta de Aviación Civil*, but shelved by the Legislature, and the second by a draft submitted in 1965 to the Legislature and published in the Official Gazette,³⁵ but not yet enacted.

In view of these developments the main problem is to determine the impact of the new Commercial Code on the 1949 aviation law. As already stated, the *Ley de Prenda* of 1941 was expressly abrogated; consequently, the question arises whether or not the Commercial Code will fill the gap. It appears that this question should be answered affirmatively. First of all, the Commercial Code applies (Art. 1) to acts and contracts therein regulated, regardless of whether the parties involved are merchants. This would make the code provisions dealing with securities in chattels applicable without the need for determining the commercial status of aircraft owners or operators. This is further supported by the express provision of Art. 531 that any loan accompanied by *prenda* as defined in Art. 530, will be regulated (Arts. 530 to 581) as a commercial transaction, without giving the parties involved the status of merchants necessary to invoke bankruptcy (Art. 851). Some doubt regarding the correctness of this reasoning may arise from Art. 348 of the Commercial Code which provides that Chapter V dealing with carriers will apply to air carriers, except where there are opposing provisions in the General Civil Aviation Law of 1949, while the chapter dealing with chattel security arrangements has no parallel clause. This may be overcome by pointing out that Art. I of the Code's general and transitional provisions has expressly derogated the *Ley de Prenda* of 1941 which was used, as pointed out, as a supplementary source in conjunction with the General Civil Aviation Law of 1949. Finally, Art. 109 of the latter law expressly provides that such security arrangements shall be regulated by provisions of this law and, in the second place, by "legal provisions regarding *prenda* generally," which now appear in the Commercial Code and refer in Art. 533 expressly to "all kinds of movables," including "machines and means of transportation" (Art 533, b).

A complete survey of interrelations between the aviation law of 1949 and the Commercial Code of 1964 will not be attempted. Only one particular question will be discussed, namely that of privileged claims.

It would seem that Art. 113 of the law of 1949 remains in force, thus retaining as privileged claims the following: (a) judicial costs as well as expenses for the preservation of the aircraft or for payment of liabilities (apparently connected with it); (b) refunds for assistance and salvage; (c) taxes and fees imposed on the aircraft; (d) expenses incurred by the pilot within his authority and necessary for the flight; and (e) salaries of the crew, all this in spite of Art. 573 of the Commercial Code. The reason for such solution lies in the fact that Art. 113 of the law of 1949 survives as the *lex specialis*.

The 1965 draft for a new *Ley General de Aviación Civil*³⁶ provides that aircraft "even though chattels" may be mortgaged (Art. 227), the arrangement to be regulated not only by this law, but also by the Commercial Code and, if necessary, by the Civil Code. Privileged claims are regulated (Art. 228), in substance, following Art. 113 of the law of 1949. The draft also provides that aircraft, engines, propellers and other equipment may be pledged. This would require that they be given to the creditor (Art. 233), thus making the security dispossessory, in spite of the fact that the *Ley de Prenda* referred to here was abrogated in 1964 and the Commercial Code of 1964, listed here as another supplementary source, allows a nondispossessory *prenda* whenever parties so agree (Art. 538).

CUBA

No recent developments which would affect aircraft mortgages have been reported.³⁷

Cuba has ratified the Geneva Convention.

DOMINICAN REPUBLIC

The law presently in force, i.e., *Ley No. 1915 sobre Navegación Aerea Civil* (1949)³⁸ provides for registration of domestic aircraft (Art. 17) and transfer of property (Art. 25). Aircraft mortgages may be established only according to the *Ley de Préstamos con Prenda sin Desampoderamiento* of 1948³⁹ which allows chattel mortgage arrangements involving "means of transportation, vessels, machinery . . . and other movables . . . they use in their work, industries, enterprises . . ." (Art. 1). The debtor appears before the justice of the peace of the place where the respective chattel is located and declares under oath the required contents of the agreement which then is included in a book kept by this court (Art. 4).

A new *Ley de Aeronáutica Civil* was adopted by the Legislature in December 1969 and is presently waiting for presidential signature.⁴⁰ The law provides for a dual aircraft register, one of aeronautical property (Art. 248) and the other for administrative purposes, both administered by the *Dirección General de Aeronáutica Civil* (Art. 247). In the former, instruments "establishing, transferring, acknowledging, modifying or extinguishing interests *in rem* (*derechos reales*) in aircraft or their engines" will be inscribed (Art. 248, b). Aircraft are considered chattels and amenable to mortgages (Art. 274). The underlying contract shall be governed "by this Law, provisions of the Civil Code and by special laws" (Art. 274). The contract must be executed in a public document and inscribed in the *Registro de Propiedad Aeronáutica* (Art. 275). At the same time the law provides for pledge (*prenda*) of aircraft, engines, propellers and other equipment, but with dispossessory effect (Art. 270). A regulation is to be issued in regard to pledged aircraft (Art. 277).

ECUADOR

Aviation law is presently regulated by two enactments; *Ley de Aviación Civil* of 1959 and the *Ley de Tránsito Aereo* of 1960.⁴¹ The latter enactment provides (Art. 10) that mortgages may be constituted in aircraft and their appurtenances (*accesorios*) according to the rules of the Civil Code. Such encumbrances have no effect unless they are inscribed in the *Registro Aeronáutico Nacional* (Art. 8, 2). In case such agreements involving Ecuadorean aircraft are executed abroad, they shall be made before the competent Ecuadorean consul who will forward the agreement to the Ministry of Foreign Relations, after having inscribed it in the consular register. However, in order to take effect such agreements also shall be inscribed in the *Registro Aeronáutico Nacional* which may be done through intervention of the acting consular officer (Art. 8, 3).

Ecuador has adopted the Geneva Convention.⁴²

EL SALVADOR

The *Ley de Aeronáutica Civil* enacted in 1955 and its Arts. 241 to 252 continue to regulate aircraft mortgages.⁴³

El Salvador has adopted the Geneva Convention.

FRENCH ANTILLES AND GUIANA

The Code of Civil Aviation of 1967,⁴⁴ consisting of two parts, one

legislative, the other reglementary,⁴⁵ has, in regard to aircraft mortgages, considerably expanded the provision contained in the previous code and incorporated, to some extent, provisions of the Geneva Convention, ratified by France.⁴⁶

The aircraft mortgage encumbers not only the hull, the engines, propellers and apparatus on board, but also "all pieces intended to permanently serve the aircraft, regardless of whether or not they are part of the aircraft or are temporarily separated" (Art. L. 122-1), provided, of course, that they belong to the owner of the aircraft. The inscription of the mortgage is made according to Art. R. 122-1, indicating, among other things, the amount of the debt, the interests and conditions of payment, as well as the "election of a domicile by the creditor in the city where the registry of aircraft is kept" (Art. R.122-1, 2). The mortgage also may encumber a part of or the whole of an air fleet belonging to the same owner, provided the "different component part (*éléments*) of the fleet are identified (*individualisées*) in the document" (Art. R.122-2). The mortgage may be expanded so as to encumber spare parts as defined in Art. L.122-4, pertaining to the mortgaged aircraft, provided, again, that the "pieces are identified" (Art. L.122-3). These spare parts located in one or several places and there properly publicized (Art. L.122-4) must be replaced immediately after they are used in the aircraft (Art. L.122-3, 2).

In order to take effect, a mortgage must be constituted by written contract (Art. L.122-5, 1). In case sale is mentioned in the document and the whole or part of the purchase price remains unpaid, a mortgage will accrue in favor of the seller, unless the contrary is agreed upon, provided the seller has this mortgage inscribed in accordance with the regulatory part of the Code (Art. L. 122-5, 2). A mortgage must be inscribed in the *registre d'immatriculation* and takes effect in regard to third persons only upon inscription (Art. L.122-7, 1). Two or more mortgages rank according to the dates of their inscription; however, inscriptions on the same day are considered to be simultaneous regardless of the hour of inscription (Art. L.122-8). The inscription remains effective for ten years, unless renewed (Art. L.122-9); interests for three years enjoy the same rank (Art. L.122-10).

The law expressly provides that a mortgage runs with the aircraft regardless of a change in the title (Art. L.122-13); in case of damage to or loss of the aircraft, insurance proceeds will be subrogated (Art. L.122-6, 1). Of the numerous privileged claims which might have attached to the aircraft, the Code, in accordance with the Geneva Convention,

allows only three: judicial costs, remuneration for salvage, and necessary expenses of conservation of the aircraft (Art. L.122-14). Thus the Geneva Convention became, at least in this regard, applicable also to non-international situations (Arts. L.122-15 to L.122-16), with the exception in favor of claims caused on the ground in France by aircraft registered in another country which is a party to the Geneva Convention (Art. L.122-17), but eliminating the 80% limit (Art. VII (5) (b)).

Attachment as well as judicial sale are regulated in regard to aircraft registered in countries which are parties to the Geneva Convention in accordance with the substantive provision of Art. VII (4) of the Convention, namely that no such sale may take effect unless claims having preference under the Convention over the claim of the executing creditor are covered by the proceeds or assumed by the purchaser (Art. L.123-1, 1); the same article also repeats the reservation of Art VII(5) of the Convention made already in Art. L.122-17 of the Code. Proceedings are regulated in greater detail in the regulatory part of the Code (Art. R.123-1 to R.123-9).

GUATEMALA

The Law of Civil Aviation enacted in 1948⁴⁷ remains in force, making it possible to mortgage not only aircraft but also engines, propellers and other parts thereof (Art. 14). The new Civil Code enacted in 1963⁴⁸ supplied additional provisions, namely that "aircraft (*naves aéreas*) and encumbrances thereon" may be inscribed in the *Registro de Propiedad* (Art. 1127, 7), a provision repeated in Art. 1207 which reads that "vessels and aircraft . . . as well as interests *in rem* (*derechos reales*) which affect them, shall be inscribed at the central registry of property in the book designated for such assets." Such special register for vessels and aircraft (Art. 1185) is kept in the capital (Art. 1216). Effects of inscriptions are determined by Arts. 1130 to 1148 of the same Civil Code.

GUYANA

The Colonial Air Navigation Order of 1961 (S.I. 3216) still regulates aviation;⁴⁹ however, it contains no provisions dealing with mortgages in aircraft. Nevertheless, mortgages may be established according to general rules applicable to chattel mortgages as contained in Sec. 13 (2) of the Deeds Registry Ordinance (Laws of Guyana, Ch. 32, 1953) or available under the Bills of Sale Ordinance (Laws of Guayana, Ch. 339, 1953).

HAITI

A presidential decree, dated November 16, 1960,⁵⁰ not only abrogated (Art. 4) all prior laws⁵¹ related to aviation, particularly the one of October 29 and 30, 1948 insofar as it was incompatible with the presidential decree, but also granted to the executive the authority to regulate the administration as well as the development of aviation (Art. 11). Relying on this authority, the President issued a decree dated November 17, 1960,⁵² regulating the registration of domestic aircraft and of interests therein.

Aircraft are "movables subject to rules of general civil law (*droit commun*), except where the present decree contains special provisions" (Art. 16). Such a rule appears in Art. 17, providing that

Aircraft may be encumbered by mortgages (*hypothèques*) and other interest real (*droits réels*). Provisions of the Commercial Code regarding mortgages on vessels apply to aircraft mortgages; however, claims for remuneration of salvage and for extraordinary expenses of conservation of aircraft are the only privileged claims.

Consequently, provisions of the Commercial Code of 1826 as amended, dealing with ship mortgages (Arts. 354-374) apply to aircraft, except the twelve classes of privileged claims listed in Art. 231 of the Code, including those in Arts. 1868 and 1869 of the Civil Code, thus reducing such claims to two.

In order to take effect against third persons, mortgages must be inscribed in the proper register, i.e., the *Registre du Bureau de l'Enregistrement et de la Conservation des Hypothèques* which will notify the *Service de l'Aéronautique Civile*, attached to the Ministry of Commerce and Industry (Art. 21).

The attachment and judicial sale of aircraft also is to be performed in accordance with the provisions of the Commercial Code applicable to vessels; time periods to be granted and notifications to be made may be regulated by a presidential decree. A temporary attachment (*saisie conservatoire*) may be had according to provisions of the "general civil law"; however, a foreign aircraft may not be seized if it is engaged in scheduled public transportation, or, if the aircraft is not so engaged, when it is ready to take off, provided the country of matriculation grants reciprocity; in all other cases, an aircraft may be released provided sufficient security is put up (Art. 20).

Haiti has adopted the Geneva Convention by a decree dated February 15, 1961.

HONDURAS

The *Ley de Aeronáutica Civil* of 1957⁵³ and its provisions contained in Arts. 197 to 218 dealing with aircraft mortgages remain in force.

JAMAICA

The legal status of aircraft mortgages may be considered, for the most part, as that described for Guyana, and Trinidad and Tobago.

MEXICO

Articles 362 to 375 of the *Ley de Vías Generales de Comunicación*⁵⁴ enacted in 1949 and implemented by the *Reglamento del Registro Aero-náutico Mexicano* of 1951⁵⁵ remain in force.

Mexico has adopted the Geneva Convention; however, the Convention is not in effect in relation to the Netherlands and the United States, both countries having declined reservations to the Convention made by Mexico.⁵⁶

NETHERLANDS ANTILLES AND SURINAM

The Kingdom of the Netherlands has ratified the Geneva Convention for its European domain but not for the dependencies in the Caribbean.⁵⁷

NICARAGUA

The *Código de Aviación Civil* enacted in 1956,⁵⁸ almost identical with that of Honduras, and regulating aircraft mortgages in Arts. 190 to 211, remains in force.⁵⁹

PANAMA

Replacing Decree No. 147 of 1932 regulating civil aviation,⁶⁰ the new Aviation Law enacted by Decree-Law No. 19 (1963)⁶¹ introduced aircraft mortgages as a statutory institution. According to Art. 25, aircraft, including the "body, engines, propellers, radio and any other equipment necessary for its functioning" (Art. 22) may be encumbered by mortgage (Art. 25). The law also allows mortgages of a "complete fleet of an enterprise engaged in air transportation" (Art. 25), without any additional rules to govern such complex security arrangements. Mortgages

must be inscribed in the special section of the *Registro Público*, namely its *Sección Aeronáutica* (Art. 28, a) in order to take effect against third parties (Art. 29). In regard to preferred liens the law provides that a credit secured by a mortgage will take preference over any other claim except for "indemnities due to assistance or salvage, as well as expenses necessary for the preservation of the aircraft" (Art. 26), a strict limitation patterned after the Geneva Convention even though it was not adopted by Panama.

For all other matters the law refers to "provisions applicable to chattel mortgages," i.e., the law regarding chattel mortgages (*Ley sobre Hipotecas de Bienes Muebles*) enacted in 1952⁶² and amended in 1954.⁶³ This provision, however, does not exclude the application, if necessary, of the Civil or the Commercial Codes "insofar as they are not modified by the provisions of this section" of the aviation law, namely Arts. 22 to 30.

PARAGUAY

The Aviation Code of 1957⁶⁴ allows aircraft mortgages (Art. 30) to be executed as public documents and inscribed in the *Registro Nacional de Aeronaves* (Arts. 7 to 15). The inscription gives the underlying claims their rank according to the sequence of the respective inscriptions. The security does not attach only to the aircraft but also, in cases of loss of or damage to the aircraft, or to its expropriation, to the proceeds of insurance, to the damages owed by third persons or to the indemnity due for expropriation (Art. 31). There are a number of privileged claims preferred to mortgage creditors: (a) judicial costs; (b) claims by the state for fines and for taxes; (c) fees for the use of airports and related services; (d) claims arising from rescue operations, collision or salvage; (e) claims for provisioning and repairs made outside the place of destination necessary to continue the flight; and (f) salaries of the crew for the last flight (Art. 32).

The mortgage expires three years after inscription (Art. 33). Additional provisions applicable to aircraft mortgages must be gleaned from those applicable to ship mortgages (Art. 33).

Paraguay recently ratified the Geneva Convention.

PERU

The early regulation of civil aviation issued in 1933⁶⁵ was replaced, in 1963, by a new *Reglamento*.⁶⁶ In regard to mortgages, the regulation provided that civil aircraft are amenable to mortgaging (Art. 269), but

not shares thereof (Art. 273). Mortgages are constituted "in conformity with the applicable legal provision," i.e., the Civil Code of 1936 (Art. 812) which classifies aircraft as immovable property and thus makes provisions regulating mortgages on immovables applicable to aircraft (*Reglamento, Art 267*). A mortgage must be established by a public document (Art. 81, 270) and inscribed in the *Registro Público de Aeronaves*; the day and hour of filing of the petition determine the rank (Art. 270). In cases of instruments executed abroad, they will be inscribed provided they comply with the laws of the place of making and are authenticated, as well as translated into Spanish (Art. 82). Special provisions provide for provisional registration of foreign aircraft and incumbrances thereon (Arts. 38, 39).

In 1965 a new *Ley de Aeronáutica Civil*⁶⁷ was enacted and contains rather scant provisions on mortgages. Following the general rule that civil aircraft are amenable to being mortgaged (Art. 100), the law provides that contracts establishing in aircraft an interest *in rem* (*derecho real*) must be inscribed in the *Registro Público de Aeronaves del Perú* (Art. 98).⁶⁸ The law furthermore provides that mortgaged aircraft cannot be transferred abroad nor may essential characteristics of an aircraft be changed without the consent of the creditor (Arts. 101, 102). Finally, the sale (apparently judicial) of mortgaged aircraft may take place only according to provisions applicable to real property contained in the Code of Civil Procedure (Art. 99).

The law was implemented by a new *Reglamento de la Ley de Aeronáutica Civil del Perú*.⁶⁹ In the main, the regulation repeats provisions contained in the law, namely that aircraft may be mortgaged (Art. 273); that aircraft mortgaged within the country and registered in the *Registro Público de Aeronaves* may not be transferred abroad without express written consent of the mortgagee (Art. 274), and that (forced) sales of mortgaged aircraft may be executed only according to the provisions of the Code of Civil Procedure applicable to immovables (Art. 272). In regard to the inscription of the mortgage in the *Registro Público de Aeronaves*, Art. 274 provides that the hour of filing determines the rank.

Additional provisions of the Civil Code applicable to mortgages on immovables continue in force. Among them a few may be mentioned: that the amount secured by the mortgage must be determined (Art. 1013); and that contracts made abroad will result in a mortgage on assets situated in Peru only if the mortgage is inscribed in the register of the place where the respective assets are located (Art. 1025).⁷⁰ These provisions are implemented by Art. 73 of the *Reglamento* to the effect that contracts

entered into abroad will qualify for inscription only if they are valid under the law of the country where made. The rule appears to be repeated in Art. 75 of the *Reglamento* providing that foreign established interests (*titulos*) will be inscribed provided "they have been executed by submission to the laws of the country where made and are authenticated as well as translated into Spanish."

TRINIDAD AND TOBAGO

The Imperial Air Navigation Acts of 1920 and 1947 granted the sovereign the authority to extend by Order in Council provisions of the Act to dependent areas. In pursuance of this authority Colonial Air Navigation (Application of Acts) Orders were issued between 1937 and 1947. Subsequently, the Colonial Air Navigation Order of 1949 was enacted providing, among other things, for registration of aircraft. It was followed by the Colonial Air Navigation Order of 1955, also dealing with registration and markings of aircraft, as did the Air Navigation (General, Amendment) Regulations of 1961 and finally the Colonial Air Navigation Order of 1961, as amended in 1966.⁷¹ However, none of these enactments contain provisions applicable to security interests in aircraft. These may be established under local law in accordance with statutory provisions dealing with such interests in movable property generally.

UNITED STATES

Since the re-enactment in 1958 of the statutory aviation law as the Federal Aviation Act of 1958,⁷² only minor amendments have affected security arrangements of the chattel mortgage type. While according to paragraph (2) of Sec. 503 of the Act security interests, including mortgages, may have been established in particular aircraft engines and propellers when at designated locations or under the basket mortgage,⁷³ the amendment enacted in 1959⁷⁴ made it possible to establish security interests also in "specifically identified aircraft propeller" of a specified power. Also amended were provisions contained in Sec. 504 of the Act exempting from liability persons holding security interests in aircraft or its parts, for damages inflicted to persons or property on the ground, by extending such rule to include persons holding security interests in aircraft or propellers. Finally, an enactment passed in 1964⁷⁵ provided that, as a rule, instruments to be recorded "shall have been acknowledged before a notary public" or other officer authorized by law.

The most significant innovation came about by the enactment in 1964⁷⁶ of a choice-of-law provision dealing with the law to govern instru-

ments to be recorded (Sec. 506). The "validity" of such instruments shall be "governed by the laws of the State, District of Columbia, or territory or possession of the United States in which such instrument is delivered, irrespective of the location or the place of delivery of the property which is the subject of such instrument." In case the place of "intend delivery of such instrument is specified herein, it shall constitute presumptive evidence that such instrument was delivered at the place so specified."⁷⁷

It is generally accepted that federal law will supersede state law in matters of aviation generally and in those of security interests in particular, except in regard to matters which may be reasonably assumed to have been left to regulation by the several states. It is apparent that the Federal Aviation Act does not cover the whole area of security interests. First of all, the provisions of the Act regarding interests in aircraft apply only to domestic aircraft, and in regard to security interests in engines and propellers only to certain technically specified types. Furthermore, provisions dealing with the effect of registration and with the choice-of-law apply only to what the Act terms "validity" of the instrument, leaving out apparently its effects, particularly enforcement of interests thereby constituted. Consequently, the area thus left out may be regulated by an expanding federal decisional law; but until this happens, the matters will be covered by state law, in most cases by the substantive as well as choice-of-law provisions of the Uniform Commercial Code.⁷⁸ Without going deeper into this complex problem,⁷⁹ it will suffice to repeat that the provisions of the Federal Aviation Act regarding the "validity of registration" and the choice-of-laws provision of Sec. 506 apply only to domestic aircraft regardless of their situs while the Uniform Commercial Code applies the law of the situs to all aspects of the security arrangements and not only to its "validity."

Of course, these rules will yield to or supplement the provisions contained in the Geneva Convention which was ratified by the United States.⁸⁰ The choice-of-law provision enacted as Sec. 506 of the Federal Aviation Act contains an express saving clause, applicable only to those provisions of the Convention which cover interests in aircraft registered in the same country (Art. XI, 2).

In one area strongly urged legislative action did not materialize. An amendment to the Federal Bankruptcy Act⁸¹ lists among interests not to be affected by bankruptcy only leases and conditional sales, but omits chattel mortgages. This omission resulted in an otherwise irrational shift in the type of security arrangements from chattel mortgages to the safer leases or conditional sales.⁸²

URUGUAY

The *Código de Legislación Aeronáutica* of 1942⁸³ and its Arts. 105 to 109 dealing with aircraft mortgages continue in force as does the particular *Reglamentación* (1944).⁸⁴

VENEZUELA

The *Ley de Aviación Civil* enacted in 1955 and containing provisions on mortgages in Arts. 62 to 64 remains in force.⁸⁵ New regulations for aircraft registration have been recently issued by Decree No. 146 (1969).⁸⁶

(II) TREATY PROBLEMS

The international recognition and subsequent enforcement of interests in aircraft is determined, in the first place, by the choice-of-laws rules in force in the respective forum⁸⁷ unless, of course, these rules are superseded by provisions emanating from a properly adopted treaty. Limiting this survey to choice-of-laws rules created by treaties, two regional conventions and one universal convention must be discussed.

Among the regional conventions with bearing on international recognition of interests in aircraft, the Montevideo group of conventions must first be mentioned.⁸⁸ The 1940 Convention on International Maritime Commerce Law, applicable also to aviation, provides that the nationality of the aircraft determines the "acquisition and transfer of property, privileges and other interests *in rem* as well as publication which guarantees their effect in relation to third interested parties" (Art. 2), adding that "*hipotecas* or any other interest *in rem* in vessels or aircraft having the nationality of one of the states and properly constituted and registered in accordance with its laws shall be valid and take effect in other States" (Art. 3).

The other regional convention, the Bustamante Code adopted in Havana in 1928,⁸⁹ provides that rules applicable to vessels apply equally to aircraft (Art. 282). The law of the nationality of the aircraft prevails (Art. 278). Unconditional international recognition of interests "acquired in accordance with the rules of this Code" is imposed by the provision that such interests shall have "extraterritorial force in the contracting States, except when any of their effects or consequences conflicts with a rule of international public order" (Art. 8).

The Geneva Convention of 1948⁹⁰ contains extensive rules regarding international recognition of interests in aircraft, including "mortgages,

hypothèques and similar rights in aircraft which are contractually created as security for payment of an indebtedness" (Art. I, 1 d), provided such interests have been "constituted in accordance with the law of the Contracting State in which the aircraft was registered as to nationality at the time of their constitution," and are "regularly [properly] recorded in a public record of the Contracting State in which the aircraft is registered as to nationality" (Art. I, 1, i and ii). Additional provisions deal with privileged claims, enforcement, and with interests in spare parts. These provisions are analyzed elsewhere.⁹¹

Many solutions adopted by the Geneva Convention, particularly the numerous details which the drafters drifted into, have resulted not only in valid criticism but also must be blamed for a rather unimpressive number of ratifications. In 1963 the Mexican representative in ICAO recommended that certain amendments be studied, some of them related to mortgages and privileged claims. However, in 1965 the Mexican representative withdrew his proposal when a considerable number of participating countries expressed their opposition to "reopening at this time the question of international recognition of aircraft dealt with in the Geneva Convention of June 1948."⁹²

It may be added that the Convention on the High Seas, signed in Geneva on April 29, 1958,⁹³ provides—in connection with piracy on high seas—that the courts of the state which carried out the seizure of a piratical aircraft may also "determine the action to be taken with regard to the . . . aircraft or property, subject to the rights of third parties acting in good faith" (Art. 19).

(III) UNIFICATION

In view of its international dimensions, the ideal of unification of aviation law presents a particularly fascinating challenge.⁹⁴ In this area of the law unification need not start from scratch since unification of sorts has already taken place. In the first place, one must not overlook the fact that significant uniformity has resulted from the widespread practice of adopting into aviation codes solutions enacted in other countries, as well as by the simpler method of copying their very text. In many instances significant areas of uniformity have resulted from transplanting into domestic law parts of international conventions without a formal ratification, as for example the liability provisions of the Warsaw Convention (1929), incorporated into some Latin American aviation

codes. Of course, this type of unification is achieved to a larger degree and with more effectiveness by formal ratification of aviation treaties. Finally, unification exists to a considerable extent because of the basic principles pervading legal systems of the civil as well as common law. In this respect the opposing attitudes taken by both legal systems in the past, when dealing with chattel mortgages — namely, that of hostility in the civil law and of acceptance in the common law — have for all practical purposes disappeared since civil law jurisdictions adopted in aviation law the nondispossessory pledge coupled with inscription.

Nevertheless, it seems that more uniformity is desired and needed.⁹⁵ Indicative of such trend is the *Código Aeronáutico Americano: Anteproyecto Argentino*,⁹⁶ published in 1962. The draft is designed mainly to become uniform domestic law in countries which adopt it (Art. 1), while it will take on the characteristics of an international convention (Art. 37) between the contracting countries and their nationals, including aircraft there registered, in regard to the recognition of mortgages (Art. 56) and related privileged liens (Art. 49).

Title III, Chapter VI, of the draft dealing with aircraft mortgages (*hipotecas*) starts out with rules applicable to aircraft under construction (Art. 50), while it omits provisions dealing with ready-made aircraft as well as mortgages of engines, propellers and spare parts. An agreement to mortgage must be executed in a proper document and inscribed in the aircraft register (Art. 51); inscriptions effectuated within six days from the day when the mortgage was agreed upon will have retroactive effect from the day of the agreement; this rule is implemented by Art. 39, stating that legal acts qualifying for inscription in the aircraft register (Art. 29), including incumbrances (Art. 29, 2), will not affect third persons unless they have been subsequently inscribed (Art. 36). In any case, the question whether such inscriptions are constitutive or merely declaratory remains doubtful; it would seem that, at least in regard to third persons, the inscription is constitutive.

The mortgage instrument must identify the parties as well as the aircraft; it must declare any insurance thereon and supply data on the secured credit (Art. 51, 2), but without indicating the effect of concompliance. In case of loss or average the insurance proceeds or damages due to the owner of the aircraft will be subrogated (Art. 52, 1). To this effect mortgagees are expected to inform insurers about encumbrances (Art. 52, 2). In case of destruction or non-use of aircraft, mortgagees may seek payment from salvaged materials or from proceeds from proper

sale (Art. 53). A mortgage will last ten years unless renewed (Art. 54). The touchy question of privileged liens is introduced by the general rule that such claims take precedence over claims secured by a contractual mortgage (Art. 53). Privileged liens are divided into two classes: general (Art. 41) and special (Art. 42). The former include remuneration for collision, assistance and salvage; conservation; credits arising from the construction of the aircraft (an unusual claim unless to be understood as analogous to mechanic liens); fees for the use of airports and related services during the last year; wages of the crew (without limitation); and claims for the outfitting and repairs of the aircraft outside of the place of destination. It may be added that these claims are barred after six months from time of accrual (Art. 188); parties are denied the right to modify this provision by agreement (Art. 191). Special liens include judicial costs incurred in the common interest of the creditors in the course of a forced sale of the aircraft (Art. 42). Additional detailed provisions applicable to privileged claims are patterned after the Geneva Convention. However, the draft did not determine the ranking of the two classes of privileged claims *inter sese*. A novel provision is added in Art. 48, namely that privileged claims encumber aircraft also in cases where they are operated by someone other than their owners, except in case of an illegal taking (*desposesión*) or in case of bad faith on the part of the creditor (Art. 48).

In regard to the international recognition of interests secured by mortgages, the draft suggests that signatory countries should recognize them provided they are established on aircraft registered in another contracting country and "established in accordance with the requirements of this chapter" (Art. 56). An analogous provision applies to the recognition of privileged liens; they will be recognized in any other contracting country "in all legal acts effectuated in their respective territories and on which they are designed to take effect" (Art. 49).

Without entering into a detailed analysis and evaluation of the draft, it may suffice to note that in most respects, including provisions dealing with mortgages, the draft represents a mere compilation of rules generally found in Latin American aviation codes. This means that the draft did not advance beyond solutions (or lack of them) presently on the books. It also adopted numerous rules of detail which may have been safely left to domestic legislation, particularly extensive administrative regulations. This indicates that the significance of the draft is rather limited. In fact, the adoption of the draft may result in an international perpetuation of law as it is, including many of its patent deficiencies.

(IV) CONCLUSIONS

An internationally uniform aviation law is not so much needed for domestic purposes as it is for situations arising in international air transportation. The areas in dire need of unification are primarily liability of air carriers, jurisdictional conflicts and international financing, including related security arrangements. These questions present difficulties when they arise among Latin American countries. They become even more difficult to handle when they involve civil law and common law jurisdictions, i.e., Canada, British dependencies and the United States. In order to solve both inter-civil-law and inter-civil-and-common-law situations, the question must be asked whether solutions are available through a detailed uniform code which is based prevalently on civil law foundations and, assuming its total adoption, has dispensed with choice-of-law rules. It would seem that an international agreement on some basic legal principles dealing with liability of carriers, jurisdiction, interests in aircraft, including security arrangements of various types, and coupled with related choice-of-laws provisions (an international *ley de bases*) would be preferable. It would have better prospects to generate an active interest on the part of the prospective participating countries. An attempt which promises a reasonable balance between inter-nationally uniform basic rules, and the possibility of their implementation by domestic legislation, including a complete freedom to develop one's own administrative rules according to constitutional and organizational patterns, has at least some hope of success. The first step toward achieving this goal is a wider adoption, on the part of the countries in the Hemisphere, of the already existing international conventions dealing with some of the basic substantive and choice-of-laws areas of aviation law.

FOOTNOTES

¹For previous developments Bayitch, *Aircraft Mortgage in the Americas: A Study in Comparative Aviation Law with Documents* (1960, hereinafter cited as *Aircraft Mortgage*; also *Titles and Liens in Aircraft*, 3 *ITA Humanidades* 1 (Brazil, 1967); *Silveira da Mota, Titles and Liens in Aircraft*, id. 9 (1967). Codes and other sources are available in *United States Senate Committee on Commerce, Air Laws and Treaties of the World* (1965). See also *Camara, Prenda con Registro o Hipoteca Mobiliaria* (Buenos Aires, 1961); and *Mercado, Hipoteca Aerea*, 14 *Enciclopedia Jurídica Omeba* 78 (Buenos Aires, 1961).

²Ley No. 14.307 (1954). *Rodríguez Jurado, Teoría y Práctica del Derecho Aeronáutico* 102 (Buenos Aires, 1963).

³Ley No. 17.285 (1967), summarized in 1 (1) *Lawyer of the Americas* 105 (1969); also in 1 *Videla Escalada, Derecho Aeronáutico* 220 (Buenos Aires, 1969); *Basualdo Moine, El Nuevo Código Aeronáutico*, 127 *La Ley* 1230 (1967). This law

expressly provides in Art. 52, para. 2, that aircraft and engines are not amenable to *prenda con registro*, apparently under Decree—Law No. 15,348 (1946), as amended by Law No. 12,962 (1947).

⁴Decreto-Ley No. 12.627 (1957) and Ley No. 15.779 (1960). Cases reported in Maciel, *Interpretación Judicial de la Ley Aeronáutica 45-48* (Buenos Aires, n.d.), and Bernhard, *Cora y otros c. Transatlantica Argentina* (1962), 107 *La Ley* 208 (1962). Cf. Azona, *Inscripción de Aeronaves Adquiridas en el Extranjero*, 36 *Impuestos* 500 (1968).

⁵An aircraft registered provisionally under Art. 42 and 43 may not be encumbered by any lien (*garantía real*), until the registration becomes permanent (*definitiva*) (Art 52, para. 3).

⁶Law No. 12.339 (1958). Cases reported in Maciel, *op. cit.* 47-48. Videla Escalada, *La Ratificación de la Convención de Ginebra de 1948 Relacionada con el Reconocimiento Internacional de Derechos sobre Aeronaves*, (7327) *Jurisprudencia Argentina* (1958). The Convention on the International Recognition of Rights in Aircraft, signed at Geneva on June 19, 1948, will be hereinafter referred to as Geneva Convention.

⁷Aircraft Mortgage 23, 93.

⁸Lawyer of the Americas 43 (1970).

⁹Decreto-Ley No. 483 (1938); Aircraft Mortgage 93 (1960). Amorin Araujo, *Hipoteca das Aeronaves*, 5 (11) *Revista Brasileira de Direito Aeronautico* 52 (1961). Generally, Rocha Guimaraes, *Tendencias do Direito Privado Aeronautico Brasileiro*, 5(7) *Revista del Instituto de Derecho Aeronáutico* 361, 366 (1956); Lobo Araujo, *El Derecho Aeronáutico en el Ambito Nacional Convenciones y Legislación*, 11 (19) *Revista del Instituto de Derecho Aeronáutico* 37 (1962).

¹⁰Decreto-Ley No. 32 (1966), summarized in 1 (2) *Lawyer of the Americas* 110 (1969); also in 1 Videla Escalada, *Derecho Aeronáutico* 185 (1969). Bastos Belchior, *Hipoteca Aerea no Direito Brasileiro*, 1 (2) *Revista Brasileira de Direito Aeronautico* 51 (1951).

¹¹Previous Art. 140 in Aircraft Mortgage 94 (1960).

¹²In the unreported case of Pan American World Airways v Panair do Brasil, S. A. (Justicia do Estado da Guanabara, Cidade do Rio de Janeiro, August 2, 1965) the court found that the title allegedly retained by Panair's did not qualify to be opposed to creditors in the corporate bankruptcy because the conditional sales contract, entered into the United States where the aircraft was registered at the time of sale, was not recorded in New York pursuant to the Uniform Conditional Sales Act nor in the register of the Federal Aviation Agency and, consequently, did not qualify for recognition under the Geneva Convention.

¹³Shawcross & Beaumont, *On Air Law* 116 (3d ed., 1966).

¹⁴Cheshire, *Private International Law* 404 (7th ed., 1965).

¹⁵Rev. Stat. Can. ch. 2 (1952).

¹⁶Hansard 7337 (June 30, 1961).

¹⁷Hansard 2453 (April 3, 1962).

¹⁸Johnston & Kennerly, *Canada's Need for a Central Aircraft Registry*, 12 *McGill L. J.* 225 (1966).

¹⁹Johnston & Kennerly, *op. cit.* 227; Mankiewicz (ed.), *Yearbook of Air and Space Law*, 1965, at 72 (Montreal, 1967); also Johnston, *Legal Aspects of Aircraft Finance*, 29 *J. Air L. & Comm.* 161, 319 (1963).

²⁰Baudouin, *Les Aspects Généraux du Droit Privé dans la Province de Quebec* 949 (Montreal, 1967).

²¹Aircraft Mortgage 21, n. 43.

²²Corte de Apelaciones (Talca), Aircraft Mortgage 22; supported by Hamilton, Manual de Derecho Aereo 417 (Santiago, 1960).

²³Ley sobre el contrato de prenda industrial, No. 5.687 (1935), with Reglamento (Decree No. 1.274, 1928). Enforcement is regulated by Decree-Law No. 776 (1925) sobre realización de prenda. Zuloaga, Derecho Industrial y Agrícola 320 (Santiago, 1943).

²⁴Adopted by Senate in 1949 with reservations; subsequently by Congress in 1951; reservation withdrawn in 1954 and approved by Congress in 1955 (Decree No. 553, 1955, but published only in 1959, D.O. No. 24.437); Memoria del Ministerio de Relaciones Exteriores Correspondientes al Año 1955, at 240 (Santiago, n. d.). Aguayo Mendibourne, Reconocimiento Internacional de Derechos sobre Aeronaves segun el Convenio de Ginebra de 1948 (Memoria, Santiago, 1963).

²⁵Hamilton, op. cit. 421.

²⁶Aircraft Mortgage 24, 99.

²⁷Text in 1 Cobo Cayon, Manual de Derecho Aereo 283 (Bogota, 1966).

²⁸N.d.

²⁹Providing that, among other instruments, "10. all documents issued or executed before a notary" shall be inscribed.

³⁰Repeat Art. 2673 and Art. 2674 of the Civil Code.

³¹2 Lawyer of the Americas 49 (1970).

³²Aircraft Mortgage 24, 99.

³³Ley de Prenda (No. 27, 1941); Aircraft Mortgage 100.

³⁴Código de Comercio, 1964 (Diario Oficial, alcance, No. 27 a la Gaceta No. 119, May 27, 1964), disposiciones generales y transitorias, Art. I.

³⁵Diario Oficial, alcance No. 37 a la Gaceta No. 156 (July 14, 1965).

³⁶See supra n. 35.

³⁷Aircraft Mortgage 22, n. 44. Fuentes, Guía Legal de Transportes, Legislación del Transporte Ferroviario, Motorizado, Marítimo y Aereo 1411 (Havana, 1958).

³⁸Aircraft Mortgage 22, n. 45.

³⁹Ley No. 1841 (G.O. No. 6.857, 1958), as amended. Text also in Terrero Pena, Código Civil de la República Dominicana 450 (1958?).

⁴⁰2 Lawyer of the Americas 51 (1970).

⁴¹Text in Carrera del Río, Legislación Aeronáutica del Ecuador 1, 10 (Guayaquil, 1963). The recent reforms of the Commercial Code (R.O. No. 99, November 8, 1963) did not affect aircraft mortgages. The regulation regarding inscriptions foreseen in Art. 8 of the Ley de Tránsito Aéreo has not yet been issued.

⁴²Carrera del Río, op. cit. at 305.

⁴³Aircraft Mortgage 24, 104.

⁴⁴Code d'Aviation Civile, as amended by Decree No. 67-333 of March 30, 1967 (J.O. April 9, 1967, 3569); text also in Recueil Dalloz Sirey (Leg.) 184 (1967), and 21 Revue Française de Droit Aérien 129 ss. (1966); excerpts in 56 Revue Critique de Droit International Privé 589 (1967).

⁴⁵The Code contains legislative (L.) as well as administrative (R) provisions.

⁴⁶Law No. 63-1350. December 30, 1963 (J. O. January 3, 1964); see 18 Revue Française de Droit Aérien 47 (1964).

⁴⁷Aircraft Mortgage 24, 105. Juárez Rodas, El Derecho Aereo Guatemalteco en el Derecho Internacional (Guatemala, 1957).

⁴⁸168 Diario Oficial No. 84 ss. (1963).

- ⁴⁹Shawcross & Beaumont, *On Air Law* 116 (3d ed., 1966).
- ⁵⁰115 *Moniteur*, No. 109, 465 (1960).
- ⁵¹Loi, December 17, 1947; Loi concernant la propriété sur les aéronefs, February 2, 1948 (*Bulletin des Lois et Actes de Haiti* 59, 1948).
- ⁵²116 *Moniteur* No. 21 (a), February 16, 1961.
- ⁵³*Aircraft Mortgage* 24, 106; *Mendoza Fugón, Condición Jurídica de la Aeronave* 26 (thesis, Tegucigalpa, 1965)
- ⁵⁴*Aircraft Mortgage* 25, 108. Francoz Rigalt, *Propiedad y Derechos sobre Aeronaves*, (17) *Revista del Instituto de Derecho Comparado de Mexico* 53 (1961).
- ⁵⁵*Aircraft Mortgage* 110; Art. 57 modified by decree of September 12, 1957 (D.O. April 19, 1961). Art. 24 of the Reglamento dealing with choice-of-law in Bayitch & Siqueiros, *Conflict of Laws: Mexico and the United States, a Bilateral Study* 118 (1968).
- ⁵⁶Text in Bayitch-Siqueiros, *op. cit.* n. 55 *supra*, at 17, n. 56.
- ⁵⁷Letter from the Netherlands Ministry of Foreign Affairs (DVE/BK-236580, December 19, 1969).
- ⁵⁸*Aircraft Mortgage* 25, 113.
- ⁵⁹Regulations of 1968 translated in *Aircraft Mortgage* 115.
- ⁶⁰Fabrega, *Historia de la Legislación Aeronáutica Panameña* (Panama, 1965).
- ⁶¹60 *Gaceta Oficial*, No. 14. 987, October 21, 1963. Elwell, *Origen y Naturaleza de la Hipoteca sobre Flota*, 1 (1) *Revista del Instituto de Derecho Aeronáutico* 37 (1952).
- ⁶²49 *Gaceta Oficial*, No. 11.724 (March 7, 1952)
- ⁶³51 *Gaceta Oficial*, No. 12.490 (October 7, 1954); *Aircraft Mortgage* 119.
- ⁶⁴Bayitch, *The Aviation Code of Paraguay: a Comparative Study*, 3 *Int.-Am. L. Rev.* 235 (1961) (bilingual).
- ⁶⁵*Aircraft Mortgage* 25.
- ⁶⁶Decreto Supremo No. 22, December 26, 1963, published by Ministerio de Aeronautica, *Dirección General de Aeronautica Civil* (1964).
- ⁶⁷Ley No. 15.720 (1965). Ministerio de Aeronáutica, *Dirección General de Aeronáutica Civil, Leyes y Reglamentos de Aeronáutica Civil del Perú* (1966).
- ⁶⁸Register of ownership of aircraft (Acuerdo No. 3, 1947) in *Aircraft Mortgage* 121; Acuerdo aprobatorio, 1953, *id.* at 122, is still in force. Another acuerdo (October 11, 1949) is quoted in Garcia Salazar, *Guía Jurisprudencial de los Registros Públicos* 17 (Lima, 1965). Acavado y Criado, *Origen y Evolución de la Prenda sin Desplazamiento o con Registro y sus Antecedentes en las Legislaciones Extranjeras y del Perú*, 24 *Revista de Derecho y Ciencias Políticas* 19 (Lima, 1960).
- ⁶⁹Decreto Supremo No. 16, 1966, *El Peruano*, April 27, 1966.
- ⁷⁰Hooper, *El Derecho Aeronáutico en el Perú: Posición Internacional Peruana* (Lima, 1964).
- ⁷¹Shawcross & Beaumont, *On Air Law* 116 (3d ed., 1966).
- ⁷²*Aircraft Mortgage* 27.
- ⁷³Sec. 503 (a) (3) F.A.A.
- ⁷⁴73 Stat. 180.
- ⁷⁵Sec. 503 (e) F.A.A., 74 Stat. 236. Case law dealing with recordation is collected in 22 A.L.R. 3d 1270 (1968). See also Billyou, *Air Law* 189 (1964); Johnston, *Legal Aspects of Aircraft Finance*, 29 *J. Air L. & Comm.* 161 (1963), and Lambert, *Survey of Domestic and International Aspects of Aircraft Equipment Financing*, 18 *Bus. Law.* 627, 631 (1963).

⁷⁶68 Stat. 236.

⁷⁷Aircraft Titles: Hearing before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 88th Cong. (1963).

⁷⁸Bayitch, Florida: Conflict of Laws, 1964-1966, 20 U. Miami L. Rev. 498 (1966).

⁷⁹International Aircraft Financing under the Uniform Commercial Code, 2 N.Y.U.J. Int'l L. & Pol. 180 (1969).

⁸⁰4 U.S.T. 1830, T.I.A.S. No. 2847. The Convention is analyzed in Aircraft Mortgage 69-86.

⁸¹Sec. 116 (5) provides that "Notwithstanding any other provision of this chapter, the title of any owner, whether as trustee or otherwise, to aircraft, aircraft engines, propellers, appliances, and spare parts . . . leased, subleased, or conditionally sold to any air carrier . . . and any right of such owner or of any lessor to such air carrier to take possession of such property in compliance with the provisions of any such lease or conditional sale contract shall not be affected by the provisions of this chapter if the terms of such lease or conditional sale so provide." MacLachlan, *The Impact of Bankruptcy on Secured Transactions*, 60 Colum. L. Rev. 593 (1960).

⁸²Lambert, *op. cit.* 646; Billyou, *op. cit.* 201.

⁸³Aircraft Mortgage 26, 140.

⁸⁴Aircraft Mortgage 141.

⁸⁵Aircraft Mortgage 26, 142.

⁸⁶2 Lawyer of the Americas 65 (1970).

⁸⁷Bentivoglio, *Conflicts Problems in Aviation Law*, (119) *Recueil des Cours (Hague)*, 1966, at 75 (1969).

⁸⁸Aircraft Mortgage 65, 144. Rabel, *The Revision of the Treaties of Montevideo on the Law of Conflicts*, 39 Mich. L. Rev. 517 (1941).

⁸⁹Aircraft Mortgage 67, 146. Adopted by the following countries, some with reservations (R); Bolivia (R), Brazil (R), Chile (R), Costa Rica (R), Cuba, Dominican Republic (R), Ecuador (R), El Salvador (R), Guatemala, Haiti (R), Honduras, Nicaragua, Paraguay, Peru, Venezuela (R).

⁹⁰Aircraft Mortgage 147. As of March 16, 1970, the Convention was ratified by the following countries with the effective date: Algeria (1964), Argentina (1958), Brazil (1953), Cameroon (1969), Central African Republic (1969), Chile (1956), Cuba (1961), Denmark (1963), Ecuador (1958), El Salvador (1958), France (1964), Gabon (1970), Germany (Fed. Republic, 1959), Haiti (1961), Iceland (1967), Italy (1961), Ivory Coast (1965), Laos (1965), Lebanon (1969), Mali (1962), Mauretania (1962), Mexico (1953), Netherlands (1959), Niger (1963), Norway (1954), Pakistan (1953), Paraguay (1969), Sweden (1956), Switzerland (1961), Thailand (1968), Tunisia (1966), United Arab Republic (1969), United States (1953); Colombia, Dominican Republic, Peru, and Venezuela have signed but not ratified the Convention.

⁹¹Aircraft Mortgage 69. Ferrero, *El Reconocimiento Internacional de Derechos sobre Aeronaves en el Convenio de Ginebra de 1948*, 2 (2) *Revista del Instituto de Derecho Aeronáutico* 13 (1953); Belchior, *Convencao de Genebra, 1948*, 2 (4) *Revista Brasileira de Direito Aeronautico* 18 (1952); Silveira da Mota, *Reconhecimento Internacional de Direitos sobre Aeronaves*, 55 (374) *Revista dos Tribunais* 31 (1966).

⁹²ICAO C-WP 3756 (19/3/63); C-WP/3906 (3/12/63); Doc. 8373-14, C/948-14, Council, 50th Session, Minutes of the 14th Meeting, p. 211.

⁹³13 U.S.T. 2312.

⁹⁴Bayitch, Unification of Aviation Law in the Western Hemisphere, 19 U. Miami L. Rev. 535 (1965); also in 10 (16) Revista Brasileira de Direito Aeronautico 5 (1964); 2 ITA Humanidades 1 (Brazil, 1966); and La Unificación del Derecho Aereo en el Hemisferio Occidental, 19 Boletín del Instituto de Derecho Comparado de México 99 (1966). Folchi, Hacia la Unificación Legislativa del Derecho Aeronáutico en América, 112 La Ley 899 (1963); Cocca, L'Unification du Droit Aérien en Amérique Latine, 19 Revue Francaise de Droit Aérien 269 (1965).

⁹⁵Videla Escalada, La Unificación en América Latina en Materia de Derechos de Garantía sobre Aeronaves, in Primeras Jornadas Latinoamericanas de Derecho Aeronáutico (1960), at 561 (Buenos Aires, 1962).

⁹⁶Bayitch, El Actual Derecho Convencional de la Aviación, 18 Boletín del Instituto de Derecho Comparado de México 723, 744 (1965).