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6-1-1970

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Recommended Citation

C. E.B. McKenry, *Aviation*, 2 U. Miami Inter-Am. L. Rev. 289 (1970)
Available at: <http://repository.law.miami.edu/umialr/vol2/iss2/11>

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AVIATION

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HIJACKING

In March, 1970 IATA's Executive Committee met in Geneva to discuss the security of aircraft and airports; the meeting was an extension of the General Meeting in Amsterdam in October, 1969. Proposals were drafted involving governments, airports, airlines and IATA. In brief, the resolutions proposed the following:

By Governments:

1. Promote international legislation which would make the act of unlawful seizure of an aircraft an international offense subject to severe penalties, and the hijacker to extradition before allowing pleas for asylum. This could be accomplished by supplementing existing bilateral agreements.
2. Conclude international agreements to make the placing on board of explosives with intent to damage any portion of the plane, passengers or crew an international offense with appropriate punishment.
3. Enact national legislation to implement the provisions of the existing international conventions and provide for implementation of agreements envisaged in (1) and (2) above.
4. Enact local legislation to authorize the taking of appropriate preventative measures by law enforcement agencies and other security organizations.
5. Provide for cooperation between international organizations such as ICAO, UPU and INTERPOL in matters relating to security of aircraft, passengers, crew, cargo and mail.
6. Ensure maximum security on a national basis *vis-a-vis* unlawful acts against aircraft and provide for the exchange of relevant information between various government agencies on all subjects relating to civil aviation security.
7. Develop, through ICAO, international airport security standards (Annex to Chicago Convention).

8. When feasible, appoint national security coordinators who would be directly responsible to a member of their own government at cabinet level in charge of civil aviation, in coordination with airlines.

By Airport Authorities:

1. Ensure proper coordination of airport security between all interested agencies, e.g. postal authorities, customs, immigration, local law enforcement authorities and other security organizations.
2. Coordinate security measures between airports either through existing airport organizations or on an inter-governmental basis.
3. Provide all appropriate means to enable the airlines to set up and implement security measures such as screening of passengers, baggage and cargo by means of electronic equipment, chemical detectors, among others.
4. Ensure that corresponding measures are taken to secure appropriate screening of all forms of air mail.

By Airlines:

1. Ensure the maximum exchange of information on security between airlines, relying primarily on the Secretariat and the Security Advisory Committee.
2. Standardize security measures for normal situations as well as emergency situations.
3. Establish effective liaison with government agencies and airport authorities on all aspects of security.
4. Establish clearly defined policies on security to enable a common position to be taken at meetings with government officials and airport authorities where matters of security are discussed.

By IATA:

1. The Executive Committee to establish an *ad hoc* subcommittee of three to advise and assist the Director General on security matters.
2. The Secretariat to provide member airlines with appropriate documentation and material to be used by national authorities in developing regulations or legislation in relation to security in international civil air transport.

3. Make representations to inter-governmental organizations and government agencies concerning IATA policy relating to the security of aircraft in civil air transportation.

On October 20, 1969 Brazil enacted legislation providing for the affirmative prosecution of anyone engaging in the "smuggling and transportation of terrorists and subversives in aircraft." By definition, the crime is committed whether the flight originates in Brazil or not. The only requirement is that the accused overfly or land in Brazilian national territory without authorization. Sections I and II of the law make the transport of such people, or even the collaboration in such transport a crime. Section III covers the illegal transport of arms, drugs and other contraband. Accessories to these crimes are penalized equally with the actual hijackers with penalties ranging from 8 to 20 years in prison.

Between September 23 and October 3, 1969 an ICAO subcommittee convened in Montreal to discuss and propose legislation for member nations on the unlawful seizure of aircraft. Twelve nations were represented, including Argentina, Canada, Colombia and the United States. The Subcommittee stated that in order to attain its objective, i.e., the successful "deterrence of persons committing acts of unlawful seizure of aircraft and, more specifically, to ensure the prosecution and punishment of these persons," an international agreement must be promulgated and adhered to by the member nations. It was agreed that any international agreement should be one to which states could become parties independently of the Tokyo Convention, and that the agreement "should be so formulated as to avoid posing any problems to States which would wish to become parties to both these international agreements . . ." The proposed convention is intended to apply to "all civil aircraft." A definition of unlawful seizure was agreed upon, and on the subjects of attempts and complicity the conclusion reached that they should be punishable offenses. Jurisdiction was also discussed and it was decided that each State must establish its jurisdiction over the offense if committed on board an aircraft registered in that state. The objective of this provision was to "ensure that the State in the best position to apprehend the alleged offender would have jurisdiction over him." The Subcommittee also reached decisions on prosecution and extradition. Specifically, that "the authorities of the State in the territory in which the aircraft has landed and where the alleged offender has left the aircraft should, save in exceptional circumstances, either prosecute the person concerned or extradite him . . . in cases where extradition was not proceeded with, the State in question must be obliged to submit the case to its competent authorities so that they might decide

whether legal proceedings should be undertaken." The Subcommittee further decided that unlawful seizure should be an extraditable offense, and that on board offenses, for the purpose of extradition, would be considered offenses in the place of landing as well as the place of occurrence. Finally, the Subcommittee agreed that "the Convention should not attempt to prevent any State to refuse extradition of the person concerned in conformity with its law."

ICAO has scheduled an extraordinary session to meet June 15-July 1 in Montreal to tighten operational security rules and measures for the protection of air travelers, civil aircraft and crews from illegal acts endangering flights and other operations.

ICAO has also circulated a draft treaty designed to eliminate safe havens for hijackers, and convened a diplomatic conference for its consideration in the Hague, December 1-16, 1970.

In April, 1970, the International Federation of Airline Pilots Association (IFALPA) rejected demands from some of its delegates for an aggressive anti-hijacking policy and decided to work with ICAO and the UN on the problem. While calling for attendance and support of the ICAO draft convention on the subject, an IFALPA resolution mentioned the possibility of an air traffic ban in countries where "the level of safety which crews and passengers have the right to expect cannot be achieved." The above took place at the annual meeting in London.

In addition to organized international response to sabotage and hijacking, new programs and procedures have been considered by individual airlines and airports as well as by various interested groups. Airports around the world have begun adopting use of electronic, x-ray and chemical devices to detect metal and explosives. Rigorous searching of baggage and even passengers has become routine in some areas. Trained officials observe passengers for facial characteristics and mannerisms associated with hijackers, and security guards in plain clothes often accompany flights. United States pilots through ALPA have reacted to recent violence in attempted seizures by demanding installation of bullet-proof bulkheads between the cockpit and passenger cabins, and in addition uniform adoption of electronic passenger screening systems. During 1969 over 30 U. S. airlines were hijacked to Cuba by 41 hijackers, including 20 U. S. citizens. During the same period 26 Latin American airliners were taken to Cuba.

An ATA report has indicated that hijackers are being prosecuted with increasing regularity. During 1969, 18 hijackers were indicted by

Federal Courts in the U.S. In a recent decision, a U.S. District Court in Texas decided that a passenger carrying a concealed weapon has made an unlawful attempt to board at the moment he surrenders his ticket and enters the departure lounge for the flight. Actual boarding of the plane is not necessary. Portions of the ticket and the weapon were held admissible evidence (*U.S. v. Brown*).

WARSAW CONVENTION

In a recent decision, an Illinois State Circuit Court found the Warsaw Convention inapplicable in *Burdell v Canadian Pacific Airlines* (see *Lawyer of the Americas*, June 1969 at p. 107). By so holding, the Court avoided the more troublesome question of the constitutionality of the Convention. It was found that both the origin and the destination of Mr. Burdell's ticket was Singapore, and that Singapore was not a High Contracting Party at the time of the purchase or the crash. From these facts the Court concluded that "there is no 'international transportation' as defined in Art. 1 of the Warsaw Convention."

The Warsaw Convention was held applicable to international transportation of passengers by a U.S. District Court (Southern District of N.Y.) under a contract of carriage on a package charter tour in *Molitch v. Irish International Airlines*. The air carrier here was in complete control of the aircraft with no operational functions being performed by the charterer. Also decided in this case under Art. 29 of the Convention was the elimination of the defense of statute of limitations when the passenger's ticket failed to give effective notice of the applicability of the Convention.

The New York State Supreme Court held that the notice requirement of the Convention was properly complied with by the carrier in *Millikin Trust v. Iberia*, when notice was printed in eight point print on the ticket. The ticket envelope, when opened to remove the ticket also contained reference to the Convention in large type.

CHICAGO CONVENTION

In a recent address to the American Bar Association, IATA's Director General pointed out the need to update Arts. 5 and 6 of the Chicago Convention. Article 6 governs scheduled international services. The articles, he said, have allowed an ambiguity to develop regarding the classification of "inclusive tour services." Many types of charter services have grown under Art. 5, which originally covered ambulance and taxi service. Article

5 granted transit and stop rights, as a qualified traffic privilege, to aircraft not engaged in "scheduled international air service." Today the inclusive tour service does not really fit within Article 5. Mr. Hammar-skjold noted two reasons: 1) the tours involve sale of transportation to the public, and 2) they display a regularity of operation unlike most air charters. In response to this problem, the Director General called for adoption of the ICAO definition of international air transport, or revision of Article 5 to cover purely occasional travel.

In *Gold v Swissair*, the New York Supreme Court recently decided that defendant Swissair was liable for injuries suffered by a passenger on an "all services tour" despite a provision in the contract limiting the carrier's liability to occasions when the passengers were physically on board. In this case, the passenger was injured in a rest room at an intermediate stop. The duty of the carrier was held to subsist beyond the plane itself to places of implied invitation of the carrier to the passenger.

CAPACITY

The introduction of the 747 into international travel has precipitated a dispute which threatens continued use of this aircraft. Several countries, including Brazil, Japan, Great Britain and Australia have announced their intention to restrict 747 service or to seek reduction of scheduled flights into their countries because of the impending imbalance of capacity presented by airlines presently operating the 747. Use of these planes, it is alleged, will swamp many foreign points with excess seats and pose a severe threat to smaller foreign lines, as well as to the fare structure. Countries such as Italy, Britain and Belgium feel that the only way to prevent U.S. carriers from gaining a competitive advantage is to have all airlines initiate 747 service at the same time. Some countries may attempt to withhold 747 service as a bargaining tool to gain concessions for use of U.S. cities as gateways for international routes.

An IATA forecast voiced the fear of the industry that even a normal rate of growth in passenger traffic (estimated at 14% for 1970) may not be enough to keep pace with presently high costs and growing capacities. The forecast expressed the need for a new simplified fare schedule as well as new approaches to cost problems. International airlines are preparing for the upcoming IATA Traffic Conference in September, 1970 in Honolulu which will place special emphasis on capacity problems. More consistent policies on the part of governments and international organizations were also mentioned as a necessary backdrop to reduction of traveling costs.

The effect of the new generation of large jets was the subject of a CAB staff study: "Impact of The New Large Jets on the Air Transport System, 1970-73".

SMOKE POLLUTION

Lawsuits initiated by Illinois and New Jersey last year against major airlines for violation of their new airplane smoke pollution laws have led to agreements which should end jet smoke pollution by 1972. Over 75% of the U.S. commercial airline fleet has agreed to proposals of the U.S. Department of Transportation calling for the fitting of a special combustion device to existing engines. The device will allow for a more complete combustion of jet fuel, eliminating the smoke trails and solid particle fallout.

Fearing other states would pass laws similar to those above, as well as more lawsuits, the airlines began a program of modifications which will cost in excess of \$13 million. Some of the lawsuits are not being dropped, despite the agreement, because of the states' desires that the modification program have judicial backing.

Jet pollution accounts for only one percent of the pollution in the atmosphere and has been called by some an "aesthetic problem." The above percentage is normally exceeded near airports in large cities where flights are frequent and pollution is already severe. The 747 and other new generation large aircraft have smokeless engines and should not add new problems in this area.

In addition to the airlines' exhaust agreement, the FAA has taken action aimed at ending invisible harmful exhaust emissions. The action includes:

1. Advanced notice of proposed rule making requesting comments by July 1, 1970 on establishment of standards governing aircraft engine emissions.
2. Imminent award of an FAA contract for a study to establish design criteria for control of nitrogen oxides, an invisible exhaust pollutant.

CARGO THEFTS

Claims for air cargo losses covered by the Institute of Marine Underwriters have increased almost three-fold according to a recent statement by the Secretary of the Institute. The percentage increase of losses seems

to be progressing geometrically while the industry wide security procedure effectiveness increases arithmetically.

To cope with security problems, 44 airlines operating from Kennedy Airport in New York City have formed an *Airport Security Council* which will establish the requirements in order to increase the proficiency of security measures. Other airport authorities have asked individual airlines to impose stricter enforcement of present security procedures until a more workable solution can be found.

The U.S. Treasury Department has under consideration proposed legislation intended to prevent thefts from airports as well as seaports.

WAKE TURBULENCE

The FAA has released new traffic control separation standards for the new giant jets. The new rules relax the strict 10 mile/200 (vertical) separation distances required earlier by the FAA for smaller aircraft traveling astern of the 747's.

Tests conducted at Edwards Air Force Base by the FAA revealed that the dangers posed to smaller planes following the bigger jets were not as great as originally believed. However, aircraft on the ground in the vicinity of the large jets will be cautioned about the air blasts from their engines, since these can equal 35 mph winds at 900 feet. Enroute separation distances have been eased to 5 miles and 1000 foot vertical separation. This is reduced to 3 miles for heavy (300,000 lb.+) jets following other heavy jets.

AIRCRAFT MANUFACTURE

A mixed capital company *Empresa Brasileira do Aeronautica* (EMBRAER) will begin production of jet training and light aircraft at a plant in Sao Jose do Campos (Sao Paulo) by the end of 1971. The company, with an initial capitalization of 50 million new *cruzeiros*, was organized in December, 1969.

SAFETY

ALPA recently petitioned the U.S. Federal Aviation administration for an immediate requirement that most aircraft presently flying in the United States be equipped with *strobe lights*. The strobe light is a low cost (approximately \$100 each) means of avoiding midair collisions which

functions during the day as well as at night. It is predictable that this type of lighting may soon be tied into a pilot warning indicator system.

A runway de-icer demonstration has been termed effective after recent extensive tests under adverse weather conditions at La Guardia Airport in New York City. This glycol-based de-icer has been used to clear runways in approximately one-tenth of the time taken by conventional de-icers. Although the use of this de-icer is substantially more expensive than normal de-icing methods, the effectiveness might offset the additional expense when the high cost of flight diversions is considered.

CARIBBEAN CONSORTIUM

The Caribbean Heads of Government Conference held in Jamaica April 13-17 decided to establish a committee of experts to examine the feasibility of a Caribbean multi-national airline based on the existing services of BWIA, LIAT, Air Jamaica, Guiana Airways and Air Bahamas. The committee is to submit a report within four months of its organization date.

TRAVEL AGENTS

A class action by seven travel agents against IATA alleging an illegal agreement by IATA not to pay commissions to these agents was dismissed by the U. S. Court of Appeals (Second Circuit) in *Caceres Agency v IATA*. The Court ruled each agency should bring suit individually because of the high individual damages sought, and also because each agency had different basic causes of dispute with IATA.

INTERAMERICAN AVIATION LAW CONFERENCE

The Seventh Interamerican Aviation Law Conference was held in Miami, Florida on April 15-17, 1970. The Conference was co-sponsored by the School of Law of the University of Miami, the University of Carabobo, Venezuela, and the University of Morón, Argentina.

Rafael C. Benitez, Associate Dean of the University of Miami School of Law, gave the opening address welcoming the airline personnel, government officials, distinguished speakers, attorneys, and guests.

A lecture by Dr. Mario O. Folchi, attorney and Professor at the University of Morón, dealt with *Aerial Hijacking*. Dr. Anibal Rueda of the University of Carabobo, delivered a lecture on *Aviation in Venezuela* and Dr. Eduardo T. Cosentino from the University of Morón lectured on the

legal framework of *Air Traffic Control Agencies*. The subject, *U. S. Methods of Evaluating Air Routes in Bilateral Agreements* was covered by Francis S. Murphy, Chief of the Project Development Staff of the U.S. Civil Aeronautics Board. Richard J. O'Melia, Chief, Bureau of Enforcement of the CAB talked on the *Bureau of Enforcement*.

Participants in the Conference took part in general debates following the above lectures. They also enjoyed a luncheon hosted by the Boeing Company, and an evening reception given in their honor by Parker and Company International, aviation and general insurance brokers.